

## SCHEDULE TEMPORARY JUSTICE MEASURES

### PART 1

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

### 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.
- (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—

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- (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—
- (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.

(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.

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- (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.