
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 356

Act of Sederunt (Sheriff Appeal Court Rules) 2015

PART 5

INCIDENTAL PROCEDURE: STANDARD PROCEDURES

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(1) 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.

(1) 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.

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(2).

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).

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(3);

(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(4) has been approved under Part I of that Act.

(2) 2000 c. 8. Section 31 was amended by the Financial Services Act 2012 (c. 21), section 11(1).

(3) 1985 c. 66. Section 7 was last amended by the Policing and Crime Act 2009 (c. 26), Schedule 7, paragraph 47.

(4) 1986 c. 45. Section 1(1) was amended by the Enterprise Act 2002 (c. 40), Schedule 17, paragraph 10.

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.