

# Scottish Courts and Tribunals Service



Margaret Mitchell MSP  
c/o Justice Committee Clerks  
Room T2.60  
The Scottish Parliament  
Edinburgh  
EH99 1SP

Chief Executive's Office  
Parliament House  
Parliament Square  
Edinburgh  
EH1 1RQ

DX 549306  
LP1 Edinburgh 10

[justicecommittee@parliament.scot](mailto:justicecommittee@parliament.scot)

20 April 2020

Dear Ms Mitchell,

## **COVID-19 and the court system**

Thank you for your letter dated 26 March regarding the challenges faced by the Scottish Courts and Tribunals Service (SCTS) during the ongoing Covid-19 emergency.

As you would expect, our priorities during this period remain protecting our staff, the judiciary and all court and tribunal users, while maintaining public trust and confidence by providing the essential services that support justice.

In order to do this we have collaborated with our justice partners to work through the challenges of how we prioritise action across the justice system to focus on safety and public order at this difficult time. It was helpful, that with Justice Committee colleagues, you were able to take part in the Cabinet Secretary's round table discussion last week. This highlighted the significant challenges faced in the short and long term in managing solemn business. These same challenges are evident in every aspect of courts and tribunals business.

A number of changes to our programming of business have taken place at different stages and regular updates are available through our website and social media as the ever-changing situation progresses. We will continue to provide the most up to date information on our [homepage](#) and in more detail at the following link:

<http://www.scotcourts.gov.uk/coronavirus>

In response to the specific points raised in your letter:

- 1. What steps is the SCTS taking to tackle the COVID-19 emergency and does the Service have sufficient resources at its disposal to be able to continue its work during this period?***

[As published on our website on 25 March](#), we have reduced the business we carry out in our buildings to that which is urgent and/or essential. That decision was taken to support the public health response to the greatest possible extent – minimising the need for our staff and court or tribunal users to travel or to attend court to those cases essential to maintain public confidence in the justice system. Courts ceased all jury trials, adjourned all but essential summary criminal trials, adjourned all civil hearings involving witnesses and made arrangements to maintain essential tribunals' hearings by audio conference. In line with current public health advice our buildings have been closed to the public and a range of steps have been taken to minimise the number of people who need to physically attend in court to the greatest possible extent.

We have reduced the number of open buildings and significantly reduced the number of people that need to be in those buildings. Sheriff Court business has been consolidated into [ten "hub" sheriff courts](#):

As a result of these measures, we are confident that we will be able to maintain the essential services that support justice. The situation is being kept under constant review and we are making changes to the services that we can provide, as the situation develops, balancing our absolute commitment to the public health response with our desire to support ongoing business where possible. We will continue to update our website regularly to ensure all court users are aware of any changes. At this point in time we have sufficient resources to continue our work as we focus on that essential business. We will keep this under regular review, as the nature and scale of the challenge will change over time and will be dependent on how a range of factors – including those relating to social distancing – affect our ability to deliver business and manage case backlogs over the short, medium and longer term.

**2. *Given the decision not to empanel any new juries, how many criminal trials are currently underway and still to complete? Similarly, how many civil cases are still proceeding and how many tribunal cases?***

There are no criminal trials currently underway, with any part heard trials being continued to future dates. All cases where an accused is in custody or on remand will call in court. Trials where the accused is in custody have been continued to a further date without evidence being led. We estimate that by August 2020 there will be a minimum of 1600 solemn trials outstanding, which are likely to require evidence to be led. The actual figure will most likely be higher as indictment levels continue to increase.

In the Sheriff Court legal representation for custody and remand cases can now take place remotely using telephone links, removing the need for physical attendance by solicitors or accused.

Civil business is also restricted to [emergency applications](#) as detailed on our website and includes: applications relating to the care and protection of children; urgent applications for interim orders under the Adults with Incapacity (Scotland) Act 2000 and child abduction petitions. Other civil applications can proceed on cause shown where urgency can be established. As the lockdown period continues we are exploring how to manage a slightly greater proportion of civil business whilst continuing to respect the public health imperative. We are in discussions with the Law Society of

Scotland in order to identify which areas would be most appropriate to prioritise and what criteria should apply to identify those cases that could be advanced while we remain in lock down.

As a result of our recent work to configure new systems the Inner House of the Court of Session will recommence from 21 April, operating as a virtual court. This will not only allow judiciary, counsel and solicitors to participate, it will also support access to justice by allowing media and interested persons to view the entire virtual court proceedings from their own computer or smartphone.

This is an evolving situation as our capacity for remote working grows. Information on this has been added to our [website](#) and will be updated as matters progress. This includes our capability for judges and clerks in the Outer House to operate remotely, enabling Outer House business to recommence through telephone conference facilities.

In relation to Tribunal cases, time-critical hearings are being conducted by telephone conference. Hearings of the Mental Health Tribunal Scotland are considered essential and these are now all being heard via telephone conference, with 182 such hearings having taken place between 30 March and 9 April. This protects all parties, while ensuring that statutory deadlines for hearings are maintained.

### ***3. How will SCTS ensure social distancing in court rooms, tribunals and jury facilities?***

At present, in order to support the public health advice, all our premises are closed to the public – with the exception of those whose attendance is necessary to maintain essential business. We have agreed [a joint protocol](#) with the Crown Office and Procurator Fiscal Service and the Law Society of Scotland, which details the measures that have been implemented across our estate. This focuses on strict adherence to social distancing guidelines, sets out the increased focus on hygiene standards and enhanced cleaning regimes that have been implemented across our premises and confirms that clerks will manage business so that the most appropriate facilities are used to maintain social distancing.

Any individual with symptoms of COVID-19 should self-isolate and would not be expected to appear at court. The one exception to this relates to accused persons who have been brought into police custody. We have worked with Police Scotland to ensure that any custody case in which the accused shows symptoms or claims to have symptoms of COVID will not attend court. Rather they will appear by video link from one of seven dedicated Police Scotland custody centres, at which staff are equipped with the appropriate PPE and video links have been established between the custody suite and sheriff courts, allowing the hearing to take place remotely. We will continue to explore and develop the capacity for hearings from custody to be heard by video link more generally – minimising the need for travel and contact whilst preserving a process that is essential to the maintenance of public order.

As social distancing measures are likely to be in place for some time – and likely to be lifted on a phased basis – this will pose quite significant issues in relation to the volume of people we will be able to admit into court buildings at any given time. This could impact significantly on the accommodation required to manage juries in solemn trials and, in turn, restrict court capacity available for other business types.

**4. What impact will the UK Government's Coronavirus Bill have on the work of the courts (including civil courts and tribunals) in Scotland?**

There are a number of provisions in the Coronavirus Act 2020 ("the 2020 Act") which will impact on the courts in Scotland. However, it is not clear to what extent the overall impact will be given the emergency nature of the provisions and the unprecedented circumstances the country finds itself in as a consequence of this pandemic.

The 2020 Act introduced a number of new offences and penalties, which may affect court time and court programming. Whilst it is not clear what volume of offences may be prosecuted, any resultant impact will have to be considered along with the recovery plan that will require to be implemented as a consequence of the adjournment of current court business owing to the pandemic. Some of the new provisions include:

Fixed penalties

Schedule 19 of the 2020 Act, together with the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, create a new fixed penalty regime. In an extremely short period of time, we have configured our case management system to enable these fixed penalties to be electronically registered by Police Scotland. This has included addressing complications as a consequence of the reduction of the amount of penalty if paid within 28 days and that any subsequent fixed penalty (for the same recipient) is registered for the full increased amount. We have also updated our online payment system to facilitate the payment of the new fixed penalties.

Civil Proceedings

The 2020 Act introduced a number of statutory appeals to the sheriff/summary sheriff. Whilst it is considered that the provisions will not give rise to a great number of appeals, they may impact on the courts in terms of court time and court programming - in particular, where any such appeal requires to be dealt with urgently. The potential impact will be managed in the context of the contingencies we have put in place for dealing with urgent business.

I hope this is of assistance, but should there be anything further please do not hesitate to contact me.

Yours sincerely



Eric McQueen  
Chief Executive

0131 444 3301

[emcqueen@scotcourts.gov.uk](mailto:emcqueen@scotcourts.gov.uk)