



# Courts Reform (Scotland) Act 2014

## 2014 asp 18

### PART 5

#### CIVIL APPEALS

##### *Appeals to the Sheriff Appeal Court*

#### **109 Abolition of appeal from a sheriff to the sheriff principal**

- (1) No appeal may be taken to the sheriff principal against any decision of a sheriff in civil proceedings.
- (2) Subsection (3) applies to any provision of any pre-commencement enactment that—
  - (a) provides for an appeal to the sheriff principal from any decision of a sheriff in civil proceedings, or
  - (b) restricts or excludes any such appeal.
- (3) The provision has effect as if for the reference to the sheriff principal there were substituted a reference to the Sheriff Appeal Court.
- (4) In subsection (2), “pre-commencement enactment” means an enactment passed or made before this section comes into force.

#### **110 Appeal from a sheriff to the Sheriff Appeal Court**

- (1) An appeal may be taken to the Sheriff Appeal Court, without the need for permission, against—
  - (a) a decision of a sheriff constituting final judgment in civil proceedings, or
  - (b) any decision of a sheriff in civil proceedings—
    - (i) granting, refusing or recalling an interdict, whether interim or final,
    - (ii) granting interim decree for payment of money other than a decree for expenses,
    - (iii) making an order ad factum praestandum,
    - (iv) sisting an action,
    - (v) allowing, refusing or limiting the mode of proof, or

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(vi) refusing a reponing note.

- (2) An appeal may be taken to the Sheriff Appeal Court against any other decision of a sheriff in civil proceedings if the sheriff, on the sheriff's own initiative or on the application of any party to the proceedings, grants permission for the appeal.
- (3) In an appeal to the Sheriff Appeal Court, the Court may allow further proof.
- (4) This section does not affect any other right of appeal to the Sheriff Appeal Court under any other enactment.
- (5) This section does not affect any right of appeal against any decision of a sheriff to the Court of Session under any other enactment.
- (6) This section is subject to any provision of this or any other enactment that restricts or excludes a right of appeal from a sheriff to the Sheriff Appeal Court.

### **111 Sheriff Appeal Court's powers of disposal in appeals**

- (1) In determining an appeal under section 110, the Court has power to—
  - (a) grant such disposal as the Court sees fit, including by (in whole or in part)—
    - (i) adhering to the decision that is subject to the appeal,
    - (ii) recalling the decision,
    - (iii) varying the decision,
    - (iv) remitting the case back to the sheriff,
    - (v) dismissing the appeal,
  - (b) make such incidental or interim orders as may be necessary, and
  - (c) determine any incidental or other issue that needs to be determined for the purpose of doing justice in the appeal.
- (2) Subsection (1)—
  - (a) does not affect the generality of section 47(3), but
  - (b) is subject to any other provision of this Act or any other enactment that restricts or excludes any power of the Court in determining or disposing of an appeal.

### **112 Remit of appeal from the Sheriff Appeal Court to the Court of Session**

- (1) This section applies in relation to an appeal to the Sheriff Appeal Court against a decision of a sheriff in civil proceedings.
- (2) The Sheriff Appeal Court may—
  - (a) on the application of a party to the appeal, and
  - (b) if satisfied that the appeal raises a complex or novel point of law,
 remit the appeal to the Court of Session.
- (3) Where an appeal is remitted to the Court of Session under subsection (2), the Court of Session may deal with and dispose of the appeal as if it had originally been made direct to that Court.

### *Appeals to the Court of Session*

#### **113 Appeal from the Sheriff Appeal Court to the Court of Session**

- (1) An appeal may be taken to the Court of Session against a decision of the Sheriff Appeal Court constituting final judgment in civil proceedings, but only—
  - (a) with the permission of the Sheriff Appeal Court, or
  - (b) if that Court has refused permission, with the permission of the Court of Session.
- (2) The Sheriff Appeal Court or the Court of Session may grant permission under subsection (1) only if the Court considers that—
  - (a) the appeal would raise an important point of principle or practice, or
  - (b) there is some other compelling reason for the Court of Session to hear the appeal.
- (3) This section does not affect any other right of appeal against any decision of the Sheriff Appeal Court to the Court of Session under any other enactment.
- (4) This section is subject to any provision of any other enactment that restricts or excludes a right of appeal from the Sheriff Appeal Court to the Court of Session.

#### **114 Appeal from the sheriff principal to the Court of Session**

- (1) An appeal may be taken to the Court of Session against a decision of a sheriff principal constituting a final judgment in relevant civil proceedings.
- (2) This section does not affect any other right of appeal against any decision of a sheriff principal to the Court of Session under any other enactment.
- (3) This section is subject to any provision of any other enactment that restricts or excludes any right of appeal from a sheriff principal to the Court of Session.
- (4) In subsection (1), “relevant civil proceedings” means civil proceedings (other than an appeal) under an enactment that provides for the proceedings to be brought before a sheriff principal rather than a sheriff.

#### **115 Appeals: granting of leave or permission and assessment of grounds of appeal**

In the Court of Session Act 1988, after section 31 insert—

##### **“31A Power to provide for single judge of Inner House to determine leave or permission and assess grounds of appeal**

- (1) The Court may by act of sederunt provide for any applications to the Court for leave or permission to appeal to the Inner House to be determined by a single judge of the Inner House.
- (2) The Court may by act of sederunt provide for—
  - (a) any appeal proceedings to be considered initially (and, where required, after leave or permission to appeal has been granted) by a single judge of the Inner House, and

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- (b) for the single judge to decide, by reference to whether the grounds of appeal or any of them are arguable—
    - (i) whether the appeal proceedings should be allowed to proceed in the Inner House, and
    - (ii) if so, on which grounds.
- (3) An act of sederunt under subsection (1) or (2)—
  - (a) must include provision—
    - (i) about the procedure to be followed in the proceedings before the single judge, including provision for the parties to be heard before the judge makes a decision,
    - (ii) for review, on the application of any party to the proceedings, of the decision of the single judge by a Division of the Inner House,
    - (iii) about the grounds on which the decision may be so reviewed,
    - (iv) about the procedure to be followed in such a review,
    - (v) about the matters that may be considered in such a review and the powers available to the Division on disposing of the review, and
  - (b) may make different provision in relation to different types of—
    - (i) applications for leave or permission,
    - (ii) appeal proceedings.
- (4) Subject to any provision made in an act of sederunt by virtue of subsection (3)(a)(ii) to (v), the decision of any single judge under an act of sederunt under subsection (1) or (2) is final.
- (5) Subsection (6) applies in appeal proceedings in which—
  - (a) a single judge has granted leave or permission for the appeal by virtue of subsection (1), and
  - (b) the judge’s decision is subject to review by a Division of the Inner House by virtue of subsection (3)(a)(ii).
- (6) Where this subsection applies, the reference in subsection (2)(a) to leave or permission to appeal having been granted is a reference to its having been confirmed following review by the Division of the Inner House.
- (7) In subsection (2)(a), “appeal proceedings” means proceedings on—
  - (a) a reclaiming application under section 28 (reclaiming against decisions of a Lord Ordinary),
  - (b) an application under section 29 (application for a new trial),
  - (c) an application under section 31 (application to overturn jury verdict),
  - (d) an appeal from the Sheriff Appeal Court under section 113 of the Courts Reform (Scotland) Act 2014,
  - (e) an appeal from a sheriff principal under section 114 of that Act,
  - (f) any other appeal taken to the Court (whether under an enactment or otherwise).”.

### *Effect of appeal*

#### **116 Effect of appeal**

- (1) This section applies to—
  - (a) an appeal to the Sheriff Appeal Court under section 110 (including such an appeal remitted to the Court of Session under section 112), and
  - (b) an appeal to the Court of Session under section 113 or 114.
- (2) In the appeal, all prior decisions in the proceedings (whether made at first instance or at any stage of appeal) are open to review.
- (3) Any party to the proceedings may insist in the appeal even though the party is not the one who initiated the appeal.
- (4) An appeal to which this section applies does not prevent the immediate execution of any of the following, which may continue to have effect despite the appeal until recalled—
  - (a) a warrant to take inventories,
  - (b) a warrant to place effects in custody for the interim,
  - (c) a warrant for interim preservation,
  - (d) an interim interdict.

### *Appeals to the Supreme Court*

#### **117 Appeals to the Supreme Court**

In the Court of Session Act 1988, for section 40 (appeals to the Supreme Court: appealable interlocutors) substitute—

##### **“40 Appeals to the Supreme Court**

- (1) An appeal may be taken to the Supreme Court against a decision of the Inner House mentioned in subsection (2), but only—
  - (a) with the permission of the Inner House, or
  - (b) if the Inner House has refused permission, with the permission of the Supreme Court.
- (2) The decisions are—
  - (a) a decision constituting final judgment in any proceedings,
  - (b) a decision in an exchequer cause,
  - (c) a decision, on an application under section 29, to grant or refuse a new trial in any proceedings,
  - (d) any other decision in any proceedings if—
    - (i) there is a difference of opinion among the judges making the decision, or
    - (ii) the decision is one sustaining a preliminary defence and dismissing the proceedings.

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- (3) An appeal may be taken to the Supreme Court against any other decision of the Inner House in any proceedings, but only with the permission of the Inner House.
- (4) In an appeal against a decision mentioned in subsection (2)(c), the Supreme Court has the same powers as the Inner House had in relation to the application under section 29, including, in particular, the powers under sections 29(3) and 30(3).
- (5) No appeal may be taken to the Supreme Court against any decision of a Lord Ordinary.
- (6) But subsection (5) does not affect the operation of subsections (1) and (3) in relation to a decision of the Inner House in a review of a decision of a Lord Ordinary.
- (7) In an appeal to the Supreme Court under this section against a decision of the Inner House in any proceedings, all prior decisions in the proceedings (whether made at first instance or at any stage of appeal) are open to review by the Supreme Court.
- (8) This section is subject to—
  - (a) sections 27(5) and 32(5),
  - (b) any provision of any other enactment that restricts or excludes an appeal from the Court of Session to the Supreme Court.
- (9) This section does not affect any right of appeal from the Court of Session to the Supreme Court that arises apart from this section.
- (10) In this section—
  - “final judgment”, in relation to any proceedings, means a decision which, by itself or taken along with prior decisions in the proceedings, disposes of the subject matter of the proceedings on its merits, even though judgment may not have been pronounced on every question raised or expenses found due may not have been modified, taxed or decerned for,
  - “preliminary defence”, in relation to any proceedings, means a defence that does not relate to the merits of the proceedings.

#### **40A Permission for appeal under section 40**

- (1) An application to the Inner House for permission to take an appeal under section 40(1) or (3) must be made—
  - (a) within the period of 28 days beginning with the date of the decision against which the appeal is to be taken, or
  - (b) within such longer period as the Inner House considers equitable having regard to all the circumstances.
- (2) An application to the Supreme Court for permission to take an appeal under section 40(1) must be made—
  - (a) within the period of 28 days beginning with the date on which the Inner House refuses permission for the appeal, or
  - (b) within such longer period as the Supreme Court considers equitable having regard to all the circumstances.

- (3) The Inner House or the Supreme Court may grant permission for an appeal under section 40(1) or (3) only if the Inner House or, as the case may be, the Supreme Court considers that the appeal raises an arguable point of law of general public importance which ought to be considered by the Supreme Court at that time.”