
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 356

Act of Sederunt (Sheriff Appeal Court Rules) 2015

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(1) (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(2) (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;

(1) 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.

(2) 2011 asp 1.

- (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).

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.