
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 356

Act of Sederunt (Sheriff Appeal Court Rules) 2015

PART 7

SPECIAL APPEAL PROCEEDINGS

CHAPTER 27

ACCELERATED APPEAL PROCEDURE

Application of this Chapter

27.1. This Chapter applies to an appeal which has been appointed to proceed under the accelerated appeal procedure.

Hearing of appeal

27.2. The Clerk must fix a hearing and intimate the date and time of that hearing to parties when—

- (a) a provisional procedural order appointing the appeal to the accelerated appeal procedure becomes final or is confirmed; or
- (b) the Court makes an order appointing the appeal to the accelerated appeal procedure under rule 6.7(5)(b).

Application to remove appeal from accelerated appeal procedure

27.3.—(1) The procedural Appeal Sheriff may—

- (a) of the procedural Appeal Sheriff's own accord; or
- (b) on the application of any party,

order that an appeal is to proceed under the standard appeal procedure instead of the accelerated appeal procedure.

(2) The procedural Appeal Sheriff may only make such an order if the procedural Appeal Sheriff is satisfied that, taking into account the matters in rule 6.6(3), it is no longer appropriate for the appeal to proceed under the accelerated appeal procedure.

(3) That order must appoint the appeal to proceed under the standard appeal procedure and specify

- (a) the procedure to be followed in the appeal;
- (b) the periods for complying with each procedural step.

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 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.

(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.

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.

CHAPTER 29

APPEALS FROM SUMMARY CAUSES AND SMALL CLAIMS

Application of this Chapter

29.1. This Chapter applies to an appeal under section 38 of the Sheriff Courts (Scotland) Act 1971(2) arising from the decision of a sheriff in proceedings under—

- (a) the Summary Cause Rules 2002(3);
- (b) the Small Claim Rules 2002(4).

Transmission of appeal

29.2.—(1) Within 4 days after the sheriff has signed the stated case, the sheriff clerk must transmit to the Clerk—

- (a) the stated case;
- (b) all documents and productions in the case.

(2) On receipt of the stated case, the Clerk is to fix a hearing and intimate the date, time and place of that hearing to the parties.

Transmission of appeal: time to pay direction

29.3.—(1) Within 4 days after the sheriff states in writing the reasons for the sheriff's original decision in accordance with rule 25.4(4) of the Summary Cause Rules 2002 or rule 23.4(4) of the Small Claim Rules 2002, the sheriff clerk must transmit to the Clerk—

- (a) the appeal in Form 33 of the Summary Cause Rules 2002 or Form 22 of the Small Claim Rules 2002;
- (b) the sheriff's written reasons for the sheriff's original decision.

(2) On receipt of those documents, the Clerk is to fix a hearing and intimate the date, time and place of that hearing to the parties.

Hearing of appeal

29.4.—(1) The Court is to hear parties orally on all matters connected with the appeal, including liability for expenses.

(2) Any party may apply by motion for the question of liability for expenses to be heard after the Court gives its decision on the appeal.

(3) At the hearing, a party may only raise questions of law of which notice has not been given if the Court permits the party to do so.

(4) The Court may permit a party to amend any question of law or to add any new question of law.

(5) Where the Court grants permission under paragraph (3) or (4), it may do so on such conditions as to expenses or otherwise as the Court thinks fit.

(2) 1971 c. 58. Section 38 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 18(4) and is prospectively modified by S.S.I. 2015/[xxxx], article [xx].

(3) The Summary Cause Rules 2002 are in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002 (S.S.I. 2002/132, last amended by S.S.I. 2015/283).

(4) The Small Claim Rules 2002 are in Schedule 1 to the Act of Sederunt (Small Claim Rules) 2002 (S.S.I. 2002/133, last amended by S.S.I. 2015/283).

Determination of appeal

29.5.—(1) At the conclusion of the hearing, the Court may either give its decision orally or reserve judgment.

(2) Where the Court reserves judgment, it must give its decision in writing within 28 days.

(3) The Court may—

- (a) adhere to or vary the decision appealed against;
- (b) recall the decision and substitute another decision for it;
- (c) remit the matter to the sheriff for further procedure.

(4) The Court may not remit the matter to the sheriff in order that further evidence may be led.

Appeal to the Court of Session: certification

29.6.—(1) This rule applies where the Court has determined an appeal arising from the decision of a sheriff in proceedings under the Summary Cause Rules 2002.

(2) An application under section 38(b) of the Sheriff Courts (Scotland) Act 1971 for a certificate that a cause is suitable for appeal to the Court of Session is to be made in Form 29.6.

(3) Such an application must be lodged within 14 days after the date on which the Court gave its decision on the appeal.

(4) An application may only be disposed of after the procedural Appeal Sheriff has heard parties on it.

CHAPTER 30

APPEALS BY STATED CASE UNDER PART 15 OF THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

Application and interpretation of this Chapter

30.1.—(1) This Chapter applies to an appeal by stated case under section 163(1), 164(1), section 165(1) and 167(1) of the Children's Hearings (Scotland) Act 2011⁽⁵⁾.

(2) In this Chapter, "parties" means the parties specified in rule 3.59(2) of the Act of Sederunt (Child Care and Maintenance Rules) 1997⁽⁶⁾.

Transmission of appeal

30.2.—(1) Within 4 days after the sheriff has signed the stated case, the sheriff clerk must transmit to the Clerk—

- (a) the stated case;
- (b) all documents and productions in the case.

(2) On receipt of the stated case, the Clerk is to fix a hearing and intimate the date, time and place of that hearing to the parties.

Hearing of appeal

30.3.—(1) At the hearing, a party may only raise questions of law or procedural irregularities of which notice has not been given if the Court permits the party to do so.

(5) 2011 asp 1. There are amendments to Part 15 which are not relevant to this Act of Sederunt.

(6) 1997/291, last amended by S.S.I. 2015/283. Rule 3.59 was last amended by S.S.I. 2013/172

(2) Where the Court grants permission, it may do so on such conditions as to expenses or otherwise as the Court thinks fit.

Determination of appeal

30.4.—(1) At the conclusion of the hearing, the Court may either give its decision orally or reserve judgment.

(2) Where the Court reserves judgment, it must give its decision in writing within 28 days.

Leave to appeal to the Court of Session

30.5.—(1) This rule applies to applications for leave to appeal to the Court of Session under section 163(2), 164(2) or 165(2) of the Children’s Hearings (Scotland) Act 2011.

(2) An application is to be made in Form 30.5.

(3) Such an application must be lodged within 7 days after the date on which the Court gave its decision on the appeal.

(4) On receipt of an application, the Clerk must—

- (a) fix a hearing to take place before the procedural Appeal Sheriff no later than 14 days after the application is received;
- (b) intimate the date, time and place of that hearing to the parties.