



## SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE

### COVID 19 GUIDANCE FOR CIVIL BUSINESS

No. 3 of 2020

#### **Introduction**

1. The purpose of this guidance is to facilitate the efficient management of certain civil business following the covid-19 pandemic.
2. This guidance applies to all general civil business to which the Ordinary Cause Rules<sup>1</sup> ("OCR") apply. Paragraph 43 below applies the guidance to summary applications, summary cause actions and hearings under the Children's Hearings (Scotland) Act 2011.
3. This guidance has effect from 22 June 2020.
4. The current arrangements for (i) the hub courts to be used for urgent civil business and (ii) the restart application process, are terminated with immediate effect. From 22 June all civil business will be processed and determined by the relevant sheriff court with jurisdiction.

#### **Hearings**

5. In accordance with Part 1 of Schedule 4 to the Coronavirus (Scotland) Act 2020, any requirement physically to attend court is suspended unless the court otherwise directs in circumstances where that would (i) result in prejudice to the fairness of the proceedings or (ii) otherwise be contrary to the interests of justice.

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<sup>1</sup> Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993 SI 1956/223 as amended.

6. If physical attendance at court is directed, government guidance and regulations on physical distancing, gathering and hygiene must be complied with. Any discussions should take place outside the court building.
7. Otherwise, all civil hearings will be conducted by electronic means ie telephone or video conference call.
8. Parties must not attend the court in person and must contact the Sheriff Clerk at the appropriate court by email or telephone no less than 24 hours in advance of the hearing (i) to make any representations as to how the electronic hearing should be conducted and (ii) to obtain details of how to participate. The email addresses and telephone numbers appear in Appendix 1.
9. Any party attending such a hearing is expected to behave as if they were attending court physically. Parties must participate in the hearing from a quiet and secure place.
10. The recording of such a hearing is not permitted without the consent of the court.

#### **Electronic signatures and transmission**

11. Where a document referred to in sub-paragraph 1(4) of Schedule 4 to the 2020 Act requires to be given to a person, it may be transmitted electronically in accordance with Part 1 of Schedule 4 to the 2020 Act.
12. Where such a document requires to be signed, an electronic signature in accordance with Part 1 of Schedule 4 to the 2020 Act is acceptable.
13. In accordance with the Lord President's Practice Note No.1 of 2020, electronic signatures and electronic transmission of documents are not acceptable for commissary business.

## **Lodging of documents**

14. All items of process, or any other document required by the sheriff, in relation to all cases, should be lodged electronically by email to the e-mail addresses for the relevant court set out in Appendix 1.
15. Where the rules of court require specific documents to be lodged with an initiating writ or defences, such documents should also be sent to the court in hard copy by post with a covering letter confirming that they have been lodged electronically.
16. With the exception of those documents referred to in paragraph 15, only in exceptional circumstances (which require to be set out in a covering letter), or where a sheriff so directs in advance of a hearing, should documents be lodged in hard copy paper form.
17. The following naming convention should be used for all electronic documents to be lodged in process: Case name - Case Reference number - Nature of Document (e.g. A Smith v B Jones – A908-20 – Defences; D Campbell v F Gordon – F156-20 - Minute of Amendment).
18. Any document lodged electronically will be deemed to have been lodged with the court on the date the email is received. An automated acknowledgment of receipt will be issued.
19. Urgent writs, applications, forms or motions should be sent by electronic means to the e-mail addresses for the relevant court set out in Appendix 1 to this guidance. Such emails must carry the word 'URGENT' in the subject title of the email.
20. Documents submitted electronically must be submitted as PDF documents, PNG images, JPGs or JPEG images. Each document must not exceed 50MB in size. Where this is not possible, enquiries should be made by email to the relevant mailbox referred to in Appendix 1 to agree a way forward with the relevant clerk of court.

## **Pleadings.**

21. Lengthy pleadings are discouraged. Parties must adjust pleadings using tracked changes or strike-through or a different font.

## **Restoring business**

22. To facilitate the restoration of business, the court may assign a hearing in any case.
23. No later than 2 working days before that hearing, parties must intimate their positions, supported by reasons, to the court and other parties by email.
24. If the parties have an agreed position, the sheriff may administratively issue an interlocutor to that effect.
25. Otherwise, the sheriff may determine the matter either (i) on the basis of the parties' written representations (supplemented by any further information required) and discharge the hearing or (ii) after hearing the parties.

## **Motions**

26. All motions lodged in terms of chapter 15 of the OCR must be accompanied by brief written reasons in support of the motion.
27. Any opposition to a motion must briefly set out the grounds of opposition.
28. The party making a motion, which has been opposed, must lodge written submissions, and intimate these to the other parties, no later than 4 working days before the hearing.
29. A party opposing the motion must lodge written submissions and intimate these to the other parties, no later than 2 working days before the hearing.
30. The sheriff may determine the opposed motion either (i) on the written submissions (together with any further information required) and discharge the hearing or (ii) after hearing the parties.
31. At any hearing, parties should avoid repetition of points made in the written submissions and confine themselves to points of clarification.

## **Debates**

32. Sheriffs will actively case manage all cases where a debate is fixed.
33. Unless the sheriff otherwise directs, parties must lodge the following information with the court and intimate to other parties, 7 days prior to the hearing:
- (i) written submissions (limited in length as may be specified by the sheriff);
  - (ii) joint bundle of authorities (limited to 10 unless otherwise directed) highlighting passages relied upon;
  - (iii) copies of any documents relied upon in the pleadings;
  - (iv) any other material specified by the sheriff.
34. Unless otherwise directed in advance of the hearing, each party has a maximum of 30 minutes to make oral submissions at the hearing.

## **Proofs**

35. Sheriffs will actively case manage all proofs and proofs before answer at a pre-proof hearing in accordance with rule 28A.1 or at a proof management hearing in accordance with rule 29.17A of the OCR.
36. It is the duty of the parties to provide the sheriff with sufficient information to enable the sheriff to ascertain the extent to which the proof may be conducted by electronic means.
37. Unless otherwise directed, the evidence in chief of all witnesses shall be by affidavit.
38. Unless otherwise directed, the oral evidence of any witness shall be taken by live video link.
39. Evidence shall be recorded electronically unless the sheriff otherwise directs.
40. During any proof, unless otherwise directed by the sheriff, only the following persons shall be present in the court room:-
- (i) the sheriff, the clerk and the bar officer;

- (ii) the parties and their representatives;
- (iii) members of the media; and
- (iv) authorised witnesses.

41. Unless otherwise directed, each witness shall arrive at court no earlier than 15 minutes before the time scheduled for their evidence to start. A witness who arrives early or late may be refused admission to the building. The party who has cited the witness is responsible for ensuring the witness is aware of these provisions.

42. If a subsequent diet is assigned for oral submissions, the procedure for debates applies.

#### **Summary Applications, summary cause actions and children’s hearings**

43. Unless otherwise directed, the guidance set out above applies to summary applications, summary cause actions and hearings under the Children’s Hearings (Scotland) Act 2011, subject to any modifications deemed appropriate for the expeditious resolution of the case.

#### **Failure to comply with the guidance**

44. The sheriff may require parties to account for their failure to comply with this guidance, which may lead to delay in the case being progressed. The sheriff may take into account any such failure when deciding on any award of expenses.

**Sheriff Principal M W Lewis**

**18 June 2020**

## Appendix 1

Mailboxes and telephone numbers for civil business

Alloa: [alloacivil@scotcourts.gov.uk](mailto:alloacivil@scotcourts.gov.uk) / 01259 722734

Dundee: [dundeecivil@scotcourts.gov.uk](mailto:dundeecivil@scotcourts.gov.uk) / 01382 229961

Dunfermline: [dunfermline@scotcourts.gov.uk](mailto:dunfermline@scotcourts.gov.uk) / 01383 724666

Falkirk: [falkirkcivil@scotcourts.gov.uk](mailto:falkirkcivil@scotcourts.gov.uk) / 01324 620822

Forfar: [forfarcivil@scotcourts.gov.uk](mailto:forfarcivil@scotcourts.gov.uk) / 01307 462186

Kirkcaldy: [kirkcaldycivil@scotcourts.gov.uk](mailto:kirkcaldycivil@scotcourts.gov.uk) / 01592 260171

Perth: [perthcivil@scotcourts.gov.uk](mailto:perthcivil@scotcourts.gov.uk) / 01738 620546

Stirling: [stirlingcivil@scotcourts.gov.uk](mailto:stirlingcivil@scotcourts.gov.uk) / 01786 462191