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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 245**

**Act of Adjournal (Criminal Procedure Rules 1996  
Amendment) (No. 4) (Sheriff Appeal Court) 2015**

**Amendment of the Criminal Procedure Rules 1996: appeals etc. from Sheriff Appeal Court**

3. After Chapter 19C (risk assessment) of the Criminal Procedure Rules 1996(1), insert—

**“PART IVA**

**APPEALS AND REFERRALS FROM SHERIFF APPEAL COURT**

**CHAPTER 19D**

**REFERRAL OF POINT OF LAW FOR OPINION OF THE HIGH COURT OF JUSTICIARY**

**Interpretation of this Chapter**

**19D.1.** In this Chapter—

“appeal document” has the meaning given by rule 19E.3(2);

“reference” means a reference made by the Sheriff Appeal Court to the High Court for its opinion on a point of law under section 175A(1) of the Act of 1995.

**Notice of intention to seek reference**

**19D.2.**—(1) Where a party to the appeal proceedings applies to the Sheriff Appeal Court to make a reference, that party must give notice of intention to do so to the Clerk of the Sheriff Appeal Court and to every other party.

(2) A record of that notice is to be entered in the minute of proceedings.

(3) On receiving notice—

(a) the court is to fix a diet at which parties may be heard on the application for a reference;

(b) the Clerk of the Sheriff Appeal Court must give every party to the appeal proceedings notice of the date, time and place of the diet.

**Reference proposed by the Sheriff Appeal Court on its own initiative**

**19D.3.**—(1) Where the Sheriff Appeal Court proposes to make a reference on its own initiative, it is to fix a diet at which parties may be heard on the question of whether a reference should be made.

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(1) The Criminal Procedure Rules 1996 are in Schedule 2 to the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513, last amended by S.S.I. 2015/201). Chapter 19C was inserted by S.S.I. 2006/302.

(2) The Clerk of the Sheriff Appeal Court must give every party to the appeal proceedings notice of—

- (a) the intention of the court to make a reference; and
  - (b) the date, time and place of the diet.
- (3) A record of that notice is to be entered in the minute of proceedings.

### **Preparation of a reference**

**19D.4.**—(1) After hearing parties, where the court grants an application for a reference or decides to make a reference on its own initiative, the court is to—

- (a) give reasons for that decision and cause those reasons to be recorded in the minute of proceedings;
- (b) continue the proceedings from time to time as necessary for the purposes of the reference to the High Court.

(2) The reference is to be drafted—

- (a) in Form 19D.4 unless the court directs otherwise;
- (b) in accordance with directions given by the court to the parties about the manner in which and by whom the reference is to be drafted and adjusted.

(3) The reference may be further adjusted to take account of any adjustments required by the court.

(4) After approval by the court, the Clerk of the Sheriff Appeal Court must transmit the reference to the Clerk of Justiciary, together with a certified copy of—

- (a) the minute of proceedings;
- (b) the complaint;
- (c) the appeal document.

### **Procedure before the High Court**

**19D.5.**—(1) On receipt of a reference, the High Court may make such order as it thinks fit in order to determine the reference, and in particular it may—

- (a) order that the reference be intimated on any person appearing to the High Court to have an interest, including the Lord Advocate;
- (b) order parties to lodge written submissions in such form and on such matters as it considers appropriate;
- (c) fix a diet at which parties may be heard on the reference.

(2) The Clerk of Justiciary must send to the Clerk of the Sheriff Appeal Court a certified copy of the opinion of the High Court on the reference, including any direction as to further procedure given in accordance with section 175A(3).

### **Procedure on receipt of opinion of the High Court**

**19D.6.**—(1) When the Clerk of the Sheriff Appeal Court receives the opinion of the High Court, the clerk must lay the ruling before the Sheriff Appeal Court.

(2) The Sheriff Appeal Court is then to give directions as to further procedure.

(3) The Clerk of the Sheriff Appeal Court must give every party to the appeal proceedings—

- (a) notice of those directions;

- (b) a copy of the opinion of the High Court.

## CHAPTER 19E

### APPEALS TO HIGH COURT OF JUSTICIARY

#### Forms for appeals

**19E.1.**—(1) A note of appeal under section 194ZC(1) of the Act of 1995 (appeals: applications and procedure) is to be in Form 19E.1–A.

(2) The form of minutes of procedure in an appeal under section 194ZC(1) is to be in Form 19E.1–B.

#### Lodging of appeal

**19E.2.**—(1) The note of appeal is to be lodged with the Clerk of the Sheriff Appeal Court within the period specified in section 194ZB(4) of the Act of 1995, unless that period is extended by the High Court in accordance with section 194ZB(5).

(2) On receipt of the note of appeal, the Clerk of the Sheriff Appeal Court must—

- (a) send a copy of the note to the respondent or the respondent’s solicitor;
- (b) where the judgment of the Sheriff Appeal Court appealed against is not available, obtain it from the Sheriff Appeal Court.

(3) Within two weeks of receiving the note of appeal, the Clerk of the Sheriff Appeal Court must send—

- (a) the note of appeal, together with the documents specified in rule 19E.3(1), to the Clerk of Justiciary;
- (b) the judgment of the Sheriff Appeal Court appealed against to the appellant and respondent or their solicitors.

(4) Paragraph (3)(b) does not apply if the judgment was available when the note of appeal was lodged.

(5) The President of the Sheriff Appeal Court may, on cause shown, extend the period of two weeks specified in paragraph (3), and such an extension is to be in Form 19E.2.

#### Documents to be considered in determining an application for permission

**19E.3.**—(1) Where an application for permission is being considered and determined under section 194ZD of the Act of 1995, the following documents are specified for the purposes of section 194ZF(1)(c)(ii)—

- (a) the judgment of the Sheriff Appeal Court appealed against;
- (b) the minute of proceedings—
  - (i) in the Sheriff Appeal Court;
  - (ii) in the court in which the complaint was brought;
- (c) a certified copy of the complaint;
- (d) the appeal document;
- (e) any other relevant documents sent by the clerk of court to the Clerk of the Sheriff Appeal Court under section 179(8)(b) or section 186(4)(a);
- (f) any other documents that the Clerk of the Sheriff Appeal Court considers are relevant.

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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(2) In paragraph (1), “appeal document” means the document or documents by which the appeal to the Sheriff Appeal Court was instituted, that is in an appeal under the provision mentioned in the first column of the following table, the document or documents mentioned in the second column—

<i>Provision</i>	<i>Appeal document(s)</i>
Section 32(1) or (2)	The notice of appeal and the report mentioned in section 32(3B)(b), unless the sheriff court has determined the appeal without the report in accordance with section 32(3H)(b)
Section 175(2)(a) or (d) or (3)	The stated case
Section 175(2)(b), (c) or (cza) or (4)	The note of appeal and the report mentioned in section 186(3)(b), unless the Sheriff Appeal Court has determined the appeal without the report in accordance with section 186(7)
Section 191	The bill of suspension or bill of advocation

(3) Where an application for permission is being considered and determined under section 194ZE, the following documents are specified for the purposes of section 194ZF(1)(c)(ii)—

- (a) the documents specified in paragraph (1);
- (b) the reasons in writing given under section 194ZD(3)(a).

#### **Solicitor entering appearance etc.**

**19E.4.**—(1) The solicitor for the appellant or the appellant, if unrepresented, must enter appearance within 7 days after the Clerk of Justiciary intimates that permission has been given in accordance with section 194ZF(2)(a).

(2) Appearance is entered by lodging Form 19E.4–A with the Clerk of Justiciary.

(3) Where an appellant is represented by a solicitor who does not practise in Edinburgh, that solicitor may appoint a solicitor who practises in Edinburgh to carry out the duties of solicitor for the appellant.

(4) If there is a change in representation of an appellant, the new solicitor for the appellant or the appellant, if unrepresented, must lodge Form 19E.4–B with the Clerk of Justiciary within 7 days of that change in representation.

(5) A change in representation occurs where—

- (a) an unrepresented appellant instructs a solicitor;
- (b) an appellant dismisses the appellant’s solicitor and—
  - (i) instructs another solicitor; or
  - (ii) intends to conduct the appeal in person.

#### **List of appeals**

**19E.5.**—(1) The Clerk of Justiciary must, after consultation with the Lord Justice General or the Lord Justice-Clerk, issue a list of appeals under section 194ZB of the Act of 1995 with the respective dates of hearing on the Justiciary Roll.

(2) The Clerk of Justiciary must give the respective solicitors representing parties to an appeal listed in accordance with paragraph (1) at least 14 days' notice of the date fixed for the hearing of the appeal.

#### **Intimation of determination of appeal**

**19E.6.** The Clerk of Justiciary must send the Clerk of the Sheriff Appeal Court a certified copy of the order under section 194ZH of the Act of 1995 disposing of an appeal under section 194ZB.

#### **Abandonment of appeal**

**19E.7.—(1)** A minute of abandonment under section 194ZJ of the Act of 1995 (abandonment of appeal) is to be in Form 19E.7.

(2) When a minute of abandonment is lodged, the Clerk of Justiciary must inform the Clerk of the Sheriff Appeal Court that the appeal has been abandoned.”.