

COVID-19 : FAQs on the impact on family matters

During these extraordinary times, the Government's measures affecting family arrangements and changes to court proceedings may impact on your family situation and ongoing matters. We are available to assist you, provide guidance and we'll strive to ensure continuity for your unique circumstances.

These frequently asked questions may provide some guidance on certain queries you have but feel free to contact us if you would prefer to discuss your specific situation.

Q I currently have a family action raised at my local Sheriff Court and there is a hearing scheduled in the next few weeks. Will my case still go ahead, and should I attend personally?

It has been announced by Scottish Courts that no courts will be sitting until further notice other than to deal with very restricted civil and criminal business.

Only urgent cases will be considered and dealt with as deemed appropriate, and those matters include:

- Child Protection Orders
- New applications for Interim Interdict
- Urgent Residence applications
- Interim Compulsory Supervision Orders
- Adults with Incapacity applications.

All other family cases will be put on hold (or 'sisted' in legal terms) in the meantime. This includes proofs (evidential hearings with witnesses) and procedural hearings that are scheduled to run from now and up to the end of June 2020.

Once Courts resume usual business, such cases will be recalled and become live again. At this point, little information has been released as to how cases will be brought back into court.

You should not to attend at court, unless specifically requested.

Q I have recently lodged papers to commence divorce proceedings, will this be on hold?

Many of the Sheriff Court civil offices have closed in line with the government's measures and as a result of staff shortages. It is therefore unlikely that any divorce papers (eg. Writs / Minutes for Decree) lodged will be dealt with administratively until civil offices re-open fully.

It is possible to prepare the relevant court documents (eg. Affidavits etc) so that everything is prepared and ready for signing, which will allow matters to progress quickly once the courts re-open. You can contact your family law solicitor to discuss this further.

Q My children live with my ex-partner, can I continue to have contact with them?

It was confirmed by MP Michael Gove on 24 March 2020 that children under the age of 18 **can** continue to see both parents during the lockdown, so long as there is minimal social contact and the children are not self-isolating. The Lord President has since confirmed that this does not mean that a child must move between parents.

If there is a court order or formal agreement in place, parents are advised to adhere to the arrangements it sets out, where appropriate, unless you and the other parent agree to vary the order.

If you have a more informal arrangement with the other parent, you should discuss how best to approach the situation and make a decision on whether a child is to continue to move between homes after a sensible assessment of the circumstances.

At this point it is unclear whether the same approach is to be adopted by the Scottish Government. However, many Scottish Sheriff Courts have advised parents to take a 'common sense' approach to contact and consider what would be appropriate in the current circumstances, to ensure the children's welfare and wellbeing.

When considering how to operate a shared-care arrangement in these difficult circumstances, parents should consider and discuss exactly how handovers will take place, to ensure their children's safety, and their own safety, is protected as much as possible. Considerations should include:

- Will the children require to use public transport or be in a crowded place?
- Is each parent's home a self-contained household?
- Will elderly members of the household be placed at risk?

Parents should also be aware that if the children or someone in their household become unwell, they must self-isolate for 14 days. If this is required, contact cannot take place. These situations can vary from household to household so if in doubt obtain advice. If face to face contact is not appropriate or possible then a child should be able to communicate with their parents by other means such as skype, Whatsapp, or facetime.

Q What happens if my former partner refuses to hand over the children without good reason?

The court will regulate care arrangements on an urgent basis if a parent is being prevented from seeing a child or a parent refuses to return a child. The court will have to be persuaded that the matter is urgent and the order is in the best interests of the child.

Disputes regarding more minor contact arrangements, such as the time a child is to be collected, are not considered urgent business. However, if one parent places obstacles in the way of the other at this difficult time, this can be brought to the attention of the Sheriff or Judge who may take that parent's poor or inappropriate behaviour into account in determining matters going forward once in court.

If a parent has a contact order issued by the court, then a refusal by the other parent to comply could amount to a contempt of court.

Q My separation is currently being negotiated, will negotiations continue?

Yes, if we are acting on your behalf.

Our Family Law team are all working remotely, you can still contact them by phone or email during normal business hours. We'll endeavour to keep your negotiations moving and maintain communication with your spouse's solicitor on your behalf throughout this time.

Q I would like to prepare a cohabitation / pre-nuptial / post-nuptial separation agreement do I have to come in for a face-to-face appointment?

We are happy to take instructions by email or phone for any agreement. Feel free to contact us and we can advise you on the process.

For further guidance and support, you can contact:

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