



# CIVIL PRACTICE 2020

NOW THIS IS INTERESTING

“Necessity is the mother of invention.”

Attributed to whom ?

# WHAT HAVE WE LEARNED ?

Courts are plainly outdated.

Litigation will never be the same again.

IT ability is just as important as legal ability.

Alternative dispute resolution is preferable to litigation.

Justice does not need to be seen..... to be done.

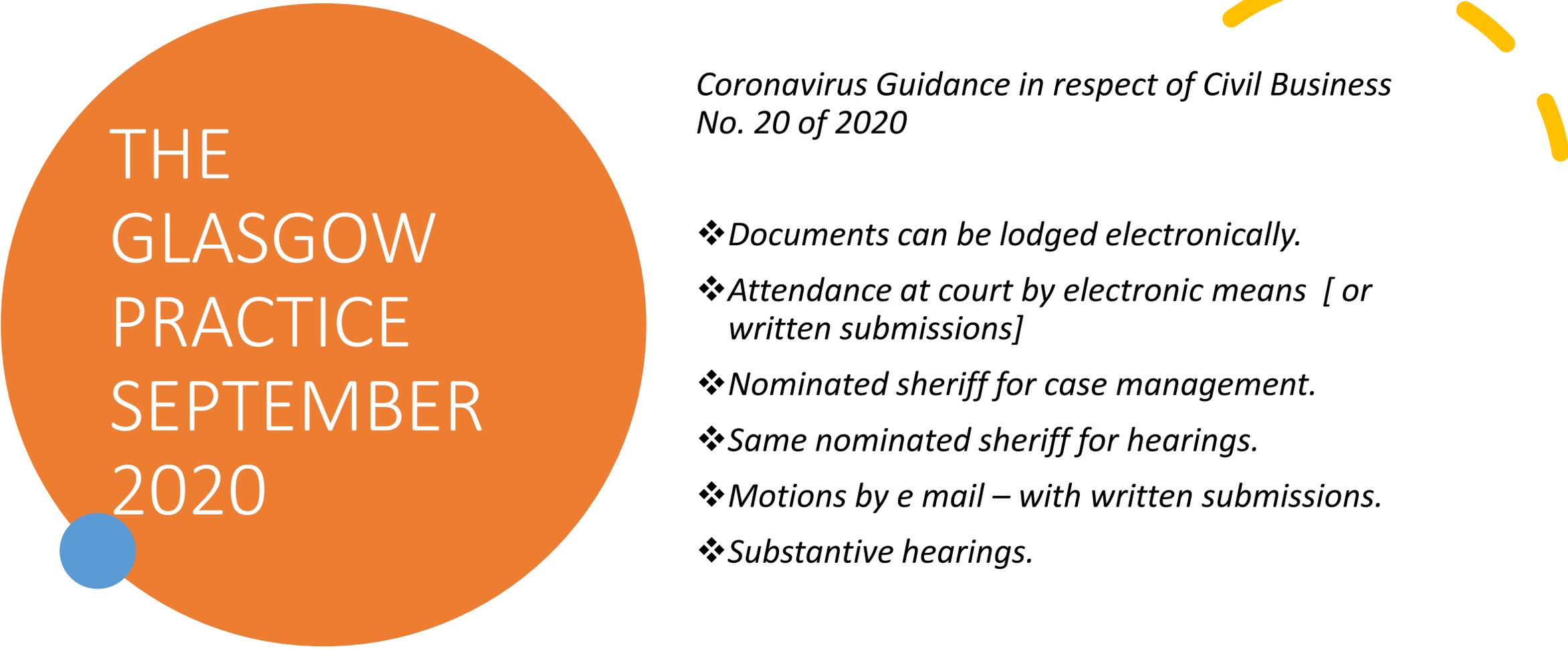
WHO SAID THIS  
IN MAY 2020 ?

*“ Time limits will be applied flexibly and ...  
parties should bear in mind that  
...unnecessary disputes over  
procedural matters are discouraged. ”*

WHO SAID THIS  
IN SEPTEMBER  
2020 ?

The attention of practitioners is drawn to Practice Note No 1 of 2006, the provisions of which should be utilised wherever possible.

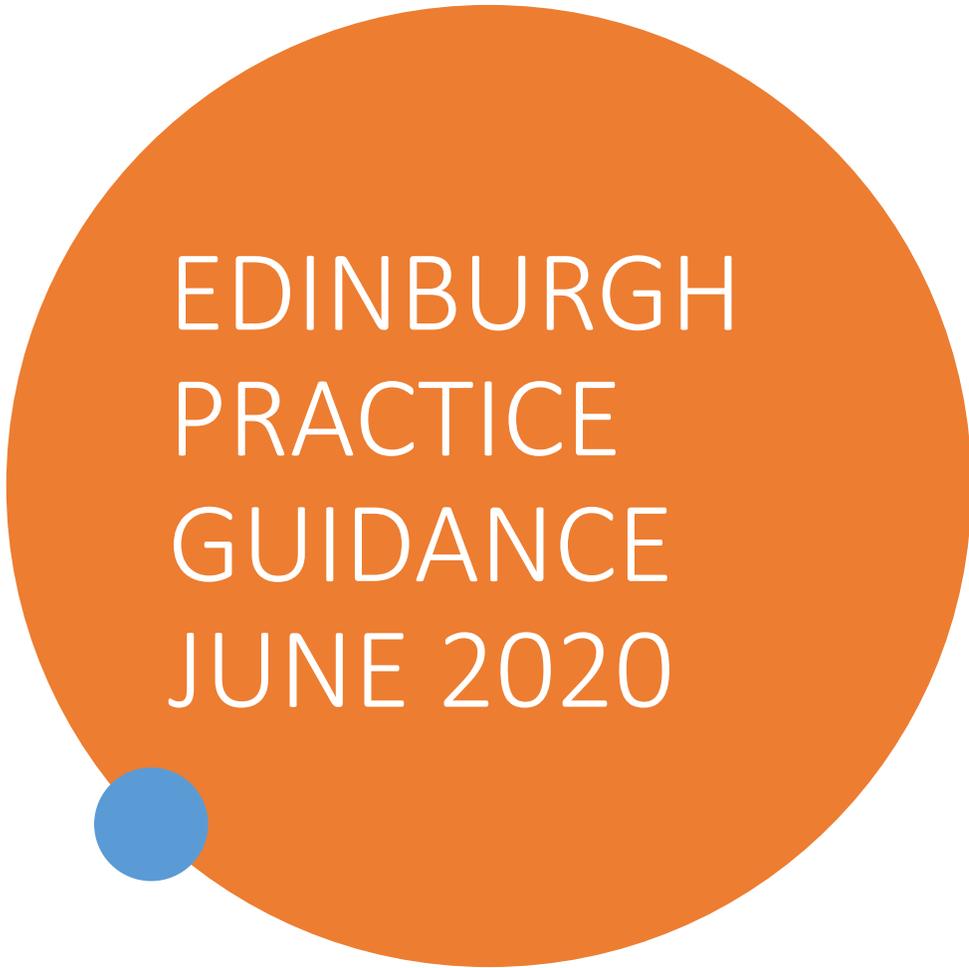
.....



THE  
GLASGOW  
PRACTICE  
SEPTEMBER  
2020

*Coronavirus Guidance in respect of Civil Business  
No. 20 of 2020*

- ❖ *Documents can be lodged electronically.*
- ❖ *Attendance at court by electronic means [ or written submissions]*
- ❖ *Nominated sheriff for case management.*
- ❖ *Same nominated sheriff for hearings.*
- ❖ *Motions by e mail – with written submissions.*
- ❖ *Substantive hearings.*



# EDINBURGH PRACTICE GUIDANCE JUNE 2020

....The court is reviewing how civil proofs can proceed including the use of Webex ... for procedural hearings and proof.

Parties to actions where a proof had been fixed for a date between 17 March and 19 June 2020 should carefully review preparedness for proof; the availability of witnesses and the suitability of the case for proof by video conference or, exceptionally, if it must proceed in the conventional manner in a courtroom with the physical presence of witnesses.

Parties should contact the court by email after reviewing. ..

Actions in this category will be allocated to sheriffs for case management.

Procedural hearings may be fixed to allow consideration of matters including preparedness for proof and how the proof is to be conducted.

# ASSPIC

- Proofs in ASSPIC
- [2] Part 1 2 of Schedule 4 of the Coronavirus (Scotland) Act 2020 suspends the requirement for physical attendance at court unless the court directs otherwise. Under these provisions all hearings in ASSPIC will be conducted remotely until further notice unless the court directs otherwise.
- Presumed mode of hearing
- The default position is that proofs in ASSPIC will proceed on a remote basis using Webex technology unless the court otherwise directs. Proofs may proceed as live hearings “in-person” where physical distancing can be accommodated and the court so directs. Where a party considers that a hearing cannot proceed by WebEx video conference, or cannot entirely be conducted in this manner, that party should advise the court of the reasons for that. It will be a matter for the sheriff to determine whether the hearing is suitable for a WebEx video conference. If the sheriff determines that WebEx is not suitable, consideration will be given to whether a physically distanced live “in-person” hearing can be accommodated.
- There will be no civil jury trials meantime.
- Live hearings
- [4] Where one or more parties seek a live hearing, intimation of such must be given to the court as early as possible and in any event by not later than the date on which the pre- trial minute is to be lodged. Requests for a proof to be heard live will be considered by the court on a case by case basis. Cause must be shown why a case is not suitable for a hearing by VC. The factors set out in the Appendix hereto are matters which the court is likely to consider relevant to that issue.

# SHERIFF APPEAL COURT

- Practice guidelines.
- 2] All current and new documents, including **all** new notes of appeal should be lodged by e-mail to [SAC.civil@scotcourts.gov.uk](mailto:SAC.civil@scotcourts.gov.uk). The document will be deemed to have been lodged with the Court on the date when the e-mail with the document is received at this e-mail address. ..
- [3] All new notes of appeal will be acknowledged and passed to the procedural Appeal Sheriff for consideration of an order for intimation and answers. Once answers have been received the matter will be reconsidered by the procedural Appeal Sheriff in relation to further procedure.
- [4] With effect from week commencing 11 May 2020 the Sheriff Appeal Court will schedule procedural business. The preferred approach to conducting procedural business will be by way of written submissions. Where required, procedural hearings may be conducted by telephone conference.
- [5] In all cases parties will be contacted by a member of the Sheriff Appeal Court staff to confirm the manner in which hearings will be conducted and make the necessary arrangements.



# SIMPLE PROCEDURE

Civil Online



# COURT OF SESSION

- **COURT OF SESSION PRACTICE NOTE No 1 of 2020**
- **Substantive Hearings by Video Conference**
- This Practice Note applies to all substantive court hearings which are due to take place by means of video conference.
- Where a hearing is to proceed by video conference, parties must lodge electronic copies of any productions with the Court.
- An electronic copy of a production will be considered to be the principal copy unless good reason is provided otherwise.
- When lodging electronic copy productions, a party should:
  - lodge with the Court an inventory of the productions in electronic form, with hyperlinks to each of the electronic copies; and
  - send a copy of those electronic productions to every other party.
- Parties are to co-operate, agree and lodge a joint list of those productions which require to be referred to at the hearing. The list should comprise only those productions which are relevant to the legal and factual issues to be raised at the hearing and which are likely to be referred to at it. The productions identified on that list will comprise the core bundle.
- Each party must intimate in writing to the Court the names and email addresses of each person whom the party intends to call as a witness.
- Parties are responsible for displaying productions from the core bundle at the substantive hearing<sup>1</sup>.

- RCS 36.9 continues to apply. Parties are responsible for ensuring that their witnesses are ready and available to join the video conference at the appropriate time. Each party must provide to the clerk of court a numbered list of its witnesses together with a timetable setting out the order in which, and day on which, it is proposed to call them.
- SCTS will provide guidance and support on this until such time as video conference hearings are fully established.
- ...to be complied with, subject to appropriate modification for the context of a court hearing conducted by video conference.
- As with any court hearing conducted by video conference, each party must ensure its electronic equipment and internet connection to the Court - and that of its witnesses - is of appropriate quality and robustness for the anticipated duration of the proceedings. Each party must ensure that the hearing is conducted with the same decorum and respect as a hearing conducted in the courtroom.
- Where the Court requests that a test be undertaken of the video conference facilities in advance of a hearing, parties and witnesses are expected to participate in the test so far as practicable.

**No shortage of “breaking news” on the challenges, joys and disasters of coping with covid restrictions in the civil courts.**

- Some of the short-term fixes ought to stick.
- Some will stick.
- Some will be forgotten with regret or pleasure.



RAPID AROUND  
THE WORLD



# Scottish Civil Justice Council

- Activity ?



# READ ALL ABOUT IT....

SCOTTISH LEGAL NEWS - various articles in the last few months, including :-

Shoosmiths - *“A day in the virtual sheriff court”*

Sarah Lilley: *“Rural courts- embracing the switch to remote courtrooms”*

14 October 2020 - *Scots lawyers oppose entrenchment of virtual courts*

- SLAS - Views about remote hearings.
  - Civil Online
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ENGLAND

- Remote hearings in the family justice system: a rapid consultation Family Law April 2020
- The impact of COVID-19 measures on the civil justice system Civil Justice Council May 2020
- [The rapid review was launched on 1 May 2020 and concluded on the 15 May 2020. The aim of the review was - To understand the impact of the arrangements necessitated by COVID-19 on court users. To make practical recommendations to address any issues over the short to medium term. To inform thinking about a longer-term review. ]
- **SC (A Child) v University Hospital Southampton NHS Foundation Trust** 4 June 2020
- The Future of Courts by Richard Susskind July/August 2020

# THE REST OF THE WORLD

- “Observing Online Courts: Lessons from the Pandemic” - Prof. Elizabeth Thornburg.
- Gathering Evidence remotely for trial - American Bar Association
- Remote trials in South Africa – A note on recent case law
- Australia – Capric v Ford.



# LORD PRESIDENT

Access to justice.

Cheaper justice

Advocates less needed

Travel and distance costs

Much more accessible to legal profession and clients.



# FUTURE PRACTICE

PAPERS -

PEOPLE

PRESENTATION -

PREPARATION -

PROPORTIONALITY

PREDICTABILITY -

PROCEDURE -

[PERIOD OF  
SETTLING DOWN]

PRAGMATISM -