SCOTTISH STATUTORY INSTRUMENTS

2015 No. 356

SHERIFF APPEAL COURT

Act of Sederunt (Sheriff Appeal Court Rules) 2015

Made - - - -	*21st October 2015*
Laid before the Scottish Parliament - - - -	*23rd October 2015*
Coming into force - -	*1st January 2016*

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(**1**), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council with such modifications as it thinks appropriate.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 14(7) of the Scottish Commission for Human Rights Act 2006(**2**), section 104(1) of the Courts Reform (Scotland) Act 2014(**3**) and all other powers enabling it to do so.

PART 1

PRELIMINARY MATTERS

CHAPTER 1

CITATION, COMMENCEMENT AND INTERPRETATION ETC.

Citation and commencement, etc.

1.1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Appeal Court Rules) 2015.

(2) It comes into force on 1st January 2016.

(3) A certified copy is to be inserted in the Books of Sederunt.

Interpretation

1.2.—(1) In this Act of Sederunt—

(**1**) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3).
(**2**) 2006 asp 16. Section 14 was amended by S.S.I. 2013/211.
(**3**) 2014 asp 18.

"the 2014 Act" means the Courts Reform (Scotland) Act 2014;

"the Clerk" means the Clerk of the Sheriff Appeal Court;

"advocate" means a practising member of the Faculty of Advocates;

"the Court" means the Sheriff Appeal Court;

"grounds of appeal" has the meaning given by rule 6.2(2)(b);

"party litigant" has the meaning given by rule 4.1(2);

"procedural Appeal Sheriff" has the meaning given by paragraph 2(1) of Schedule 1;

"procedural hearing" means a hearing under rule 7.14 or rule 28.13;

"provisional procedural order" means an order under rule 6.6(1);

"sheriff court process" means—

(a) the sheriff court process for the cause that is appealed to the Court; or

(b) where the cause is recorded in an official book of the sheriff court, a copy of the record in that book certified by the sheriff clerk;

"sheriff's note" means a note setting out the reasons for the decision appealed against;

"solicitor" means a person qualified to practise as a solicitor under section 4 of the Solicitors (Scotland) Act 1980(**4**);

"timetable" means a timetable in—

(a) Form 7.2 issued under—

(i) rule 7.2(1) (timetable in appeal);

(ii) rule 7.6(5)(a) (recall of sist: issuing revised timetable); or

(iii) rule 7.6(6)(b) (variation of timetable: issuing revised timetable); or

(b) Form 28.5 issued under—

(i) rule 28.5(1) (timetable in application for new trial);

(ii) rule 28.6(6)(a) (recall of sist: issuing revised timetable); or

(iii) rule 28.6(7)(b) (variation of timetable: issuing revised timetable).

(2) In relation to an application under section 69(1) or 71(2) of the 2014 Act—

"appeal" includes that application;

"appellant" includes the applicant;

"note of appeal" includes an application in Form 28.2 or Form 28.14.

Computation of periods of time

1.3. If any period of time specified in these Rules expires on a Saturday, Sunday or public or court holiday, it is extended to expire on the next day that the office of the Clerk is open for civil business.

Administrative provisions

1.4. Schedule 1 makes provision about administrative arrangements for the Court, including its quorum.

(**4**) 1980 c. 46.

Forms

1.5.—(1) Where there is a reference in these Rules to a form, it is a reference to that form in Schedule 2.

(2) Where these Rules require a form to be used, that form may be varied where the circumstances require it.

PART 2

GENERAL PROVISIONS

CHAPTER 2

RELIEF FOR FAILURE TO COMPLY

Relief for failure to comply with rules

2.1.—(1) The Court may relieve a party from the consequences of a failure to comply with a provision in these Rules.

(2) The Court may do so only where the party shows that the failure is due to—

(a) mistake;

(b) oversight; or

(c) any other excusable cause.

(3) Where relief is granted, the Court may—

(a) impose conditions that must be satisfied before relief is granted;

(b) make an order to enable the appeal to proceed as if the failure had not occurred.

CHAPTER 3

SANCTIONS FOR FAILURE TO COMPLY

Circumstances where a party is in default

3.1. A party is in default if that party fails—

(a) to comply with the timetable;

(b) to implement an order of the Court within the period specified in the order;

(c) to appear or be represented at any hearing; or

(d) otherwise to comply with any requirement imposed on that party by these Rules.

Sanctions where a party is in default

3.2.—(1) This rule—

(a) applies where a party is in default; but

(b) does not apply where a party is in default because the party has failed to comply with rule 17.4(1) (peremptory hearing).

(2) The procedural Appeal Sheriff may make any order to secure the expeditious disposal of the appeal.

(3) In particular, the procedural Appeal Sheriff may—

(a) refuse the appeal, where the party in default is the appellant;

(b) allow the appeal, if the condition in paragraph (4) is satisfied, where—

(i) the party in default is the sole respondent; or

(ii) every respondent is in default.

(4) The condition is that the appellant must show cause why the appeal should be allowed.

CHAPTER 4

REPRESENTATION AND SUPPORT

Representation and support

4.1.—(1) A natural person who is a party to proceedings may appear and act on that party's behalf.

(2) That person is to be known as a party litigant.

(3) A party may be represented in any proceedings by—

(a) a legal representative (see rule 4.2); or

(b) a lay representative (see rule 4.3).

(4) A lay supporter (see rule 4.5) may assist a party litigant with the conduct of any proceedings.

Legal representation

4.2. A party is represented by a legal representative if that party is represented by an advocate or a solicitor.

Lay representation: applications

4.3.—(1) This rule does not apply where any other enactment makes provision for a party to a particular type of case to be represented by a lay representative.

(2) A party is represented by a lay representative if that party is represented by a person who is not a legal representative.

(3) A party litigant may apply to the Court for permission to be represented by a lay representative.

(4) An application is to be—

(a) made by motion;

(b) accompanied by a document in Form 4.3 signed by the prospective lay representative.

(5) The Court may grant an application only if it considers that it would assist its consideration of the appeal to do so.

(6) Where the Court grants permission, it may—

(a) do so in respect of one or more specified hearings;

(b) withdraw permission of its own accord or on the motion of any party.

Lay representation: functions, conditions and duties

4.4.—(1) A lay representative may represent a party at a specified hearing for the purpose of making oral submissions on behalf of the party.

(2) The party must appear along with the lay representative at any hearing where the lay representative is to make oral submissions.

(3) A party may show any document (including a court document) or communicate any information about the proceedings to that party's lay representative without contravening any prohibition or restriction on disclosure of the document or information.

(4) Where a document or information is disclosed under paragraph (3), the lay representative is subject to any prohibition or restriction on disclosure in the same way that the party is.

(5) A lay representative must not receive directly or indirectly from the party any remuneration or other reward for assisting the party.

(6) Any expenses incurred by a party in connection with a lay representative are not recoverable expenses in the proceedings.

Lay support: applications

4.5.—(1) A party litigant may apply to the Court for permission for a named person to assist the party litigant in the conduct of proceedings, and such a person is to be known as a lay supporter.

(2) An application is to be made by motion.

(3) The Court may refuse an application only if it is of the opinion that—

(a) the named person is an unsuitable person to act as a lay supporter (whether generally or in the proceedings concerned); or

(b) it would be contrary to the efficient administration of justice to grant it.

(4) The Court, if satisfied that it would be contrary to the efficient administration of justice for permission to continue, may withdraw permission—

(a) of its own accord;

(b) on the motion of any party.

Lay support: functions, conditions and duties

4.6.—(1) A lay supporter may assist a party by accompanying the party at hearings in court or in chambers.

(2) A lay supporter may, if authorised by the party, assist the party by—

(a) providing moral support;

(b) helping to manage court documents and other papers;

(c) taking notes of the proceedings;

(d) quietly advising on—

(i) points of law and procedure;

(ii) issues which the party litigant might wish to raise with the Court.

(3) A party may show any document (including a court document) or communicate any information about the proceedings to that party's lay supporter without contravening any prohibition or restriction on disclosure of the document or information.

(4) Where a document or information is disclosed under paragraph (3), the lay supporter is subject to any prohibition or restriction on disclosure in the same way that the party is.

(5) A lay supporter must not receive directly or indirectly from the party any remuneration or other reward for assisting the party.

(6) Any expenses incurred by a party in connection with a lay supporter are not recoverable expenses in the proceedings.

CHAPTER 5

INTIMATION AND LODGING ETC.

Interpretation of this Chapter

5.1.—(1) In this Chapter—

"first class post" means a postal service which seeks to deliver documents or other things by post no later than the next working day in all or the majority of cases;

"intimating party" means any party who has to give intimation in accordance with rule 5.2(1);

"receiving party" means any party to whom intimation is to be given in accordance with rule 5.2;

"recorded delivery" means a postal service which provides for the delivery of documents or other things by post to be recorded.

(2) Where this Chapter authorises intimation to be given by electronic means—

(a) intimation may only be given by this method if the intimating party and the solicitor for the receiving party have notified the Court that they will accept intimation by electronic means at a specified email address;

(b) the intimation is to be sent to the specified email address of the solicitor for the receiving party.

(3) Where this Chapter authorises a document to be lodged by electronic means, it is to be sent to the email address of the Court.

Intimation

5.2.—(1) Unless the Court orders otherwise, where—

(a) any provision in these Rules requires a party to—

(i) lodge any document;

(ii) intimate any other matter; or

(b) the Court orders a party to intimate something,

intimation is to be given to every other party.

(2) Where the Court makes an order, the Clerk is to intimate the order to every party.

Methods of intimation

5.3.—(1) Intimation may be given to a receiving party who is a party litigant by—

(a) the method specified in rule 5.4;

(b) any of the methods specified in rule 5.5.

(2) Intimation may be given to a receiving party who is represented by a solicitor by—

(a) the method specified in rule 5.4;

(b) any of the methods specified in rule 5.5;

(c) any of the methods specified in rule 5.6.

Methods of intimation: recorded delivery

5.4. An intimating party may give intimation by recorded delivery to the receiving party.

Methods of intimation: by sheriff officer

5.5.—(1) A sheriff officer may give intimation on behalf of an intimating party by—

(a) delivering it personally to the receiving party; or

(b) leaving it in the hands of—

(i) a resident at the receiving party's dwelling place; or

(ii) an employee at the receiving party's place of business.

(2) Where a sheriff officer has been unsuccessful in giving intimation in accordance with paragraph (1), the sheriff officer may give intimation by—

(a) depositing it in the receiving party's dwelling place or place of business; or

(b) leaving it at the receiving party's dwelling place or place of business in such a way that it is likely to come to the attention of that party.

Additional methods of intimation where receiving party represented by solicitor

5.6.—(1) An intimating party may give intimation to the solicitor for the receiving party by—

(a) delivering it personally to the solicitor;

(b) delivering it to a document exchange of which the solicitor is a member;

(c) first class post;

(d) fax;

(e) electronic means.

(2) Where intimation is given by the method in paragraph (1)(a), (d) or (e) not later than 1700 hours on any day, the date of intimation is that day.

(3) Where intimation is given by the method in—

(a) paragraph (1)(b) or (c); or

(b) paragraph 1(a), (d) or (e) at or after 1700 hours on any day,

the date of intimation is the next day.

Lodging

5.7.—(1) Where any provision in these Rules requires a party to lodge a document, it is to be lodged with the Clerk.

(2) A document may be lodged by—

(a) delivering it personally to the office of the Clerk;

(b) delivering it to a document exchange of which the Clerk is a member;

(c) first class post;

(d) fax;

(e) electronic means.

PART 3

INITIATION AND PROGRESS OF AN APPEAL

CHAPTER 6

INITIATION OF AN APPEAL

Application of this Chapter

6.1. This Chapter applies to an appeal against a decision of a sheriff in civil proceedings except—

(a) an application for a new trial under section 69(1) of the 2014 Act (see Chapter 28);

(b) an application to enter a jury verdict under section 71(2) of the 2014 Act (see Chapter 28);

(c) an appeal under section 38 of the Sheriff Courts (Scotland) Act 1971(**5**) (see Chapter 29);

(d) an appeal by stated case under section 163(1), 164(1), 165(1) or 167(1) of the Children's Hearings (Scotland) Act 2011(**6**) (see Chapter 30).

Form of appeal

6.2.—(1) An appeal is made by lodging a note of appeal in Form 6.2.

(2) The note of appeal must—

(a) specify—

(i) the decision complained of;

(ii) the date on which the decision was made;

(iii) the date on which it was intimated to the appellant;

(iv) any other relevant information;

(b) state the grounds of appeal in brief specific numbered paragraphs setting out concisely the grounds on which it is proposed that the appeal should be allowed;

(c) where the sheriff's note is available, have appended to it a copy of the note;

(d) where the sheriff's note is not available, indicate whether the appellant—

(i) has requested that the sheriff writes a note and is awaiting its production;

(ii) requests that the sheriff write a note; or

(iii) considers that the appeal is sufficiently urgent that the Court should hear and determine the appeal without the sheriff's note;

(e) state whether, taking into account the matters in rule 6.6(3), the appellant considers that the appeal should be appointed to the standard appeal procedure or to the accelerated appeal procedure;

(f) be signed and dated;

(g) where the appellant is represented by a solicitor, specify the name and business address of the solicitor.

(3) When a note of appeal is lodged, the appellant must lodge a process made up in accordance with paragraph 4 of Schedule 1 (form of process).

(**5**) 1971 c. 58. Section 38 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 18(4), and is prospectively amended by S.S.I. 2015/xxxx, article xxxx.

(**6**) 2011 asp 1.

Time for appeal

6.3.—(1) An appeal must be made within 28 days after the date on which the decision appealed against was given.

(2) This rule does not apply where the enactment under which the appeal is made specifies a period within which the appeal must be made.

Applications to appeal out of time

6.4.—(1) This rule applies where the enactment under which the appeal is made—

(a) specifies a period within which the appeal must be made; and

(b) provides that a party may apply to the Court to allow an appeal to be made outwith that period.

(2) An application to allow an appeal to be received out of time is to be made by motion.

(3) That motion is to be made when the note of appeal is lodged.

(4) Where a motion to allow an appeal to be received out of time is refused—

(a) the Clerk is to—

(i) notify the sheriff clerk that leave to appeal out of time has been refused;

(ii) transmit the note of appeal to the sheriff clerk;

(b) the sheriff clerk is to place the note of appeal in the process.

Order for intimation and answers

6.5.—(1) On the first available court day after being lodged, an appeal is to be brought before the procedural Appeal Sheriff for an order for—

(a) intimation of the appeal, within 7 days after the date of the order, to be given to—

(i) the respondent;

(ii) any other person who appears to have an interest in the appeal;

(b) any person on whom the appeal is intimated to lodge answers, if so advised, within 14 days after the date of intimation.

(2) The procedural Appeal Sheriff may vary the periods of 7 days and 14 days mentioned in paragraph (1)—

(a) of the procedural Appeal Sheriff's own accord; or

(b) on cause shown, on the application of the appellant.

(3) That application must—

(a) be included in the note of appeal;

(b) give reasons for varying the period.

(4) Where an appeal is intimated under this rule, the appellant must lodge a certificate of intimation in Form 6.5 within 14 days after the date of intimation.

Initial case management of appeals

6.6.—(1) When the procedural Appeal Sheriff makes an order for intimation and answers in accordance with rule 6.5(1), the procedural Appeal Sheriff must also make a provisional procedural order.

(2) The provisional procedural order must provisionally appoint the appeal to—

(a) the standard appeal procedure (see Chapter 7); or

(b) the accelerated appeal procedure (see Chapter 27).

(3) When considering which procedure is appropriate for the appeal, the procedural Appeal Sheriff must take into account—

(a) the importance of the appeal;

(b) the complexity of the appeal;

(c) the novelty of the points of law raised by the appeal; and

(d) the presumption in paragraph (4).

(4) The following categories of appeal are presumed to be appropriate for the accelerated appeal procedure—

(a) appeals against a decision of the sheriff to grant decree by default;

(b) appeals against a decision of the sheriff to refuse a reponing note.

(5) A provisional procedural order under this rule is to be intimated at the same time and in the same manner as the order for intimation and answers made in accordance with rule 6.5.

Provisional orders: representations

6.7.—(1) Any person to whom a provisional procedural order under rule 6.6 has been intimated may make representations to the Court before that order becomes final.

(2) Representations are to be—

(a) made in Form 6.7;

(b) lodged within 14 days after the date of intimation of the provisional order.

(3) Representations must specify why, taking into account the matters in rule 6.6(3), it is not appropriate for the appeal to proceed in accordance with the provisional procedural order.

(4) If representations are made, the Clerk is to fix a hearing and intimate the time and date of that hearing to every person to whom the provisional order was intimated.

(5) At that hearing, the Court may—

(a) confirm the provisional procedural order; or

(b) recall the provisional procedural order and make an order appointing the appeal to the standard appeal procedure or the accelerated appeal procedure.

(6) If no representations are made in accordance with paragraph (2), the provisional procedural order becomes final.

CHAPTER 7

STANDARD APPEAL PROCEDURE

Application of this Chapter

7.1. This Chapter applies to an appeal which has been appointed to proceed under the standard appeal procedure.

Timetable in appeal

7.2.—(1) The Clerk must issue a timetable in Form 7.2 when—

(a) a provisional procedural order appointing the appeal to the standard appeal procedure becomes final or is confirmed; or

(b) the Court makes an order appointing the appeal to the standard appeal procedure under rule 6.7(5)(b).

(2) When the Clerk issues a timetable, the Clerk must also fix a procedural hearing to take place after completion of the procedural steps specified in paragraph (4).

(3) The timetable specifies—

(a) the dates by which parties must comply with those procedural steps;

(b) the date and time of the procedural hearing.

(4) The procedural steps are the steps mentioned in the first column of the following table, provision in respect of which is found in the rule mentioned in the second column—

Procedural step	*Rule*
Cross appeals: lodging of grounds of appeal	7.3(1)
Cross appeals: lodging of answers	7.3(2)
Referral of question about competency of appeal	7.7(3)
Lodging of appeal print	7.9(1) and (2)
Lodging of appendices to appeal print	7.10(1)
Giving notice that the appellant considers appendix unnecessary	7.11(1)
Lodging of notes of argument	7.12(1)
Lodging of estimates of duration of appeal hearing	7.13

Cross-appeals

7.3.—(1) A respondent who seeks to—

(a) appeal against any decision of the sheriff; or

(b) challenge the grounds on which the sheriff made the decision appealed against,

may lodge grounds of appeal in Form 7.3 within 28 days after the appeal is intimated in accordance with an order under rule 6.5(1) (order for intimation and answers).

(2) The appellant may lodge answers to the respondent's grounds of appeal within 28 days after the grounds are intimated to the appellant.

Urgent disposal

7.4.—(1) The procedural Appeal Sheriff may order urgent disposal of an appeal—

(a) of the procedural Appeal Sheriff's own accord; or

(b) on the application of the appellant or a respondent.

(2) Where the appellant or a respondent seeks urgent disposal, an application for urgent disposal is to be made by motion.

(3) An application may be made—

(a) by the appellant, when the note of appeal is lodged;

(b) by the respondent, not later than the expiry of the period for lodging answers specified in rule 6.5(1)(b) (order for intimation and answers).

(4) Where the decision appealed against concerns an order made by the sheriff under section 11(1) of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.)(**7**), the appellant must seek urgent disposal.

(5) Where the procedural Appeal Sheriff proposes to order urgent disposal of the procedural Appeal Sheriff's own accord—

(a) the Clerk must notify every party to the appeal;

(b) any party who objects to urgent disposal may make representations within such time and in such manner as the procedural Appeal Sheriff orders.

Urgent disposal: determination

7.5.—(1) Where an application for urgent disposal is opposed, it may only be disposed of after the procedural Appeal Sheriff has heard parties on it.

(2) Where a party makes representations objecting to urgent disposal in accordance with rule 7.4(5), the procedural Appeal Sheriff must hear parties before ordering urgent disposal.

(3) At a hearing under paragraph (1) or (2), the parties must provide the procedural Appeal Sheriff with an assessment of the likely duration of the hearing to determine the appeal.

(4) When ordering urgent disposal of an appeal, the procedural Appeal Sheriff must make an order specifying—

(a) the procedure to be followed in the appeal;

(b) the periods for complying with each procedural step.

(5) Accordingly, the following rules apply only to the extent that the procedural Appeal Sheriff specifies in the order made under paragraph (3)—

(a) rule 7.2 (timetable in appeal);

(b) rule 7.7 (questions about competency of appeal);

(c) rule 7.8 (questions about competency: determination);

(d) rule 7.9 (appeal print);

(e) rule 7.10 (appendices to the appeal print: contents);

(f) rule 7.11 (appendices to the appeal print considered unnecessary);

(g) rule 7.12 (notes of argument);

(h) rule 7.13 (estimates of duration of appeal hearing);

(i) rule 7.14 (procedural hearing).

Sist of appeal and variation of timetable

7.6.—(1) Any party may apply by motion to—

(a) sist the appeal for a specified period;

(b) recall a sist;

(c) vary the timetable.

(2) An application to sist the appeal or vary the timetable may only be granted on special cause shown.

(3) The procedural Appeal Sheriff may—

(**7**) 1995 c. 36. Section 11 was amended by the Family Law (Scotland) Act 2006 (asp 2), section 24; the Adoption and Children (Scotland) Act 2007 (asp 4), section 107, schedule 2, paragraph 9(2) and schedule 3, paragraph 1; the Human Fertilisation and Embryology Act 2008 (c. 22), Schedule 6, paragraph 52; S.S.I. 2001/36 and S.S.I 2005/42.

(a) grant the application;

(b) refuse the application; or

(c) make an order not sought in the application, where the procedural Appeal Sheriff considers that doing so would secure the expeditious disposal of the appeal.

(4) Where the procedural Appeal Sheriff makes an order sisting the appeal, the Clerk is to discharge the procedural hearing fixed under rule 7.2(2) (timetable: fixing procedural hearing).

(5) When a sist is recalled or expires, the Clerk is to—

(a) issue a revised timetable in Form 7.2;

(b) fix a procedural hearing.

(6) Where the procedural Appeal Sheriff makes an order varying the timetable, the Clerk is to—

(a) discharge the procedural hearing fixed under rule 7.2(2) (timetable: fixing procedural hearing);

(b) issue a revised timetable in Form 7.2;

(c) fix a procedural hearing.

Questions about competency

7.7.—(1) A question about the competency of an appeal may be referred to the procedural Appeal Sheriff by any respondent.

(2) A question is referred by lodging a reference in Form 7.7.

(3) A question may be referred within 14 days after the timetable is issued under rule 7.2(1).

(4) When a reference is lodged, the Clerk is to fix a hearing and intimate the date and time of that hearing to the parties.

(5) Within 14 days after the date on which the reference is lodged, each party must lodge a note of argument.

(6) That note of argument must—

(a) give fair notice of the submissions the party intends to make on the question of competency;

(b) comply with the requirements in rule 7.12(3).

(7) Paragraphs (4) and (5) of rule 7.12 apply to that note of argument.

Questions about competency: determination

7.8.—(1) At a hearing on the competency of an appeal, the procedural Appeal Sheriff may—

(a) refuse the appeal as incompetent;

(b) find the appeal to be competent;

(c) reserve the question of competency until the appeal hearing; or

(d) refer the question of competency to the Court.

(2) The procedural Appeal Sheriff may make an order as to the expenses of the reference.

(3) Where the question of competency is referred to the Court, it may—

(a) refuse the appeal as incompetent;

(b) find the appeal to be competent;

(c) reserve the question of competency until the appeal hearing.

(4) The Court may make an order as to the expenses of the reference.

Appeal print

7.9.—(1) The appellant must lodge an appeal print within 21 days after the date on which the note of appeal is lodged.

(2) Where an application to allow an appeal to be received out of time under rule 6.4(2) is granted, the appellant must lodge the appeal print within 21 days after the date of the interlocutor granting that application.

(3) An appeal print is to contain—

(a) the pleadings in the sheriff court process;

(b) the interlocutors in the sheriff court process;

(c) the sheriff's note setting out the reasons for the decision appealed against, if it is available.

(4) Where the appeal is directed at the refusal of the sheriff to allow the pleadings to be amended, the appeal print is also to contain the text of the proposed amendment.

Appendix to appeal print: contents

7.10.—(1) The appellant must lodge an appendix to the appeal print no later than 7 days before the procedural hearing, unless rule 7.11(1) (giving notice that appellant considers appendix unnecessary) is complied with.

(2) The appendix is to contain—

(a) any document lodged in the sheriff court process that is founded upon in the grounds of appeal;

(b) the notes of evidence from any proof, if it is sought to submit them for consideration by the Court.

(3) Where the sheriff's note has not been included in the appeal print and it subsequently becomes available, the appellant must—

(a) include it in the appendix where the appendix has not yet been lodged; or

(b) lodge a supplementary appendix containing the sheriff's note.

(4) The parties must—

(a) discuss the contents of the appendix;

(b) so far as possible, co-operate in making up the appendix.

Appendix to appeal print considered unnecessary

7.11.—(1) Where the appellant considers that it is not necessary to lodge an appendix, the appellant must, no later than 7 days before the procedural hearing—

(a) give written notice of that fact to the Clerk;

(b) intimate that notice to every respondent.

(2) Where the appellant complies with paragraph (1), the respondent may apply by motion for an order requiring the appellant to lodge an appendix.

(3) An application must specify the documents or notes of evidence that the respondent considers should be included in the appendix.

(4) In disposing of an application, the procedural Appeal Sheriff may—

(a) grant the application and make an order requiring the appellant to lodge an appendix;

(b) refuse the application and make an order requiring the respondent to lodge an appendix; or

(c) refuse the application and make no order.

(5) Where the procedural Appeal Sheriff makes an order requiring the appellant or the respondent to lodge an appendix, that order must specify—

(a) the documents or notes or evidence to be included in the appendix;

(b) the time within which the appendix must be lodged.

Notes of argument

7.12.—(1) The parties must lodge notes of argument no later than 7 days before the procedural hearing.

(2) A note of argument must summarise briefly the submissions the party intends to develop at the appeal hearing.

(3) A note of argument must—

(a) state, in brief numbered paragraphs, the points that the party intends to make;

(b) after each point, identify by means of a page or paragraph reference the relevant passage in any notes of evidence or other document on which the party relies in support of the point;

(c) for every authority that is cited—

(i) state the proposition of law that the authority demonstrates;

(ii) identify the page or paragraph references for the parts of the authority that support the proposition;

(d) cite only one authority for each proposition of law, unless additional citation is necessary for a proper presentation of the argument.

(4) Where a note of argument has been lodged and the party lodging it subsequently becomes aware that an argument in the note is not to be insisted upon, that party must—

(a) give written notice of that fact to the Clerk;

(b) intimate that notice to every other party.

(5) Where a party wishes to advance an argument at a hearing that is not contained in that party's note of argument, the party must apply by motion for leave to advance the argument.

Estimates of duration of appeal hearing

7.13. The parties must lodge estimates of the duration of any appeal hearing required to dispose of the appeal in Form 7.13 not later than 7 days before the procedural hearing.

Procedural hearing

7.14.—(1) At a procedural hearing, the procedural Appeal Sheriff is to ascertain the state of preparation of the parties, so far as reasonably practicable.

(2) The procedural Appeal Sheriff may—

(a) determine that parties are ready to proceed to an appeal hearing; or

(b) determine that further procedure is required.

(3) Where the procedural Appeal Sheriff determines that parties are ready to proceed—

(a) the procedural Appeal Sheriff is to fix an appeal hearing;

(b) the Clerk is to intimate the date and time of that hearing to the parties;

(c) the procedural Appeal Sheriff may make an order specifying further steps to be taken by the parties before the hearing.

(4) Where the procedural Appeal Sheriff determines that further procedure is required, the procedural Appeal Sheriff—

(a) is to make an order to secure the expeditious disposal of the appeal;

(b) may direct the Clerk to fix a further procedural hearing and intimate the date and time of that hearing to parties.

Transmission of sheriff court process

7.15.—(1) The Court may order that the sheriff court process, or any part of it, is to be transmitted to the Clerk—

(a) of its own accord;

(b) on cause shown, where any party to the appeal applies for such an order by motion.

(2) Where the Court makes such an order, the Clerk must send a copy of the order to the sheriff clerk.

(3) Within 4 days after receipt of the order, the sheriff clerk must—

(a) send written notice to each party to the cause;

(b) certify on the interlocutor sheet that subparagraph (a) has been complied with;

(c) transmit the sheriff court process, or the specified part of it, to the Clerk.

(4) On receipt of the sheriff court process, the Clerk must—

(a) mark the date of receipt on—

(i) the interlocutor sheet or the copy record from the sheriff court books, where the entire process is transmitted;

(ii) the part of process that has been transmitted, where the Court has specified that only part of the process is to be transmitted;

(b) send written notice of that date to the appellant.

(5) Where the Clerk or a sheriff clerk fails to comply with this rule—

(a) that does not affect the validity of the appeal;

(b) the Court may, as it thinks fit, make an order to enable the appeal to proceed as if the failure had not occurred.

Extension of notes of evidence

7.16.—(1) The parties may agree that, in relation to any particular issue, the decision appealed against is not to be submitted to review.

(2) It is not necessary to reproduce the notes of evidence or documents relating to that issue.

Referral to family mediation

7.17.—(1) Where the decision appealed against concerns an order made by the sheriff under section 11(1) of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.)(**8**), the procedural Appeal Sheriff may refer that matter to a family mediator.

(2) In this rule, "family mediator" means a person accredited as a mediator in family mediation to an organisation which is concerned with such mediation and which is approved for the purposes

(**8**) 1995 c. 36. Section 11 was amended by the Family Law (Scotland) Act 2006 (asp 2), section 24; the Adoption and Children (Scotland) Act 2007 (asp 4), section 107, schedule 2, paragraph 9(2) and schedule 3, paragraph 1; the Human Fertilisation and Embryology Act 2008 (c. 22), Schedule 6, paragraph 52; S.S.I. 2001/36 and S.S.I 2005/42.

of the Civil Evidence (Family Mediation) (Scotland) Act 1995(**9**) by the Lord President of the Court of Session.

PART 4

DISPOSAL OF AN APPEAL

CHAPTER 8

REFUSAL OF APPEAL DUE TO DELAY

Application to refuse appeal due to delay

8.1.—(1) Any party may apply to the procedural Appeal Sheriff to refuse the appeal if the conditions in paragraph (2) are met.

(2) The conditions are that—

(a) there has been an inordinate and inexcusable delay by another party or another party's solicitor; and

(b) unfairness has resulted from that delay.

(3) An application is to be made by motion.

(4) That motion must specify the grounds on which refusal of the appeal is sought.

Determination of application to refuse appeal due to delay

8.2.—(1) The procedural Appeal Sheriff may refuse the appeal if the procedural Appeal Sheriff considers that—

(a) there has been an inordinate and inexcusable delay on the part of any party or any party's solicitor; and

(b) such delay results in unfairness specific to the factual circumstances, including the procedural circumstances, of the appeal.

(2) The procedural Appeal Sheriff must take into account the procedural consequences of allowing the appeal to proceed for—

(a) the parties to the appeal;

(b) the efficient disposal of business in the Court.

CHAPTER 9

ABANDONMENT OF APPEAL

Application to abandon appeal

9.1.—(1) An appellant may apply to the Court to abandon an appeal by lodging a minute of abandonment.

(2) Where all of the parties consent to the abandonment of the appeal, the Court must refuse the appeal.

(3) Where the other parties do not consent to the abandonment of the appeal, the Court may—

(a) refuse the application;

(**9**) 1995 c. 6.

(b) grant the application and refuse the appeal.

(4) If the Court refuses an appeal under this rule, it may make an order as to the expenses of the appeal.

(5) If the Court refuses an application, it may make an order as to the expenses of the application.

CHAPTER 10

REMIT TO THE COURT OF SESSION

Application to remit appeal to the Court of Session

10.1.—(1) An application under section 112 of the 2014 Act (remit of appeal from the Sheriff Appeal Court to the Court of Session) is to be made by motion.

(2) Within 4 days after the Court has made an order remitting an appeal to the Court of Session, the Clerk must—

(a) give notice of the remit to each party;

(b) certify on the interlocutor sheet that subparagraph (a) has been complied with;

(c) transmit the process to the Deputy Principal Clerk of Session.

(3) Failure by the Clerk to comply with paragraph (2)(a) or (b) does not affect the validity of a remit.

CHAPTER 11

APPLICATIONS FOR PERMISSION TO APPEAL TO THE COURT OF SESSION

Application of this Chapter

11.1. This Chapter applies where a party seeks the permission of the Court to appeal to the Court of Session against a decision of the Court constituting final judgment in civil proceedings under section 113 of the 2014 Act.

Applications for permission to appeal

11.2.—(1) An application to the Court for permission to appeal to the Court of Session is to be made in Form 11.2.

(2) Such an application must be lodged within 14 days after the date on which the Court gave its decision on the appeal.

(3) When an application is made, the Clerk is to fix a hearing and intimate the time and date of that hearing to the parties to the appeal.

(4) The hearing is, so far as reasonably practicable, to be before the Appeal Sheriff or Appeal Sheriffs who made the decision in respect of which permission to appeal is sought.

PART 5

INCIDENTAL PROCEDURE: STANDARD PROCEDURES

CHAPTER 12

MOTIONS: GENERAL

Interpretation

12.1.—(1) In this Chapter, Chapter 13 and Chapter 14—

"court day" means a day on which the office of the Clerk is open;

"court day 1" means the court day on which a motion is treated as being intimated under rule 13.1;

"court day 3" means the second court day after court day 1;

"court day 4" means the third court day after court day 1;

"lodging party" means the party lodging the motion;

"receiving party" means a party receiving the intimation of the motion from the lodging party;

"transacting motion business" means—

(a) intimating and lodging motions;

(b) receiving intimation of motions;

(c) intimating consent or opposition to motions;

(d) receiving intimation of opposition to motions.

(2) In this Chapter and Chapter 13, a reference to—

(a) the address of a party is a reference to the email address included in the list maintained under rule 12.5(4) of—

(i) that party's solicitor; or

(ii) that party;

(b) the address of the court is a reference to the email address of the court included in that list under rule 12.5(5).

Making of motions

12.2. A motion may be made—

(a) orally, in accordance with rule 12.3; or

(b) in writing, in accordance with rule 12.4.

Oral motions

12.3.—(1) A motion may be made orally during any hearing.

(2) Such a motion may only be made with leave of the Court.

Written motions

12.4.—(1) A motion in writing is made by lodging it with the Clerk in accordance with Chapter 13 or Chapter 14.

(2) Chapter 13 (motions lodged by email) applies where each party to an appeal has provided to the Clerk an email address for the purpose of transacting motion business.

(3) Chapter 14 (motions lodged by other means) applies where a party to an appeal has not provided to the Clerk an email address for the purpose of transacting motion business.

Provision of email addresses to the Clerk

12.5.—(1) A solicitor representing a party in an appeal must provide to the Clerk an email address for the purpose of transacting motion business.

(2) A solicitor who does not have suitable facilities for transacting motion business by email may make a declaration in writing to that effect, which must be—

(a) sent to the Clerk; and

(b) intimated to each of the other parties to the appeal.

(3) A party who is not represented by a solicitor may provide to the Clerk an email address for the purpose of transacting motion business.

(4) The Clerk must maintain a list of the email addresses provided for the purpose of transacting motion business, which must be published in up to date form on the website of the Scottish Courts and Tribunals Service.

(5) The Clerk must also include on that list an email address of the Court for the purpose of lodging motions.

Grounds for written motion

12.6. A motion in writing must specify the grounds on which it is made.

Determination of unopposed motions in writing

12.7.—(1) The Clerk may determine any unopposed motion in writing other than a motion which seeks a final interlocutor.

(2) Where the Clerk considers that such a motion should not be granted, the Clerk must refer the motion to the procedural Appeal Sheriff.

(3) The procedural Appeal Sheriff is to determine—

(a) a motion referred under paragraph (2);

(b) an unopposed motion which seeks a final interlocutor,

in chambers without the appearance of parties, unless the procedural Appeal Sheriff otherwise determines.

Issuing of orders by email

12.8. Where the Court makes an order determining a motion which was lodged in accordance with Chapter 13, the Clerk must email a copy of the order to the addresses of the lodging party and every receiving party.

CHAPTER 13

MOTIONS LODGED BY EMAIL

Intimation of motions by email

13.1.—(1) The lodging party must give intimation of that party's intention to lodge the motion, and of the terms of the motion, to every other party by sending an email in Form 13.1 (form of motion by email) to the addresses of every party.

(2) The requirement under paragraph (1) to give intimation of a motion to a party by email does not apply where that party—

(a) has not lodged answers within the period of notice for lodging those answers;

(b) has withdrawn or is deemed to have withdrawn those answers; or

(c) became a party to the appeal by minute, but has withdrawn or is deemed to have withdrawn that minute.

(3) A motion intimated under this rule must be intimated not later than 1700 hours on a court day.

Opposition to motions

13.2.—(1) A receiving party must intimate any opposition to a motion by sending an email in Form 13.2 (form of opposition to motion by email) to the address of the lodging party.

(2) Any opposition to a motion must be intimated to the lodging party not later than 1700 hours on court day 3.

(3) Late opposition to a motion must be sent to the address of the Court and may only be allowed with the leave of the procedural Appeal Sheriff, on cause shown.

Consent to motions

13.3. Where a receiving party seeks to consent to a motion, that party may do so by sending an email confirming the consent to the address of the lodging party.

Lodging unopposed motions

13.4.—(1) This rule applies where no opposition to a motion has been intimated.

(2) The motion must be lodged by the lodging party not later than 1230 hours on court day 4 by sending an email in Form 13.1 headed "Unopposed motion" to the address of the court.

(3) That motion is to be determined by 5 p.m. on court day 4.

(4) Where for any reason it is not possible for that motion to be determined in accordance with paragraph (3), the Clerk must advise the parties of that fact and give reasons.

Lodging opposed motions by email

13.5.—(1) This rule applies where opposition to a motion has been intimated.

(2) The motion must be lodged by the lodging party not later than 1230 hours on court day 4 by—

(a) sending an email in Form 13.1 headed "Opposed motion", to the address of the court;

(b) attaching to that email the opposition in Form 13.2 intimated by the receiving party to the lodging party.

(3) That motion is to be heard by the procedural Appeal Sheriff on the first suitable court day after court day 4.

(4) The Clerk must intimate the date and time of the hearing to the parties.

Variation of periods of intimation

13.6. Where—

(a) every receiving party in an appeal consents to a shorter period of intimation; or

(b) the Court shortens the period of intimation,

the motion may be lodged by the lodging party, or heard or otherwise determined by the Court at an earlier time and date than that which is specified in this Chapter.

CHAPTER 14

MOTIONS LODGED BY OTHER MEANS

Intimation of motions by other means

14.1.—(1) The lodging party must give intimation of that party's intention to lodge the motion, and of the terms of the motion, to every other party in Form 14.1 (form of motion).

(2) That intimation must be accompanied by a copy of any document referred to in the motion.

Opposition to motions

14.2.—(1) A receiving party may oppose a motion by lodging a notice of opposition in Form 14.2 (form of opposition to motion).

(2) Any notice of opposition must be lodged within 7 days after the date of intimation of the motion.

(3) The procedural Appeal Sheriff may, on the application of the lodging party—

(a) vary the period of 7 days mentioned in paragraph (2); or

(b) dispense with intimation on any party.

(4) An application mentioned in paragraph (3) must—

(a) be included in the motion;

(b) give reasons for varying the period or dispensing with intimation, as the case may be.

(5) The procedural Appeal Sheriff may allow a notice of opposition to be lodged late, on cause shown.

Consent to motions

14.3. Where a receiving party seeks to consent to a motion, that party may do so by lodging a notice to that effect.

Lodging of motions

14.4.—(1) The motion must be lodged by the lodging party within 5 days after the date of intimation of the motion, unless paragraph (3) applies.

(2) The lodging party must also lodge—

(a) a certificate of intimation in Form 6.5 (certificate of intimation);

(b) so far as practicable, any document referred to in the motion that has not already been lodged.

(3) Where the procedural Appeal Sheriff varies the period for lodging a notice of opposition to a period of 5 days or less, the motion must be lodged no later than the day on which that period expires.

Joint motions

14.5.—(1) A joint motion by all parties need not be intimated.

(2) Such a motion is to be lodged by any of the parties.

Hearing of opposed motions

14.6.—(1) Where a notice of opposition in Form 14.2 (form of opposition to motion) is lodged, the motion is to be heard by the procedural Appeal Sheriff on the first suitable court day after the lodging of the notice of opposition.

(2) The Clerk must intimate the date and time of the hearing to the parties.

Modification of Chapter 5

14.7. For the purposes of this Chapter, the following provisions in Chapter 5 (intimation and lodging etc.) do not apply—

(a) rule 5.6(1)(e) (additional methods of intimation: electronic means);

(b) rule 5.7(2)(e) (lodging: electronic means).

CHAPTER 15

MINUTES

Application of this Chapter

15.1. This Chapter applies to any application to the Court that is made by minute, other than a joint minute.

Form and lodging of minute

15.2.—(1) A minute must—

(a) specify the order sought from the Court;

(b) contain a statement of facts supporting the granting of that order;

(c) where appropriate, contain pleas-in-law.

(2) A minute is to be lodged in the process of the appeal to which it relates.

Orders for intimation and answers

15.3.—(1) On the first available court day after being lodged, a minute is to be brought before the procedural Appeal Sheriff for an order—

(a) for intimation, within 7 days after the date of the order, to—

(i) every other party to the appeal;

(ii) any other person who appears to have an interest in the minute;

(b) for any person on whom the minute is intimated to lodge answers, if so advised, within 14 days after the date of intimation;

(c) fixing a hearing on the minute and any answers no sooner than 28 days after the date of the order.

(2) The procedural Appeal Sheriff may vary the periods of 7 days, 14 days and 28 days mentioned in paragraph (1)—

(a) of the procedural Appeal Sheriff's own accord; or

(b) on cause shown, on the application of the applicant.

(3) An application mentioned in paragraph (2)(b) must—

(a) be included in the minute;

(b) give reasons for varying the period.

(4) Where a minute is intimated in accordance with an order under this rule, the applicant must lodge a certificate of intimation in Form 6.5 within 14 days after the date of intimation.

Consent to minute

15.4.—(1) Where a person to whom a minute is intimated seeks to consent to the minute, that person may do so by lodging a notice to that effect.

(2) Where every person to whom a minute is intimated consents to the minute, the procedural Appeal Sheriff is to determine the minute in chambers without the appearance of those persons, unless the procedural Appeal Sheriff otherwise determines.

Minutes of sist and transference

15.5.—(1) This rule applies where a party to an appeal ("P") dies or comes under legal incapacity while the appeal is depending before the Court.

(2) Any person who claims to represent P or P's estate may apply to the Court by minute to be sisted as a party to the appeal.

(3) If no person makes an application under paragraph (2), any other party may apply to the Court by minute to transfer the appeal in favour of or against (as the case may be) the person who represents P or P's estate.

(4) An application under paragraph (3) must be intimated to the person specified in the minute as representing P or P's estate.

Applications to enter process as respondent

15.6.—(1) A person on whom the appeal has not been intimated may apply by minute for leave to enter the process as a party minuter and lodge answers.

(2) A minute under paragraph (1) must specify—

(a) the applicant's title and interest to enter the process;

(b) the basis for the answers that the applicant proposes to lodge.

(3) At the hearing fixed under rule 15.3(1)(c), the procedural Appeal Sheriff is to determine whether the applicant has shown title and interest to enter the process.

(4) If the procedural Appeal Sheriff is satisfied, the procedural Appeal Sheriff may grant the applicant leave to enter the process and lodge answers.

(5) Where leave is granted, the procedural Appeal Sheriff is to make such further order as the procedural Appeal Sheriff thinks fit.

(6) In particular, such an order may include an order—

(a) varying any timetable;

(b) as to the expenses of the application.

CHAPTER 16

AMENDMENT OF PLEADINGS

Amendment of sheriff court pleadings

16.1.—(1) Any party to an appeal may apply by motion to amend the pleadings in the sheriff court process.

(2) Where the procedural Appeal Sheriff—

(a) allows an amendment to the pleadings in the sheriff court process; and

(b) considers that the amendment makes a material change to the pleadings,

the procedural Appeal Sheriff may set aside the decision appealed against and remit the matter to the sheriff for a further hearing.

Amendment of note of appeal and answers etc.

16.2.—(1) A party who has lodged a document specified in paragraph (2) may apply by motion to amend that document.

(2) The documents are—

(a) a note of appeal;

(b) answers to a note of appeal;

(c) grounds of appeal in a cross-appeal;

(d) answers to grounds of appeal in a cross-appeal.

(3) Such a motion must include the text of the proposed amendment.

(4) An application under paragraph (1) is to be accompanied by an application to vary the timetable under rule 7.6(1)(c) or rule 28.6(1)(c) (sist of proceedings and variation of timetable) if such an application is necessary.

CHAPTER 17

WITHDRAWAL OF SOLICITORS

Interpretation of this Chapter

17.1. In this Chapter, "peremptory hearing" means a hearing at which a party whose solicitor has withdrawn from acting must appear or be represented in order to state whether or not the party intends to proceed.

Giving notice of withdrawal to the Court

17.2.—(1) Where a solicitor withdraws from acting on behalf of a party, the solicitor must give notice in writing to the Clerk and to every other party.

(2) Paragraph (1) does not apply if the solicitor withdraws from acting at a hearing in the presence of the other parties or their representatives.

(3) Paragraph (4) applies if a solicitor who withdraws from acting is aware that the address of the party for whom the solicitor acted has changed from that specified in the instance of the note of appeal or answers to the note of appeal.

(4) The solicitor must disclose to the Clerk and every other party the last known address of the party for whom the solicitor acted.

Arrangements for peremptory hearing

17.3.—(1) On the first available court day after notice is given under rule 17.2(1), the procedural Appeal Sheriff is to make an order—

(a) ordaining the party whose solicitor has withdrawn from acting to appear or be represented at a peremptory hearing;

(b) fixing a date and time for the peremptory hearing;

(c) appointing any other party to the appeal to intimate the order and a notice in Form 17.3 to that party within 7 days after the date of the order.

(2) A peremptory diet is to be fixed no sooner than 14 days after the date on which an order is made under paragraph (1).

(3) The procedural Appeal Sheriff may vary the period of 7 days mentioned in paragraph (1) or the period of 14 days mentioned in paragraph (2)—

(a) of the procedural Appeal Sheriff's own accord; or

(b) on cause shown, on the application of any other party to the appeal.

(4) Where any previously fixed hearing is to occur within 14 days after the date on which the procedural Appeal Sheriff is to make an order under paragraph (1), the procedural Appeal Sheriff may continue consideration of the matter to the previously fixed hearing instead of making an order under paragraph (1).

(5) Where an order and a notice in Form 17.3 are intimated under this rule, the party appointed to intimate them must lodge a certificate of intimation in Form 6.5—

(a) within 14 days after the date of intimation; or

(b) before the peremptory hearing,

whichever is sooner.

Peremptory hearing

17.4.—(1) At a peremptory hearing, the party whose solicitor has withdrawn from acting must appear or be represented in order to state whether the party intends to proceed.

(2) Where the party fails to comply with paragraph (1), the Court may make an order mentioned in paragraph (3) only if it is satisfied that the order and notice in Form 17.3 have been intimated to that party.

(3) The orders are—

(a) if the party is the appellant, an order refusing the appeal; or

(b) if the party is the respondent and the condition in paragraph (4) is satisfied, an order allowing the appeal.

(4) The condition is that the appellant must show cause why the appeal should be allowed.

(5) If the Court is not satisfied that the order and notice in Form 17.3 have been intimated to that party, it may make—

(a) an order fixing a further peremptory hearing;

(b) any other order that the Court considers appropriate to secure the expeditious disposal of the appeal.

CHAPTER 18

CAUTION AND SECURITY

Application of this Chapter

18.1. This Chapter applies to any appeal in which the Court has power to order a person to find caution or give other security.

Form of application to find caution or give security

18.2. An application—

(a) for an order for caution or other security;

(b) to vary or recall such an order,

is to be made by motion.

Orders for caution or other security: time for compliance

18.3. Where the Court makes an order for caution or to give other security, the order must specify the period within which caution is to be found or security given.

Methods of finding caution or giving security

18.4.—(1) A person who is ordered to find caution must do so by obtaining a bond of caution.

(2) A person who is ordered to consign a sum of money into court must do so by consignation under the Sheriff Courts Consignations (Scotland) Act 1893(**10**) in the name of the Clerk.

(3) The Court may order a person to give security by—

(a) a method other than those mentioned in paragraphs (1) and (2);

(b) a combination of two or more methods of security.

(4) Any document by which an order to find caution or give security is satisfied must be lodged in process.

(5) A document lodged under paragraph (4) may not be borrowed from process.

Cautioners and other guarantors

18.5. A bond of caution or other security may only be given by a person who is an authorised person within the meaning of section 31 of the Financial Services and Markets Act 2000(**11**).

Form of bond of caution

18.6.—(1) A bond of caution must oblige the cautioner to make payment of the sums as validly and in the same manner as the party is obliged.

(2) In this rule—

"cautioner" includes the cautioner's heirs and executors;

"party" means the person to whom the cautioner is bound, and that person's heirs and successors;

"the sums" are the sums for which the cautioner is bound to the party.

Caution or other security: sufficiency and objections

18.7.—(1) The Clerk must be satisfied that any document lodged in process under rule 18.4(4) is in proper form.

(2) A party who is dissatisfied with the sufficiency or form of any document lodged in process under rule 18.4(4) may apply to the Court by motion for an order under rule 18.9 (failure to find caution or give security).

(**10**) 1893 c. 44, amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 (c. 42), section 6(2); the Sheriff Courts (Scotland) Act 1971 (c. 58), section 4 and Schedule 1, paragraph 1; the Statute Law (Repeals) Act 1986, Schedule 1, Part 1, Group 4 and Schedule 2, paragraph 1; and S.I. 1974/1274, article 3(4) and Schedule 1. The Act is prospectively applied to the Sheriff Appeal Court by S.S.I. 2015/xxxx, Schedule, paragraph 1.

(**11**) 2000 c. 8. Section 31 was amended by the Financial Services Act 2012 (c. 21), section 11(1).

Insolvency or death of cautioner or guarantor

18.8.—(1) This rule applies where caution has been found by bond of caution or security has been given by guarantee.

(2) Where one of the events specified in paragraph (3) occurs, the party entitled to benefit from the caution or guarantee may apply to the Court by motion for further caution to be found or further security to be given.

(3) The events are that the cautioner or guarantor—

(a) becomes apparently insolvent within the meaning of section 7 of the Bankruptcy (Scotland) Act 1985(**12**);

(b) calls a meeting of the cautioner or guarantor's creditors to consider the state of that person's affairs;

(c) dies unrepresented;

(d) is a company and—

(i) an administration, bank administration or building society special administration order has been made in respect of it;

(ii) a winding up, bank insolvency or building society insolvency order has been made in respect of it;

(iii) a resolution for its voluntary winding up has been passed;

(iv) a receiver of all or any part of its undertaking has been appointed;

(v) a voluntary arrangement within the meaning of section 1(1) of the Insolvency Act 1986(**13**) has been approved under Part I of that Act.

Failure to find caution or give security

18.9.—(1) Where a person who has been ordered to find caution or give security fails to do so, any other party may apply to the Court by motion for a finding that the person is in default.

(2) Despite rule 3.1 (circumstances where a party is in default), a person who fails to find caution or give security is only in default if the Court grants a motion under paragraph (1) and makes a finding that the person is in default.

CHAPTER 19

EXPENSES

Taxation of expenses

19.1.—(1) Where the Court makes an order allowing expenses in any appeal, those expenses must be taxed before decree is granted for them.

(2) This rule does not apply where the Court modifies those expenses to a fixed sum.

Additional fee

19.2.—(1) Where the Court makes an order allowing expenses, it may also make an order allowing a percentage increase in the fees authorised in the Act of Sederunt (Fees of Solicitors in the Sheriff Appeal Court) 2015(**14**) to reflect the responsibility undertaken by the solicitor in the conduct of the appeal.

(**12**) 1985 c. 66. Section 7 was last amended by the Policing and Crime Act 2009 (c. 26), Schedule 7, paragraph 47.
(**13**) 1986 c. 45. Section 1(1) was amended by the Enterprise Act 2002 (c. 40), Schedule 17, paragraph 10.
(**14**) S.S.I. [xxx/xxxx].

(2) An application for an additional fee is to be made by motion.

(3) The Court must take the following matters into account in determining what percentage increase, if any, to allow—

(a) the complexity of the appeal and the number, difficulty or novelty of the questions raised;

(b) the skill, time and labour and specialised knowledge required of the solicitor;

(c) the number and importance of any documents prepared;

(d) the place and circumstances of the appeal or in which the work of the solicitor in preparation for, and conduct of, the appeal has been carried out;

(e) the importance of the appeal or the subject matter of it to the client;

(f) the amount or value of money or property involved in the appeal;

(g) the steps taken with a view to settling the appeal, limiting the matters in dispute or limiting the scope of any hearing

Order to lodge account of expenses

19.3.—(1) This rule applies where a party entitled to expenses has not lodged an account of expenses in process within 4 months after the date of the order about expenses.

(2) The party found liable in expenses may apply to the Court for an order ordaining the party entitled to expenses to lodge an account of expenses in process.

(3) An application under paragraph (2) is to be made by motion.

Procedure for taxation of expenses

19.4.—(1) Where an account of expenses is lodged for taxation, the Clerk must transmit the account and the process to the auditor of court.

(2) The auditor of court must—

(a) fix a taxation hearing no sooner than 7 days after the auditor receives the account;

(b) intimate the date, time and place of the taxation hearing to every party.

(3) If the auditor reserves consideration of the account at the taxation hearing, the auditor must intimate the auditor's decision to the parties who attended the hearing.

(4) After the account has been taxed, the auditor must transmit the account and the process, together with the auditor's report, to the Clerk.

(5) Where no objections are lodged under rule 19.5, the Court may grant decree for the expenses as taxed.

Objections to taxed account

19.5.—(1) A party may lodge a note of objections to an account as taxed only where the party attended the taxation hearing.

(2) A note of objections must be lodged within 7 days after—

(a) the taxation hearing; or

(b) where the auditor reserved consideration of the account, the date on which the auditor intimates the auditor's decision to the parties.

(3) The Court is to dispose of the note of objections in a summary manner, with or without answers.

Decree for expenses in name of solicitor

19.6. The Court may allow a decree for expenses to be extracted in the name of the solicitor who conducted the appeal.

Expenses of curator *ad litem* appointed to a respondent

19.7.—(1) This rule applies where a curator *ad litem* is appointed to any respondent to an appeal.

(2) The appellant is responsible in the first instance for the payment of the expenses of a curator *ad litem* mentioned in paragraph (3).

(3) Those expenses are any fees of the curator *ad litem* and any outlays incurred by the curator from the date of appointment until any of the following steps occur—

(a) the lodging of a minute stating that the curator does not intend to lodge answers to the note of appeal;

(b) the lodging of answers by the curator, or the adoption of answers that have already been lodged;

(c) the discharge of the curator before either of the steps in subparagraphs (a) or (b) occurs.

PART 6

INCIDENTAL PROCEDURE: SPECIAL PROCEDURES

CHAPTER 20

DEVOLUTION ISSUES

Interpretation

20.1. In this Chapter—

"devolution issue" means a devolution issue under—

(a) Schedule 6 to the Scotland Act 1998(**15**);

(b) Schedule 10 to the Northern Ireland Act 1998(**16**);

(c) Schedule 9 to the Government of Wales Act 2006(**17**);

and any reference to Schedule 6, Schedule 10 or Schedule 9 is a reference to that Schedule in that Act;

"relevant authority" means—

(a) the Advocate General;

(b) in the case of a devolution issue under Schedule 6, the Lord Advocate;

(c) in the case of a devolution issue under Schedule 10, the Attorney General for Northern Ireland, and the First Minister and deputy First Minister acting jointly;

(d) in the case of a devolution issue under Schedule 9, the Counsel General to the Welsh Government.

(**15**) 1998 c. 46.
(**16**) 1998 c. 47.
(**17**) 2006 c. 32.

Raising a devolution issue

20.2.—(1) A devolution issue is raised by specifying a devolution issue in Form 20.2.

(2) A devolution issue in Form 20.2 is to be lodged—

(a) by an appellant, when the note of appeal is lodged;

(b) by a respondent, when answers to the note of appeal are lodged,

unless the Court allows an appellant or a respondent to raise a devolution issue at a later stage in proceedings.

(3) An application to allow a devolution issue to be raised after the note of appeal has been lodged or answers to the note of appeal have been lodged, as the case may be, is to be made by motion.

(4) The party raising a devolution issue must specify, in sufficient detail to enable the Court to determine whether a devolution issue arises—

(a) the facts and circumstances; and

(b) the contentions of law,

on the basis of which it is alleged that the devolution issue arises in the appeal.

(5) The Court may not determine a devolution issue unless permission has been given for the devolution issue to proceed.

Raising a devolution issue: intimation and service

20.3.—(1) This rule applies to the intimation of a devolution issue on a relevant authority under—

(a) paragraph 5 of Schedule 6;

(b) paragraph 23 of Schedule 10;

(c) paragraph 14(1) of Schedule 9.

(2) When a devolution issue is raised, the party raising it must intimate the devolution issue to the relevant authority unless the relevant authority is a party to the appeal.

(3) Within 14 days after intimation, the relevant authority may give notice to the Clerk that it intends to take part in the appeal as a party under—

(a) paragraph 6 of Schedule 6;

(b) paragraph 24 of Schedule 10;

(c) paragraph 14(2) of Schedule 9.

Raising a devolution issue: permission to proceed

20.4.—(1) When a devolution issue is raised, the Clerk is to fix a hearing and intimate the date and time of that hearing to the parties.

(2) Within 14 days after the Clerk intimates the date and time of the hearing, each party must lodge a note of argument.

(3) That note of argument must summarise the submissions the party intends to make on the question of whether a devolution issue arises in the appeal.

(4) At the hearing, the procedural Appeal Sheriff is to determine whether a devolution issue arises in the appeal.

(5) Where the procedural Appeal Sheriff determines that a devolution issue arises, the procedural Appeal Sheriff is to grant permission for the devolution issue to proceed.

(6) Where the procedural Appeal Sheriff determines that no devolution issue arises, the procedural Appeal Sheriff is to refuse permission for the devolution issue to proceed.

(7) At the hearing the procedural Appeal Sheriff may make any order, including an order concerning expenses.

(8) In this rule, "party" includes a relevant authority that has given notice to the Clerk that it intends to take part in the appeal as a party.

Participation by the relevant authority

20.5.—(1) Paragraph (2) applies where a relevant authority has given notice to the Clerk that it intends to take part in the appeal as a party.

(2) Within 7 days after permission to proceed is given, the relevant authority must lodge a minute containing the relevant authority's written submissions in respect of the devolution issue.

Reference to the Inner House or Supreme Court

20.6.—(1) This rule applies to the reference of a devolution issue to the Inner House of the Court of Session for determination under—

(a) paragraph 7 of Schedule 6;

(b) paragraph 25 of Schedule 10;

(c) paragraph 15 of Schedule 9.

(2) This rule also applies where the Court has been required by a relevant authority to refer a devolution issue to the Supreme Court under—

(a) paragraph 33 of Schedule 6;

(b) paragraph 33 of Schedule 10;

(c) paragraph 29 of Schedule 9.

(3) The Court is to make an order concerning the drafting and adjustment of the reference.

(4) The reference must specify—

(a) the questions for the Inner House or the Supreme Court;

(b) the addresses of the parties;

(c) a concise statement of the background to the matter, including—

(i) the facts of the case, including any relevant findings of fact; and

(ii) the main issues in the case and contentions of the parties with regard to them;

(d) the relevant law including the relevant provisions of the Scotland Act 1998, the Government of Wales Act 2006 or the Northern Ireland Act 1998;

(e) the reasons why an answer to the questions is considered necessary for the purpose of disposing of the proceedings.

(5) The reference must have annexed to it—

(a) a copy of all orders made in the appeal; and

(b) a copy of any judgments in the proceedings.

(6) When the reference has been drafted and adjusted, the Court is to make and sign the reference.

(7) The Clerk must—

(a) send a copy of the reference to the parties to the proceedings;

(b) certify on the back of the principal reference that subparagraph (a) has been complied with.

Reference to the Inner House or Supreme Court: further procedure

20.7.—(1) On a reference being made, the appeal must, unless the Court otherwise orders, be sisted until the devolution issue has been determined.

(2) Despite a reference being made, the Court continues to have the power to make any interim order required in the interests of the parties.

(3) The Court may recall a sist for the purpose of making such interim orders.

(4) On a reference being made the Clerk must send the principal copy of the reference to (as the case may be)—

(a) the Deputy Principal Clerk of the Court of Session; or

(b) the Registrar of the Supreme Court (together with 7 copies).

(5) Unless the Court orders otherwise, the Clerk must not send the principal copy of the reference where an appeal against the making of the reference is pending.

(6) An appeal is to be treated as pending—

(a) until the expiry of the time for making that appeal; or

(b) where an appeal has been made, until that appeal has been determined.

Reference to the Inner House or Supreme Court: procedure following determination

20.8.—(1) This rule applies where either the Inner House of the Court of Session or the Supreme Court has determined a devolution issue.

(2) Upon receipt of the determination, the Clerk must place a copy of the determination before the Court.

(3) The Court may, on the motion of any party or otherwise, order such further procedure as may be required.

(4) Where the Court makes an order other than on the motion of a party, the Clerk must intimate a copy of the order on all parties to the appeal.

CHAPTER 21

PRELIMINARY REFERENCES TO THE CJEU

Interpretation of this Chapter

21.1. In this Chapter—

"European Court" means the Court of Justice of the European Union;

"reference" means a reference to the European Court for—

(a) a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union(**18**);

(b) a ruling on the interpretation of the Conventions mentioned in Article 1 of Schedule 2 to the Civil Jurisdiction and Judgments Act 1982(**19**) under Article 3 of that Schedule;

(c) a preliminary ruling on the interpretation of the instruments mentioned in Article 1 of Schedule 3 to the Contracts (Applicable Law) Act 1990(**20**) under Article 2 of that Schedule.

(**18**) OJ C 326, 26.10.2012, p. 47.
(**19**) 1982 c. 27. Schedule 2 was substituted by S.I. 2000/1824.
(**20**) 1990 c. 36. Schedule 3 was amended by S.I. 2011/1043.

Applications for a reference

21.2.—(1) An application for a reference by a party is to be made by motion.

(2) The Court may make a reference of its own accord.

Preparation of reference

21.3.—(1) Where the Court decides that a reference is to be made, it is to make an order specifying—

(a) by whom the reference is to be drafted and adjusted;

(b) the periods within which the reference is to be drafted and adjusted.

(2) A reference is to be drafted in Form 21.3 unless the Court directs otherwise when it makes an order under paragraph (1).

(3) In drafting and adjusting the reference, parties are to have regard to the Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings issued by the European Court(**21**).

(4) When the reference has been drafted and any adjustments required by the Court have been made, the Court is to make and sign the reference.

(5) When the reference is made, the Clerk must notify the parties.

Transmission of reference to European Court

21.4. A copy of the reference is to be certified by the Clerk and sent to the Registrar of the European Court.

Sist of appeal

21.5.—(1) When a reference is made, the Court is to sist the appeal until the European Court determines the reference, unless the Court orders otherwise.

(2) Where an appeal is sisted under paragraph (1), the Court may recall the sist for the purposes of making an interim order.

CHAPTER 22

INTERVENTIONS BY CEHR AND SCHR

Application and interpretation of this Chapter

22.1.—(1) This Chapter applies to—

(a) interventions in legal proceedings by the CEHR under section 30(1) of the Equality Act 2006(**22**);

(b) interventions in civil proceedings (other than children's hearing proceedings) by the SCHR under section 14(2) of the Scottish Commission for Human Rights Act 2006(**23**).

(2) In this Chapter—

"the CEHR" means the Commission for Equality and Human Rights;

"the SCHR" means the Scottish Commission for Human Rights.

(**21**) OJ C 338, 6.11.2012, p. 1.
(**22**) 2006 c. 3.
(**23**) 2006 asp 13. Section 14 was amended by S.S.I. 2013/211, Schedule 1, paragraph 16.

Applications to intervene

22.2.—(1) An application for leave to intervene is to be made in Form 22.2.

(2) Such an application is to be lodged in the process of the appeal to which it relates.

(3) When an intervener lodges an application, rule 5.2(1) applies as if the intervener were a party.

(4) The parties may request a hearing on the application to intervene within 14 days after the application is lodged.

(5) Where a hearing is requested—

(a) the Court is to appoint a date and time for a hearing;

(b) the Clerk must notify the date and time of the hearing to the parties and the applicant.

(6) Where no hearing is requested, the Court may appoint a date and time for a hearing of its own accord and the Clerk must notify the date and time of the hearing to the parties and the applicant.

Applications to intervene: determination

22.3.—(1) The Court may determine an application for leave to intervene without a hearing, unless a hearing is fixed under rule 22.2(5) or (6).

(2) In an application for leave to intervene under section 30(1) of the Equality Act 2006, the Court may grant leave only if it is satisfied that the proposed submissions are likely to assist the Court.

(3) Where the Court grants leave to intervene, it may impose any conditions that it considers desirable in the interests of justice.

(4) In particular, the Court may make provision about any additional expenses incurred by the parties as a result of the intervention.

(5) When an application is determined, the Clerk must notify the parties and the applicant of the outcome.

Invitations to intervene

22.4.—(1) An invitation to intervene under section 14(2)(b) of the Scottish Commission for Human Rights Act 2006 is to be in Form 22.4.

(2) The Clerk must send a copy of Form 22.4 to the parties to the proceedings and to the SCHR.

(3) When the Clerk sends a copy of Form 22.4 to the SCHR, the Clerk must also send—

(a) a copy of the note of appeal and any answers to it;

(b) the appeal print, if it is available;

(c) any other documents relating to the appeal that the Court thinks are relevant.

(4) Where the Court invites the SCHR to intervene, it may impose any conditions that it considers desirable in the interests of justice.

(5) In particular, the Court may make provision about any additional expenses incurred by the parties as a result of the intervention.

Form of intervention

22.5.—(1) An intervention is to be by way of written submission.

(2) A written submission (including any appendices) must not exceed 5,000 words.

(3) The intervener must lodge the written submission within such time as the Court may direct.

(4) In exceptional circumstances, the Court may allow—

(a) a written submission exceeding 5,000 words to be made;

(b) an oral submission to be made.

(5) Where the Court allows an oral submission to be made, it is to appoint a date and time for the submission to be made.

(6) The Clerk must notify that date and time to the parties and the intervener.

CHAPTER 23

PROOF

Taking proof in the course of an appeal

23.1.—(1) If it is considered necessary, proof or additional proof may be ordered—

(a) by the procedural Appeal Sheriff at a procedural hearing;

(b) by the Court in the course of an appeal hearing.

(2) Where the procedural Appeal Sheriff orders that proof or additional proof is to be taken—

(a) the procedural Appeal Sheriff is to appoint a date and time for a hearing for that to be done;

(b) so far as reasonably practicable, the hearing is to be before the procedural Appeal Sheriff who made the order.

(3) Where the Court orders that proof or additional proof is to be taken, the Court is to—

(a) remit the proof to be taken before any Appeal Sheriff;

(b) appoint a date and time for a hearing for that to be done;

(c) continue the appeal hearing until the Appeal Sheriff reports the proof to the Court.

(4) Where a hearing is fixed under this rule, the Clerk must notify the date and time of the hearing to the parties.

Preparation for proof

23.2.—(1) Where a proof or additional proof is ordered, the Appeal Sheriff before whom it is to be taken is to make an order specifying—

(a) the witnesses whose evidence is to be taken;

(b) how those witnesses are to be cited to the hearing.

(2) An order under paragraph (1) may include provision as to liability for the fees and expenses of a witness.

Conduct of proof

23.3. A proof is to be taken continuously so far as possible, but the Appeal Sheriff may adjourn the hearing from time to time.

Administration of oath or affirmation to witnesses

23.4.—(1) The Appeal Sheriff is to administer the oath to a witness in Form 23.4-A unless the witness elects to affirm.

(2) Where a witness elects to affirm, the Appeal Sheriff is to administer the affirmation in Form 23.4-B.

Recording of evidence

23.5.—(1) The evidence given at a hearing is to be recorded, unless the parties agree to dispense with the recording of evidence and the Appeal Sheriff considers that it is appropriate to do so.

(2) The evidence is to be recorded by—

(a) a shorthand writer to whom the oath *de fideli administratione* has been administered in connection with the Court; or

(b) by tape recording or other mechanical means approved by the Court.

(3) In the first instance, the solicitors for the parties are personally liable to pay, in equal shares—

(a) the fees of a shorthand writer; or

(b) the fee payable for recording evidence by tape recording or other mechanical means.

(4) The record of evidence is to include—

(a) any objection taken to a question or to the line of evidence;

(b) any submission made in relation to such an objection; and

(c) the ruling of the Appeal Sheriff in relation to the objection and submission.

Transcripts of evidence

23.6.—(1) A transcript of the record of the evidence is to be made only where the Appeal Sheriff orders it to be made.

(2) In the first instance, the solicitors for the parties are personally liable, in equal shares, for the cost of making the transcript.

(3) The transcript provided for the use of the Court is to be certified as a faithful record of the evidence by—

(a) the shorthand writer who recorded the evidence; or

(b) where the evidence was recorded by tape recording or other mechanical means, by the person who transcribed the record.

(4) The Appeal Sheriff may alter the transcript where the Appeal Sheriff considers it necessary to do so, but only after hearing parties on the proposed alterations.

(5) Where the Appeal Sheriff alters the transcript, the Appeal Sheriff is to authenticate the alterations.

(6) The transcript may only be borrowed from process on cause shown.

(7) Where a transcript is required for the purpose of an appeal but the Appeal Sheriff has not directed that it be made—

(a) the appellant may request a transcript from the shorthand writer or the person in whose possession the recording of the evidence is;

(b) in the first instance, the solicitor for the appellant is liable for the cost of the transcript;

(c) the appellant must lodge the transcript in process;

(d) any party may obtain a copy by paying the fee of the person who made the transcript.

Recording objections where recording of evidence dispensed with

23.7. Where the recording of evidence has been dispensed with under rule 23.5(1), a party may request that the Appeal Sheriff record in the report of the proof—

(a) any objection taken to a question or to the line of evidence;

(b) any submission made in relation to such an objection; and

(c) the ruling of the Appeal Sheriff in relation to the objection and submission.

CHAPTER 24

VULNERABLE WITNESSES

Interpretation and application of this Chapter

24.1.—(1) This Chapter applies where proof or additional proof is ordered to be taken under rule 23.1(1).

(2) In this Chapter—

"2004 Act" means the Vulnerable Witnesses (Scotland) Act 2004(**24**);

"child witness notice" has the meaning given by section 12(2) of the 2004 Act;

"review application" means an application under section 13(1)(a) of the 2004 Act;

"vulnerable witness application" has the meaning given by section 12(6) of the 2004 Act.

Form of notices and applications

24.2.—(1) A child witness notice is to be made in Form 24.2–A.

(2) A vulnerable witness application is to be made in Form 24.2–B.

(3) A review application is to be made—

(a) in Form 24.2–C; or

(b) orally, if the Court grants leave.

Determination of notices and applications

24.3.—(1) When a notice or application under this Chapter is lodged, the Court may require any of the parties to provide further information before determining the notice or application.

(2) The Court may—

(a) determine the notice or application by making an order under section 12(1) or (6) or 13(2) of the 2004 Act without holding a hearing;

(b) fix a hearing at which parties are to be heard on the notice or application before determining it.

(3) The Court may make an order altering the date of the proof in order that the notice or application may be determined.

Determination of notices and applications: supplementary orders

24.4. Where the Court determines a notice or application under this Chapter and makes an order under section 12(1) or (6) or 13(2) of the 2004 Act, the Court may make further orders to secure the expeditious disposal of the appeal.

Intimation of orders

24.5.—(1) Where the Court makes an order—

(a) fixing a hearing under rule 24.3(2)(b);

(b) altering the date of a proof or other hearing under rule 24.3(3); or

(**24**) 2004 asp 3, amended by the Children's Hearings (Scotland) Act 2011 (asp 1), section 176 and Schedule 6, paragraph 1; and the Victims and Witnesses (Scotland) Act 2014 (asp 1), section 22.

(c) under section 12(1) or (6) or 13(2) of the 2004 Act,

the Clerk is to intimate the order in accordance with this rule.

(2) Intimation is to be given to—

(a) every party to the proceedings; and

(b) any other person named in the order.

(3) Intimation is to be made—

(a) on the day that the hearing is fixed or the order is made;

(b) in the manner ordered by the Court.

Taking of evidence by commissioner: preparatory steps

24.6.—(1) This rule applies where the Court authorises the special measure of taking evidence by a commissioner under section 19(1) of the 2004 Act.

(2) The commission is proceed without interrogatories unless the Court otherwise orders.

(3) The order of the Court authorising the special measure is sufficient authority for citing the vulnerable witness to appear before the commissioner.

(4) The party who cited the vulnerable witness—

(a) must give the commissioner—

(i) a certified copy of the order of the Court appointing the commissioner;

(ii) a copy of the appeal documents;

(iii) where rule 24.7 applies, the approved interrogatories and cross-interrogatories;

(b) must instruct the clerk to the commission;

(c) is responsible in the first instance for the fee of the commissioner and the clerk.

(5) The commissioner is to fix a hearing at which the commission will be carried out.

(6) The commissioner must consult the parties before fixing the hearing.

(7) An application by a party for leave to be present in the room where the commission is carried out is to be made by motion.

(8) In this rule, "appeal documents" means any of the following documents that have been lodged in process by the time the use of the special measure is authorised—

(a) the note of appeal and answers;

(b) where there is a cross appeal, the grounds of appeal and answers;

(c) the appeal print and appendices;

(d) the notes of argument.

Taking of evidence by commissioner: interrogatories

24.7.—(1) This rule applies where the Court—

(a) authorises the special measure of taking evidence by a commissioner under section 19(1) of the 2004 Act; and

(b) orders that interrogatories are to be prepared.

(2) The party who cited the vulnerable witness must lodge draft interrogatories in process.

(3) Any other party may lodge cross-interrogatories.

(4) The parties may adjust their interrogatories and cross-interrogatories.

(5) At the expiry of the adjustment period, the parties must lodge the interrogatories and cross-interrogatories as adjusted in process.

(6) The Court is to resolve any dispute as to the content of the interrogatories and cross-interrogatories, and approve them.

(7) When the Court makes an order for interrogatories to be prepared, it is to specify the periods within which parties must comply with the steps in this rule.

Taking of evidence by commissioner: conduct of commission

24.8.—(1) The commissioner is to administer the oath *de fideli administratione* to the clerk.

(2) The commissioner is to administer the oath to the vulnerable witness in Form 23.4-A unless the witness elects to affirm.

(3) Where the witness elects to affirm, the commissioner is to administer the affirmation in Form 23.4-B.

Taking of evidence by commissioner: lodging and custody of video record and documents

24.9.—(1) The commissioner is to lodge the video record of the commission and any relevant documents with the Clerk.

(2) When the video record and any relevant document are lodged, the Clerk is to notify every party—

(a) that the video record has been lodged;

(b) whether any relevant documents have been lodged;

(c) of the date on which they were lodged.

(3) The video record and any relevant documents are to be kept by the Clerk.

(4) Where the video record has been lodged—

(a) the name and address of the vulnerable witness and the record of the witness's evidence are to be treated as being in the knowledge of the parties;

(b) the parties need not include—

(i) the name of the witness in any list of witnesses; or

(ii) the record of evidence in any list of productions.

CHAPTER 25

USE OF LIVE LINKS

Interpretation

25.1. In this Chapter—

"evidence" means the evidence of—

(a) the party; or

(b) a person who has been or may be cited to appear before the court as a witness;

"live link" means—

(a) a live television link; or

(b) where the Court gives permission in accordance with rule 25.2(4), an alternative arrangement;

"submission" means any oral submission which would otherwise be made to the Court by a party or that party's representative, including an oral submission in support of a motion.

Application for use of live link

25.2.—(1) A party may apply to the Court to use a live link to make a submission or to give evidence.

(2) An application to use a live link is to be made by motion.

(3) Where a party seeks to use a live link other than a live television link, the motion must specify the proposed arrangement.

(4) The Court must not grant a motion to use a live link other than a live television link unless the proposed arrangement meets the requirements in paragraph (5).

(5) The requirements are that the person using the live link is able to—

(a) be seen and heard, or heard, in the courtroom; and

(b) see and hear, or hear, the proceedings in the courtroom.

CHAPTER 26

REPORTING RESTRICTIONS

Interpretation and application of this Chapter

26.1.—(1) This Chapter applies to orders which restrict the reporting of proceedings.

(2) In this Chapter, "interested person" means a person—

(a) who has asked to see any order made by the Court which restricts the reporting of proceedings, including an interim order; and

(b) whose name is included on a list kept by the Lord President for the purposes of this Chapter.

Interim orders: notification to interested persons

26.2.—(1) Where the Court is considering making an order, the Court may make an interim order.

(2) Where the Court makes an interim order, the Clerk must immediately send a copy of the interim order to any interested person.

(3) The Court is to specify in the interim order why the Court is considering making an order.

Interim orders: representations

26.3.—(1) Paragraph (2) applies where the Court has made an interim order.

(2) An interested person who would be directly affected by the making of an order is to be given an opportunity to make representations to the Court before the order is made.

(3) Representations are to—

(a) be made in Form 26.3;

(b) include reasons why an urgent hearing is necessary, if an urgent hearing is sought;

(c) be lodged no later than 2 days after the interim order is sent to interested persons in accordance with rule 26.2(2).

(4) If representations are made—

(a) the Court is to appoint a date and time for a hearing—

(i) on the first suitable court day; or

(ii) where the Court considers that an urgent hearing is necessary, at an earlier date and time;

(b) the Clerk must—

(i) notify the date and time of the hearing to the parties to the proceedings and any person who has made representations; and

(ii) send a copy of the representations to the parties.

(5) Where no interested person makes representations in accordance with paragraph (3), the Clerk is to put the interim order before the Court in chambers in order that the Court may resume consideration of whether to make an order.

(6) Where the Court, having resumed consideration, makes no order, it must recall the interim order.

(7) Where the Court recalls an interim order, the Clerk must immediately notify any interested person.

Notification of reporting restrictions

26.4.—(1) Where the Court makes an order, the Clerk must immediately—

(a) send a copy of the order to any interested person;

(b) arrange for the publication of the making of the order on the Scottish Courts and Tribunals Service website.

Applications for variation or revocation

26.5.—(1) A person aggrieved by an order may apply to the Court for its variation or revocation.

(2) An application is to be made in Form 26.5.

(3) When an application is made—

(a) the Court is to appoint a date and time for a hearing;

(b) the Clerk must—

(i) notify the date and time of the hearing to the parties to the proceedings and the applicant; and

(ii) send a copy of the application to the parties.

(4) The hearing is, so far as reasonably practicable, to be before the Appeal Sheriff or Appeal Sheriffs who made the order.

PART 7

SPECIAL APPEAL PROCEEDINGS

CHAPTER 27

ACCELERATED APPEAL PROCEDURE

Application of this Chapter

27.1. This Chapter applies to an appeal which has been appointed to proceed under the accelerated appeal procedure.

Hearing of appeal

27.2. The Clerk must fix a hearing and intimate the date and time of that hearing to parties when—

(a) a provisional procedural order appointing the appeal to the accelerated appeal procedure becomes final or is confirmed; or

(b) the Court makes an order appointing the appeal to the accelerated appeal procedure under rule 6.7(5)(b).

Application to remove appeal from accelerated appeal procedure

27.3.—(1) The procedural Appeal Sheriff may—

(a) of the procedural Appeal Sheriff's own accord; or

(b) on the application of any party,

order that an appeal is to proceed under the standard appeal procedure instead of the accelerated appeal procedure.

(2) The procedural Appeal Sheriff may only make such an order if the procedural Appeal Sheriff is satisfied that, taking into account the matters in rule 6.6(3), it is no longer appropriate for the appeal to proceed under the accelerated appeal procedure.

(3) That order must appoint the appeal to proceed under the standard appeal procedure and specify—

(a) the procedure to be followed in the appeal;

(b) the periods for complying with each procedural step.

CHAPTER 28

APPLICATION FOR NEW JURY TRIAL OR TO ENTER JURY VERDICT

Application of this Chapter

28.1. This Chapter applies to an application—

(a) for a new trial under section 69(1) of the 2014 Act;

(b) to enter a verdict under section 71(2) of the 2014 Act.

Form of application for new trial

28.2.—(1) An application for a new trial is to be made in Form 28.2.

(2) Such an application must be made within 7 days after the date on which the jury have returned their verdict.

(3) The motion must specify the grounds on which the application is made.

(4) When an application for a new trial is lodged, the party lodging it must also lodge—

(a) a print containing—

(i) the pleadings in the sheriff court process;

(ii) the interlocutors in the sheriff court process;

(iii) the issues and counter-issues;

(b) the verdict of the jury;

(c) any exception and the determination on it of the sheriff presiding at the trial;

(d) a process made up in accordance with paragraph 4 of Schedule 1 (form of process).

Application for new trial: restrictions

28.3.—(1) An application for a new trial which specifies the ground in section 69(2)(a) of the 2014 Act (misdirection by sheriff) may not be made unless the procedure in rule 36B.8 of the Ordinary Cause Rules 1993(**25**) (exceptions to sheriff's charge) has been complied with.

(2) An application for a new trial which specifies the ground in section 69(2)(b) of the 2014 Act (undue admission or rejection of evidence) may not be made unless objection was taken to the admission or rejection of evidence at the trial and recorded in the notes of evidence under the direction of the sheriff presiding at the trial.

(3) An application for a new trial which specifies the ground in section 69(2)(c) of the 2014 Act (verdict contrary to evidence) may not be made unless it sets out in brief specific numbered propositions the reasons the verdict is said to be contrary to the evidence.

Applications out of time

28.4.—(1) An application to allow an application for a new trial to be lodged outwith the period specified in rule 28.2(2) is to be included in the application made under rule 28.2(1).

(2) Where the procedural Appeal Sheriff allows such an application, the application for a new trial is to be received on such conditions as to expenses or otherwise as the procedural Appeal Sheriff thinks fit.

Timetable in application for new trial

28.5.—(1) The Clerk must issue a timetable in Form 28.5 when an application is lodged under rule 28.2(1).

(2) When the Clerk issues a timetable, the Clerk must also fix a procedural hearing to take place after completion of the procedural steps specified in paragraph (4).

(3) The timetable specifies—

(a) the dates by which parties must comply with those procedural steps;

(b) the date and time of the procedural hearing.

(4) The procedural steps are the steps mentioned in the first column of the following table, provision in respect of which is found in the rule mentioned in the second column—

Procedural step	*Rule*
Referral of question about competency of application	28.7(3)
Lodging of appendices to print	28.9(1)
Giving notice that the applicant considers appendix unnecessary	28.10(1)
Lodging of notes of argument	28.11(1)
Lodging of estimates of duration of hearing of application for new trial	28.12

Sist of application for new trial and variation of timetable

28.6.—(1) Any party may apply by motion to—

(a) sist the application for a new trial for a specified period;

(b) recall a sist;

(**25**) The Ordinary Cause Rules 1993 are in Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (c. 51). Schedule 1 was substituted by S.I. 1993/1956 and last amended by S.S.I. 2015/312.

(c) vary the timetable.

(2) An application is to be determined by the procedural Appeal Sheriff.

(3) An application to sist the application for a new trial or to vary the timetable may only be granted on special cause shown.

(4) The procedural Appeal Sheriff may—

(a) grant the application;

(b) refuse the application; or

(c) make an order not sought in the application, where the procedural Appeal Sheriff considers that doing so would secure the expeditious disposal of the appeal.

(5) Where the procedural Appeal Sheriff makes an order sisting the application for a new trial, the Clerk is to discharge the procedural hearing fixed under rule 28.5(2) (timetable: fixing procedural hearing).

(6) When a sist is recalled or expires, the Clerk is to—

(a) issue a revised timetable in Form 28.5;

(b) fix a procedural hearing.

(7) Where the procedural Appeal Sheriff makes an order varying the timetable, the Clerk is to—

(a) discharge the procedural hearing fixed under rule 28.5(2) (timetable: fixing procedural hearing);

(b) issue a revised timetable in Form 28.5;

(c) fix a procedural hearing.

Questions about competency of application

28.7.—(1) A question about the competency of an application for a new trial may be referred to the procedural Appeal Sheriff by a party, other than the applicant.

(2) A question is referred by lodging a reference in Form 28.7.

(3) A question may be referred within 7 days after the date on which the application for a new trial was lodged.

(4) Where a reference is lodged, the Clerk is to fix a hearing and intimate the time and date of that hearing to the parties.

(5) Within 7 days after the date on which the reference is lodged, each party must lodge a note of argument.

(6) That note of argument must—

(a) give fair notice of the submissions the party intends to make on the question of competency;

(b) comply with the requirements in rule 28.11(3) (notes of argument).

(7) Paragraphs (4) and (5) of rule 28.11 apply to a note of argument lodged under paragraph (5).

Questions about competency: determination

28.8.—(1) At a hearing on the competency of an application for a new trial, the procedural Appeal Sheriff may—

(a) refuse the application as incompetent;

(b) find the application to be competent;

(c) reserve the question of competency until the hearing of the application; or

(d) refer the question of competency to the Court.

(2) The procedural Appeal Sheriff may make an order as to the expenses of the reference.

(3) Where the question of competency is referred to the Court, it may—

(a) refuse the application as incompetent;

(b) find the application to be competent;

(c) reserve the question of competency until the hearing of the application.

(4) The Court may make an order as to the expenses of the reference.

Appendices to print: contents

28.9.—(1) The applicant must lodge an appendix to the print mentioned in rule 28.2(4)(a) no later than 7 days before the procedural hearing, unless rule 28.10(1) (giving notice that applicant considers appendix unnecessary) is complied with.

(2) The appendix is to contain—

(a) any document lodged in the sheriff court process that is founded upon in the application for a new trial;

(b) the notes of evidence from the trial, if it is sought to submit them for consideration by the Court.

(3) Where the sheriff's note has not been included in the print and it subsequently becomes available, the applicant must—

(a) include it in the appendix where the appendix has not yet been lodged; or

(b) lodge a supplementary appendix containing the sheriff's note.

(4) The parties must—

(a) discuss the contents of the appendix;

(b) so far as possible, co-operate in making up the appendix.

Appendices to print considered unnecessary

28.10.—(1) Where the applicant considers that it is not necessary to lodge an appendix, the applicant must, no later than 7 days before the procedural hearing—

(a) give written notice of that fact to the Clerk;

(b) intimate that notice to every respondent.

(2) Where the applicant complies with paragraph (1), the respondent may apply by motion for an order requiring the applicant to lodge an appendix.

(3) An application under paragraph (2) must specify the documents or notes of evidence that the respondent considers should be included in the appendix.

(4) In disposing of an application under paragraph (2), the procedural Appeal Sheriff may—

(a) grant the application and make an order requiring the applicant to lodge an appendix;

(b) refuse the application and make an order requiring the respondent to lodge an appendix; or

(c) refuse the application and make no order.

(5) Where the procedural Appeal Sheriff makes an order requiring the applicant or the respondent to lodge an appendix, that order must specify—

(a) the documents or notes or evidence to be included in the appendix;

(b) the time within which the appendix must be lodged.

Notes of argument

28.11.—(1) The parties must lodge notes of argument no later than 7 days before the procedural hearing.

(2) A note of argument must summarise briefly the submissions the party intends to develop at the hearing of the application for a new trial.

(3) A note of argument must—

(a) state, in brief numbered paragraphs, the points that the party intends to make;

(b) after each point, identify by means of a page or paragraph reference the relevant passage in any notes of evidence or other document on which the party relies in support of the point;

(c) for every authority that is cited—

(i) state the proposition of law that the authority demonstrates;

(ii) identify the page or paragraph references for the parts of the authority that support the proposition;

(d) cite only one authority for each proposition of law, unless additional citation is necessary for a proper presentation of the argument.

(4) Where a note of argument has been lodged and the party lodging it subsequently becomes aware that an argument in the note is not to be insisted upon, that party must—

(a) give written notice of that fact to the Clerk;

(b) intimate that notice to every other party.

(5) Where a party wishes to advance an argument at a hearing that is not contained in that party's note of argument, the party must apply by motion for leave to advance the argument.

Estimates of duration of hearing of application for new trial

28.12. The parties must lodge estimates of the duration of any hearing required to dispose of the application for a new trial in Form 28.12 not later than 7 days before the procedural hearing.

Procedural hearing

28.13.—(1) At the procedural hearing, the procedural Appeal Sheriff is to ascertain the state of preparation of the parties, so far as reasonably practicable.

(2) The procedural Appeal Sheriff may—

(a) determine that parties are ready to proceed to a hearing of the application for a new trial; or

(b) determine that further procedure is required

(3) Where the procedural Appeal Sheriff determines that parties are ready to proceed—

(a) the procedural Appeal Sheriff is to fix a hearing of the application for a new trial;

(b) the Clerk is to intimate the date and time of that hearing to the parties;

(c) the procedural Appeal Sheriff may make an order specifying further steps to be taken by the parties before the hearing.

(4) Where the procedural Appeal Sheriff determines that further procedure is required, the procedural Appeal Sheriff—

(a) is to make an order to secure the expeditious disposal of the appeal;

(b) may direct the Clerk to fix a further procedural hearing and intimate the date and time of that hearing to parties.

Application to enter jury verdict

28.14.—(1) This rule applies to an application under section 71(2) of the 2014 Act (verdict subject to opinion of the Court).

(2) Such an application is to be made in Form 28.14.

(3) When a motion under paragraph (2) is lodged, the party lodging it must also lodge—

(a) a print containing—

(i) the pleadings in the sheriff court process;

(ii) the interlocutors in the sheriff court process;

(iii) the issues and counter-issues;

(b) the verdict of the jury;

(c) any exception and the determination on it of the sheriff presiding at the trial;

(d) a process made up in accordance with paragraph 4 of Schedule 1 (form of process).

(4) Unless the procedural Appeal Sheriff otherwise directs—

(a) it is not necessary for the purposes of such a motion to print the notes of evidence; but

(b) the notes of the sheriff presiding at the trial may be produced at any time if required.

(5) The procedural Appeal Sheriff may refer an application referred to in paragraph (1) to the Court in cases of complexity or difficulty.

CHAPTER 29

APPEALS FROM SUMMARY CAUSES AND SMALL CLAIMS

Application of this Chapter

29.1. This Chapter applies to an appeal under section 38 of the Sheriff Courts (Scotland) Act 1971(**26**) arising from the decision of a sheriff in proceedings under—

(a) the Summary Cause Rules 2002(**27**);

(b) the Small Claim Rules 2002(**28**).

Transmission of appeal

29.2.—(1) Within 4 days after the sheriff has signed the stated case, the sheriff clerk must transmit to the Clerk—

(a) the stated case;

(b) all documents and productions in the case.

(2) On receipt of the stated case, the Clerk is to fix a hearing and intimate the date, time and place of that hearing to the parties.

(**26**) 1971 c. 58. Section 38 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 18(4) and is prospectively modified by S.S.I. 2015/[xxxx], article [xx].

(**27**) The Summary Cause Rules 2002 are in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002 (S.S.I. 2002/132, last amended by S.S.I. 2015/283).

(**28**) The Small Claim Rules 2002 are in Schedule 1 to the Act of Sederunt (Small Claim Rules) 2002 (S.S.I. 2002/133, last amended by S.S.I. 2015/283).

Transmission of appeal: time to pay direction

29.3.—(1) Within 4 days after the sheriff states in writing the reasons for the sheriff's original decision in accordance with rule 25.4(4) of the Summary Cause Rules 2002 or rule 23.4(4) of the Small Claim Rules 2002, the sheriff clerk must transmit to the Clerk—

(a) the appeal in Form 33 of the Summary Cause Rules 2002 or Form 22 of the Small Claim Rules 2002;

(b) the sheriff's written reasons for the sheriff's original decision.

(2) On receipt of those documents, the Clerk is to fix a hearing and intimate the date, time and place of that hearing to the parties.

Hearing of appeal

29.4.—(1) The Court is to hear parties orally on all matters connected with the appeal, including liability for expenses.

(2) Any party may apply by motion for the question of liability for expenses to be heard after the Court gives its decision on the appeal.

(3) At the hearing, a party may only raise questions of law of which notice has not been given if the Court permits the party to do so.

(4) The Court may permit a party to amend any question of law or to add any new question of law.

(5) Where the Court grants permission under paragraph (3) or (4), it may do so on such conditions as to expenses or otherwise as the Court thinks fit.

Determination of appeal

29.5.—(1) At the conclusion of the hearing, the Court may either give its decision orally or reserve judgment.

(2) Where the Court reserves judgment, it must give its decision in writing within 28 days.

(3) The Court may—

(a) adhere to or vary the decision appealed against;

(b) recall the decision and substitute another decision for it;

(c) remit the matter to the sheriff for further procedure.

(4) The Court may not remit the matter to the sheriff in order that further evidence may be led.

Appeal to the Court of Session: certification

29.6.—(1) This rule applies where the Court has determined an appeal arising from the decision of a sheriff in proceedings under the Summary Cause Rules 2002.

(2) An application under section 38(b) of the Sheriff Courts (Scotland) Act 1971 for a certificate that a cause is suitable for appeal to the Court of Session is to be made in Form 29.6.

(3) Such an application must be lodged within 14 days after the date on which the Court gave its decision on the appeal.

(4) An application may only be disposed of after the procedural Appeal Sheriff has heard parties on it.

CHAPTER 30

APPEALS BY STATED CASE UNDER PART 15 OF THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

Application and interpretation of this Chapter

30.1.—(1) This Chapter applies to an appeal by stated case under section 163(1), 164(1), section 165(1) and 167(1) of the Children's Hearings (Scotland) Act 2011(**29**).

(2) In this Chapter, "parties" means the parties specified in rule 3.59(2) of the Act of Sederunt (Child Care and Maintenance Rules) 1997(**30**).

Transmission of appeal

30.2.—(1) Within 4 days after the sheriff has signed the stated case, the sheriff clerk must transmit to the Clerk—

(a) the stated case;

(b) all documents and productions in the case.

(2) On receipt of the stated case, the Clerk is to fix a hearing and intimate the date, time and place of that hearing to the parties.

Hearing of appeal

30.3.—(1) At the hearing, a party may only raise questions of law or procedural irregularities of which notice has not been given if the Court permits the party to do so.

(2) Where the Court grants permission, it may do so on such conditions as to expenses or otherwise as the Court thinks fit.

Determination of appeal

30.4.—(1) At the conclusion of the hearing, the Court may either give its decision orally or reserve judgment.

(2) Where the Court reserves judgment, it must give its decision in writing within 28 days.

Leave to appeal to the Court of Session

30.5.—(1) This rule applies to applications for leave to appeal to the Court of Session under section 163(2), 164(2) or 165(2) of the Children's Hearings (Scotland) Act 2011.

(2) An application is to be made in Form 30.5.

(3) Such an application must be lodged within 7 days after the date on which the Court gave its decision on the appeal.

(4) On receipt of an application, the Clerk must—

(a) fix a hearing to take place before the procedural Appeal Sheriff no later than 14 days after the application is received;

(b) intimate the date, time and place of that hearing to the parties.

(**29**) 2011 asp 1. There are amendments to Part 15 which are not relevant to this Act of Sederunt.
(**30**) 1997/291, last amended by S.S.I. 2015/283. Rule 3.59 was last amended by S.S.I. 2013/172

CJM Sutherland
Lord Justice Clerk

Edinburgh
21st October 2015

I.P.D.

SCHEDULE 1 Rule 1.4

ADMINISTRATIVE PROVISIONS

Quorum of the Court

1.—(1) The quorum of the Court for the types of business specified in subparagraph (3) is one Appeal Sheriff.

(2) The quorum of the Court for any other business is three Appeal Sheriffs.

(3) The types of business are—

(a) disposing of an application for leave to receive an appeal out of time under rule 6.4(2);

(b) disposing of an application to abandon an appeal under rule 9.1;

(c) disposing of an application for permission to appeal to the Court of Session under rule 11.2(1), where the decision in respect of which permission to appeal is sought was made by one Appeal Sheriff;

(d) a peremptory hearing under rule 17.4;

(e) disposing of an application to ordain a party to lodge an account of expenses under rule 19.3(2);

(f) disposing of an application to allow a devolution issue to be raised after the note of appeal has been lodged or answers to the note of appeal have been lodged under rule 20.2(3);

(g) a hearing fixed under Chapter 27 (accelerated appeal procedure);

(h) a hearing fixed under Chapter 29 (appeals from summary causes and small claims);

(i) disposing of an application for authority to address the Court in Gaelic or to give oral evidence in Gaelic under paragraph 6 of this Schedule;

(j) any business where the Rules provide for that business to be disposed of by the procedural Appeal Sheriff.

Procedural Appeal Sheriff

2.—(1) Every Appeal Sheriff is a procedural Appeal Sheriff.

(2) Where the Court considers it appropriate to do so, the Court may dispose of any business where the Rules provide for that business to be disposed of by the procedural Appeal Sheriff.

Signature of interlocutors etc.

3.—(1) Any order made by the Court under these Rules is to be contained in an interlocutor.

(2) An interlocutor is to be signed in accordance with subparagraphs (3) to (5).

(3) Where the Court is constituted by more than one Appeal Sheriff when an order is made, the interlocutor is to be signed by—

(a) the Appeal Sheriff who presided over the Court when the order was made; or

(b) in the event of the death, disability or absence of that Appeal Sheriff, the next senior Appeal Sheriff who sat on that occasion, after such consultation with the other Appeal Sheriffs who sat as may be necessary.

(4) Where the Court is constituted by one Appeal Sheriff, the interlocutor is to be signed by that Appeal Sheriff.

(5) Where the Clerk determines an unopposed motion in writing in accordance with rule 12.7(1), the interlocutor is to be signed by the Clerk unless the procedural Appeal Sheriff directs otherwise.

(6) An interlocutor signed in accordance with subparagraph (5) is to be treated for all purposes as if it had been signed by an Appeal Sheriff.

(7) An extract of an interlocutor which is not signed in accordance with the provisions of this rule is void and has no effect.

(8) An interlocutor may, on cause shown, be corrected or altered at any time before extract by—

(a) the Appeal Sheriff who signed it;

(b) in the event of the death, disability or absence of that Appeal Sheriff, by any other Appeal Sheriff;

(c) where the interlocutor was signed in accordance with subparagraph (5), by any Appeal Sheriff.

Form of process

4.—(1) A process must include the following steps of process—

(a) an interlocutor file;

(b) a motion file;

(c) a minute of proceedings;

(d) an inventory of process.

(2) Any document lodged with the Clerk is to be placed in the process.

Decrees, extracts and execution

5.—(1) In this paragraph, "decree" includes any order or interlocutor which may be extracted.

(2) A decree may be extracted at any time after whichever is the later of—

(a) the expiry of the period within which an application for leave to appeal may be made, if no such application is made;

(b) the date on which leave to appeal is refused, if there is no right to appeal from that decision;

(c) the expiry of the period within which an appeal may be made, if no such appeal is made;

(d) the date on which an appeal is finally disposed of.

(3) A party may apply by motion to the procedural Appeal Sheriff to allow an extract to be issued earlier than a date referred to in subparagraph (2).

(4) Nothing in this paragraph affects the power of the Court to supersede extract.

(5) Where execution may follow on an extract decree, the decree is to include the warrant for execution specified in subparagraph (6).

(6) That warrant is "This extract is warrant for all lawful execution hereon".

Use of Gaelic

6.—(1) This paragraph applies where the use of Gaelic by a party has been authorised by the sheriff in the proceedings out of which an appeal arises.

(2) That party may apply by motion for authority to address the Court in Gaelic at—

(a) an appeal hearing fixed under rule 7.14(3)(a); or

(b) a hearing under rule 29.4.

(3) Where proof or additional proof is ordered in accordance with rule 23.1 (taking proof in the course of an appeal) and that party wishes to give oral evidence in Gaelic, the party may apply by motion for authority to do so.

(4) Where the Court grants authority under paragraph (2) or (3), an interpreter is to be provided by the Court.

SCHEDULE 2

Rule 1.5(1)

FORMS

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt ("the Rules") makes provision about the procedure to be followed in appeals to the Sheriff Appeal Court in civil proceedings. Appeals may be made from a decision of the sheriff under section 110 of the Courts Reform (Scotland) Act 2014 ("the 2014 Act") or under existing appeal provisions as modified by section 109. Additionally, applications for a new trial (section 69(1)) or to enter a jury verdict (section 71(2)) may be made to the Sheriff Appeal Court following a jury trial in the sheriff court. The Rules also make provision about appeals from summary causes and small claims under section 38 of the Sheriff Courts (Scotland) Act 1971.

The Rules come into force on 1st January 2016, when the Sheriff Appeal Court takes up its civil jurisdiction and competence.

Part 1 – preliminary matters

Part 1 makes provision about the commencement, citation and interpretation of the Rules. It also deals with the computation of time periods, administrative provisions and the forms to be used.

Part 2 – general provisions

Part 2 makes provision about general matters which apply to any proceedings under the Rules. Chapters 2 and 3 deal with failures to comply with the Rules, providing for applications for relief and sanctions respectively.

Chapter 4 deals with representation and support before the Sheriff Appeal Court. It contains provision about legal representation, applications for lay representation and support, and the functions, conditions and duties applicable to lay representatives and lay supporters.

Chapter 5 makes provision about intimation and lodging of documents, including provision for intimation and lodging by electronic means in certain circumstances.

Part 3 – initiation and progress of an appeal

Part 3 makes provision about how an appeal is to be brought, including specifying the form of the note appeal. Chapters 6 and 7 do not apply to applications for a new trial or to enter a jury verdict, or appeals from summary causes and small claims: bespoke provision is made instead in Part 7. Chapter 6 includes a mechanism for initial case management of appeals by the procedural Appeal Sheriff, with appeals being appointed to the standard appeal procedure in Chapter 7, or the accelerated appeal procedure in Chapter 27.

Chapter 7 sets out the standard appeal procedure. A timetable is issued, fixing a procedural hearing under rule 7.14 and regulating the dates by which parties must comply with various procedural steps. At the procedural hearing, the procedural Appeal Sheriff may fix an appeal hearing if parties are ready to proceed, or order further procedural steps to be taken.

Part 4 – disposal of an appeal

Part 4 makes provision about how an appeal may come to an end. Chapter 8 deals with applications to refuse an appeal due to delay, Chapter 9 deals with abandonment of an appeal, Chapter 10 provides for applications to remit an appeal to the Court of Session, and Chapter 11 concerns applications for permission to appeal to the Court of Session against a decision of the Sheriff Appeal Court.

Part 5 – incidental procedure: standard procedures

Part 5 makes provision about incidental procedure that is relatively commonly encountered in appeal proceedings. In particular, Chapters 12 to 14 deal with motions. Written motions may be made

by email in accordance with Chapter 13, or by other means in accordance with Chapter 14. Chapter 15 makes provision about minutes, including specific rules for minutes of sist and transference (rule 15.5) and applications to enter process as a respondent where the appeal has not been intimated to that person (rule 15.6).

Chapter 16 provides that applications to amend pleadings are to be made by motion. This includes amendment of the sheriff court pleadings (rule 16.1) and amendment of the appeal documents (rule 16.2).

Chapter 17 sets out the procedure to be followed when a party's solicitors withdraw from acting, including the fixing of a peremptory hearing so that the party's intentions may be ascertained.

Chapter 18 makes provision about applications for caution and security.

Chapter 19 makes provision about expenses, including the possibility of applying for an additional fee (rule 19.2). Provision is also made for the payment of the expenses of a curator *ad litem* appointed to a respondent (rule 19.7).

Part 6 – incidental procedure: special procedures

Part 6 makes provision about more unusual forms of incidental procedure.

Chapter 20 sets out the procedure to be followed where a party wishes to raise a devolution issue for the first time in the course of an appeal.

Chapter 21 specifies how applications for a preliminary reference to the Court of Justice of the European Union are to be made, and how references are to be prepared and transmitted to that Court.

Chapter 22 concerns interventions by the Commission for Equality and Human Rights and the Scottish Commission for Human Rights. It makes provision about applications to intervene and about invitations to the Scottish Commission for Human Rights to intervene in proceedings.

Chapters 23 and 24 make provision about how proof may be taken by the Sheriff Appeal Court. Chapter 23 sets out the procedure for doing so, while Chapter 24 makes provision in terms of the Vulnerable Witnesses (Scotland) Act 2004 for the purposes of such a proof.

Chapter 25 deals with applications to make submissions or give evidence by live link.

Chapter 26 contains the procedure to be followed when the Sheriff Appeal Court is contemplating making an order which restricts the reporting of proceedings.

Part 7 – special appeal proceedings

Part 7 makes provision for appeals which do not follow the standard appeal procedure in Chapter 7.

Chapter 27 deals with appeals that are appointed to the accelerated appeal procedure. Instead of following the procedure in Chapter 7, an appeal hearing is fixed once the appeal has been appointed to the accelerated appeal procedure. The procedural Appeal Sheriff may remit an appeal to the standard appeal procedure if the procedural Appeal Sheriff considers that it is no longer appropriate for the accelerated appeal procedure to apply.

Chapter 28 applies to applications for a new trial under section 69(1) of the 2014 Act, or to enter a verdict under section 71(2). The procedure in Chapter 28 is closely related to that in Chapter 7, although rule 28.14 makes bespoke provision for applications under section 71(2).

Chapter 29 applies to appeals under section 38 of the Sheriff Courts (Scotland) Act 1971 (appeals arising from summary causes and small claims). A stated case is requested and prepared under the relevant provisions of the Act of Sederunt (Summary Cause Rules) 2002 or the Act of Sederunt (Small Claim Rules) 2002. It is then transmitted to the Sheriff Appeal Court (rule 29.2) and a hearing is fixed. Rule 29.4 specifies how such a hearing is to be conducted. A party who wishes to appeal the decision of the Sheriff Appeal Court (in a summary cause) must obtain a certificate that the cause is suitable for appeal to the Court of Session (rule 29.6).

Chapter 30 applies to appeals by stated case under Part 15 of the Children's Hearings (Scotland) Act 2011. A stated case is requested and prepared under Part IX of Chapter 3 of the Act of Sederunt (Child Care and Maintenance Rules) 1997. It is then transmitted to the Sheriff Appeal Court (rule 30.2) and a hearing is fixed. Rule 30.3 specifies how such a hearing is to be conducted. A party who wishes to appeal the decision of the Sheriff Appeal Court must obtain leave to appeal to the Court of Session (rule 30.5).

Schedule 1 – administrative provisions

Schedule 1 contains administrative provisions about the Sheriff Appeal Court. In particular, paragraph 1 specifies the quorum of the Court for different types of business. The quorum is three Appeal Sheriffs, unless the business is of a type listed in subparagraph (3) when the quorum is one Appeal Sheriff.

Paragraph 2 specifies that every Appeal Sheriff is a procedural Appeal Sheriff, and that where the Rules provide for business to be dealt with by a procedural Appeal Sheriff, the Court may dispose of that business where it considers it appropriate to do so.

Paragraphs 3 to 5 contain technical provision about the signature of interlocutors, the form of process and decrees, extracts and execution.

Paragraph 6 makes provision for the use of Gaelic in certain circumstances.

Schedule 2 – forms

Schedule 2 contains the forms referred to in rule 1.5.