



Coronavirus (COVID-19) and COPFS Information for solicitors

19 March 2020

The coronavirus (COVID-19) outbreak is now having a significant impact on the Scottish criminal justice system.

Our priority for the duration of the outbreak is to keep the public safe and to uphold the rule of law, whilst supporting the public health response and protecting service users and our employees.

Today we are announcing new contingency arrangements for court business aimed at significantly reducing the demand at this time on the justice system and reducing unnecessary social contact to slow the spread of COVID-19.

These arrangements will apply to all Summary, Sheriff and Jury and High Court business with immediate effect.

Meantime, we are working with justice partners and the Scottish Government on a range of measures to support the fair and effective administration of justice whilst respecting the public health guidance.

The Lord Justice General confirmed on 17 March that no new jury trials will start until further notice. COPFS continues to work with our justice partners to ensure the prioritisation of our essential casework. Our overall priorities are to maintain public safety and protect public health during this period.

PRIORITISING ESSENTIAL BUSINESS

Working with our justice partners, it has been agreed that the only business going through courts at this time will be essential business.

This will allow the justice system to reflect the current Scottish Government and NHS guidance on both the current COVID-19 position, the likely progression of COVID-19 and measures that we are all being asked to take to minimise infection rates.

Essential business is as follows:

1. New custody cases where a remand is to be sought on public safety grounds and individuals who have been released on undertakings to appear at a specified court.
2. Custody Sentencing cases. Where possible the Accused will VC in from Prison.

3. High Court Preliminary Hearing and Sheriff Court First Diet Courts. If the accused has been served with an indictment and have either a First Diet or Preliminary Hearing set down then it is likely that these will be postponed administratively. However all efforts will continue to be made to liaise with solicitors to identify issues that require to be resolved and whether the case itself could resolve. We will discuss with solicitors if the accused's attendance at court would facilitate these discussions.
4. A small number of summary custody trials may take place where witnesses are available and it is possible to continue. Solicitors and witnesses will be contacted proactively where this is proposed.

Further detail as to how COPFS propose to deal with current business is set out later in this document.

Business as Usual

1. The Judiciary advise that the Appeal Court will continue to sit where possible
2. FAIs will continue where possible (however we will not ask any medical professional NHS worker to attend court meantime)
3. CWP/PD summary courts should continue – but with no Accused or Solicitor present and should be done by correspondence.

Indicted Bail Cases

Where possible, First Diets and Preliminary Hearings will call as normal.

Where a Trial has been fixed in a Sheriff and Jury or High Court case where all Accused are on bail, the prosecutor will lodge a minute in terms of Section 75A seeking to postpone the diet and extend the time bar periods, and intimate that to the defence. The minute will ask for a response within a specific (short) timescale. Prosecutors ask that in the current situation that if there is no opposition defence representatives advise prosecutors of this so that the court can be advised that the application is a joint one, bearing only the signature of the prosecutor. If this procedure is followed, indicted bail cases will be adjourned on joint application by the Sheriff or Judge in chambers without the need for a hearing. If necessary a diet will be fixed to postpone the trial.

Indicted Custody Cases

Where possible, First Diets and Preliminary Hearings will call as normal.

Where a trial has been fixed, the prosecutor will lodge a minute in terms of Section 75A seeking to postpone the diet and to extend the timebar period. It is anticipated that in such cases the accused will wish to be heard on the question of bail.

In such cases a Section 75A minute should be lodged, signed by the Prosecutor alone, and a hearing will require to be fixed. It is hoped that where possible that

formal notice periods for such hearings can be dispensed with in order to enable hearings to be fixed at speed.

Accused will not be ordered out to court to appear at such hearings and it is hoped that they will appear by video link from custody. Where for whatever reason this cannot be arranged, the Lord President has confirmed that appropriately instructed representatives who are properly instructed may appear in the absence of the Accused.

Summary Bail Cases

The prosecutor will lodge a minute of acceleration in each case and seek to adjourn the case. Solicitors will be notified and asked to intimate opposition within 24 hours. It is anticipated that these cases can all be dealt with in chambers.

Summary Custody Cases

The prosecutor will review each of these cases. In some cases it may be that the prosecutor is of the view that the trial may go ahead. If, subject to review, the Crown's position on bail changes, a minute of acceleration to postpone the trial will be lodged and it is hoped that the accused may appear by VC. Where the trial cannot be run and the Crown's position to bail has not changed, an application will be made to postpone the trial and extend the timebar period.

Pleading Diets and CWPs

Prosecutors will continue to mark cases in the anticipation that courts will continue to be held. These cases may be dealt with administratively with no solicitors required or accused required. The court can proceed by way of letter pleas requiring personal appearance only where necessary and at an appropriate time dependent upon Scottish Government Guidelines.