

# COVID 19

## Guidance in respect of Progressing Certain Categories of Civil Business in the Sheriff Courts

### Part 1. Introduction

1.1 The purpose of this guidance is to facilitate the efficient disposal of certain categories of civil business in the Sheriff Court during the current COVID-19 emergency. This guidance has effect from 1 May 2020.

1.2 Compliance with the Government's measures to slow the spread of the virus is vital. Accordingly, a return to business as usual is not viable in the near future. Nevertheless, the aim is that with the cooperation of parties some steps can be taken now to progress certain classes of business in the sheriff courts.

1.3 Arrangements have been put in place to enable the following categories of sheriff court business to be dealt with:

- Ordinary, family and commercial actions; adults with incapacity applications; and corporate insolvency proceedings sisted by the court *ex proprio motu*; administratively adjourned to a date on or after 1 June 2020; or in respect of which no further order was made, where the court is satisfied that there is good reason why the action should be restarted and that the action can be progressed remotely without recourse to a hearing which requires the leading of evidence; and
- Commissary.

1.4 Part 1 of Schedule 4 to the Coronavirus (Scotland) Act 2020 enables the use of electronic signatures and electronic transmission of court documents. Where a document requires to be signed an electronic signature will be accepted in accordance with Schedule 4. Part 1 of Schedule 4 also suspends the requirement for physical attendance at court unless the court directs otherwise.

## **Part 2. Civil Business**

2.1 This is not a return to business as usual. Whilst courts are currently dealing with business identified as urgent and necessary<sup>1</sup>, the purpose of this Part is to set out a basis upon which the court will determine if an action should be restarted. Only actions that can be progressed remotely will be restarted.

2.2 If a party to an action (“the applicant”) is of the opinion that it can be progressed remotely an application may be made in accordance with the procedure set out below. Prior to making an application, the applicant shall explore with the other parties to the action whether a position on restarting the action and further procedure can be agreed or if not the extent to which there are disputed matters.

2.3 Following and informed by such discussions the applicant shall prepare an application (in the form set out in Appendix 1). The applicant shall send by e-mail to each of the other parties to the action (“the respondent”) a copy of the application and the accompanying documentation referred to in paragraph 2.5 below.

2.4 The application shall contain the following information:

- the court reference number (e.g. PER-A1-20) and the names of the parties;
- the stage the action was at before it was sisted or adjourned administratively;
- the reasons why it is considered that the action should be restarted and why it is suitable to be progressed remotely;
- the means the applicant has available to deal with the case remotely;
- where the applicant is legally represented the name of the solicitor dealing with the action for the applicant and his or her e-mail address and telephone number; and
- the order sought by the applicant.

2.5 The application shall be accompanied by electronic copies of such documents as the applicant considers the sheriff will require to enable him or her to determine whether the case should be restarted and progressed remotely including, without prejudice to the foregoing generality, the up to date pleadings in the action in the form of a record.

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<sup>1</sup> <http://www.scotcourts.gov.uk/docs/default-source/default-document-library/urgent-civil-business---website-notice.pdf?sfvrsn=6>

2.6 Within 2 working days of receipt of an application, the respondent shall send by e-mail to the applicant either (i) confirmation of their consent to the application; or (ii) a response to the application (“the response”).

2.7 A consent to an application shall contain the following information:

- the court reference number (e.g. PER-A1-20) and the names of the parties;
- confirmation that the application is not opposed;
- the means that the respondent has available to deal with the case remotely;
- where the applicant is legally represented the name of the solicitor dealing with the action for the respondent and his or her e-mail address and telephone number; and
- (if different to the order sought by the applicant) the order sought by the respondent.

2.8 A response shall contain the following information:

- the court reference number (e.g. PER-A1-20) and the name of the parties;
- the reasons why the application is opposed;
- the means that the respondent has available to deal with the case remotely;
- where the applicant is legally represented the name of the solicitor dealing with the action for the respondent and his or her e-mail address and telephone number; and
- the order sought by the respondent.

2.9 The response shall be accompanied by electronic copies of such documents as were not lodged with the application which the respondent considers the sheriff will require to enable him or her to determine whether the case should be restarted and progressed remotely.

2.10 Upon receipt of confirmation of the respondent’s consent to the application or a response to the application, the applicant shall send by e-mail to the dedicated e-mail address for the court in which the action ordinarily proceeds (see Appendix 2) the information set out in paragraph 2.11 below. The applicant’s e-mail shall be headed “APPLICATION TO RESTART” and the heading shall include both the court reference number and the names of the parties. No fee shall be payable in relation to an application to restart.

2.11 The applicant shall send the following to the court:

- the application;
- the documents accompanying the application;
- either (i) the respondent's consent to the application; (ii) the response and the documents accompanying the response; or (iii) in the event that the respondent has failed to provide either consent to the application or a response to the application, the information set out in paragraph 2.12 below.

2.12 If, within the time limit stipulated in paragraph 2.6 above, the respondent fails to provide to the applicant either consent to the application or a response to the application the applicant shall (no earlier than 3 working days after intimation of the application in accordance with paragraph 2.3 above) send to the court:

- a copy of the e-mail sending to the respondent a copy of the application and the accompanying documentation;
- either (i) any correspondence between the parties in relation to restarting the action; or (ii) confirmation that the respondent has failed to reply to the application;

2.13 Once received the application will be considered by a sheriff as soon as is reasonably practicable.

2.14 Prior to determining the application the sheriff may request further submissions in writing or fix a hearing at which parties shall participate by electronic means.

2.15 Upon determining the application, the sheriff will pronounce an interlocutor either:

- (i) recalling the sist, re-enrolling the action or discharging the adjourned diet; and (ii) making such order as to the court seems proper; or
- refusing the application.

2.16 Where the application is refused the sheriff shall give reasons.

### **Part 3. Commissary**

The court will process commissary applications from 1 May 2020.

Until further notice, all commissary applications including applications for confirmation and petitions for appointment of executor dative should be sent, in hard copy, to the postal address of the relevant hub court detailed on the SCTS website<sup>2</sup>.

Applications which were sent to courts that are currently closed will be processed in the relevant hub court.

Where the application requires the production of a testamentary writing applicants may wish to consider sending the application via a postal service that tracks delivery.

Due to significantly reduced staff resources commissary applications will take longer to be processed.

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<sup>2</sup> <http://www.scotcourts.gov.uk/coronavirus--sheriffdom-hub-courts>

**APPENDIX 1**

Form of application to restart action

Court ref.no .....

SHERIFFDOM OF (insert name of sheriffdom)

AT (insert place of sheriffdom)

APPLICATION FOR THE PURSUER [or DEFENDER / THIRD PARTY etc.]

in the cause

[A.B.] (insert designation and address)

Pursuer

Against

[C.D.] (insert designation and address)

Defender

The (insert description of party) moves the court to restart the action.

(the application should include the following in separate numbered paragraphs)

(the stage the action was at before it was sisted or adjourned administratively)

(the reasons why it is considered that the action should be restarted and why it is suitable to be progressed remotely)

(the steps taken by the parties to agree a position in relation to restarting the action or whether the application is made with the consent of all parties)

(the means the applicant has available to deal with the case remotely)

(the name of the solicitor dealing with the action for the applicant and his or her e-mail address and telephone number)

(the order sought by the applicant)

List the documents lodged with the application:

(insert description of document)

Date (insert date)

(Signed electronically) .....

Party

(insert name and description of party)

Or

Solicitor for Pursuer (or Defender / Third Party etc.)

(insert designation and business address)

## APPENDIX 2

Sheriffdom	Email address
G&S	<a href="mailto:RESTARTGlasgow@scotcourts.gov.uk">RESTARTGlasgow@scotcourts.gov.uk</a>
	<a href="mailto:glasgowcommercialcou@scotcourts.gov.uk">glasgowcommercialcou@scotcourts.gov.uk</a> -commercial related business only
TC&F	<a href="mailto:RESTARTAlloa@scotcourts.gov.uk">RESTARTAlloa@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTStirling@scotcourts.gov.uk">RESTARTStirling@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTFalkirk@scotcourts.gov.uk">RESTARTFalkirk@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTDundee@scotcourts.gov.uk">RESTARTDundee@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTPerth@scotcourts.gov.uk">RESTARTPerth@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTForfar@scotcourts.gov.uk">RESTARTForfar@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTKirkcaldy@scotcourts.gov.uk">RESTARTKirkcaldy@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTDunfermline@scotcourts.gov.uk">RESTARTDunfermline@scotcourts.gov.uk</a>
	<a href="mailto:taysidecommercial@scotcourts.gov.uk">taysidecommercial@scotcourts.gov.uk</a> –commercial (incl corporate insolvency) related business only
L&B	<a href="mailto:RESTARTEdinburgh@scotcourts.gov.uk">RESTARTEdinburgh@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTLivingston@scotcourts.gov.uk">RESTARTLivingston@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTJedburgh@scotcourts.gov.uk">RESTARTJedburgh@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTSelkirk@scotcourts.gov.uk">RESTARTSelkirk@scotcourts.gov.uk</a>
GH&I	<a href="mailto:RESTARTAberdeen@scotcourts.gov.uk">RESTARTAberdeen@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTPeterhead@scotcourts.gov.uk">RESTARTPeterhead@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTBanff@scotcourts.gov.uk">RESTARTBanff@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTElgin@scotcourts.gov.uk">RESTARTElgin@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTLerwick@scotcourts.gov.uk">RESTARTLerwick@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTInverness@scotcourts.gov.uk">RESTARTInverness@scotcourts.gov.uk</a> for Inverness, Wick, Tain, Fort William, Stornoway, Kirkwall, Portree and Lochmaddy
	<a href="mailto:commercialinv@scotcourts.gov.uk">commercialinv@scotcourts.gov.uk</a> –commercial related business for Inverness only
SSD&G	<a href="mailto:RESTARTHamilton@scotcourts.gov.uk">RESTARTHamilton@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTAyr@scotcourts.gov.uk">RESTARTAyr@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTAirdrie@scotcourts.gov.uk">RESTARTAirdrie@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTLanark@scotcourts.gov.uk">RESTARTLanark@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTDumfries@scotcourts.gov.uk">RESTARTDumfries@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTStranraer@scotcourts.gov.uk">RESTARTStranraer@scotcourts.gov.uk</a>
NS	<a href="mailto:RESTARTPaisley@scotcourts.gov.uk">RESTARTPaisley@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTKilmarnock@scotcourts.gov.uk">RESTARTKilmarnock@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTDumbarton@scotcourts.gov.uk">RESTARTDumbarton@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTGreenock@scotcourts.gov.uk">RESTARTGreenock@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTDunoon@scotcourts.gov.uk">RESTARTDunoon@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTOban@scotcourts.gov.uk">RESTARTOban@scotcourts.gov.uk</a>
	<a href="mailto:RESTARTCampbeltown@scotcourts.gov.uk">RESTARTCampbeltown@scotcourts.gov.uk</a>