

OFFERS TO SELL

GUIDANCE FOR COVID-19 AMENDMENTS



During the restrictions on movement imposed by the Scottish Government, you may need to consider making some adjustments to the [PSG Offers to Sell](#) to accommodate some of the limitations on signing, delivery and changes to registration.

Key considerations are timescales e.g. [10] Business Days in which to do something, and the Land Registration requirements and Post Completion time limits.

Pre-conclusion of contract

It is rare these days for contracts to be concluded subject to property due diligence being completed. Accordingly, it is unlikely that you will need to make any particular adjustment to missives to account for Covid-19 limitations for this stage.

If you are required to conclude missives prior to conducting or completing due diligence, then make sure the time limits in Clauses 6.2/7.2 and 6.3/7.3 *Documents to be Disclosed* are sufficient. They currently stand at [15] Business Days, which still ought to be ample.

Conclusion of Missives

The Offers to Sell provide that both the missives letters themselves and any document referred to in the contract have to be "duly executed", meaning they must be self-proving (i.e. "meets the requirements of section 3 or sections 9B and 9C of the Requirements of Writing (Scotland) Act 1995").

Since strictly speaking missives do not require to be self-proving, and to reduce the signing burden on solicitors during restrictions, we suggest that the definition of "Missives" be amended to read:

"means the contract constituted by this offer and all ~~duly executed~~ letters following on it validly executed in terms of section 2 or section 9B of the Requirements of Writing (Scotland) Act 1995;"

and to amend the provisions of Clause 19.1/23.1 *Formal Documentation Required* in a similar way.

Completion

Solicitors will need to determine how they are prepared to accept delivery of the documents for submission, on a case-by-case basis. Issues to consider include the availability of postal and courier services, the ability to scan and send pdfs of documents, and the ability to receive physical documents.

It is recommended that parties agree to adopt one of the **PSG Digital Submission Protocols** for completion of the transaction, see http://www.psglegal.co.uk/digital_submission_protocols.php

For ease, a new definition "**Digital Submission System**" could be used:

"means the system for online submission of applications to register documents in the Land Register of Scotland [Register of Sasines] under the provisions of section 21 of the 2012 Act [section 6A of the Land Registers (Scotland) Act 1868];".

This reflects the changes that the [Coronavirus \(Scotland\) Act 2020](#) made to permit the Keeper to accept submissions by electronic means.

Payment of the Price and handing over the completion items in terms of Clause 8/10 *Completion* should be able to proceed notwithstanding COVID-19 restrictions: advance Notices, legal reports and charges searches are all available.

Post Completion

There are a number of documents where signing may need to be finalised post-Completion (e.g. assignments of rent deposits, guarantees and service charge contracts). Registration of the Disposition and Discharge (and other documents) also takes place post completion, and the Offers provide a number of time limits and timescales for these.

The principal clauses are 7.8/8.8 *Land Register Requirements* and 9/11 *Post Completion*.

Land Register Requirements

Now that the Digital Submission System is fully operational for both Land Register and Sasine documents, completions ought to be able to take place as normal. There should be no need to amend the Offer, although until such time as the Keeper declares the application record fully open, there is no need to obtain further advance notices.

Post Completion

The obligation on the Seller that the Purchaser's Title Sheet will contain no adverse entries is dependent on the Purchaser's solicitor presenting the Disposition for registration prior to the earlier of 14 days after Completion and the date of expiry of the last Advance Notice registered in relation to the Disposition.

While the provisions of the Coronavirus (Scotland) Act 2020 apply, advance notices will have an open-ended duration. This means that the 14 day period will, until those provisions are either repealed or the Keeper declares the application record open, always be the earlier of the two dates (until the advance notice protection starts to count down from the date of the Keeper's declaration. The PSG does not consider that any amendment is currently necessary to this clause.

Time scales and time limits

The table below identifies the clauses in the Offers where a time scale or time limit is imposed.

Not all timescales will need to be amended. Those that relate to payment for example ought to be capable of being complied with, as most payments will be processed through the banking system in the normal way.

Similarly, there seems to be no Covid-19-specific reason to extend time limits for resilement, or for examination of title.

Clause number (VP/Investment)	Purpose	Timescale
1.1 Seller's Bank Account	Intimation of account details	3 Business Days
2.3.2	Seller's Right to Rescind	[10] Business Days
2.4.1	Purchaser's Right to Rescind	[10] Business Days
N/A; 3	VAT	Timescales throughout
4.2.2; 4.3.2	Advise local authority of the change of ownership	5 Business Days
N/A; 5.1	Arrears	5 Business Days

N/A; 5.2.3	Service Charge budget	[10] Business Days
N/A; 5.2.6	Payment of further service charge expenditure	[] Business Days
N/A; 5.2.10	Over or under payment of service charge	[10] Business Days
N/A; 5.3.4	Rent Deposit Assignment: execution and intimation	15 Business Days and 20 Business Days respectively
N/A; 5.4.3	Payment of proportion of reviewed rent	5 Business Days
6.2; 7.2	Documents to be disclosed	[15] Business Days
6.3; 7.3	Notification of intention to resile	[15] Business Days
7.7.1; 8.7.1	Advance Notices – ordering prior to completion	[5] Business Days
7.9; 8.9	Trust Clause	3 Business Days
10.3; 12.3	Cancellation of insurance	5 Business Days
15.2; 17.2	Employees – termination of employment	10 Business Days
N/A; 18.2	Guarantee Assignment: execution and intimation	15 Business Days and 20 Business Days respectively
N/A; 19.2	Service Contract Assignment: execution and intimation	15 Business Days and 20 Business Days respectively
Part 6/17 of the Schedule	Community interests	Timescales throughout
Part 8/19 of the Schedule	Capital Allowances	5 Business Days