



SHERIFFDOM OF LOTHIAN AND BORDERS

COVID-19

GUIDANCE IN RESPECT OF BUSINESS IN THE ALL SCOTLAND SHERIFF PERSONAL INJURY COURT

Introduction

[1] The purpose of this guidance is to inform practitioners of the steps which are to be taken to facilitate, as far as is possible, the efficient disposal of business in the All Scotland Sheriff Personal Injury Court (ASSPIC) during the current COVID19 emergency. This guidance has effect from 25 May 2020 and will be kept under review.

[2] The UK and Scottish Government measures to address COVID19 must be complied with. The court is operating with significantly reduced staff resource who are currently supporting the progression of urgent and necessary business. Accordingly, a return to business as usual is not feasible in the foreseeable future. Nevertheless, the court has been constantly reviewing its business planning in light of the pandemic and some steps will be taken to progress that business using technological solutions. The Coronavirus (Scotland) Act 2020 ("the 2020 Act") suspends the requirement for physical attendance at court unless the court directs otherwise. All hearings will be conducted remotely until further notice.

[3] Schedule 4 Part 1.1 of the 2020 Act enables the use of electronic signature and electronic transmission of court documents. Where a document requires to be signed electronic signature will be accepted in accordance with schedule 4.

[4] Personal injury litigation proceeding under Chapter 36 of the Ordinary Cause Rules (OCR) is a case flow managed procedure which depends on a timetable set by the court. It relies heavily on the support of court staff to progress business and deal with a wide range of

steps of process. The volume of cases in ASSPIC generates in turn a very significant volume of motions which are in the main unopposed with a relatively small volume of opposed motions. A very small percentage of cases proceed to proof and a correspondingly large number of cases settle. The importance of having a timetable as a framework for settlement is understood.

[5] With the support of SCTS the court has been making every effort to devise and maintain systems to allow the court to operate its key functions. Urgent business is currently being processed by sheriffs with a very limited number of staff working in the court building. Court staff now have the technology to support the court working remotely from home.

[6] The court will now proceed to restart the operation of ASSPIC using modest measures in several phases as follows: -

Phase 1

[7] During this initial phase, the court will:

- Continue to process priority and urgent business
 - Writs will be warranted where the Time Bar is imminent i.e. up to a month ahead. All writs received by the court are date stamped and filed in order of time bar and reviewed. Practitioners are requested to send any writs by electronic means where possible highlighting the time bar date within the subject line of the accompanying email.
 - Urgent motions will continue to be dealt with and practitioners are reminded to flag up any urgency within the subject line of the email communication.
- Process
 - the backlog of unopposed motions
 - NIDs and defences and issue timetables
 - steps of process lodged with the court in actions where timetables have already been issued.
- Hear opposed motions and procedural hearings under Chapter 36A OCR by teleconference unless parties agree that the motion may be determined by a PI Sheriff on written submissions. Further guidance will be issued as to the arrangements for the hearing of opposed motions and procedural hearings.

- Check initial writs when lodged with the court. These will be accorded priority by date of time bar. Practitioners should refrain, where possible, from submitting new writs at this stage where the time bar is more than 6 months ahead.

Further information on Phase 1

[8]

Lodging documents

During this phase and moving forward practitioners must submit formal documents to be lodged in process in PDF format only and to submit one such document per email communication, with the exception of motions as noted below. This is to enable separate distribution and allocation of tasks for processing by staff working remotely. Please note that documents lodged in PDF format must not exceed 5mb to enable the file to be uploaded onto the electronic case management system (ICMS). If the document exceeds 5 mb it will be necessary to lodge it in two separate PDFs.

Lodging motions

Practitioners should continue to lodge motions by 12.30pm, ensuring that the motion email communication contains separate PDF formatted attachments for all supporting documents relating to the associated motion. The document size limit of 5 mb applies equally to documents lodged as attachments in support of a motion – see above.

Settled actions

Parties to actions with proofs due to take place between March and mid-June (which have been discharged and sisted by the court *ex proprio motu*) or between mid-June and end of July 2020, where any form of settlement has been agreed, should lodge the relevant PIAS form and motion to enable disposal of the action. These categories of proof are under active consideration and cases disposed of can be removed from the system with appropriate interlocutors. See paragraph [11] below.

Minutes for Decree

Minutes for Decree (whether or not already lodged) will not be considered until the backlog has been processed.

Communication with the court

Communication with the court for normal or routine purposes should continue to be by way of the generic mailbox - nationalPICourt@scotcourts.gov.uk. Please do not direct e mails to a named e mail recipient or multiple e mail addresses.

Review of Phase 1

Progress in all the areas mentioned above will be reviewed as Phase 1 progresses. Practitioners will be notified when the court can move to Phase 2.

Phase 2 – Moving Forward

[9] During this phase ASSPIC will continue with the processes carried out during Phase 1 together with the following:

- Continue to process and dispose of opposed motions
- Process Minutes for Decree
- Register and Warrant Initial Writs beginning with writs received since 24 March in Time Bar order.
- Continue with the processing of NIDs/Defences and issue associated Timetables.
- Process motions and other steps of procedure.

Further information on Phase 2

[10] The court welcomes co-operation with practitioners who must understand that this is progress but must not be seen as a return to normal business. Allowing for technological progress, staff resource continues to be reduced and non-urgent matters will take longer than usual to be progressed.

Please do not lodge significant numbers of writs as the court will simply not cope. Please use the mailboxes in a measured fashion. Repetitive e mails are counterproductive as they distract staff and inhibit them from getting on with implementing this process as fairly and expeditiously as possible.

Practitioners are encouraged to use existing timetables as a framework for settlement and to submit the PIAS form followed by the relevant motion and joint minute or alternatively to proceed by way of tender and acceptance. Should parties find that any action reaches the stage where progress cannot be made and are agreed that a sist is required the court will

normally grant any motion presented in accordance with OCR 36H.1. Generally, unnecessary disputes over procedural matters are discouraged. Should there be an issue to determine the court will deal with an opposed application or motion preferably by teleconference or by written submission if parties agree.

Proofs

[11] In light of current restrictions hearings where witnesses are required cannot proceed. Proofs due to take place between 17 March and 19 June 2020 have been sisted administratively by the court. This was a necessary response to the impending crisis.

The cohort of proofs fixed to take place during the period from 23 June until 31 July 2020 are currently under consideration. The court will take a constructive and discriminating approach to these proofs in line with parties' views subject to the clear understanding that these proofs will not proceed; parties should not incur expense in preparation for a proof and the proof diet will be converted to a notional diet rather than being discharged immediately. This will allow parties to retain the benefit of having a framework for settlement which the timetable and procedural rules provide.

Parties will have three options:

1. Where settlement can be achieved prior to the notional diet parties should inform the court to enable the action to be disposed of e.g. by way of Joint Minute or Tender and Acceptance of Tender using normal procedure.
2. Where parties are agreed that the notional proof diet should be discharged and the cause sisted they should make a joint application to the court by e mail with the proof date highlighted in the subject line of the e mail. It is not necessary to proceed by way of formal motion. No fee will be charged for this procedure.
3. If parties do not contact the court to state their position as to the notional proof diet the court will *ex proprio motu* discharge the diet and sist the cause 5 days prior to the date of the diet.

At this stage it is not feasible to offer the option of fixing new proof dates given current uncertainty and constraints. However, the court will continue to review how proofs are to be

allocated and managed. Proofs due to take place during the period March to July 2020 which have been sisted will be given reasonable priority when the court is in a position to allocate dates.

Actions proceeding under Chapter 36A -OCR

[12] Any reference to actions proceeding in ASSPIC includes those proceeding under Chapter 36A OCR.

Personal Injury Actions – Sheriff’s Local Jurisdiction

[13] This guidance applies only to actions raised for determination in the exercise of the sheriff’s All Scotland jurisdiction. PI Actions which proceed under local jurisdiction may adopt the ‘Restart’ procedure guidance on which was issued and effective from 1 May. See : <http://www.scotcourts.gov.uk/docs/default-source/default-document-library/coronavirus-guidance--progressing-certain-categories-of-civil-business-29-04-20.pdf?sfvrsn=2>

Jury Trials

[14] Chapter 36B OCR cannot be fully implemented during the current emergency. Jury Trials will not proceed and Rule 36B.3 will not be implemented by the Sheriff Clerk until further notice.

Online Court Technology

[15] Consideration has already been given to using online Virtual Court technology in ASSPIC. This is a National Court and this technology would allow enhanced access to the court by practitioners throughout Scotland. The WebEx system has proved highly successful with Inner House Appeal Hearings where all documents can be lodged electronically. Currently this technology is planned for Court of Session (Outer House) business when its use in substantive hearings including proofs with evidence from witnesses taken remotely will be evaluated. In light of this its effectiveness in ASSPIC will be carefully assessed and will be the subject of further guidance.

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