

## SCHEDULE 4

Rule 1.5

### MISCELLANEOUS AND GENERAL MATTERS

#### **Lodging**

1.—(1) Where these Rules require something to be lodged or the sheriff orders something to be lodged, it must be lodged with the sheriff clerk.

(2) Something may be lodged by—

- (a) delivering it personally to the sheriff clerk's office;
- (b) delivering it to a document exchange of which the sheriff clerk is a member;
- (c) delivering it using a postal service which seeks to deliver documents or other things by post no later than the next working day in all or the majority of cases;
- (d) fax; or
- (e) another method ordered by the sheriff.

#### **Live links**

2.—(1) In this rule—

“live link” means—

- (a) a live television link; or
- (b) where the sheriff gives permission, an alternative arrangement; and

“submission” means any oral submission which would otherwise be made to the sheriff by a participant or that participant's representative, including an oral submission in support of an application.

(2) A participant may apply to the sheriff to use a live link to make a submission or to present information.

(3) Where a participant seeks to use an alternative arrangement, the application must specify the proposed arrangement.

(4) The sheriff must not grant an application to use an alternative arrangement unless the person using the live link is able to—

- (a) be heard in the courtroom; and
- (b) hear the proceedings in the courtroom.

#### *Reporting restrictions*

#### **Reporting restrictions: interpretation and application**

3.—(1) Paragraphs 4 to 7 apply to orders which restrict the reporting of proceedings, whether under section 22(2) (publishing restrictions in relation to children) or otherwise.

(2) In those paragraphs, “interested person” means a person—

- (a) who has asked to see any order made by the sheriff which restricts the reporting of proceedings, including an interim order; and
- (b) whose name is included on a list kept by the Lord President of the Court of Session for the purposes of paragraphs 4 to 7.

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#### **Interim orders: notification to interested persons**

- 4.—(1) Where the sheriff is considering making an order, the sheriff may make an interim order.
- (2) Where the sheriff makes an interim order, the sheriff clerk must immediately send a copy of the interim order to any interested person.
- (3) The sheriff is to specify in the interim order why the sheriff is considering making an order.

#### **Interim orders: representations**

- 5.—(1) Subparagraph (2) applies where the sheriff has made an interim order.
- (2) An interested person who would be directly affected by the making of an order is to be given an opportunity to make representations to the sheriff before the order is made.
- (3) Representations are to—
  - (a) be made in Form S4.5;
  - (b) include reasons why an urgent hearing is necessary, if an urgent hearing is sought; and
  - (c) be lodged no later than 2 days after the interim order is sent to interested persons.
- (4) If representations are made—
  - (a) the sheriff is to appoint a date and time for a hearing—
    - (i) on the first suitable court day; or
    - (ii) where the sheriff considers that an urgent hearing is necessary, at an earlier date and time;
  - (b) the sheriff clerk must—
    - (i) notify the date and time of the hearing to the participants to the proceedings and any person who has made representations; and
    - (ii) send a copy of the representations to the participants.
- (5) Where no interested person makes representations in accordance with paragraph (3), the sheriff clerk is to put the interim order before the sheriff in chambers in order that the sheriff may resume consideration of whether to make an order.
- (6) Where the sheriff, having resumed consideration, makes no order, the sheriff must recall the interim order.
- (7) Where the sheriff recalls an interim order, the sheriff clerk must immediately notify any interested person.

#### **Notification of reporting restrictions**

6. Where the sheriff makes an order, the sheriff clerk must immediately—
  - (a) send a copy of the order to any interested person; and
  - (b) arrange for the publication of the making of the order on SCTS's website.

#### **Applications for variation or revocation**

- 7.—(1) A person aggrieved by an order may apply to the sheriff for its variation or revocation.
- (2) An application is to be made in Form S4.7.
- (3) When an application is made—
  - (a) the sheriff is to appoint a date and time for a hearing; and
  - (b) the sheriff clerk must—

- (i) notify the date and time of the hearing to the participants to the proceedings and the applicant; and
  - (ii) send a copy of the application to the participants.
- (4) The hearing is, so far as reasonably practicable, to be before the sheriff who made the order.

#### *The style of oath and affirmation*

#### **Oaths**

8. The style of the oath is—  
“I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth”.

#### **Affirmations**

9. The style of the affirmation is—  
“I solemnly, sincerely and truly declare and affirm that I will tell the truth, the whole truth and nothing but the truth”.

#### *Interventions*

#### **Interventions by the Commission for Equality and Human Rights and the Scottish Commission for Human Rights**

10. Paragraphs 11 to 14 apply to—
- (a) interventions in legal proceedings by the Commission for Equality and Human Rights under section 30(1) of the Equality Act 2006<sup>(1)</sup>;
  - (b) interventions in civil proceedings by the Scottish Commission for Human Rights under section 14(2) of the Scottish Commission for Human Rights Act 2006<sup>(2)</sup>.

#### **Applications to intervene**

- 11.—(1) An application for leave to intervene is to be made in writing.
- (2) The participants or the applicant may request a hearing on the application to intervene within 14 days after the application is lodged.
- (3) Where a hearing is requested—
- (a) the sheriff is to appoint a date and time for a hearing;
  - (b) the sheriff clerk must notify the date and time of the hearing to the participants and the applicant.
- (4) Where no hearing is requested, the sheriff may appoint a date and time for a hearing of the sheriff’s own accord and the sheriff clerk must notify the date and time of the hearing to the participants and the applicant.

#### **Determination of applications**

- 12.—(1) The sheriff may determine an application for leave to intervene without a hearing, unless a hearing is fixed under paragraph 11(3) or (4).

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(1) 2006 c.3.  
(2) 2006 asp 16.

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(2) In an application for leave to intervene under section 30(1) of the Equality Act 2006, the sheriff may grant leave only if satisfied that the proposed submissions are likely to assist the sheriff.

(3) Where the sheriff grants leave to intervene, the sheriff may impose any conditions that the sheriff considers desirable in the interests of the efficient administration of the inquiry.

(4) When an application is determined, the sheriff clerk must notify the participants and the applicant of the outcome.

### **Invitations to intervene**

**13.**—(1) An invitation to intervene under section 14(2)(b) of the Scottish Commission for Human Rights Act 2006(3) is to be in writing.

(2) The sheriff clerk must send a copy of the invitation to the participants and to the Scottish Commission for Human Rights together with—

- (a) a copy of the first order; and
- (b) any other documents relating to the inquiry that the sheriff considers to be relevant.

(3) Where the sheriff invites the intervention, the sheriff may impose any conditions that the sheriff considers desirable to further the purpose of the inquiry.

### **Form of intervention**

**14.**—(1) An intervention is by written submission.

(2) A written submission (including any appendices) must not exceed 5,000 words.

(3) The intervener must lodge the written submission within such time as the sheriff may direct.

(4) In exceptional circumstances, the sheriff may allow—

- (a) a written submission exceeding 5,000 words to be made;
- (b) an oral submission to be made.

(5) Where the sheriff allows an oral submission to be made, the sheriff is to appoint a date and time for the submission to be made.

(6) The sheriff clerk must notify that date and time to the participants and the intervener.

### *Lay representation and support*

#### **Lay representation: applications**

**15.**—(1) In paragraphs 15 to 18 a reference to a participant is a reference to a participant other than a procurator fiscal.

(2) A participant who is an individual may be represented by a lay representative.

(3) A participant is represented by a lay representative if that participant is represented by a person who is not a solicitor or an advocate.

(4) A participant may apply to the sheriff for permission to be represented by a lay representative.

(5) The sheriff may grant an application only if it is considered that it would assist the effective administration of the inquiry to do so.

(6) Where the sheriff grants permission, the sheriff may—

- (a) do so in respect of one or more specified hearings; and

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(3) 2006 c.42.

- (b) withdraw permission of the sheriff's own accord or on the application of any participant.

**Lay representation: functions, conditions and duties**

16.—(1) A participant must appear along with the lay representative at any hearing where the lay representative is to make oral submissions.

(2) A participant may show any document or communicate any information about the inquiry proceedings to that participant's lay representative without contravening any prohibition or restriction on disclosure of the document or information.

(3) Where a document or information is disclosed under subparagraph (2), the lay representative is subject to any prohibition or restriction on disclosure in the same way that the participant is.

(4) A lay representative must not receive directly or indirectly from the participant any remuneration or other reward for assisting the participant.

**Lay support: application**

17.—(1) A participant who is an individual may apply to the sheriff for permission for a named person to assist the participant in the conduct of inquiry proceedings, and such a person is to be known as a lay supporter.

(2) The sheriff may refuse an application only if in the sheriff's opinion—

- (a) the named person is an unsuitable person to act as a lay supporter (whether generally or in the proceedings concerned); or
- (b) it would be contrary to the efficient administration of the inquiry to grant it.

(3) The sheriff, if satisfied that it would be contrary to the efficient administration of the inquiry for permission to continue, may withdraw permission—

- (a) of the sheriff's own accord; or
- (b) on the application of any participant.

**Lay support: functions, conditions and duties**

18.—(1) A lay supporter may assist a participant by accompanying the participant at inquiry hearings.

(2) A lay supporter may, if authorised by the participant, assist the participant by—

- (a) providing moral support;
- (b) helping to manage inquiry documents and other papers;
- (c) taking notes of the inquiry proceedings; and
- (d) quietly advising on—
  - (i) points of law and procedure; and
  - (ii) issues which the participant might wish to raise with the sheriff.

(3) A participant may show any document or communicate any information about the inquiry proceedings to that participant's lay supporter without contravening any prohibition or restriction on disclosure of the document or information.

(4) Where a document or information is disclosed under subparagraph (3), the lay supporter is subject to any prohibition or restriction on disclosure in the same way that the participant is.

(5) A lay supporter must not receive directly or indirectly from the participant any remuneration or other reward for assisting the participant.

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### *Lay representation for non-natural persons*

#### **Interpretation**

**19.**—(1) In paragraphs 19 to 22—

“authorisation document” means a document executed by a non-natural person of a type mentioned in the first column of the following table authorising an individual holding the relevant position mentioned in the corresponding second column to act as its lay representative—

<i>Type of non-natural person</i>	<i>Relevant position</i>
a company	a director or a secretary of the company
a limited liability partnership	a member of the limited liability partnership
any other partnership	a partner in the partnership
an unincorporated association of persons	a member or office holder of the association

“non-natural person” means—

- (a) a company (whether incorporated in the United Kingdom or elsewhere);
- (b) a limited liability partnership;
- (c) any other partnership; or
- (d) an unincorporated association of persons;

“lay representative” means an individual who is not a legal representative; and

“legal representative” means—

- (a) a solicitor;
- (b) an advocate; or
- (c) a person having a right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990<sup>(4)</sup>.

(2) An individual holds a relevant position with a non-natural person if the individual—

- (a) in the case of a company, is a director or secretary of the company;
- (b) in the case of a limited liability partnership, is a member of the partnership;
- (c) in the case of any other partnership, is a partner in the partnership; or
- (d) in the case of an unincorporated association, is a member or office holder of the association.

(3) References to conducting proceedings are references to exercising, in relation to the proceedings, a function or right (including a right of audience) that a legal representative could exercise in the proceedings.

#### **Lay representation of non-natural persons at inquiries**

**20.**—(1) This section applies where a non-natural person is a participant at an inquiry.

(2) A lay representative may, if the sheriff grants permission, conduct the inquiry proceedings on behalf of the non-natural person.

(3) The sheriff may grant permission if satisfied that—

<sup>(4)</sup> 1990 c.40.

- (a) the non-natural person is unable to pay for the services of a legal representative to conduct the inquiry proceedings;
  - (b) the lay representative is a suitable person to conduct the inquiry proceedings; and
  - (c) it is in the interests of justice to grant permission.
- (4) For the purposes of subparagraph (3)(b), a lay representative is a suitable person to conduct the proceedings if—
- (a) the lay representative holds a relevant position with the non-natural person;
  - (b) the responsibilities of the lay representative in that position do not consist wholly or mainly of conducting legal proceedings on behalf of the non-natural person or another person;
  - (c) the lay representative is authorised by the non-natural person to conduct the inquiry proceedings;
  - (d) the lay representative does not have a personal interest in the subject matter of the inquiry proceedings; and
  - (e) the lay representative is not the subject of an order of the sheriff preventing a lay representative from conducting any proceedings before any sheriff on behalf of non-natural persons.
- (5) In subparagraph (4)(d), “personal interest” means an interest other than one that anyone holding the position that the lay representative holds with the non-natural person would have.
- (6) For the purposes of subparagraph (3)(c), in deciding whether it is in the interests of justice to grant permission, the sheriff must have regard, in particular, to—
- (a) the non-natural person’s interest in the inquiry proceedings; and
  - (b) the likely complexity of the inquiry proceedings.

### **Applications for authorisation of lay representatives for non-natural persons**

- 21.**—(1) An application for permission for a lay representative to conduct proceedings on behalf of a non-natural person is to be made in Form S4.21.
- (2) The application must be accompanied by an authorisation document.
  - (3) An application may be considered in chambers and without hearing the participants.
  - (4) Where the sheriff grants an application, the sheriff may—
    - (a) do so in respect of one or more specified hearings;
    - (b) withdraw permission of the sheriff’s own accord or on the application of a participant.

### **Lay representation of non-natural persons: functions, conditions and duties**

- 22.**—(1) A lay representative may be shown any document (including a court document) or receive any information about the inquiry proceedings without the non-natural person, or any of its office holders or employees, contravening any prohibition or restriction on disclosure of the document or information.
- (2) Where a document or information is disclosed under subparagraph (1), the lay representative is subject to any prohibition or restriction on disclosure in the same way that the non-natural person is.
- (3) The sheriff, of the sheriff’s own accord or on the application of a participant, may impose conditions on the exercise of functions by a lay representative, where it is necessary to do so in the interests of justice.

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