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**POLICE
SCOTLAND**

Keeping people safe

**Service of Legal Documents
Standard Operating Procedure**

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1. Purpose

- 1.1 In support of victims of crime and the delivery of swift justice, the Police Service of Scotland (hereafter referred to as Police Scotland) is charged under Section 20 of the Police and Fire Reform (Scotland) Act 2012 to serve citations and other legal documents in relation to criminal proceedings.
- 1.2 The legal documents issued by the Crown Office and Procurator Fiscal Service (COPFS) for personal service by the Police, include witness citations, countermands and re-cites, Petitions, Indictments, Copy Complaints and Notices relating to legal procedures. Some documents can only be served personally on the named person; but the vast majority are issued to the Police because COPFS are unable to serve them by other means.
- 1.3 There are constraints on how these documents can be served and the timescales available. Lord Advocate's Guidelines exist to shape document service by the police.
- 1.4 Most legal documents include instructions, or covering letters, indicating the method(s) of competent service, and the date of the trial. Documents may have a range of other forms enclosed with them, some of which are served, some of which are retained and returned to the office of issue. This SOP provides greater detail about the nature of the documents and the procedures for the proper Execution of Service.
- 1.5 Legal documents are critical to the court process and their importance cannot be over-stated. **All** Police officers and staff (those authorised to serve legal documents) **must** understand and undertake their responsibilities in document service. Robust management by all supervisors is expected in support of this requirement.
- 1.6 Should an officer be allocated documentation that relates to anyone in their private or personal life, this must be disclosed to their line manager, so that the work can be re-allocated. This will prevent conflict and allegations against the originally allocated officer or staff member.
- 1.7 The repeat calling of cases to trial and the re-issue of legal documents ("churn") can be reduced by successfully serving documents. Sufficient, unsuccessful enquiry, and early return to COPFS allows consideration of how, or if, to proceed with the case. Officers must make every effort, at every stage of the reporting process, to reduce demand.
- 1.8 Police officers and staff should, in all cases, deal with each recipient on an individual basis, taking cognisance of any vulnerability or other issue, such as making appropriate arrangements to facilitate effective communication. Officers and staff should make themselves aware of the Interpreting and Translating Services SOP, Victim Support SOP and Appropriate Adults SOP.

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- 1.9 The processes for the citation of Police officers and staff are available within the Citations (Police Officers and Staff) SOP.

2. Lord Advocate's Guidelines on the Citation of Witnesses

- 2.1 The Lord Advocate issued guidelines on witness citation to all legacy force Chief Constables. These guidelines are the standing guidance and expectation of COPFS **for all legal documents** and are available here with the key points summarised below.
- 2.2 It is important that witnesses cited for a trial actually attend; and that citation is achieved early, so that action can be taken to reduce unnecessary attendance. The citation should be served on the named person, but it can be served on another person in the household or workplace. Under **no** circumstance should a witness citation be put through a letterbox or otherwise simply left at an address.
- 2.3 Wherever possible, COPFS will issue documents to the police as early as possible. Often, documents are issued with very little time to serve.
- 2.4 Where a document is not served, COPFS should be informed immediately and instruction sought on how, or if, to proceed with further enquiries.
- 2.5 Where instructions are received from COPFS to countermand witnesses, **immediate steps** should be taken to achieve this. It is important that the unnecessary attendance of witnesses at court is avoided.

3. Crown Office Guidance to Police on the Personal Service of Witness Citations

- 3.1 A Witness Citation is an official notification to the named person when and where they must attend court. If the citation is for personal service only (that is to the named witness only) the citation will normally have a "C/O Police Scotland" address. If there is no such entry nor other information indicating it should be personal service only, all service methods listed on the Execution of Service are competent.
- 3.2 Witness citations for personal service by the Police, for **JP, Sheriff and Sheriff and Jury Court** cases across Scotland, are printed at the COPFS, National Print Unit (NPU) in Glasgow. High Court witness citations are, and occasionally late citations for lower courts can be, issued from the COPFS office managing the case.
- 3.3 Each court procedure has colour-coded documents:

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- Grey/green document – Summary Court – JP or Sheriff;
- Orange document – Solemn Court - Sheriff and Jury;
- Purple document – Solemn Court - High Court.

There is no other means of prioritising court documents, other than the hierarchy of court procedure. Solemn court documents should be prioritised over Summary court documents.

- 3.4 COPFS NPU receives citation requests each day from across Scotland. Each citation pack contains information specific to the witness, the case and the court in which the trial is to take place. Citations for personal service by the police, are sent by post to the relevant police station for initial administration.
- 3.5 The Civilian Witness Citation pack includes:
- The Witness Citation.
 - The Execution of Service.
 - A covering letter addressed to the witness.
 - A 'Going to Court' and/or 'Being a Witness' leaflet.
 - A translation sheet.
 - For child witnesses, a covering letter is addressed to the parent/guardian with an information document.
- 3.6 Citations, and other legal documents, will be sent by COPFS to police stations in large single envelopes. Once the envelope is opened, each document has the witness/accused name, address, PF case reference number, return date, court and trial date clearly visible. There will be occasions when a document for an accused is for service on the defence agent and their details will be provided.
- 3.7 Any citation or other legal document that is served on a 3rd party, at home or at work, **must** be left securely for the named person, with their name clearly visible.
- 3.8 Occasionally, witness citations will come directly from the local COPFS office. The instructions on completion are the same. Officers should check with the office of issue to where the Execution of Service, or the un-served citation, should be returned.

4. How to serve a Witness Citation

- 4.1 The last day on which a witness citation can be served is the day of the trial and efforts to trace and serve the citation should continue until that date if required.

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- 4.2 The Legal Documents Database, on which all legal documents for personal service by the Police are administered, generates a “Report by” date. This date is the date officers, staff and supervisors **must** work to.
- 4.3 There will be occasions when there are very short periods of time between the police receiving the document and the “Report by” date. Appropriate priority must be given to serve these documents, or to provide an update to COPFS, as quickly as possible.
- 4.4 The police “Report by” date is based on the requirement for COPFS to declare at Summary Court Intermediate Diet (held either 2 or 4 weeks before the trial date) that all of their witnesses have been cited **and** are available to attend.
- 4.5 In High Court and Sheriff and Jury Court (Solemn Procedure) the Preliminary or 1st Diet is held around 4 weeks before the trial sitting. COPFS will issue witness citations with the required Police “Report by” date printed at the top – allocated officers **must** serve the citation or provide an update to COPFS by that date.
- 4.6 The “Report by” date will be used to evaluate demand and performance and should be the basis for supervisors when considering the urgency of document service.
- 4.7 When the witness has been traced, officers/staff should:
- Detach, complete and **retain** the Execution of Service.
 - Complete the Witness Citation using a **Black Pen** and in BLOCK CAPITALS so that it can be easily read by computer scanner. Do **not** write or mark the Execution of Service other than in the printed sections, as this can be misinterpreted during scanning.
 - **Execute** (hand over) the Witness Citation, covering letter(s), ‘Going to Court’ and/or ‘Being a Witness’ booklet.
 - The citation **can** be left with a 3rd party (a resident or work colleague). Their full details **must** be included on the Execution of Service. The citation must be left securely with the witness’s name clearly visible – see point 3.7 above. Officers must be satisfied that the citation will reach the named individual. If there is any doubt, it must be served on the named witness. High Court citations or those for a vulnerable witness can only be served on the named witness – see paragraph 7 below.

5. Completion and Return of the Execution of Service – Citation Served

- 5.1 When the Witness Citation has been served, the Execution of Service **must** be completed by the officer/staff member serving the citation, as follows:

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- **Section A** - **tick the box** to show the citation has been served.
- **Section B** - **print** own name and shoulder number.
 - **print** the date the citation was served.
 - **tick** the relevant box (a) **or** (b) and complete to show the method of service.
 - **sign** and date
- **Section C** - is to be used for enquiry information, such as a change of address or unsuccessful enquiries (if not recorded and reported in another way).
- **Return** the Execution of Service, and evidence of updated information (if not recorded in Section C) to COPFS in an envelope addressed to

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- 5.2 In order to update their systems at the earliest opportunity, all Executions of Service must be returned to COPFS National Print Unit, or to the office of issue if indicated, as quickly as possible.
- 5.3 Where possible, officers/staff serving citations should return the Executions of Service directly from their home station. Arrangements to return documentation to a divisional administrative unit are allowed. A single envelope containing multiple Executions of Service can be sent.

6. Completion and Return of the Execution of Service – Citation Un-Served

- 6.1 Where the witness cannot be traced and/or the citation has not been served, officers must report this to COPFS by the “Report by” date. Late issue of citations for an imminent trial should receive appropriate priority and COPFS must be notified by telephone/email of non-service as soon as possible.
- 6.2 If instructed to do so by COPFS, or enquiries have been exhausted without success, officers must complete the Execution of Service as follows:
- **Section A** - **tick the box** to show the citation has **not** been served;
 - **Include evidence of enquiry**, either in Box C or by other current methods;
 - **Return** the un-served witness Execution of Service **only, and** the evidence of enquiry directly to COPFS at

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- 6.3 In order to update their systems at the earliest opportunity, all Executions of Service must be returned directly to COPFS National Print Unit, or to the office of issue (if so indicated) on the day enquiries stop. A single envelope containing multiple Executions of Service can be sent.
- 6.4 COPFS have to consider how, or if, to proceed with the case. This may include seeking an apprehension warrant, therefore the recording and submission of enquiry to trace a named person becomes evidentially essential (Section 156 Criminal Procedure (Scotland) Act 1995). It is noteworthy that “Present whereabouts unknown” does not satisfy the test of being “deliberately obstructive”, whereas being cited to attend and failing to do so, does.

7. Solemn Court Citations (High Court and Sheriff and Jury Court)

- 7.1 Maximum efforts must be made to serve Solemn Court citations, as these relate to the most serious criminal cases. The “Report by” date on the citation (set by COPFS) is the Police “Report by” date.
- 7.2 High Court witness citations issued to the Police **can only** be served on the named witness personally. They cannot be left with a 3rd party, unless it is for a child witness, who can be cited by serving the document on their parent/guardian; or it is for a professional witness e.g. Doctor, Vet, Solicitor etc, which can be served on a secretary or receptionist.
- 7.3 Sheriff and Jury Court citations should be served on the named witness, however, can be served on a named 3rd party at home or the place of business. Officers must satisfy themselves that the witness will actually receive the citation. If there is any doubt, the citation must be served personally on the named witness.
- 7.4 Officers must continue attempts to serve the citation **until the day of the trial**, if necessary. Officers/staff must update COPFS **by the “Report by” date** that a citation remains unserved; and they should seek confirmation from COPFS to continue efforts to serve it. It is **crucial** that this communication takes place to allow COPFS to consider how to proceed, as there are provisions for Solemn Court witness apprehension warrants to be pursued (Section 11 Criminal Procedure (Amendment) (Scotland) Act 2004).

8. Copy Complaints – Summary Court

- 8.1 Copy Complaints, also called a ‘Summons’ or “Summary Complaint”, are multi-page documents, issued by COPFS for Justice of the Peace (JP) and Sheriff Summary cases. The relevant sections for the accused person are often stapled together and officers/staff must be alert to the “Execution of Service of Complaint” being attached to this bundle.

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- 8.2 The pack includes a number of forms, a summary of the evidence in the case and may include a copy of any previous convictions (Section 69 Notice), which must be served on the accused at the same time.
- 8.3 Prior to serving the document, officers/staff must check that all the documents refer to the same individual. Any anomalies must be reported immediately to COPFS. It is common for Copy Complaints to be sent without a covering letter. These should be dealt with in the same manner.
- 8.4 The officer/staff serving the Copy Complaint must complete the 'Execution of Service of Complaint' and the document should be handed to:
- The named person;
 - A resident of the address; or
 - An employee at the place of work
 - If the document is served on a 3rd party, at home or work, it must be left securely with the name of the accused person clearly visible.
 - If an accused person elects to uplift the Copy Complaint from a police station, it **must** be served personally on the accused.
 - The officer/staff serving the document **must** :
 - Complete the Execution of Service of Complaint with their own details; and
 - Sign where indicated; and
 - Tick the box of the method of service.
 - The Execution of Service of Complaint must then be sent **that day** to the COPFS office indicated on the document.
- 8.5 Officers must continue efforts to serve the Copy Complaint until 2 working days prior to the trial date (this is a legal requirement), unless directed otherwise by COPFS. If the trial is imminent, officers must update COPFS as soon as possible if the Copy Complaint remains un-served. On occasion, COPFS will put specific instructions on the Copy Complaint or envelope, which officers must follow.

9. Continued without Plea letters (CWP) – Summary Court

- 9.1 These letters are issued by COPFS for JP and Sheriff Court cases. They are issued when there has been no response by the accused to a Copy Complaint; or a plea of "Not Guilty" has been tendered and the accused is required to attend court in person.
- 9.2 The letter indicates that failure to attend court on the date specified, may result in an arrest warrant being granted. Therefore, it is essential that

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service of the document can be demonstrated. The methods of service available are the same as for Copy Complaints.

- 9.3 Officers/Staff serving the document **must complete**:
- The Execution of Service section with **their name**; and
 - The **date of service**; and
 - The **name of the accused** or the 3rd party receiving the document;
 - **Sign** the document; and
 - **Return** it that day to the COPFS office of issue.
- 9.4 Officers must continue to make efforts to serve a CWP letter until 2 working days prior to the Trial date. Officers/staff should update COPFS as soon as possible if the letter remains un-served, and seek confirmation from COPFS to continue efforts to serve it.

10. Petitions and Indictments – Solemn Court

- 10.1 In the most serious criminal cases, the Crown may begin court proceedings on Petition before deciding whether to prosecute the case on Indictment (Solemn Court) or by Summary Complaint (Summary Court).
- 10.2 The Petition/Indictment is the document that specifies the particular details of the charge(s) and case against an accused person; and the court in which the case is to be heard. The pack includes documents associated with the case (e.g. Section 67 Notices (witnesses) and Section 69 Notices (previous convictions) and other evidential material.)
- 10.3 Petitions/Indictments are issued to the police to serve (if other service methods have failed) and are usually for **service that day** and must **always** be treated as urgent enquiries. A covering letter in the pack will indicate the serve by date and it is noteworthy that a Petition/Indictment **cannot** be returned to COPFS un-served.
- 10.4 If the individual named on the Petition/Indictment cannot be traced and served personally, other options are competent and available. In these circumstances and with specific COPFS instruction, which may be stated in a covering letter or on the document itself, the following methods of service are possible:
- Post through the letter box of the address on the document; or
 - Serve on a resident of the address on the document; or
 - Attach the Petition/Indictment to the front door of the address on the document.
- 10.5 The “Execution of Service of Indictment and of Citation of Accused” **must** be:

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- **Completed** by the officer serving the document; and
- **Served personally**; and
- **Corroborated**.
- **Returned** immediately to the COPFS office of issue, unless instructed otherwise, along with the Execution of Service of any Notice(s).

11. Section 76 Procedure – Solemn Court

- 11.1 Section 76 of the Criminal Procedure (Scotland) 1995 Act provides an opportunity for the accused to plead guilty, in full or in part, to the charges on the Petition or Indictment.
- 11.2 If the Crown accepts the plea, they will indict the case to a Section 76 hearing before a Sheriff. At this hearing, the accused confirms the plea and the sheriff deals with the case in terms of sentencing. The procedure can account for as much as 20% of Solemn cases, and reduces both the number of cases proceeding to trial, and the associated documentation.
- 11.3 Section 76(1) of the Act provides for a period of **not less than 4 clear days** notice of the hearing, which can add urgency to the service of these documents. The Crown may also raise a Section 76 indictment in the High Court, if appropriate.

12. Countermand and Re-Cite – Solemn and Summary Court

- 12.1 A countermand is an instruction from COPFS that a witness is no longer required to give evidence in the case for which they were cited. A re-cite is an instruction that a witness should not attend on the date they were originally cited, but should attend on the new date provided. COPFS will usually make efforts themselves to contact witnesses. If those efforts do not succeed or there is insufficient time, police support will be required.
- 12.2 Countermands and re-cites that come to the Police to deliver are urgent and usually relate to attendance at court within the next 5 court days – i.e. COPFS have been unable to contact the witness themselves. A countermand or re-cite can be verbal or written from the police.
- 12.3 The Lord Advocate’s Guidelines state with absolute clarity for the police: “Where instructions are received from Procurators Fiscal to countermand witnesses for a trial, immediate steps should be taken to secure compliance. It is of importance that the unnecessary attendance of witnesses at court is avoided.”
- 12.4 In Summary cases, it is likely that the instruction will **not** have a new date. If the case has been adjourned, the witness should be informed that they may receive a further citation in due course. If the case has resolved, or the witness is no longer required, the witness will not be contacted again.

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- 12.5 In Solemn cases (High Court and Sheriff and Jury Court) the countermand or re-cite is likely to be with very little notice. Officers/staff must provide all dates and instructions to the witness.
- 12.6 The legal document administrator within each division will normally receive the countermand or re-cite instruction. Some enquiry may be required to trace the witness, although available witness contact information may be provided - hence the importance for officers to **obtain and submit telephone numbers** (home/work/mobile), email addresses and any change of home address. The legal document administrator, or whoever receives the countermand or re-cite (for example, out of hours) should try to contact the witness in the first instance.
- 12.7 A specific variation exists in Edinburgh division. Refer to Appendix C.
- 12.8 The Legal Documents Database has the ability to record countermands against the associated citation record.

13. Other Legal Documents for Personal Service by the Police

- 13.1 There are a number of other documents that the police are asked to serve. These documents originate from a number of agencies/courts and relate to various aspects of court procedure and case prosecution, and include: Analysis Reports; Fixed Penalty Proceedings; and Means Enquiry Court Citations. Criminal Justice division is working with COPFS, and others, to reduce the range and volume of documents for personal service.
- 13.2 These documents have their own instructions on competent methods of service, timescales, and how to evidence the successful service, or otherwise, of the document. If there is any doubt, officers/staff should contact the office of issue for specific instructions.

14. Sufficient Enquiry

- 14.1 The service of Indictments and Copy Complaints on accused and the citing of witnesses to attend court, is critical to securing an effective criminal justice process. An essential factor is that court cases are not interrupted, or adjourned, by unnecessary delays. Citing witnesses and accused at the first opportunity is important in reducing work for the police. Causes of these delays include:
- Officers not submitting full addresses, phone numbers and email addresses in reports and statements.
 - Officers not serving legal documents issued for personal service.
 - Officers not carrying out sufficient enquiry into legal documents issued for personal service.

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- 14.2 It is the responsibility of reporting officers to inform COPFS of any change in circumstances relating to the accused or witnesses, before the case is heard in court; and officers must make sufficient enquiry into all documents, to ensure that the requirements of the court are met. Intrusive supervision is expected.
- 14.3 Officers must show that they have made thorough enquiries. COPFS will decide how to proceed with the case, and as this may include seeking an apprehension warrant, there must be sufficient police enquiry. Whilst the time available to serve a document is a factor, officers and supervisors must be able to defend the enquiries made.

15. Enquiry Tools to Serve Legal Documents

- 15.1 As a minimum, for all documents, officers must:
- Carry out checks on police systems.
 - Check court disposals - www.scotcourts.pnn.police.uk/caseenquiry/
 - Attend the listed address, or any other address identified, at least twice, on different days and at different times;
 - Leave a call-back card; and
 - Attempt telephone contact (if possible) at least twice, on different days and at different times.
- 15.2 Officers and staff should consult their supervisors for guidance on any additional enquiry. The Legal Documents Database must be updated with enquiries made and any new information, so that administrators can respond quickly to COPFS enquiries.

16. Non-Service of a Document – Reporting to COPFS

- 16.1 If the document is not served, officers must provide an update to COPFS **before the Police “Report by” date**. The status of the enquiry should be submitted via existing Case Reporting systems, referring to the PF case number. This allows consideration of how to proceed. As this includes seeking an apprehension warrant, the level of police enquiry is critical.
- 16.2 The Legal Documents Database has an enquiry page where the “Execution/ Attempt” to serve the document must be recorded. Once enquiries have stopped and the document is to be returned un-served, this log of activity should be used to evidence the enquiry made - either by
- Printing it off and attaching it to the Execution of Service; or
 - Updating Section C on witness citations (and similar fields in other documents) with the enquiries made; or
 - Attaching a divisional non-service memo.

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- 16.3 A single “Non-Service Checklist” is being developed and will establish a national minimum standard of enquiry and will replace the current variations in reporting to COPFS.

17. Service of Legal Documents to HM Prisons and Young Offender Institutions

- 17.1 COPFS arranges the service of documents on prison inmates where possible. However, the police are still asked to deliver documents. In these circumstances, officers attending should make prior contact with any Police Liaison Team/Officer or gatehouse staff.
- 17.2 Officers **will not** serve legal documents on an inmate. The document will be handed to either the Police Liaison Team or to the gatehouse staff. Officers should ensure that a notebook/PDA entry is made stating clearly, to whom the document was handed and that any relevant information about the document was passed on. The staff accepting the document will serve it and return the relevant documentation to COPFS.
- 17.3 Specific variation exists in Edinburgh division. Refer to Appendix C.

18. Service of Legal Documents Issued by Courts Out-with Scotland

- 18.1 Scottish police officers and staff can serve legal documents issued by courts elsewhere in the UK. These non-Scottish documents are to be recorded on the Legal Documents Database, in their own field. Specific service information will be included on these documents and all enquiries should be directed to the office of issue.

19. Legal Documents Database

- 19.1 The divisional administration, management and performance reporting of legal documents are achieved via the Legal Documents Database. Separate guidance on the Legal Documents Database is available.
- 19.2 Enquiry officers **must** keep the document enquiry log current, so that administrators can answer COPFS enquiries on their behalf. The allocated officer retains accountability for the document. Supervisors **must** make time to review document enquiry logs to satisfy themselves that urgent and/or sufficient enquiry is being made.
- 19.3 Automated reports on divisional demand and performance are generated and assist in compiling national performance data.

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- 19.4 Documents approaching their “Report by” date” are highlighted on the database (they appear in red) and are subject to weekly reporting.

20. Roles and Responsibilities

- 20.1 Users of this SOP are advised that appropriate retention periods and actions can be found in the Records Retention SOP. The guidance indicates a relatively short retention period for the process of serving legal documents, and it is important that users are aware of this.
- 20.2 Criminal Justice Services Division will retain ownership of and responsibility for this SOP and its future amendment. It is the case that officers and staff affected by this guidance belong to Local Policing and any amendments will be made after appropriate consultation.

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List of Associated Legislation

- Police and Fire Reform (Scotland) Act 2012 (Section 20)
- Section 156 Criminal Procedure (Scotland) Act 1995 as amended
- Section 11 Criminal Procedure (Amendment) (Scotland) Act 2004

List of Associated Reference Documents

- Appropriate Adults SOP
- Citations (Police Officers and Staff) SOP
- Interpreting and Translating Services SOP
- Records Retention SOP
- Victim Support SOP
- Legal Documents Database User Notes
- Lord Advocate's Guidelines to Chief Constables on the Citation of Witnesses
- Police Scotland Diversity Booklet – A Practical Guide

E and J Divisions

Countermand and Re-Cite – Solemn and Summary Court.

Liaison with local COPFS has resulted in arrangements whereby COPFS staff undertake all countermand activity when this can be completed by telephone. In those instances where the witness cannot be contacted by telephone, COPFS staff make direct e-mail contact with the ACR to have a STORM incident created on the basis that physical attendance is then required.

Service of Legal Documents to HM Prisons and Young Offender Institutions.

In Edinburgh an Urgent Enquiries Team attends Edinburgh Prison every day to deliver documents directly from COPFS. As such, they do not make contact with staff in advance.