

SCHEDULE 4 JUSTICE

PART 1

COURTS AND TRIBUNALS: CONDUCT OF BUSINESS BY ELECTRONIC MEANS

Electronic signatures and transmission of documents

- 1 (1) An electronic signature fulfils any requirement (however expressed and for whatever purpose) that—
- (a) a document of a type mentioned in sub-paragraph (4), or
 - (b) a deletion or correction to such a document,
- be signed, initialled or signetted.
- (2) Any requirement (however expressed) that a document of a type mentioned in sub-paragraph (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.
- (3) For the purposes of sub-paragraph (2)—
- (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.
- (4) The types of document referred to in sub-paragraphs (1) and (2) are (subject to sub-paragraph (5))—
- (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.
- (5) A type of document mentioned in sub-paragraph (4) is not to be regarded as being mentioned in that sub-paragraph, for the purposes of sub-paragraph (1) or (2) (or both), if—
- (a) the Lord President of the Court of Session, or

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(b) the Lord Justice General,
directs that it is not.

(6) A direction under sub-paragraph (5) may relate to some or all proceedings.

(7) In this paragraph—

- (a) “court” includes any office holder of a court,
- (b) “document” includes a copy of a document,
- (c) “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,
- (d) references to giving a person a document include—
 - (i) serving a document on a person,
 - (ii) sending a document to a person, and
 - (iii) lodging a document with, or otherwise applying to or petitioning, a court or tribunal,
- (e) “tribunal” includes any office holder of a tribunal.

Suspension of requirements for physical attendance

- 2 (1) 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.
- (2) But sub-paragraph (1) does not apply in relation to a trial diet.
- (3) In the case of such a diet, the court may disapply any requirement (however expressed) that a person physically attend the court by directing that the person need not do so.
- (4) A court or tribunal may issue a direction under sub-paragraph (1) only if it considers that allowing the person to attend by electronic means in accordance with paragraph 3 would—
- (a) prejudice the fairness of proceedings, or
 - (b) otherwise be contrary to the interests of justice.
- (5) A court may issue a direction under sub-paragraph (3) only if it considers that allowing the person to attend by electronic means in accordance with paragraph 3 would not—
- (a) prejudice the fairness of proceedings, or
 - (b) otherwise be contrary to the interests of justice.
- (6) A court or tribunal may issue or revoke a direction under sub-paragraph (1) or (3) on the motion of a party or of its own accord.
- (7) In considering whether to issue or revoke a direction under sub-paragraph (1) or (3), the court or tribunal must—
- (a) give all parties an opportunity to make representations, and
 - (b) have regard to any guidance issued by—
 - (i) the Lord President of the Court of Session, or
 - (ii) the Lord Justice General.
- (8) 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.

Attendance by electronic means

- 3
- (1) A person excused from a requirement to physically attend a court or tribunal by virtue of paragraph 2(1) or (3) 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 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 the court or tribunal considers appropriate.
 - (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, 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) A direction under sub-paragraph (1) that—
 - (a) sets out how a party to proceedings is to attend, by electronic means, a trial diet 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) sets out how a witness who is to give evidence at a trial diet 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.
 - (8) Nothing in sub-paragraph (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 would otherwise prevent.

Further provision about attendance by electronic means

- 4
- (1) A court or tribunal may—
 - (a) issue a direction under paragraph 3(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,

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- (b) issue a further direction under paragraph 3(1) overriding, for the purpose of specific proceedings, a general direction issued by virtue of paragraph (a).
- (2) Paragraph 3(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.

Publication of directions and guidance

- 5 A person who issues any of the following must make it publicly available—
- (a) a direction under paragraph 1(5),
 - (b) guidance under paragraph 2(7)(b) or 3(6)(b).

Interpretation of Part

- 6 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),
 - “requirement” means a requirement arising from an enactment or rule of law,
 - “tribunal” means any of the following—
 - (a) the First-tier Tribunal for Scotland,
 - (b) the Upper Tribunal for Scotland,
 - (c) a children’s hearing.