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SCOTTISH STATUTORY INSTRUMENTS

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**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;

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(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.

## 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—

<i>Procedural step</i>	<i>Rule</i>
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.)<sup>(3)</sup>, 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);

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(3) 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.

- (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—
- (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.)<sup>(4)</sup>, 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 of the Civil Evidence (Family Mediation) (Scotland) Act 1995<sup>(5)</sup> by the Lord President of the Court of Session.

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(4) 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.

(5) 1995 c. 6.