



SHERIFFDOM OF LOTHIAN AND BORDERS

COVID-19

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

Introduction

[1] The purpose of this guidance is to inform parties and practitioners of the steps already taken and to be put in place to progress and facilitate the efficient disposal of business in the All Scotland Sheriff Personal Injury Court (ASSPIC) during the current COVID 19 emergency. This guidance should be read in conjunction with the guidance issued on 15 May 2020 and will have immediate effect.

[2] Schedule 4 Part 1.1 of the Coronavirus (Scotland) Act 2020 ("the Act") enables the use of electronic signature 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 1.2 of the Act suspends the requirement for physical attendance at court unless the court directs otherwise. All hearings in ASSPIC will be conducted remotely until further notice.

Review of Phased Operation of the Court

[3] Substantial progress has been made in tackling the backlog of business caused by the advent of the restrictions imposed due to COVID 19. Current business lodged with the court is being processed and opposed motions are being dealt with in real time. (See opposed motions: revised guidance note for practitioners issued by the PI Administrative Sheriff on 5 June 2020). The court is now operating significantly on a digital platform. A limited

number of staff are working in the court building due to the need for social distancing and are co-ordinating staff working remotely from home.

[4] The court has already commenced dealing with the processes described in paragraph [9] and [10] of the guidance issued on 15 May and with effect from Monday 22 June ASSPIC will formally move to implement phase 2 business.

Proofs

[5] The court has been reviewing how proofs can be managed. In view of current restrictions no civil jury trials are able to run. Generally speaking, a proof cannot proceed with witnesses appearing in person in a courtroom. However, this will be kept under review in line with restrictions easing and the availability of staff resource.

[6] The court proposes to hear proofs from 3 August 2020 by Webex video conference where appropriate. Parties with proofs due to take place during August 2020 only are asked to carefully review their preparation for proof including the likely availability of witnesses and the suitability of the case for video conferencing. Further guidance will be issued detailing the matters which the court considers important in allocating proofs to online procedure. Parties will require to address these matters and respond to the court within a timescale which will relate to the date currently allocated for proof. If any action is not likely to proceed parties should advise the court as soon as possible and arrange for the action to be disposed of in appropriate terms. It may be necessary to fix "by order" or procedural hearings to allow parties to address a sheriff on these matters. By order hearings will be conducted either by video or telephone conference.

[7] Cases which had been due to call for proof between 17 March and 31 July 2020 have been sisted or converted to notional proof diets. The court invites parties involved in these cases to carefully review the case with a view to addressing the matters referred to in paragraph [6]: namely, preparedness for proof, availability of witnesses and suitability for video conferencing. Parties should contact the court within 14 days giving their conclusions on these matters and whether a new diet of proof is required as a matter of urgency. Cause must be shown why the proof should be refixed urgently. Otherwise, the actions falling into

this category will have a proof allocated in January or February 2021 with a new partial timetable issued to accommodate necessary steps in process pre proof.

[8] The use of Webex conferencing is at an early experimental stage in ASSPIC and the suitability of cases for online court proof hearings will be considered on a case by case basis.

[9] In all cases parties should seek to narrow the issues for proof; agree evidence where possible; ascertain the nature and extent of the dispute between skilled witnesses; agree quantum or heads of damage. It is essential that parties to an action discuss these matters and advise the court of their position by email. A joint approach to the court is preferred even if parties are not in agreement as to their conclusions. The court may fix a procedural or by order hearing to give consideration to the manner in which the proof will proceed and the date.

[10] The use of video conferencing for substantive appearances including proof is evolving. The nature and number of productions likely to be required at proof is a significant consideration which will be discussed with parties on a case by case basis. Documents and productions required at proof have to be lodged in electronic form. Whereas substantive hearings proceeding by way of video conference will be managed by clerks of court who will liaise with parties with regard to the technical arrangements, any specific instructions with regard to the lodging and use of productions at an online hearing will be issued by the sheriff conducting the procedural hearing or, as the case may be, the proof.

Electronic documents

[11] The information provided at paragraph [8] of the guidance issued on 15 May 2020 should be followed.

[12] The following naming convention should be used for the subject line for all emails submitting electronic documents to be lodged in process: case name – case reference number – nature of document (eg A Smith v B Jones – PN900-20 – Defences).

[13] Any document lodged electronically will be deemed to have been lodged with the court on the date the email is received. An automated acknowledgement of receipt will be issued.

[14] Urgent writs, applications, forms etc should now be sent by electronic means to the generic mailbox – nationalPIcourt@scotcourts.gov.uk. Motions should be lodged via the mailbox national.motions@scotcourts.gov.uk

Local PI Actions

[15] The guidance given at paragraph [7] with regard to refixing of proofs does not apply to local PI cases. Proofs in local PI cases sisted *ex proprio motu* or converted to notional diets will be allocated proof dates in January and February 2021.

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