

Coronavirus

Sheriffdom of North Strathclyde Guidance in respect of Civil Business

No 4 of 2020

Introduction

1. This guidance has effect from 15 June 2020 and will be subject to ongoing review.
2. The purpose of the guidance is to facilitate insofar as possible the efficient disposal of civil business in the sheriff courts in light of the ongoing social distancing requirements caused by Covid-19.
3. Practitioners and litigants should be aware of the Practice Note No 1 of 2020 Electronic Submission of Documents.
4. The current arrangements for the processing of all urgent civil business for the Sheriffdom in the hub courts and of civil restart applications will come to an end on 15 June 2020. Thereafter, all civil business will be processed in the relevant sheriff court having jurisdiction.

Civil Hearings

5. Part I of Schedule 4 of the Coronavirus (Scotland) Act 2020 (“the 2020 Act”) suspends the requirement for physical attendance at court unless the court otherwise directs in circumstances where that would (i) result in prejudice to the fairness of the proceedings or (ii) it would otherwise be contrary to the interests of justice. A person excused from a requirement to attend at court must instead appear before the court by electronic means in accordance with a direction issued by the court.
6. All civil hearings in the Sheriffdom which do not require the leading of evidence will, unless otherwise directed by the court, be conducted remotely.
7. Hearings which require the leading of evidence will also be conducted remotely as far as possible. Only where necessary, where social distancing restrictions can be

adhered to and where evidence cannot be led remotely, will the physical presence of witnesses be permitted.

Conduct of Hearings

8. Procedural and substantive business in the Sheriffdom will be managed in accordance with the three phased approach to the recovery of civil business published on the Scottish Courts and Tribunal Service website on 1 June 2020. A summary of the three phased approach is contained within Appendix 1. Further information will follow on the programming of the remaining civil business in each of the courts in the Sheriffdom.
9. The initial default approach to conducting procedural hearings, opposed motions or debates is by telephone conference call (teleconference). Parties will be provided with teleconference joining instructions and access codes. The media will be provided with access to teleconference hearings on request and where call capacity permits. Where hearings are conducted by video conferencing, similar arrangements will apply.
10. Approaches to the management of remote hearings requiring the presentation of productions and witnesses will be discussed with parties on a case by case basis. The use of affidavits in lieu of evidence, in whole or part, is encouraged.
11. Where parties have an agreed position in respect of any hearing which, if accepted by the sheriff, might allow the hearing to be administratively discharged or orders in agreed terms to be granted, they should advise the relevant sheriff court by email (using the mailboxes referred to in Appendix 2) at least 48 hours in advance of the hearing.
12. Any party attending a court hearing by teleconference or by other remote means is expected to maintain equivalent standards of behaviour as if they were attending court physically. Parties must ensure a quiet and secure place for their participation in any remote hearing.
13. Parties will be responsible for ensuring that any witnesses cited for substantive hearings are able to appear remotely. Where a sheriff has deemed personal

attendance of a witness or party at a hearing necessary, those attending will be required to adhere to the instructions of court staff and to observe social distancing requirements at all times. Parties and their witnesses attending a court building must enter the building no earlier than 10 minutes before a time agreed with the court. Within each court, social distancing must be observed.

14. The recording of a court hearing conducted by teleconference or video conference is not permitted without the consent of the court.

Ordinary Cause Proceedings

General

15. The sheriff clerk shall fix and re-fix timetables in ordinary actions assigning Options Hearings in all proceedings which had been administratively continued in terms of Sheriffdom of North Strathclyde Civil Guidance No.2 dated 25 March 2020. Options Hearings, Continued Options Hearing, Procedural Hearings, Rule 18.3 Hearings and Opposed Motions Hearings will be assigned. Such hearings may be assigned to a date earlier than that referred to in Civil Guidance No 2. The interlocutor fixing the timetable or hearing shall set out what information may be required of parties and the means by which the hearing will take place.
16. All motions lodged in terms of chapter 15 of the Ordinary Cause Rules shall be accompanied by brief written reasons in support of the motion. All oppositions to motions shall similarly set out brief written reasons explaining the basis of the opposition. The interlocutor assigning the Opposed Motion Hearing will set out any additional information that may be required of parties in advance of the hearing.

Debates

17. Sheriffs will actively case manage all cases in which a debate has been assigned or has been administratively discharged due to Covid 19, and will make such orders as are considered necessary to expeditiously progress the action.

18. The interlocutor assigning a diet of debate will direct parties:
- (a) to exchange draft written submissions two weeks before the diet of debate; and
 - (b) to lodge and exchange
 - (i) final written submissions;
 - (ii) a joint bundle of authorities;
 - (iii) copies of any documents referred to in the pleadings to which reference may be made in the course of the debate; and
 - (iv) a note setting out the name, e-mail address and telephone number of the person who will conduct the hearing for each party.
19. The diet of debate will be conducted by telephone conference. The dial in details will be provided to the parties in advance of the call.
20. Parties' written submissions should address all matters the parties intend to raise at the debate. The exchange of submissions between parties in draft form will allow parties to focus the areas in dispute in the final submissions lodged with the court.

While the length of written submissions is not prescribed, the court favours brevity.

The written submissions must—

- (a) state, in brief numbered paragraphs, the points that the party intends to make;
- (b) after each point, identify any document on which the party relies in support of the point;
- (d) for every authority relied upon (i) state the proposition of law that the authority demonstrates; and (ii) identify the page or paragraph references for the parts of the authority that support the proposition;
- (e) cite only one authority for each proposition of law, unless additional citation is necessary for a proper presentation of the argument.

21. The bundle of authorities should not (a) include authorities for propositions not in dispute or (b) more than 10 authorities, unless the court gives permission for additional authorities to be included. The passages on which each party intends to rely (as specified in that party's written submissions) may be marked or highlighted.

Where more than 10 authorities are sought to be included in the joint bundle, the pursuer's agent should seek permission to lodge the additional authorities by emailing the court using the email addresses set out in Appendix 2.

22. The sheriff will consider the written submissions in advance of the hearing. In the hearing, unless the sheriff otherwise directs, each party will be afforded a maximum of 30 minutes to make additional oral submissions.

Proofs

23. Sheriffs will actively case manage all cases in which a proof or evidentiary hearing has been assigned or has been administratively discharged due to Covid-19. The sheriff shall make such orders as are considered necessary to expeditiously progress the case.

24. Where proof management hearings are assigned in terms of OCR 27.17A, such hearings will proceed by telephone conference.

25. Interlocutors assigning proof management hearings will direct parties to lodge a note setting out the following information at least two days in advance of the hearing:

- (i) when the parties expect to be able to proceed to proof or to continued proof;
- (ii) the likely availability of witnesses;
- (iii) the extent to which the proof or continued proof and the attendance of witnesses, may be conducted remotely and how that might be achieved;
- (iv) the extent to which affidavit evidence may be used;
- (v) whether any special measure are necessary in respect of any witnesses or parties;

- (vi) whether interpreters are required for any witnesses or parties;
 - (vii) the anticipated length of the proof;
 - (viii) such other information as may assist the sheriff to conduct the hearing; and
 - (iv) the name, email address, and telephone number of the person who will conduct the hearing for each party.
26. Where the sheriff fixes a pre-proof hearing, the interlocutor assigning a pre-proof hearing will direct parties to lodge *inter alia* the following information or items of process at least two days in advance of the pre-proof hearing:
- (i) a list of witnesses;
 - (ii) a summary of the matters the witness may speak to and the likely duration of each witnesses' evidence;
 - (iii) a joint minute of admissions;
 - (iv) affidavits.

Summary Applications and Summary Cause actions

27. Unless otherwise directed, the procedure set out in paragraphs 16 to 18 will apply to all summary applications and summary cause proceedings *mutatis mutandis*.

Peremptory diets

28. Interlocutors assigning peremptory diets will, in accordance with Part 1, Schedule 4 of the 2020 Act specify that the party in respect of whom the diet has been assigned will not require to attend physically but must instead appear before the court on a specified time and date by way of telephone conference. The teleconference details will be specified in the interlocutor.

Adults with Incapacity Applications

29. All hearings in respect of applications under the Adults with Incapacity (Scotland) Act 2000 which do not require the leading of evidence will be conducted remotely.

Where any such application is contested, the proceedings will be case managed by a sheriff. Where evidence is necessary, how that evidence is to be presented will be discussed with parties on a case by case basis.

Family Actions/Petitions for Adoption and Permanence Orders

30. Further guidance on the management of family actions and petitions for adoption and permanence orders will be provided.

Proceedings under the Children's Hearings (Scotland) Act 2011

31. Further guidance on the management of proceedings under the Children's Hearings (Scotland) Act 2011 will be provided.

Simple Procedure

32. All existing simple procedure actions will be case managed. In those cases where hearings were administratively adjourned, hearings will be assigned.

Sheriff Principal D L Murray WS
Sheriffdom of North Strathclyde
11 June 2020

Appendix 1

Sheriff Court Business Update

Civil Business

(published on SCTS website on 1 June 2020)

For civil business a three-stage approach will be followed for all cases except summary cause actions for the recovery of heritable property.

Phase 1 – current

We will continue to build on the civil business that has already restarted through the Hub courts, the developments with the All Scotland Sheriff Personal Injury Court (ASSPIC) and the Sheriff Appeal Court (SAC) which will have its first three bench virtual appeal this week.

Alongside this the main focus will be on the backlog of casework submitted during the lockdown. undefended actions, cases which have resolved by way of joint minute, unopposed motions, pending extract decrees and simplified divorces should be given priority. Other work such as initial writs, simple procedure and summary cause registrations will be processed as part of the backlog.

Urgent business will continue to be dealt with via Hub courts with Civil Restart Applications and commissary being dealt with at local courts.

Phase 2 – (no earlier than 15 June 2020)

Non-urgent new civil business, lodged after Phase 1, will now be processed, with the exception of new simple procedure claims and summary cause actions for the recovery of heritable property.

All documents should as far as possible be submitted electronically.

All existing civil actions that were administratively discharged, adjourned, continued, sisted or paused during the lockdown will be case managed to regulate further procedure, however it is unlikely that evidential hearings will be assigned during this phase.

Procedural and substantive hearings which do not require evidence to be led will be conducted remotely. In the few cases where evidence is necessary and the hearing cannot be

held remotely witnesses will attend court and will require to adhere to strict physical distancing arrangements. Cases involving children will be given priority.

The urgent civil applications (via Hub courts) and restart application processes will cease at this point.

Phase 3 (no earlier than 30 July 2020)

New simple procedure actions can be lodged electronically only, via civil online (unless in exceptional circumstances and on cause shown).

Further procedure in actions for the recovery of heritable property will be progressed.

Small Estate interviews for commissary business will be able to take place remotely.

Appendix 2

Campbeltown	campbeltowncivil@scotcourts.gov.uk
Dumbarton	dumbartoncivil@scotcourts.gov.uk
Dunoon	dunoocivil@scotcourts.gov.uk
Greenock	greenockcivil@scotcourts.gov.uk
Kilmarnock	kilmarnockcivil@scotcourts.gov.uk
Oban	obancivil@scotcourts.gov.uk
Paisley	paisleycivil@scotcourts.gov.uk