

COVID 19

Guidance in respect of Facilitating Pleas of Guilty in

Summary Criminal Proceedings in the Sheriff and Justice of the Peace Courts

Part 1. Introduction

1.1 The purpose of this guidance is to facilitate the efficient disposal of summary criminal proceedings in the sheriff and justice of the peace courts in which a plea of guilty is to be tendered during the current COVID-19 emergency. This guidance has effect from 11 May 2020.

1.2 Compliance with the Government's measures to slow the spread of the virus is vital. Accordingly, a return to business as usual is not viable in the near future. Nevertheless, the aim is that with the co-operation of parties summary criminal proceedings in which the accused wishes to tender a plea of guilty which is acceptable to the prosecutor can be resolved in the sheriff and justice of the peace courts.

1.3 This guidance is dependent upon advance discussion between the solicitor for the accused and the prosecutor. Prior to an application being made in terms of this guidance the solicitor for the accused and the prosecutor should discuss all matters relevant to the efficient disposal of the case.

1.4 The procedure set out in this guidance is only to be adopted where the solicitor for the accused and the prosecutor have agreed both the plea(s) to be recorded and the facts on which the plea(s) proceeds and are each of the opinion that the proceedings may be capable of determination in the absence of the accused or the solicitor for the accused.

1.5 The procedure set out in Part 4 below does not require the attendance at court of the accused and the solicitor for the accused. The procedure is designed to permit the attendance of the prosecutor by electronic means.

1.6 All applications made under and in terms of this guidance shall be made by electronic means to the e-mail address for the relevant hub court set out in Appendix 1 to this guidance.

1.7 Each hub court shall provide diets for the purposes of an accused tendering a plea of guilty in terms of this guidance.

Part 2. Transfer from a Closed Court

2.1 Where proceedings in which the accused wishes to tender a plea of guilty that is acceptable to the prosecutor were commenced in a court that is currently closed (and have not subsequently been transferred to a hub court), once agreement has been reached between the solicitor for the accused and the prosecutor as to the terms of the plea of guilty, the prosecutor shall, by electronic means, make application to either the sheriff in terms of section 137A(1) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) or a justice in terms of section 137CA(1) of the 1995 Act for an order to transfer the proceedings to the relevant hub court.

2.2 Upon making an order for the transfer of the proceedings the sheriff or justice shall adjourn the proceedings to a diet in the relevant hub court at which the plea of guilty will be considered by the sheriff or justice in terms of paragraph 4.2 below.

Part 3. Proceedings in Hub Courts

3.1 Where proceedings in which the accused wishes to tender a plea of guilty that is acceptable to the prosecutor were either (i) commenced in a hub court; or (ii) commenced in a court that is currently closed and subsequently been transferred to a hub court, the parties or their solicitors shall, by electronic means, make a joint application to the court in terms of section 137(1) of the 1995 Act to discharge the diet (or diets) previously fixed in the proceedings and to fix an earlier diet in lieu thereof for the purposes of the accused tendering a plea of guilty.

Part 4. Documents to Accompany Applications

4.1 An application made in terms of either paragraph 2.1 or paragraph 3.1 shall be accompanied by the following:

- A certified copy of the complaint (amended to reflect the agreed plea of guilty where appropriate);
- A letter signed by the accused or his solicitor setting out the terms of the plea of guilty;
- A schedule of previous convictions admitted by the accused or written confirmation from the prosecutor that there are no previous convictions to be placed before the court;
- The summary of evidence provided by the prosecutor to the accused or his solicitor with any agreed amendments thereto (and, where appropriate, redacted to remove any reference to matters which ought not properly be placed before the court in light of the agreed plea of guilty);
- A written plea in mitigation in the form set out in Appendix 2, which must provide all relevant information as to the accused which the court will require before proceeding to sentence including current address and contact telephone number; financial, employment, health and domestic circumstances. If it is proposed that the imposition of a monetary penalty is the appropriate disposal the plea in mitigation must fully address the accused's means (income; outlays and savings) and ability to pay by instalments or by a lump sum; and
- For an offence (i) under section 1(1) of the Domestic Abuse (Scotland) Act 2018; or (ii) that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, both the prosecutor and the accused shall provide such information as is available to them to assist the court in considering the question of whether to make a non-harassment order.

NOTE: Please be aware that in providing the documents to accompany an application made in terms of either paragraph 2.1 or paragraph 3.1, these may be seen by journalists for this purpose. The letter setting out the terms of the plea of guilty, the summary of evidence provided by the prosecutor and the written plea in mitigation may all be accessible by journalists unless specifically restricted by the sheriff.

4.2 The sheriff or justice will consider the application and the accompanying documents in open court and will determine whether or not he or she can dispose of the case on the papers in the absence of the accused.

4.3 If the sheriff or justice determines that he or she can dispose of the case on the papers in the absence of the accused he or she will proceed to do so. The court will proceed to sentence on the basis that the summary of evidence is agreed.

4.4 The sheriff clerk shall notify the disposal to the solicitor for the accused.

Part 5. Procedure Where Proceedings Cannot Be Disposed Of On The Papers

5.1 If the sheriff or justice considers that he or she cannot dispose of the case on the papers in the absence of the accused he or she shall adjourn the case for sentence in terms of section 201 of the 1995 Act.

5.2 The sheriff clerk shall notify the date of the adjourned diet to the prosecutor and the solicitor for the accused.

5.3 Where the sheriff or justice adjourns the case in terms of paragraph 5.1 the accused shall appear personally at the adjourned diet. The solicitor for the accused shall, as soon as is reasonably practicable, advise the accused of the date of the adjourned diet and of the requirement that the accused appears personally at the adjourned diet.

Appendix 1

GuiltyPleaGlasgow@scotcourts.gov.uk

GuiltyPleaInverness@scotcourts.gov.uk

GuiltyPleaAberdeen@scotcourts.gov.uk

GuiltyPleaDundee@scotcourts.gov.uk

GuiltyPleaFalkirk@scotcourts.gov.uk

GuiltyPleaEdinburgh@scotcourts.gov.uk

GuiltyPleaHamilton@scotcourts.gov.uk

GuiltyPleaDumfries@scotcourts.gov.uk

GuiltyPleaPaisley@scotcourts.gov.uk

GuiltyPleaKilmarnock@scotcourts.gov.uk

Appendix 2

Court ref.no

INFORMATION IN RELATION TO THE ACCUSED

PF V..... (Insert name of accused)

The accused confirms his/her plea of guilty to the charge as set out in the complaint (or the amended complaint as the case may be).

MITIGATION

FINANCIAL POSITION OF THE ACCUSED

EMPLOYMENT POSITION OF THE ACCUSED

DOMESTIC CIRCUMSTANCES OF THE ACCUSED

ANY RELEVANT HEALTH ISSUES PERTAINING TO THE ACCUSED

FINANCIAL CIRCUMSTANCES OF THE ACCUSED

Weekly net income from all sources (specify as necessary);

Weekly outgoings (specify as necessary)

Savings

Instalment payments towards a fine which the accused would propose /
accused is able to pay a fine as a lump sum within 28 days

**FOR ROAD TRAFFIC OFFENCES WHERE DISQUALIFICATION AND / OR PENALTY
POINTS MAY BE IMPOSED**

Confirmation that the accused has been advised that he or she should not drive on the date
of the hearing pending confirmation to him or her of the penalty imposed by the court.

ANY OTHER RELEVANT CIRCUMSTANCES OF THE ACCUSED

CONTACT DETAILS FOR ACCUSED

Current address and contact phone number(s)

Date (insert date)

(Signed electronically)

.....

Solicitor for Accused

(insert full name designation and
business address)