

## SCHEDULE TEMPORARY JUSTICE MEASURES

### PART 1

#### COURTS AND TRIBUNALS: CONDUCT OF BUSINESS BY ELECTRONIC MEANS ETC.

### CHAPTER 1

#### DOCUMENTS

##### *Electronic signing*

- 1 (1) An electronic signature fulfils any requirement (however expressed and for whatever purpose) for the signing, intialling or signetting of—
  - (a) a document of a type mentioned in [paragraph 3\(1\)](#), or
  - (b) a deletion or correction to such a document.
- (2) In [this paragraph](#), “electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000, but includes a version of an electronic signature which is reproduced on a paper document.

##### *Sending electronically and to a solicitor*

- 2 (1) Any requirement (however expressed) that a document of a type mentioned in [paragraph 3\(1\)](#) be given to a person may be fulfilled by—
  - (a) transmitting it to the person electronically, or
  - (b) transmitting it (electronically or otherwise) to a solicitor engaged to act on the person’s behalf in relation to the proceedings in question.
- (2) For the purposes of [this paragraph](#)—
  - (a) electronic transmission of a document by one person (“the sender”) to another person (“the recipient”) must be effected in a way that the recipient has indicated to the sender that the recipient is willing to receive the document,
  - (b) the recipient’s indication of willingness to receive a document in a particular way may be—
    - (i) specific to the document in question or generally applicable to documents of that kind,
    - (ii) expressed specifically to the sender or generally (for example on a website),
    - (iii) inferred from the recipient having previously been willing to receive documents from the sender in that way and not having indicated unwillingness to do so again,
  - (c) the sender’s uploading of a document to an electronic storage system from which the recipient is able to download the document may constitute electronic transmission of the document from the sender to the recipient.
- (3) In [this paragraph](#), references to giving a person a document include—
  - (a) serving a document on a person,

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- (b) sending a document to a person, and
- (c) lodging a document with, or otherwise apply to or petitioning, a court or tribunal.

*Documents to which paragraphs 1 and 2 apply*

- 3 (1) The types of document referred to in paragraphs 1 and 2 are—
- (a) an order, warrant, sentence, citation, minute or any other document produced by a court or tribunal,
  - (b) an extract of any document referred to in paragraph (a),
  - (c) any document that an enactment requires be given to a person in connection with, or in order to initiate, proceedings,
  - (d) any document that an enactment requires to be signed, initialled or signetted in order that it, or any other thing, may be used in proceedings for any purpose including—
    - (i) being used as evidence, or
    - (ii) being treated as sufficient evidence of a matter.
- (2) But a type of document mentioned in sub-paragraph (1) is not to be regarded as mentioned in that sub-paragraph for the purposes of paragraph 1 or 2 (or both) if—
- (a) the Lord President of the Court of Session, or
  - (b) the Lord Justice General,
- directs that it is not.
- (3) A direction under sub-paragraph (2) may—
- (a) relate to some or all proceedings,
  - (b) vary or revoke an earlier direction under that sub-paragraph.

*Intimation etc. on Scottish Courts and Tribunals Service website*

- 4 (1) Any requirement (however expressed) that a document—
- (a) be put on the walls, doors or any other part of a court building (whether internal or external), or
  - (b) be made publicly available in any other way within a court building,
- may be fulfilled instead by the document's being made publicly available through the Scottish Courts and Tribunals Service website.
- (2) But sub-paragraph (1) does not apply to a document if it is of a type that—
- (a) the Lord President of the Court of Session, or
  - (b) the Lord Justice General,
- has directed that sub-paragraph (1) does not apply to.
- (3) Where a document is to be made publicly available through the Scottish Courts and Tribunals Service website by virtue of this paragraph, it is to so be made available in accordance with—
- (a) any direction issued by—
    - (i) the Lord President of the Court of Session, or
    - (ii) the Lord Justice General, and
  - (b) (subject to any necessary modifications) any enactment about—

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- (i) how a step mentioned in [paragraph \(a\)](#) or [\(b\)](#) of [sub-paragraph \(1\)](#) is to be taken in relation to the document, or
  - (ii) the length of time for which the document is to be made publicly available in a way described by those paragraphs.
- (4) A direction under [sub-paragraph \(3\)\(a\)](#) may, in particular, provide that a document is to be made available only in a redacted form.
- (5) If an enactment provides for an alternative to taking a step mentioned in [paragraph \(a\)](#) or [\(b\)](#) of [sub-paragraph \(1\)](#) as a means of achieving an outcome (for example, advertising an application in a newspaper as a means of intimating it), nothing in [this paragraph](#) precludes the taking of that alternative step to achieve the outcome.
- (6) In [this paragraph](#), “the Scottish Courts and Tribunals Service website” means the website maintained by, or on behalf of, the Service with the internet domain name scotcourts.gov.uk.

#### *Interpretation of Chapter*

- 5 In [this Chapter](#)—
- (a) references to a court or tribunal include an office holder of a court or tribunal,
  - (b) “document” includes a copy of a document.

## CHAPTER 2

### ATTENDING A COURT OR TRIBUNAL

#### *Suspension of requirement for physical attendance in non-criminal proceedings, criminal trials and certain processes*

- 6 (1) This paragraph applies—
- (a) in relation to proceedings that are not criminal proceedings, and
  - (b) in the context of criminal proceedings, only in relation to—
    - (i) a hearing in which a person is to give evidence,
    - (ii) proceedings in which the only party is a public official as defined in [paragraph 9\(3\)](#).
- (2) Any requirement (however expressed) that a person physically attend a court or tribunal does not apply, unless the court or tribunal directs the person to attend physically.
- (3) But [sub-paragraph \(2\)](#) does not apply in relation to a hearing in which a person is to give evidence.
- (4) In the case of a hearing in relation to which [sub-paragraph \(2\)](#) does not apply, the court may disapply any requirement (however expressed) that a person physically attend the court by directing that the person need not do so.
- (5) A court or tribunal may direct a person to physically attend under [sub-paragraph \(2\)](#) only if it considers that allowing the person to attend by electronic means would—
- (a) prejudice the fairness of the proceedings, or
  - (b) otherwise be contrary to the interests of justice.

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- (6) A court may disapply a requirement for a person’s physical attendance under [sub-paragraph \(4\)](#) only if it considers that allowing the person to attend by electronic means in accordance with [paragraph 8](#) would not—
- (a) prejudice the fairness of the proceedings, or
  - (b) otherwise be contrary to the interests of justice.
- (7) The power to issue a direction under both [sub-paragraphs \(2\)](#) and [\(4\)](#) includes the power to revoke an earlier direction under that sub-paragraph.
- (8) A court or tribunal may issue a direction under [sub-paragraph \(2\)](#) or [\(4\)](#) on the motion of a party or of its own accord.
- (9) In considering whether to issue a direction under [sub-paragraph \(2\)](#) or [\(4\)](#), the court or tribunal must—
- (a) give all parties an opportunity to make representations (subject to [sub-paragraph \(10\)](#)), and
  - (b) have regard to any guidance issued by—
    - (i) the Lord President of the Court of Session, or
    - (ii) the Lord Justice General.
- (10) The first direction in relation to a hearing under [sub-paragraph \(2\)](#) or [\(4\)](#) may be issued by the court or (as the case may be) tribunal of its own accord without having given the parties an opportunity to make representations.
- (11) Where a direction under [sub-paragraph \(2\)](#) or [\(4\)](#) is issued in relation to a hearing as described in [sub-paragraph \(10\)](#), the court or (as the case may be) tribunal must—
- (a) take steps to ensure that the parties are aware of their right to make a motion for the revocation of the direction, and
  - (b) deal with any motion for the direction’s revocation,
- before dealing with any other matter at the hearing, other than a decision to adjourn or a matter that an enactment requires that the court deal with before another hearing could practicably be arranged.
- (12) References in [this paragraph](#) to physically attending a court or tribunal are to—
- (a) being in a particular place, or
  - (b) being in the same place as another person,
- for the purpose of any proceedings before a court or tribunal or an office holder of a court or tribunal.

*Suspension of requirement for physical attendance in  
criminal proceedings, excluding trials and certain processes*

- 7 (1) This paragraph—
- (a) applies only in relation to criminal proceedings, but
  - (b) does not apply in relation to—
    - (i) a hearing in which a person is to give evidence, or
    - (ii) proceedings in which the only party is a public official as defined in [paragraph 9\(3\)](#).
- (2) Any requirement (however expressed) that a person physically attend a court does not apply if—

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- (a) a determination made by the Lord Justice General states that it does not, and
  - (b) the court has not directed the person to physically attend.
- (3) A determination under sub-paragraph (2)(a)—
- (a) may, in particular, disapply a requirement for physical attendance—
    - (i) in relation to persons or hearings described in the determination,
    - (ii) by enabling a court to disapply it in circumstances specified in the determination,
  - (b) may make different provision for different purposes and areas,
  - (c) may vary or revoke an earlier determination made under the sub-paragraph,
  - (d) must be made publicly available for so long as it has effect.
- (4) The Lord Justice General may make a determination under sub-paragraph (2)(a) disapplying a requirement for physical attendance only if (taking into account the discretion conferred by sub-paragraph (2)(b)), the Lord Justice General is satisfied that it would not—
- (a) prejudice the fairness of proceedings, or
  - (b) otherwise be contrary to the interests of justice.
- (5) A direction under sub-paragraph (2)(b)—
- (a) may be made by a court on the motion of a party or of its own accord,
  - (b) may revoke an earlier direction made under the sub-paragraph.
- (6) Where, by reason of a determination under sub-paragraph (2)(a), a person is to attend a court hearing by electronic means in accordance with paragraph 8, the court must—
- (a) take steps to ensure that the parties are aware of their right to make a motion for a direction under sub-paragraph (2)(b), and
  - (b) deal with any motion for a direction under that sub-paragraph,
- before dealing with any other matter at the hearing, other than a decision to adjourn or a matter that an enactment requires that the court deal with before another hearing could practicably be arranged.
- (7) References in this paragraph to physically attending a court are to be construed in accordance with paragraph 6(12).

*Attending by electronic means*

- 8
- (1) A person excused from a requirement to physically attend a court or tribunal by virtue of [paragraph 6\(2\)](#) or [\(4\)](#) or [7\(2\)\(a\)](#) must instead appear before the court, tribunal or office holder (as the case may be) by electronic means in accordance with a direction issued by the court or tribunal.
  - (2) A person who fails to do so is to be regarded as having failed to comply with the requirement to physically attend from which the person is excused.
  - (3) The power under [sub-paragraph \(1\)](#) to issue a direction includes the power to vary or revoke an earlier direction issued under that sub-paragraph.
  - (4) A direction under [sub-paragraph \(1\)](#)—
    - (a) is to set out how the person is to appear by electronic means before the court, tribunal or office holder, and
    - (b) may include any other provision which the court or tribunal considers appropriate.

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- (5) A court or tribunal may issue a direction under [sub-paragraph \(1\)](#) on the motion of a party or of its own accord.
- (6) Before issuing a direction under [sub-paragraph \(1\)](#), the court or tribunal must—
- (a) give all parties an opportunity to make representations (subject to [sub-paragraph \(7\)](#)), and
  - (b) have regard to any guidance issued by—
    - (i) the Lord President of the Court of Session, or
    - (ii) the Lord Justice General.
- (7) The first direction in relation to a hearing under [sub-paragraph \(1\)](#) may be issued by the court or (as the case may be) tribunal of its own accord without having given the parties an opportunity to make representations.
- (8) Where a direction in relation to a hearing is issued as described in [sub-paragraph \(7\)](#), the court or (as the case may be) tribunal must—
- (a) take steps to ensure that the parties are aware of their right to make a motion for the variation or revocation of the direction, and
  - (b) deal with any motion for the variation or revocation of the direction, before taking a decision about any other matter at the hearing, other than a decision to adjourn, a decision in respect of a motion for a direction under [paragraph 6](#) or [7](#) or a matter that an enactment requires that the court deal with before another hearing could practicably be arranged.
- (9) A direction under [sub-paragraph \(1\)](#) setting out—
- (a) how a party to proceedings is to attend by electronic means a hearing in which a person is to give evidence, must provide for the party to use means that enable the party to both see and hear all of the other parties, the judge and (where applicable) the jury and any witness who is giving evidence,
  - (b) how a witness who is to give evidence at a hearing is to attend by electronic means, must provide for the witness to use means that enable all of the parties, the judge and (where applicable) the jury to both see and hear the witness.
- (10) Nothing in [sub-paragraph \(9\)](#) is to be taken to mean that a person is to be enabled to see or hear a witness in a way that measures taken in accordance with an order of the court or tribunal would otherwise prevent.

#### *General directions under [paragraph 8](#)*

- 9 (1) A court or tribunal may—
- (a) issue a direction under [paragraph 8\(1\)](#) that applies for the purpose of all proceedings of a type specified in the direction, provided that the only party to the proceedings is a public official,
  - (b) issue a further direction under [paragraph 8\(1\)](#) overriding, for the purpose of specific proceedings, a general direction issued by virtue of [paragraph \(a\)](#).
- (2) [Paragraph 8\(6\)\(a\)](#) does not apply in relation to a general direction issued by virtue of [sub-paragraph \(1\)\(a\)](#).
- (3) In [this paragraph](#)—  
“public official” means—

- (a) a person who is a public authority and is acting in that capacity, or
  - (b) a person who is acting on behalf of a public authority,
- “public authority” is to be construed in accordance with section 6 of the Human Rights Act 1998.

### CHAPTER 3

#### FURTHER PROVISION

##### *Publication of directions and guidance*

- 10 A person who issues any of the following must make it publicly available for so long as it has effect—
- (a) a direction under [paragraph 3\(2\)](#),
  - (b) a direction under [paragraph 4\(2\)](#) or [\(3\)\(a\)](#),
  - (c) guidance under [paragraph 6\(9\)\(b\)](#),
  - (d) guidance under [paragraph 8\(6\)\(b\)](#).

##### *Transitional provision for directions under earlier enactment*

- 11 (1) A direction under the provision of schedule 4 of the Coronavirus (Scotland) Act 2020 mentioned in the first column of the table below is to be treated as though it were a direction under the provision of [this Part](#) mentioned in the corresponding entry in the second column.

Provision of schedule 4 of the Coronavirus (Scotland) Act 2020 under which the direction was issued	Provision of <a href="#">this Part</a> under which the direction is to be treated as having been issued
paragraph 1(5)	<a href="#">paragraph 3(2)</a>
paragraph 1A(2)	<a href="#">paragraph 4(2)</a>
paragraph 1A(3)(a)	<a href="#">paragraph 4(3)(a)</a>
paragraph 2(1)	<a href="#">paragraph 6(2)</a>
paragraph 2(3)	<a href="#">paragraph 6(4)</a>
paragraph 3(1)	<a href="#">paragraph 8(1)</a>

- (2) A general direction issued by virtue of [paragraph 4\(1\)\(a\)](#) of schedule 4 of the Coronavirus (Scotland) Act 2020 is to be treated as though it were issued by virtue of [paragraph 9\(1\)\(a\)](#).

##### *Interpretation of Part*

- 12 In [this Part](#)—
- “court” means any of the Scottish courts as defined in section 2(6) of the Judiciary and Courts (Scotland) Act 2008,
- “proceedings” includes any process before a court or tribunal, or any office holder of a court or tribunal (for example, a process by which a warrant may be obtained for the purpose of investigating a suspected offence),

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“requirement” means a requirement arising from an enactment or rule of law,

“tribunal” means—

- (a) the First-tier Tribunal for Scotland,
- (b) the Upper Tribunal for Scotland.