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STATUTORY INSTRUMENTS

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**1997 No. 291**

**Act of Sederunt (Child Care and Maintenance Rules) 1997**

**CHAPTER 3**

**CHILDREN (SCOTLAND) ACT 1995**

**PART IX**

**PROCEDURE IN APPEALS UNDER SECTION 51(11) OF THE ACT**

**Appeals**

**3.59.**—(1) An appeal to the sheriff principal under section 51(11) of the Act shall be by note of appeal—

- (a) requesting a stated case;
- (b) specifying the point of law upon which the appeal is to proceed or the irregularity in the conduct of the case concerned, as the case may be; and
- (c) lodged with the sheriff clerk within a period of 14 days beginning with the date of the decision appealed against.

(2) The appellant shall, at the same time as lodging a note of appeal, intimate the lodging of an appeal from the decision of the sheriff—

- (a) in the case of an appeal under section 51(1) of the Act, to the parties referred to in rule 3.58(4);
- (b) in the case of an application made under section 65(7) or (9) of the Act, to the parties referred to in rule 3.51(2); and
- (c) in the case of an application made under section 85(1) of the Act (review of establishment of grounds of referral), to the parties referred to in rule 3.62.

(3) The sheriff shall, within 14 days of the lodging of a note of appeal, issue a draft stated case—

- (a) containing findings in fact and law or, where appropriate, a narrative of the proceedings before him;
- (b) containing appropriate questions of law or setting out the irregularity concerned; and
- (c) containing a note stating the reasons for his decisions in law,

and the sheriff clerk shall send a copy of the draft stated case to the appellant and to parties referred to in paragraph (2).

(4) Within 7 days of the issue of the draft stated case—

- (a) the appellant or a party referred to in paragraph (2) may lodge with the sheriff clerk a note of any adjustments which he seeks to make;
- (b) the appellant or such a party may state any point of law which he wishes to raise in the appeal; and

(c) the note of adjustment and, where appropriate, point of law shall be intimated to the appellant and the other such parties.

(5) The sheriff may, on the motion of the appellant or a party referred to in paragraph (2) or of his own accord, and shall where he proposes to reject any proposed adjustment, allow a hearing on adjustments and may provide for such further procedure under this rule prior to the hearing of the appeal as he thinks fit.

(6) The sheriff shall, within 14 days after—

(a) the latest date on which a note of adjustments has been or may be lodged; or

(b) where there has been a hearing on adjustments, that hearing,

and after considering such note and any representations made to him at the hearing, state and sign the case.

(7) The stated case signed by the sheriff shall include—

(a) questions of law, framed by him, arising from the points of law stated by the parties and such other questions of law as he may consider appropriate;

(b) any adjustments, proposed under paragraph (4), which are rejected by him;

(c) a note of the irregularity in the conduct of the case averred by the parties and any questions of law or other issue which he considers arise therefrom,

as the case may be.

(8) After the sheriff has signed the stated case, the sheriff clerk shall—

(a) place before the sheriff principal all documents and productions in the appeal together with the stated case; and

(b) send to the appellant and the parties referred to in paragraph (2) a copy of the stated case together with a written note of the date, time and place of the hearing of the appeal.

(9) In the hearing of an appeal, a party referred to in paragraph (2) shall not be allowed to raise questions of law or irregularities in the conduct of the case of which notice has not been given except on cause shown and subject to such conditions as the sheriff principal may consider appropriate.

(10) The sheriff may, on an application by any party or of his own motion, reduce any of the periods mentioned in paragraph (3), (4) or (6) to such period or periods as he considers reasonable.

(11) Where the sheriff is temporarily absent from duty for any reason, the sheriff principal may extend any period specified in paragraph (3) or (6) for such period or periods as he considers reasonable.

### **Lodging of reports and statements with sheriff**

**3.60.** Where, in an appeal—

(a) it appears to the sheriff that any report or statement lodged under section 51(2) or (3) of the Act is relevant to any issue which is likely to arise in the stated case; and

(b) the report or statement has been returned to the Principal Reporter,

the sheriff may require the Principal Reporter to lodge the report or statement with the sheriff clerk.

### **Hearing**

**3.61.—**(1) The sheriff principal, on hearing the appeal, may either pronounce his decision or reserve judgement.

(2) Where judgement is so reserved, the sheriff principal shall within 28 days give his decision in writing which shall be intimated by the sheriff clerk to the parties.