
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 468

Act of Sederunt (Sheriff Appeal Court Rules) 2021

PART 2

GENERAL PROVISIONS

CHAPTER 2

RELIEF FOR FAILURE TO COMPLY

Relief for failure to comply with rules

2.1.—(1) The Court may relieve a party from the consequences of a failure to comply with a provision in these Rules.

- (2) The Court may do so only where the party shows that the failure is due to—
- (a) mistake;
 - (b) oversight; or
 - (c) any other excusable cause.
- (3) Where relief is granted, the Court may—
- (a) impose conditions that must be satisfied before relief is granted;
 - (b) make an order to enable the appeal to proceed as if the failure had not occurred.

CHAPTER 3

SANCTIONS FOR FAILURE TO COMPLY

Circumstances where a party is in default

3.1. A party is in default if that party fails—

- (a) to comply with the timetable;
- (b) to implement an order of the Court within the period specified in the order;
- (c) to appear or be represented at any hearing; or
- (d) otherwise to comply with any requirement imposed on that party by these Rules.

Sanctions where a party is in default

3.2.—(1) This rule—

- (a) applies where a party is in default;
 - (b) but does not apply where a party is in default because the party has failed to comply with rule 18.4(1).
- (2) The Court may make any order to secure the expeditious disposal of the appeal.
- (3) In particular, the Court may either—

- (a) refuse the appeal, where the party in default is the appellant; or
- (b) allow the appeal, if the condition in paragraph (4) is satisfied, where either—
 - (i) the party in default is the sole respondent; or
 - (ii) every respondent is in default.
- (4) The condition is that the appellant must show cause why the appeal should be allowed.

CHAPTER 4

REPRESENTATION AND SUPPORT

Representation and support

- 4.1.—(1) A natural person who is a party to proceedings may appear and act on that party’s behalf.
- (2) That person is to be known as a party litigant.
- (3) A party may be represented in any proceedings by—
 - (a) a legal representative (see rule 4.2); or
 - (b) a lay representative (see rule 4.3).
- (4) A lay supporter (see rule 4.5) may assist a party litigant with the conduct of any proceedings.

Legal representation

4.2. A party is represented by a legal representative if that party is represented by an advocate or a solicitor.

Lay representation: applications

- 4.3.—(1) This rule does not apply where any other enactment makes provision for a party to a particular type of case to be represented by a lay representative.
- (2) A party is represented by a lay representative if that party is represented by a person who is not a legal representative.
- (3) A party litigant may apply to the Court for permission to be represented by a lay representative.
- (4) An application is to be—
 - (a) made by motion;
 - (b) accompanied by a document in Form 4.3 signed by the prospective lay representative.
- (5) The Court may grant an application only if it considers that it would be in the interests of justice to do so.
- (6) Where the Court grants permission, it may—
 - (a) do so in respect of one or more specified hearings;
 - (b) withdraw permission of its own accord or on the motion of any party.

Lay representation: functions, conditions and duties

- 4.4.—(1) A lay representative may represent a party at any hearing at which permission has been granted under rule 4.3 or where any other enactment makes provision for a party to be represented by a lay representative.
- (2) The party must appear along with the lay representative at any hearing where the lay representative is to represent the party.

(3) Where permission is granted under rule 4.3, the lay representative may do anything in the preparation or conduct of the hearing that the party may do.

(4) A party may show any document (including a court document) or communicate any information about the proceedings to that party's lay representative without contravening any prohibition or restriction on the disclosure of the document or information.

(5) Where a document or information is disclosed under paragraph (4), the lay representative is subject to any prohibition or restriction on the disclosure in the same way that the party is.

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

(7) Any expenses incurred by a party in connection with a lay representative are not recoverable expenses in the proceedings.

Lay support: applications

4.5.—(1) A party litigant may apply to the Court for permission for a named person to assist the party litigant in the conduct of proceedings, and such a person is to be known as a lay supporter.

(2) An application is to be made by motion.

(3) The Court may refuse an application only if it is of the opinion that—

(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 justice to grant it.

(4) The Court, if satisfied that it would be contrary to the efficient administration of justice for permission to continue, may withdraw permission—

(a) of its own accord; or

(b) on the motion of any party.

Lay support: functions, conditions and duties

4.6.—(1) A lay supporter may assist a party by accompanying the party at hearings in court or in chambers.

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

(a) providing moral support;

(b) helping to manage court documents and other papers;

(c) taking notes of the proceedings;

(d) quietly advising on—

(i) points of law and procedure;

(ii) issues which the party litigant might wish to raise with the Court.

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

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

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

(6) Any expenses incurred by a party in connection with a lay supporter are not recoverable expenses in the proceedings.

CHAPTER 5
INTIMATION AND LODGING ETC.

Interpretation of this Chapter

5.1.—(1) In this Chapter—

“first class post” means 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;

“intimating party” means any party who has to give intimation in accordance with rule 5.2(1);

“receiving party” means any party to whom intimation is to be given in accordance with rule 5.2;

“recorded delivery” means a postal service which provides for the delivery of documents or other things by post to be recorded.

(2) Where this Chapter authorises intimation to be given by electronic means—

(a) intimation may only be given by this method if the intimating party and the solicitor for the receiving party have notified the Court that they will accept intimation by electronic means at a specified email address;

(b) the intimation is to be sent to the specified email address of the solicitor for the receiving party.

(3) Where this Chapter authorises a document to be lodged by electronic means, it must be sent to the email address of the Court.

Intimation

5.2.—(1) Unless the Court orders otherwise, where—

(a) any provision in these Rules requires a party to—

(i) lodge any document;

(ii) intimate any other matter; or

(b) the Court orders a party to intimate something,

intimation must be given to every other party.

(2) Where intimation relates to the lodging of a document, a copy of that document must be provided at the same time as intimation is made.

(3) Where the Court makes an order, the Clerk is to intimate the order to every party.

Methods of intimation

5.3.—(1) Intimation may be given to a receiving party who is a party litigant by—

(a) the method specified in rule 5.4;

(b) any of the methods specified in rule 5.5.

(2) Intimation may be given to a receiving party who is represented by a solicitor by—

(a) the method specified in rule 5.4;

(b) any of the methods specified in rule 5.5;

(c) any of the methods specified in rule 5.6.

Methods of intimation: recorded delivery

5.4. An intimating party may give intimation by recorded delivery to the receiving party.

Methods of intimation: by sheriff officer

5.5.—(1) A sheriff officer may give intimation on behalf of an intimating party by—

- (a) delivering it personally to the receiving party; or
- (b) leaving it in the hands of—
 - (i) a resident at the receiving party's dwelling place; or
 - (ii) an employee at the receiving party's place of business.

(2) Where a sheriff officer has been unsuccessful in giving intimation in accordance with paragraph (1), the sheriff officer may give intimation by—

- (a) depositing it in the receiving party's dwelling place or place of business; or
- (b) leaving it at the receiving party's dwelling place or place of business in such a way that it is likely to come to the attention of that party.

Additional methods of intimation where receiving party represented by solicitor

5.6.—(1) An intimating party may give intimation to the solicitor for the receiving party by—

- (a) delivering it personally to the solicitor;
- (b) delivering it to a document exchange of which the solicitor is a member;
- (c) first class post;
- (d) fax;
- (e) electronic means.

(2) Where intimation is given by the method in paragraph (1)(a), (d) or (e) no later than 1700 hours on any day, the date of intimation is that day.

(3) Where intimation is given by the method in—

- (a) paragraph (1)(b) or (c); or
- (b) paragraph (1)(a), (d) or (e) after 1700 hours on any day,

the date of intimation is the next day.

Lodging

5.7.—(1) Where any provision in these Rules requires a party to lodge a document, it is to be lodged with the Clerk.

(2) A document may be lodged by—

- (a) delivering it personally to the office of the Clerk;
- (b) delivering it to a document exchange of which the Clerk is a member;
- (c) first class post;
- (d) fax;
- (e) electronic means, provided that parties have provided an email address in terms of rule 13.5.