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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 356**

**Act of Sederunt (Sheriff Appeal Court Rules) 2015**

**PART 7**

**SPECIAL APPEAL PROCEEDINGS**

**CHAPTER 28**

**APPLICATION FOR NEW JURY TRIAL OR TO ENTER JURY VERDICT**

**Application of this Chapter**

**28.1.** This Chapter applies to an application—

- (a) for a new trial under section 69(1) of the 2014 Act;
- (b) to enter a verdict under section 71(2) of the 2014 Act.

**Form of application for new trial**

**28.2.—**(1) An application for a new trial is to be made in Form 28.2.

(2) Such an application must be made within 7 days after the date on which the jury have returned their verdict.

(3) The motion must specify the grounds on which the application is made.

(4) When an application for a new trial is lodged, the party lodging it must also lodge—

- (a) a print containing—
  - (i) the pleadings in the sheriff court process;
  - (ii) the interlocutors in the sheriff court process;
  - (iii) the issues and counter-issues;
- (b) the verdict of the jury;
- (c) any exception and the determination on it of the sheriff presiding at the trial;
- (d) a process made up in accordance with paragraph 4 of Schedule 1 (form of process).

**Application for new trial: restrictions**

**28.3.—**(1) An application for a new trial which specifies the ground in section 69(2)(a) of the 2014 Act (misdirection by sheriff) may not be made unless the procedure in rule 36B.8 of the Ordinary Cause Rules 1993(1) (exceptions to sheriff's charge) has been complied with.

(2) An application for a new trial which specifies the ground in section 69(2)(b) of the 2014 Act (undue admission or rejection of evidence) may not be made unless objection was taken to

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(1) The Ordinary Cause Rules 1993 are in Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (c. 51). Schedule 1 was substituted by S.I. 1993/1956 and last amended by S.S.I. 2015/312.

the admission or rejection of evidence at the trial and recorded in the notes of evidence under the direction of the sheriff presiding at the trial.

(3) An application for a new trial which specifies the ground in section 69(2)(c) of the 2014 Act (verdict contrary to evidence) may not be made unless it sets out in brief specific numbered propositions the reasons the verdict is said to be contrary to the evidence.

### **Applications out of time**

**28.4.**—(1) An application to allow an application for a new trial to be lodged outwith the period specified in rule 28.2(2) is to be included in the application made under rule 28.2(1).

(2) Where the procedural Appeal Sheriff allows such an application, the application for a new trial is to be received on such conditions as to expenses or otherwise as the procedural Appeal Sheriff thinks fit.

### **Timetable in application for new trial**

**28.5.**—(1) The Clerk must issue a timetable in Form 28.5 when an application is lodged under rule 28.2(1).

(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>
Referral of question about competency of application	28.7(3)
Lodging of appendices to print	28.9(1)
Giving notice that the applicant considers appendix unnecessary	28.10(1)
Lodging of notes of argument	28.11(1)
Lodging of estimates of duration of hearing of application for new trial	28.12

### **Sist of application for new trial and variation of timetable**

**28.6.**—(1) Any party may apply by motion to—

- (a) sist the application for a new trial for a specified period;
- (b) recall a sist;
- (c) vary the timetable.

(2) An application is to be determined by the procedural Appeal Sheriff.

(3) An application to sist the application for a new trial or to vary the timetable may only be granted on special cause shown.

(4) 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.
- (5) Where the procedural Appeal Sheriff makes an order sisting the application for a new trial, the Clerk is to discharge the procedural hearing fixed under rule 28.5(2) (timetable: fixing procedural hearing).
- (6) When a sist is recalled or expires, the Clerk is to—
  - (a) issue a revised timetable in Form 28.5;
  - (b) fix a procedural hearing.
- (7) Where the procedural Appeal Sheriff makes an order varying the timetable, the Clerk is to—
  - (a) discharge the procedural hearing fixed under rule 28.5(2) (timetable: fixing procedural hearing);
  - (b) issue a revised timetable in Form 28.5;
  - (c) fix a procedural hearing.

#### **Questions about competency of application**

- 28.7.**—(1) A question about the competency of an application for a new trial may be referred to the procedural Appeal Sheriff by a party, other than the applicant.
- (2) A question is referred by lodging a reference in Form 28.7.
  - (3) A question may be referred within 7 days after the date on which the application for a new trial was lodged.
  - (4) Where a reference is lodged, the Clerk is to fix a hearing and intimate the time and date of that hearing to the parties.
  - (5) Within 7 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 28.11(3) (notes of argument).
  - (7) Paragraphs (4) and (5) of rule 28.11 apply to a note of argument lodged under paragraph (5).

#### **Questions about competency: determination**

- 28.8.**—(1) At a hearing on the competency of an application for a new trial, the procedural Appeal Sheriff may—
- (a) refuse the application as incompetent;
  - (b) find the application to be competent;
  - (c) reserve the question of competency until the hearing of the application; 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 application as incompetent;
    - (b) find the application to be competent;
    - (c) reserve the question of competency until the hearing of the application.

- (4) The Court may make an order as to the expenses of the reference.

#### **Appendices to print: contents**

**28.9.**—(1) The applicant must lodge an appendix to the print mentioned in rule 28.2(4)(a) no later than 7 days before the procedural hearing, unless rule 28.10(1) (giving notice that applicant 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 application for a new trial;
- (b) the notes of evidence from the trial, if it is sought to submit them for consideration by the Court.

(3) Where the sheriff's note has not been included in the print and it subsequently becomes available, the applicant 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.

#### **Appendices to print considered unnecessary**

**28.10.**—(1) Where the applicant considers that it is not necessary to lodge an appendix, the applicant 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 applicant complies with paragraph (1), the respondent may apply by motion for an order requiring the applicant to lodge an appendix.

(3) An application under paragraph (2) must specify the documents or notes of evidence that the respondent considers should be included in the appendix.

(4) In disposing of an application under paragraph (2), the procedural Appeal Sheriff may—

- (a) grant the application and make an order requiring the applicant 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 applicant 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**

**28.11.**—(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 hearing of the application for a new trial.

(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 hearing of application for new trial**

**28.12.** The parties must lodge estimates of the duration of any hearing required to dispose of the application for a new trial in Form 28.12 not later than 7 days before the procedural hearing.

#### **Procedural hearing**

**28.13.**—(1) At the 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 a hearing of the application for a new trial; 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 a hearing of the application for a new trial;
  - (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.

#### **Application to enter jury verdict**

**28.14.**—(1) This rule applies to an application under section 71(2) of the 2014 Act (verdict subject to opinion of the Court).

- (2) Such an application is to be made in Form 28.14.
- (3) When a motion under paragraph (2) is lodged, the party lodging it must also lodge—
  - (a) a print containing—

- (i) the pleadings in the sheriff court process;
- (ii) the interlocutors in the sheriff court process;
- (iii) the issues and counter-issues;
- (b) the verdict of the jury;
- (c) any exception and the determination on it of the sheriff presiding at the trial;
- (d) a process made up in accordance with paragraph 4 of Schedule 1 (form of process).
- (4) Unless the procedural Appeal Sheriff otherwise directs—
  - (a) it is not necessary for the purposes of such a motion to print the notes of evidence; but
  - (b) the notes of the sheriff presiding at the trial may be produced at any time if required.
- (5) The procedural Appeal Sheriff may refer an application referred to in paragraph (1) to the Court in cases of complexity or difficulty.