
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 468

Act of Sederunt (Sheriff Appeal Court Rules) 2021

PART 3

INITIATION AND PROGRESS OF AN APPEAL

CHAPTER 7

PROCEDURE BEFORE THREE APPEAL SHERIFFS

Application of this Chapter

7.1. This Chapter applies to an appeal which has been appointed to proceed under procedure before three Appeal Sheriffs, to be known as Chapter 7 procedure.

Timetable in appeal

7.2.—(1) The Clerk must issue a timetable in Form 7.2 when an appeal is appointed to Chapter 7 procedure.

(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>
Lodging of appeal print	7.4(1)
Lodging of appendices to appeal print	7.5(1)
Giving notice that the appellant considers appendix unnecessary	7.6(1)
Lodging of notes of argument	7.7(1)
Lodging of estimates of duration of appeal hearing	7.8

Variation of timetable

7.3.—(1) Any party may apply by motion to vary the timetable.

(2) An application to vary the timetable may only be granted on cause shown.

(3) 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.
- (4) Where the procedural Appeal Sheriff makes an order varying the timetable, the Clerk must—
- (a) discharge the procedural hearing fixed under rule 7.2(2);
 - (b) issue a revised timetable in Form 7.2;
 - (c) fix a procedural hearing.

Appeal print

7.4.—(1) The appellant must lodge an appeal print within 21 days after the timetable is issued under rule 7.2(1).

- (2) An appeal print must contain—
- (a) the pleadings in the sheriff court process;
 - (b) the interlocutors in the sheriff court process;
 - (c) the sheriff’s note setting out the reasons for the decision appealed against, if it is available.
- (3) Where the appeal is directed at the refusal of the sheriff to allow the pleadings to be amended, the appeal print must also contain the text of the proposed amendment.

Appendix to appeal print: contents

7.5.—(1) The appellant must lodge an appendix to the appeal print no later than 14 days before the procedural hearing, unless rule 7.6(1) is complied with.

- (2) The appendix must contain—
- (a) any document lodged in the sheriff court process that is founded upon in the grounds of appeal;
 - (b) the notes of evidence from any proof, if it is sought to submit them for consideration by the Court.
- (3) Where the sheriff’s note has not been included in the appeal print and it subsequently becomes available, the appellant 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) co-operate in making up the appendix.
- (5) Where the Court at any stage considers further documents are necessary for the determination of the appeal, the appellant must lodge a supplementary appendix containing those documents.

Appendix to appeal print considered unnecessary

7.6.—(1) Where the appellant considers that it is not necessary to lodge an appendix, the appellant must, no later than 14 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 appellant complies with paragraph (1), the respondent may apply by motion for an order requiring the appellant 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, the procedural Appeal Sheriff may—

- (a) grant the application and make an order requiring the appellant 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 under paragraph (4)(a) or (b), 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

7.7.—(1) The parties must lodge notes of argument no later than 14 days before the procedural hearing.

(2) A note of argument must summarise briefly the submissions the party intends to develop at the appeal hearing.

(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 appeal hearing

7.8. The parties must lodge estimates of the duration of any appeal hearing required to dispose of the appeal in Form 7.8 no later than 14 days before the procedural hearing.

Procedural hearing

7.9.—(1) At a procedural hearing, the procedural Appeal Sheriff must 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 an appeal hearing; 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 must fix an appeal hearing;
 - (b) the Clerk must 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) must 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.

Authorities

7.10.—(1) When an appeal hearing is fixed, the appellant must, after consultation with the respondent and any other party to the appeal, lodge a joint list of authorities upon which each party intends to rely at the hearing.

(2) The appellant must lodge the joint list by the date specified in the interlocutor that fixes the appeal hearing.

(3) The joint list of authorities must not include—

- (a) authorities for propositions not in dispute;
- (b) more than 10 authorities, unless permission has previously been granted by the Court on cause shown for the lodging of additional authorities.

(4) The Court may make an order requiring parties to lodge a joint bundle of photocopies or electronic versions of the authorities or digital links to them.

(5) Joint lists of authorities which do not conform with this rule may be rejected.

(6) The Court may find no expenses are payable, or may modify any expenses, where authorities are included unnecessarily.

Transmission of sheriff court process

7.11.—(1) The Court may order—

- (a) of its own accord;
- (b) on cause shown, where any party to the appeal applies for such an order by motion,

that the sheriff court process, or any part of it, must be transmitted to the Clerk.

(2) Where the procedural Appeal Sheriff makes such an order, the Clerk must send a copy of the order to the sheriff clerk.

(3) Within 4 days after receipt of the order, the sheriff clerk must—

- (a) send written notice to each party to the cause;
- (b) certify on the interlocutor sheet that sub-paragraph (a) has been complied with;
- (c) transmit the sheriff court process, or the specified part of it, to the Clerk.

(4) On receipt of the sheriff court process, the Clerk must—

- (a) mark the date of receipt on—
 - (i) the interlocutor sheet, where the entire process is transmitted;
 - (ii) the part of process that has been transmitted, where the procedural Appeal Sheriff has specified that only part of the process is to be transmitted;

- (b) send written notice of that date to the parties.
- (5) Where the Clerk or a sheriff clerk fails to comply with this rule—
 - (a) that does not affect the validity of the appeal;
 - (b) the procedural Appeal Sheriff may, as the procedural Appeal Sheriff thinks fit, make an order to enable the appeal to proceed as if the failure had not occurred.

Extension of notes of evidence

7.12. It is not necessary to produce notes of evidence in relation to any issue in respect of which the parties are agreed that the decision appealed against is not to be submitted to review.

Referral to family mediation

7.13.—(1) Where the decision appealed against concerns an order made by the sheriff under section 11(1) of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.)⁽¹⁾, the procedural Appeal Sheriff may refer that matter to a family mediator.

(2) In this rule, “family mediator” means a person accredited as a mediator in family mediation to an organisation which is concerned with such mediation and which is approved for the purposes of the Civil Evidence (Family Mediation) (Scotland) Act 1995⁽²⁾ by the Lord President of the Court of Session.

Application to transfer appeal to Chapter 8 procedure

- 7.14.—**(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 Chapter 8 procedure instead of Chapter 7 procedure.

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

(3) The procedural Appeal Sheriff may only make such an order if satisfied that, taking into account the matters in rule 6.11(3), it is no longer appropriate for the appeal to proceed under Chapter 7 procedure.

- (4) That order must appoint the appeal to proceed under Chapter 8 procedure and specify—
- (a) the procedure to be followed in the appeal;
 - (b) the periods for complying with each procedural step.

(1) 1995 c.36. Section 11 was amended by the Family Law (Scotland) Act 2006 (asp 2), section 24; the Adoption and Children (Scotland) Act 2007 (asp 4), section 107, schedule 2, paragraph 9(2) and schedule 3, paragraph 1; the Human Fertilisation and Embryology Act 2008 (c.22), Schedule 6, paragraph 52; the Children (Scotland) Act 2020 (asp 16), section 15(2); S.S.I. 2001/36; S.S.I. 2005/42; S.S.I. 2016/21 and S.I. 2018/1413.

(2) 1995 c.6.