

These notes relate to the Coronavirus (Recovery and Reform) (Scotland) Act 2022 (asp 8) which received Royal Assent on 10 August 2022

CORONAVIRUS (RECOVERY AND REFORM) (SCOTLAND) ACT 2022

EXPLANATORY NOTES

SCHEDULE: TEMPORARY MEASURES

Part 1: Courts and Tribunals: Conduct of business by electronic means, etc.

Chapter 1: Documents

215. [Paragraph 1\(1\)](#) allows an electronic signature to fulfil any requirement (however expressed and for whatever purpose) that a document mentioned in paragraph 3, or a deletion or correction of it, be signed, initialled or signetted.
216. [Paragraph 2\(1\)](#) makes provision that any requirement (however expressed) that a document of a type mentioned in paragraph 3 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.
217. [Paragraph 2\(2\)](#) 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 sub-paragraph further provides that in certain specified circumstances willingness is capable of being inferred.
218. [Paragraph 2\(3\)](#) sets out the interpretation applicable to terms used in paragraph 2.
219. By virtue of paragraph 3(1), paragraphs 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 paragraphs 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 includes documents required to initiate proceedings, and documents used as, or to certify, evidence.
220. [Paragraphs 3\(2\)](#) and [\(3\)](#) confer a power on the Lord President or the Lord Justice General to direct that the effects of paragraphs 1 and 2 do not apply to a specified type of document, either in relation to some or all proceedings.
221. [Paragraph 4](#) allows a requirement to give notice for the purpose of legal proceedings to be fulfilled by giving notice on the Scottish Courts and Tribunals Service's website rather than by posting a physical notice inside or outside a court building.
222. [Paragraph 5](#) sets out the interpretation applicable to terms used in this Chapter.

Chapter 2: Attending a court or tribunal

Overview of Chapter 2

223. **Chapter 2** of Part 1 of the schedule removes, or allows for the removal of, requirements for people to physically attend court or tribunal hearings. Reflecting different default positions on the removal of requirements for physical attendance:
- paragraph 6 deals with non-criminal cases and it also deals with criminal trials and processes before criminal courts in which the only party is a public official
 - paragraph 7 deals with criminal cases, apart from trials and processes in which the only party is a public official
224. Where the requirement to physically attend has been removed by paragraph 6 or 7, paragraph 8 requires people to attend virtually instead.

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

225. **Paragraph 6** removes requirements for people to physically attend court or tribunal hearings. It generally makes virtual attendance the default position, with the court or tribunal having an option to order an in-person hearing. But for hearings at which someone is to give evidence, the default position is reversed so that in-person attendance will be required, unless the court specifically directs a person to attend virtually. Paragraph 6(5) sets the test for reversing the default rule by ordering physical attendance at a hearing other than one at which evidence is to be given. It provides that a court or tribunal may only require the physical attendance of a person if allowing the person to attend by electronic means would prejudice the fairness of proceedings, or would otherwise be contrary to the interests of justice.
226. Sub-paragraph (6) sets the test for reversing the default rule by ordering a person's virtual attendance at a hearing at which evidence is to be given. The test is that the court or tribunal must be satisfied that attendance by electronic means would not prejudice the fairness of proceedings, or otherwise be contrary to the interests of justice.
227. Sub-paragraph (7) provides that the power to issue a direction under sub-paragraphs (2) and (4) includes the power to revoke an earlier direction under that sub-paragraph.
228. Sub-paragraph (8) provides that a court or tribunal may issue or revoke a direction under sub-paragraph (2) or (4) on the motion of a party or of its own accord.
229. Sub-paragraph (9) provides that the court or tribunal must, in considering whether to issue or revoke a direction under sub-paragraph (2) or (4), other than a first direction in relation to a hearing, give all parties to the proceedings an opportunity to make representations. It further requires the court or tribunal to have regard to any guidance issued by the Lord President or the Lord Justice General.
230. The first direction under sub-paragraph (2) or (4) in relation to a hearing can be issued without giving the parties an opportunity to make representations first. This means a court or tribunal can initially tell individuals how they are to appear before it. Where a court or tribunal proceeds in that way, sub-paragraph (11) requires it to ensure that parties know they can request the court or tribunal to change the way that it has asked an individual to attend, and if a party makes that request the court or tribunal must consider it before dealing with any substantive matters at the hearing.
231. Sub-paragraph (12) provides that references to physically attending a court or tribunal are to being in a place for the purpose of any "proceedings" (defined in paragraph 11) 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.

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

232. [Paragraph 7\(2\)\(a\)](#) allows the Lord Justice General to make determinations relieving people from the requirement to attend criminal courts in person. It does not apply in relation to trials, which are instead governed by paragraph 6. Despite a determination by the Lord Justice General generally relieving people from having to attend certain proceedings in person, paragraph 7(2)(b) allows a court to require in-person attendance in an individual case.
233. A determination by the Lord Justice General could, for example, provide that accused persons are to attend sentencing hearings by electronic means. A determination might also empower courts in individual cases to remove the requirement for in-person attendance. A determination can make different provision for different areas, so could be used to pilot virtual attendance in certain localities.
234. Where a person is allowed to attend a hearing virtually because of a determination by the Lord Justice General under paragraph 7(2)(a), sub-paragraph (6) requires the court to ensure that the parties know they can request the court to direct the person to attend in person instead, and requires the court to deal with that request before any substantive matter at the hearing.

Attending by electronic means

235. [Paragraph 8\(1\)](#) 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.
236. Sub-paragraph (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 6 or 7.
237. Sub-paragraph (3) provides that a court or tribunal may vary or revoke a direction made under sub-paragraph (1).
238. Sub-paragraph (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.
239. Sub-paragraph (5) provides that a court or tribunal may issue a direction under sub-paragraph (1) on the motion of a party or of its own accord.
240. Sub-paragraph (6) provides that before issuing a direction under sub-paragraph (1), other than a first direction in relation to a hearing, the court or tribunal must give all parties an opportunity to make representations. It further requires the court or tribunal to have regard to any guidance issued by the Lord President or the Lord Justice General.
241. Sub-paragraph (8) provides that, where an initial direction under sub-paragraph (1) has been issued in relation to a hearing without giving the parties an opportunity to make representations first, the court or tribunal must ensure the parties know that they can request that a different direction be made and, if such a request is made, the court or tribunal has to deal with it before any other substantive issue.
242. Sub-paragraph (9) provides that a direction under sub-paragraph (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 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.

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243. Sub-paragraph (10) provides that nothing in sub-paragraph (8) 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.

General directions under paragraph 8

244. Paragraph 9(1)(a) allows a court or tribunal to issue a general direction under paragraph 8(1) that applies to all proceedings of a specified type, provided that the only party to such proceedings is a public official. This would allow a court, for example, to issue a direction as to how applications for search warrants should be made by the procurator fiscal. Paragraph (b) allows a court or tribunal to issue a further direction overriding a general direction issued under paragraph (a) in individual cases. The requirement to give parties the opportunity to make representations under paragraph 8(6)(a) in relation to a general direction issued by virtue of sub-paragraph (1)(a) is disapplied.

Chapter 3: Further provision

Publication of directions and guidance

245. Paragraph 10 requires the publication of certain directions and guidance.

Transitional provision for directions under earlier enactment

246. Paragraph 11 provides that any direction made under a provision of schedule 4 of the Coronavirus (Scotland) Act 2020 specified in sub-paragraph (1) or paragraph 4(1)(a) of schedule 4 of that Act is to be treated as having been made under the corresponding provision of this Act.

Interpretation of Part

247. Paragraph 12 provides definitions for words and terms used in the other paragraphs of Part 1 of the schedule.