

CORONAVIRUS (SCOTLAND) ACT 2020

EXPLANATORY NOTES

DETAIL ABOUT PROVISIONS

Schedule 4 – Justice

Part 1 - Courts and tribunals: conduct of business by electronic means

Electronic signatures and transmission of documents

97. Paragraph 1(1) of schedule 4 makes provision that an electronic signature fulfils any requirement (however expressed and for whatever purpose) that a document mentioned in subparagraph (4), or a deletion or correction of it, be signed, initialled or signetted.
98. Paragraph 1(2) makes provision that any requirement (however expressed) that a document of a type mentioned in subparagraph (4) 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.
99. By virtue of paragraph 1(4), subparagraphs (1) and (2) apply to orders, warrants, sentences, citations, minutes or any other document produced by a court or tribunal, including any extracts of them. These subparagraphs also apply to any document which is required by law be given to a person in connection with any civil or criminal proceedings before a court or tribunal; which is to include documents required to initiate proceedings.
100. Paragraph 1(3) sets out certain requirements associated with the electronic transmission of documents, specifying that the transmission must be effected in a manner that the recipient has indicated (either specifically or generally) that they are willing to receive the document. The subparagraph further provides that in certain specified circumstances willingness is capable of being inferred.
101. Paragraph 1(3)(c) specifies that electronic transmission can be made by means of upload to and download from an electronic storage system.
102. Paragraph 1(5) confers a power on the Lord President or the Lord Justice General to direct that the effects of subparagraphs (1) and (2) do not apply to a specified type of document, either in relation to some or all proceedings (see subparagraph (6)). Paragraph 5(a) requires that any such direction be made public.
103. Paragraph 1(7) sets out the interpretation applicable to terms used in this paragraph.

Suspension of requirements for physical attendance

104. Paragraph 2(1) suspends any requirement, however expressed in statute or otherwise, that a person physically attend a court or tribunal, unless the court or tribunal directs the person to attend physically.

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105. Subparagraph (2) provides that subsection (1) does not suspend any requirement to physically attend a court trial diet.
106. Subparagraph (3) provides that the court may disapply any requirement that a person physically attend a trial diet by directing that the person need not do so.
107. Subparagraph (4) provides that a court or tribunal may require the physical attendance of a person under subparagraph (1) only if allowing a person to attend by electronic means would prejudice the fairness of proceedings, or would otherwise be contrary to the interests of justice.
108. Subparagraph (5) provides that a court can direct a person to attend a trial diet by electronic means under subparagraph (3) only if attendance by electronic means would not prejudice the fairness of proceedings, or otherwise be contrary to the interests of justice.
109. Subparagraph (6) provides that a court or tribunal may issue or revoke a direction under subparagraph (1) or (3) on the motion of a party or of its own accord.
110. Subparagraph (7) provides that the court or tribunal must, in considering whether to issue or revoke a direction under subparagraph (1) or (3), give all parties to the proceedings an opportunity to make representations, and have regard to any guidance issued by the Lord President or the Lord Justice General. Paragraph 5(b) requires that any such guidance be made public.
111. Subparagraph (8) provides that references to physically attending a court or tribunal are to being in a particular place or the same place as another person for the purpose of any “proceedings” (defined in paragraph 6) before a court or tribunal or an office holder of a court or tribunal. The effect of this provision is that applications for warrants, which take place in a judge’s chambers, would be included in a reference to physically attending a court or tribunal.

Attendance by electronic means

112. Paragraph 3(1) provides that a person excused from a requirement to physically attend a court or tribunal must instead appear by electronic means in accordance with a direction issued by the court or tribunal.
113. Subparagraph (2) provides that where a person fails to attend by electronic means in accordance with such a direction, they are to be regarded as having failed to comply with the requirement to physically attend from which they were excused under paragraph 2.
114. Subparagraph (3) provides that a court or tribunal may vary or revoke a direction made under subparagraph (1).
115. Subparagraph (4) provides that a direction is to set out how a person is to appear by electronic means before the court, tribunal or office holder, and may include any other provision the court or tribunal considers appropriate.
116. Subparagraph (5) provides that a court or tribunal may issue a direction under subparagraph (1) on the motion of a party or of its own accord.
117. Subparagraph (6) provides that before issuing a direction under subparagraph (1) the court or tribunal must give all parties an opportunity to make representations, and have regard to any guidance issued by the Lord President or the Lord Justice General. Paragraph 5(b) requires that any such guidance be made public.
118. Subparagraph (7) provides that a direction under subparagraph (1) must ensure that a party to trial proceedings, which includes an accused person, uses electronic means that enables the party to both see and hear all of the other participants in a hearing, including any witness who is giving evidence. A direction to a witness who is giving evidence at a trial using electronic means must enable all of the other participants in the trial, which

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includes an accused person, to both see and hear the witness. Any direction by a court or tribunal which is not in relation to trial proceedings sets no specific requirements.

119. Subparagraph (8) provides that nothing in subparagraph (7) 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, such as special measures in relation to a vulnerable witness, would otherwise prevent.

Further provision about attendance by electronic means

120. Paragraph 4(1)(a) allows a court or tribunal to issue a general direction under paragraph 3(1) that applies to all proceedings of a specified type, provided that the only party to such proceedings is a public official. This allows a court, for example, to issue a direction as to how applications for search warrants should be made by the procurator fiscal. Subparagraph (1)(b) allows a court or tribunal to issue a further direction overriding a general direction issued under subparagraph (1)(a) in individual cases. The requirement to give parties the opportunity to make representations under paragraph 3(6)(a) does not apply in relation to a general direction issued by virtue of paragraph 4(1)(a).

Publication of directions and guidance

121. Paragraph 5 requires the publication of certain directions and guidance.

Interpretation of Part

122. Paragraph 6 provides definitions for words and terms used in the other paragraphs of Part 1 of schedule 4.