
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 356

Act of Sederunt (Sheriff Appeal Court Rules) 2015

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 consignment 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.

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—

(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.

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

“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.

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.

(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.

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(5) to reflect the responsibility undertaken by the solicitor in the conduct of the appeal.

(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.