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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 468**

**Act of Sederunt (Sheriff Appeal Court Rules) 2021**

**PART 5**

**INCIDENTAL PROCEDURE: STANDARD PROCEDURES**

**CHAPTER 13**

**MOTIONS: GENERAL**

**Interpretation**

**13.1.**—(1) In this Chapter, Chapter 14 and Chapter 15—

“court day” means a day on which the office of the Clerk is open;

“court day 1” means the court day on which a motion is treated as being intimated under rule 14.1;

“court day 3” means the second court day after court day 1;

“court day 4” means the third court day after court day 1;

“lodging party” means the party lodging the motion;

“receiving party” means a party receiving the intimation of the motion from the lodging party;

“transacting motion business” means—

- (a) intimating and lodging motions;
- (b) receiving intimation of motions;
- (c) intimating consent or opposition to motions;
- (d) receiving intimation of opposition to motions.

(2) In this Chapter and Chapter 14, a reference to—

(a) the address of a party is a reference to the email address included in the list maintained under rule 13.5(4) of either—

- (i) that party’s solicitor; or
- (ii) that party;

(b) the address of the court is a reference to the email address of the court included in that list under rule 13.5(5).

**Making of motions**

**13.2.** A motion may be made either—

- (a) orally, in accordance with rule 13.3; or
- (b) in writing, in accordance with rule 13.4.

### **Oral motions**

- 13.3.**—(1) A motion may be made orally during any hearing.  
(2) Such a motion may only be made with leave of the Court.

### **Written motions**

**13.4.**—(1) A motion in writing is made by lodging it with the Clerk in accordance with Chapter 14 or Chapter 15.

(2) Chapter 14 applies where each party to an appeal has provided to the Clerk an email address for the purpose of transacting motion business.

(3) Chapter 15 applies where a party to an appeal has not provided to the Clerk an email address for the purpose of transacting motion business.

### **Provision of email addresses to the Clerk**

**13.5.**—(1) A solicitor representing a party in an appeal must provide to the Clerk an email address for the purpose of transacting motion business.

(2) A solicitor who does not have suitable facilities for transacting motion business by email may make a declaration in writing to that effect, which must be—

- (a) sent to the Clerk;
- (b) intimated to each of the other parties to the appeal.

(3) A party who is not represented by a solicitor may provide to the Clerk an email address for the purpose of transacting motion business.

(4) The Clerk must maintain a list of the email addresses provided for the purpose of transacting motion business, which must be published in up to date form on the website of the Scottish Courts and Tribunals Service.

(5) The Clerk must also include on that list an email address of the Court for the purpose of lodging motions.

### **Grounds for written motion**

**13.6.** A motion in writing must specify the grounds on which it is made.

### **Determination of unopposed motions in writing**

**13.7.**—(1) The Clerk may determine any unopposed motion in writing other than a motion which seeks a final interlocutor.

(2) Where the Clerk considers that such a motion should not be granted, the Clerk must refer the motion to the procedural Appeal Sheriff.

(3) The procedural Appeal Sheriff is to determine—

- (a) a motion referred under paragraph (2);
- (b) an unopposed motion which seeks a final interlocutor,

in chambers without the appearance of parties, unless the procedural Appeal Sheriff otherwise determines.

### **Issuing of orders by email**

**13.8.** Where the Court makes an order determining a motion which was lodged in accordance with Chapter 14, the Clerk must email a copy of the order to the addresses of the lodging party and every receiving party.

## **CHAPTER 14**

### **MOTIONS LODGED BY EMAIL**

#### **Intimation of motions by email**

**14.1.**—(1) The lodging party must give intimation of that party's intention to lodge the motion, and of the terms of the motion, to every other party by sending an email in Form 14.1 to the addresses of every party.

(2) The requirement under paragraph (1) to give intimation of a motion to a party by email does not apply where that party—

- (a) has not lodged answers within the period of notice for lodging those answers;
- (b) has withdrawn or is deemed to have withdrawn those answers; or
- (c) became a party to the appeal by minute, but has withdrawn or is deemed to have withdrawn that minute.

(3) A motion intimated under this rule must be intimated no later than 1700 hours on a court day.

#### **Opposition to motions**

**14.2.**—(1) A receiving party must intimate any opposition to a motion by sending an email in Form 14.2 to the address of the lodging party.

(2) Any opposition to a motion must be intimated to the lodging party no later than 1700 hours on court day 3.

(3) Late opposition to a motion must be sent to the address of the Court and may only be allowed with the leave of the procedural Appeal Sheriff, on cause shown.

#### **Consent to motions**

**14.3.** Where a receiving party seeks to consent to a motion, that party may do so by sending an email confirming the consent to the address of the lodging party.

#### **Lodging unopposed motions**

**14.4.**—(1) This rule applies where no opposition to a motion has been intimated.

(2) The motion must be lodged by the lodging party no later than 1230 hours on court day 4 by sending an email in Form 14.1 headed "Unopposed motion" to the address of the court.

(3) That motion is to be determined by 1700 hours on court day 4.

(4) Where for any reason it is not possible for that motion to be determined in accordance with paragraph (3), the Clerk must advise the parties of that fact and give reasons.

#### **Lodging opposed motions by email**

**14.5.**—(1) This rule applies where opposition to a motion has been intimated.

(2) The motion must be lodged by the lodging party no later than 1230 hours on court day 4 by—

- (a) sending an email in Form 14.1 headed "Opposed motion", to the address of the court; and

- (b) attaching to that email the opposition in Form 14.2 intimated by the receiving party to the lodging party.
- (3) That motion is to be heard by the procedural Appeal Sheriff on the first suitable court day after court day 4.
- (4) The Clerk must intimate the date and time of the hearing to the parties.

### **Variation of periods of intimation**

#### **14.6. Where either—**

- (a) every receiving party in an appeal consents to a shorter period of intimation; or
- (b) the Court shortens the period of intimation,

the motion may be lodged by the lodging party, or heard or otherwise determined by the Court at an earlier time and date than that which is specified in this Chapter.

## **CHAPTER 15**

### **MOTIONS LODGED BY OTHER MEANS**

#### **Intimation of motions by other means**

**15.1.—**(1) The lodging party must give intimation of that party's intention to lodge the motion, and of the terms of the motion, to every other party in Form 15.1.

- (2) That intimation must be accompanied by a copy of any document referred to in the motion.

#### **Opposition to motions**

**15.2.—**(1) A receiving party may oppose a motion by lodging a notice of opposition in Form 15.2.

(2) Any notice of opposition must be lodged within 7 days after the date of intimation of the motion.

- (3) The procedural Appeal Sheriff may, on the application of the lodging party, either—

- (a) vary the period of 7 days mentioned in paragraph (2); or
- (b) dispense with intimation on any party.

- (4) An application mentioned in paragraph (3) must—

- (a) be included in the motion;
- (b) give reasons for varying the period or dispensing with intimation, as the case may be.

(5) The procedural Appeal Sheriff may allow a notice of opposition to be lodged late, on cause shown.

#### **Consent to motions**

**15.3.** Where a receiving party seeks to consent to a motion, that party may do so by lodging a notice to that effect.

#### **Lodging of motions**

**15.4.—**(1) The motion must be lodged by the lodging party within 5 days after the date of intimation of the motion, unless paragraph (3) applies.

- (2) The lodging party must also lodge—

- (a) a certificate of intimation in Form 6.5-A;

(b) so far as practicable, any document referred to in the motion that has not already been lodged.

(3) Where the procedural Appeal Sheriff varies the period for lodging a notice of opposition to a period of 5 days or less, the motion must be lodged no later than the day on which that period expires.

#### **Joint motions**

**15.5.**—(1) A joint motion by all parties need not be intimated.

(2) Such a motion is to be lodged by any of the parties.

#### **Hearing of opposed motions**

**15.6.**—(1) Where a notice of opposition in Form 15.2 is lodged, the motion is to be heard by the procedural Appeal Sheriff on the first suitable court day after the lodging of the notice of opposition.

(2) The Clerk must intimate the date and time of the hearing to the parties.

#### **Modification of Chapter 5**

**15.7.** For the purposes of this Chapter, the following provisions in Chapter 5 do not apply—

- (a) rule 5.6(1)(e);
- (b) rule 5.7(2)(e).

### **CHAPTER 16**

#### **MINUTES**

#### **Application of this Chapter**

**16.1.** This Chapter applies to any application to the Court that is made by minute, other than a joint minute, a minute of abandonment or a minute of amendment.

#### **Form and lodging of minute**

**16.2.**—(1) A minute is to be made in Form 16.

(2) A minute must—

- (a) specify the order sought from the Court;
- (b) contain a statement of facts supporting the granting of that order;
- (c) where appropriate, contain pleas-in-law.

(3) A minute is to be lodged in the process of the appeal to which it relates.

#### **Orders for intimation and answers**

**16.3.**—(1) On the first available court day after being lodged, a minute must be brought before the procedural Appeal Sheriff for an order—

- (a) for intimation, within 7 days after the date of the order, to—
  - (i) every other party to the appeal;
  - (ii) any other person who appears to have an interest in the minute;
- (b) for any person to whom the minute is intimated to lodge answers, if so advised, within 14 days after the date of intimation;

- (c) fixing a hearing on the minute and any answers no sooner than 28 days after the date of the order.
- (2) The procedural Appeal Sheriff may vary the periods of 7 days, 14 days and 28 days mentioned in paragraph (1) either—
  - (a) of the procedural Appeal Sheriff’s own accord; or
  - (b) on cause shown, on the application of the applicant.
- (3) An application mentioned in paragraph (2)(b) must—
  - (a) be included in the minute;
  - (b) give reasons for varying the period.
- (4) Where a minute is intimated in accordance with an order under this rule, the applicant must lodge a certificate of intimation in Form 6.5-A within 14 days after the date of intimation.

#### **Consent to minute**

- 16.4.**—(1) Where a person to whom a minute is intimated seeks to consent to the minute, that person may do so by lodging a notice to that effect.
- (2) Where every person to whom a minute is intimated consents to the minute, the procedural Appeal Sheriff is to determine the minute in chambers without the appearance of those persons, unless the procedural Appeal Sheriff otherwise determines.

#### **Minutes of sistance and transference**

- 16.5.**—(1) This rule applies where a party to an appeal (“P”) dies or comes under legal incapacity while the appeal is depending before the Court.
- (2) Any person who claims to represent P or P’s estate may apply to the Court by minute to be sisted as a party to the appeal.
- (3) If no person makes an application under paragraph (2), any other party may apply to the Court by minute to transfer the appeal in favour of or against (as the case may be) the person who represents P or P’s estate.
- (4) An application under paragraph (3) must be intimated to the person specified in the minute as representing P or P’s estate.

#### **Applications to enter process as respondent**

- 16.6.**—(1) A person to whom the appeal has not been intimated may apply by minute for leave to enter the process as a party minuter and lodge answers.
- (2) A minute under paragraph (1) must specify—
  - (a) the applicant’s title and interest to enter the process;
  - (b) the basis for the answers that the applicant proposes to lodge.
- (3) At the hearing fixed under rule 16.3(1)(c), the procedural Appeal Sheriff must determine whether the applicant has shown title and interest to enter the process.
- (4) If the procedural Appeal Sheriff is satisfied, the procedural Appeal Sheriff may grant the applicant leave to enter the process and lodge answers.
- (5) Where leave is granted, the procedural Appeal Sheriff is to make such further order as the procedural Appeal Sheriff thinks fit.
- (6) In particular, such an order may include an order—
  - (a) varying any timetable;

- (b) as to the expenses of the application.

## CHAPTER 17

### AMENDMENT OF PLEADINGS

#### **Amendment of sheriff court pleadings**

**17.1.**—(1) Any party to an appeal may apply by motion to amend the pleadings in the sheriff court process.

(2) A party seeking to amend must lodge a minute of amendment setting out the proposed amendment and, at the same time, lodge a motion to allow—

- (a) the minute of amendment to be received;
- (b) any other person to lodge answers, if so advised, within a specified period.

(3) Where the procedural Appeal Sheriff makes an order allowing a minute of amendment to be received and answered, the procedural Appeal Sheriff may—

- (a) allow a period of adjustment of the minute of amendment and answers; and
- (b) fix a hearing on the minute of amendment and answers as adjusted.

(4) Each party must, no later than 2 days before the hearing fixed under paragraph (3)(b), lodge a copy of their minute of amendment or answers with any adjustments made thereto in italic or bold type, or underlined.

(5) The procedural Appeal Sheriff may make such order in relation to expenses, and may impose such conditions, as the procedural Appeal Sheriff thinks fit.

(6) Where the procedural Appeal Sheriff—

- (a) allows an amendment to the pleadings in the sheriff court process; and
- (b) considers that the amendment makes a material change to the pleadings,

the procedural Appeal Sheriff may recall the decision appealed against and remit the matter to the sheriff for a further hearing.

#### **Amendment of note of appeal and answers etc.**

**17.2.**—(1) A party who has lodged a document specified in paragraph (2) may apply by motion to amend that document.

(2) The documents are—

- (a) a note of appeal;
- (b) answers to a note of appeal;
- (c) grounds of appeal in a cross-appeal;
- (d) answers to grounds of appeal in a cross-appeal.

(3) Such a motion must include the text of the proposed amendment.

(4) An application under paragraph (1) must be accompanied by an application to vary the timetable under rule 7.3(1) or rule 29.6(1)(c) if such an application is necessary.

## CHAPTER 18

### WITHDRAWAL OF SOLICITORS

#### **Interpretation of this Chapter**

**18.1.** In this Chapter, “peremptory hearing” means a hearing at which a party whose solicitor has withdrawn from acting must appear or be represented in order to state whether or not the party intends to proceed.

#### **Giving notice of withdrawal to the Court**

**18.2.—(1)** Where a solicitor withdraws from acting on behalf of a party, the solicitor must give notice in writing to the Clerk and to every other party.

(2) Paragraph (1) does not apply if the solicitor withdraws from acting at a hearing in the presence of the other parties or their representatives.

(3) Paragraph (4) applies if a solicitor who withdraws from acting is aware that the address of the party for whom the solicitor acted has changed from that specified in the instance of the note of appeal or answers to the note of appeal.

(4) The solicitor must disclose to the Clerk and every other party the last known address of the party for whom the solicitor acted.

#### **Arrangements for peremptory hearing**

**18.3.—(1)** On the first available court day after notice is given under rule 18.2(1), the procedural Appeal Sheriff must make an order—

- (a) ordaining the party whose solicitor has withdrawn from acting to appear or be represented at a peremptory hearing;
- (b) fixing a date and time for the peremptory hearing;
- (c) appointing any other party to the appeal to intimate the order and a notice in Form 18.3 to that party within 7 days after the date of the order.

(2) A peremptory hearing must be fixed no sooner than 14 days after the date on which an order is made under paragraph (1).

(3) The procedural Appeal Sheriff may vary the period of 7 days mentioned in paragraph (1) or the period of 14 days mentioned in paragraph (2) either—

- (a) of the procedural Appeal Sheriff’s own accord; or
- (b) on cause shown, on the application of any other party to the appeal.

(4) Where any previously fixed hearing is to occur within 14 days after the date on which the procedural Appeal Sheriff is to make an order under paragraph (1), the procedural Appeal Sheriff may continue consideration of the matter to the previously fixed hearing instead of making an order under paragraph (1).

(5) Where an order and a notice in Form 18.3 are intimated under this rule, the party appointed to intimate them must lodge a certificate of intimation in Form 6.5-A either—

- (a) within 14 days after the date of intimation; or
- (b) before the peremptory hearing,

whichever is sooner.



### **Peremptory hearing**

**18.4.**—(1) At a peremptory hearing, the party must appear or be represented in order to state whether the party intends to proceed.

(2) Where the party fails to comply with paragraph (1), the Court may make an order mentioned in paragraph (3) only if it is satisfied that the order and notice in Form 18.3 have been intimated to that party.

(3) The orders are either—

- (a) if the party is the appellant, an order refusing the appeal; or
- (b) if the party is the respondent and the condition in paragraph (4) is satisfied, an order allowing the appeal.

(4) The condition is that the appellant must show cause why the appeal should be allowed.

(5) If the Court is not satisfied that the order and notice in Form 18.3 have been intimated to that party, it may make—

- (a) an order fixing a further peremptory hearing;
- (b) any other order that the Court considers appropriate to secure the expeditious disposal of the appeal.

## **CHAPTER 19**

### **CAUTION AND SECURITY**

#### **Application of this Chapter**

**19.1.** This Chapter applies to any appeal in which the Court has power to order a person to find caution or give other security.

#### **Form of application to find caution or give security**

**19.2.** An application—

- (a) for an order for caution or other security;
- (b) to vary or recall such an order,

is to be made by motion.

#### **Orders for caution or other security: time for compliance**

**19.3.** Where the Court makes an order for caution or to give other security, the order must specify the period within which caution is to be found or security given.

#### **Methods of finding caution or giving security**

**19.4.**—(1) A person who is ordered to find caution must do so by obtaining a bond of caution.

(2) A person who is ordered to consign a sum of money into court must do so by consignment under the Sheriff Courts Consignations (Scotland) Act 1893(1) in the name of the Clerk.

(3) The Court may order a person to give security by—

- (a) a method other than those mentioned in paragraphs (1) and (2);

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(1) [1893 c.44](#), amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act [1940 \(c.42\)](#), section 6(2); the Sheriff Courts (Scotland) Act [1971 \(c.58\)](#), section 4 and Schedule 1, paragraph 1; the Statute Law (Repeals) Act [1986 \(c.12\)](#), Schedule 1, Part 1, Group 4 and Schedule 2, paragraph 1; [S.I. 1974/1274](#) and [S.S.I. 2015/402](#).

- (b) a combination of two or more methods of security.
- (4) Any document by which an order to find caution or give security is satisfied must be lodged in process.
- (5) A document lodged under paragraph (4) may not be borrowed from process.

### **Cautioners and other guarantors**

**19.5.** A bond of caution or other security may only be given by a person who is an authorised person within the meaning of section 31 of the Financial Services and Markets Act 2000 (authorised persons)(2).

### **Form of bond of caution**

**19.6.—**(1) A bond of caution must oblige the cautioner to make payment of the sums as validly and in the same manner as the party is obliged.

(2) In this rule—

“cautioner” includes the cautioner’s heirs and executors;

“party” means the person to whom the cautioner is bound, and that person’s heirs and successors;

“the sums” are the sums for which the cautioner is bound to the party.

### **Caution or other security: sufficiency and objections**

**19.7.—**(1) The Clerk must be satisfied that any document lodged in process under rule 19.4(4) is in proper form.

(2) A party who is dissatisfied with the sufficiency or form of any document lodged in process under rule 19.4(4) may apply to the Court by motion for an order under rule 19.9(1).

### **Insolvency or death of cautioner or guarantor**

**19.8.—**(1) This rule applies where caution has been found by bond of caution or security has been given by guarantee.

(2) Where one of the events specified in paragraph (3) occurs, the party entitled to benefit from the caution or guarantee may apply to the Court by motion for further caution to be found or further security to be given.

(3) The events are that the cautioner or guarantor—

(a) becomes apparently insolvent within the meaning of section 16 of the Bankruptcy (Scotland) Act 2016 (meaning of “apparent insolvency”)(3);

(b) calls a meeting of the cautioner or guarantor’s creditors to consider the state of that person’s affairs;

(c) dies unrepresented; or

(d) is a company and—

(i) an administration, bank administration or building society special administration order has been made in respect of it;

(ii) a winding up, bank insolvency or building society insolvency order has been made in respect of it;

(2) 2000 c.8. Section 31 was amended by the Financial Services Act 2012 (c.21), section 11(1) and S.I. 2018/1149.

(3) 2016 asp 21. Section 16 was amended by S.S.I. 2019/94.

- (iii) a resolution for its voluntary winding up has been passed;
- (iv) a receiver of all or any part of its undertaking has been appointed;
- (v) a voluntary arrangement within the meaning of section 1(1) of the Insolvency Act 1986 (those who may propose an arrangement)(~~4~~) has been approved under Part I of that Act.

#### **Failure to find caution or give security**

**19.9.**—(1) Where a person who has been ordered to find caution or give security fails to do so, any other party may apply to the Court by motion for a finding that the person is in default.

(2) Despite rule 3.1, a person who fails to find caution or give security is only in default if the Court grants a motion under paragraph (1) and makes a finding that the person is in default.

### **CHAPTER 20**

#### **EXPENSES**

#### **Taxation of expenses**

**20.1.**—(1) Where the Court makes an award of expenses in any appeal, those expenses must be taxed before decree is granted for them.

(2) This rule does not apply where the Court modifies those expenses to a fixed sum.

#### **Time for lodging account of expenses**

**20.2.**—(1) A party found entitled to expenses must lodge an account of expenses in process—

- (a) no later than 4 months after the final judgment; or
- (b) at any time with permission of the court, but subject to such conditions, if any, as the Court thinks fit to impose.

(2) Where the account of expenses is lodged by the Scottish Legal Aid Board in reliance on regulation 39(2)(a) of the Civil Legal Aid (Scotland) Regulations 2002 (recovery of expenses)(~~5~~), paragraph (1)(a) applies as if the period specified there is 8 months.

(3) In this rule, “final judgment” has the meaning assigned by section 136(1) of the 2014 Act (interpretation).

#### **Diet of taxation**

**20.3.**—(1) Where an account of expenses is lodged for taxation, the Clerk must transmit the account and the process to the auditor of court.

(2) Subject to paragraph (3), the auditor of court must fix a diet of taxation on receipt of—

- (a) the account of expenses;
- (b) the process;
- (c) vouchers in respect of all outlays claimed in the account, including counsel’s fees; and
- (d) a letter addressed to the auditor of court—
  - (i) confirming that the items referred to in sub-paragraphs (a) and (c) have been intimated to the party found liable in expenses; and

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(4) 1986 c.45. Section 1(1) was amended by the Enterprise Act 2002 (c.40), Schedule 17, paragraph 10.

(5) S.S.I. 2002/494, last amended by S.S.I. 2021/333.

- (ii) providing such information as is required to enable the auditor of court to give intimation to the party found liable in expenses in accordance with paragraph (4)(b).
- (3) The auditor of court may fix a diet of taxation where paragraph (2)(c) or (d), or both, have not been complied with.
- (4) The auditor of court must intimate the diet of taxation to—
  - (a) the party found entitled to expenses;
  - (b) the party found liable in expenses.
- (5) The party found liable in expenses must, no later than 1600 hours on the fourth business day before the diet of taxation, intimate to the auditor of court and to the party found entitled to expenses particular points of objection, specifying each item objected to and stating concisely the nature and ground of objection.
- (6) Subject to paragraph (7), if the party found liable in expenses fails to intimate points of objection under paragraph (5) within the time limit set out there, the auditor of court must not take account of them at the diet of taxation.
- (7) Where a failure to comply with the requirement contained in paragraph (5) was due to mistake, oversight or other excusable cause, the auditor of court may relieve a party of the consequences of such failure on such conditions, if any, as the auditor thinks fit.
- (8) At the diet of taxation, or within such reasonable period of time thereafter that the auditor of court may allow, the party found entitled to expenses must make available to the auditor of court all documents, drafts or copies of such documents sought by the auditor and relevant to the taxation.
- (9) In this rule, a “business day” means any day other than a Saturday, Sunday or public or court holiday.

### **Auditor’s statement**

- 20.4.**—(1) The auditor of court must—
- (a) prepare a statement of the amount of expenses as taxed;
  - (b) transmit the process, the taxed account and the statement to the Clerk;
  - (c) on the day on which the documents referred to in sub-paragraph (b) are transmitted, intimate that fact and the date of the report to each party to whom the auditor intimated the diet of taxation.
- (2) The party found entitled to expenses must, within 7 days after the receipt of intimation under paragraph (1)(c), send a copy of the taxed account to the party found liable in expenses.
- (3) Where no objections are lodged under rule 20.5(1), the court may grant decree for the expenses as taxed.

### **Objections to taxed account**

- 20.5.**—(1) A party to an appeal who has appeared or been represented at a diet of taxation may object to the auditor of court’s statement by lodging in process a note of objection within 14 days after the date of the statement.
- (2) The party lodging a note of objection is referred to in this rule as “the objecting party”.
  - (3) On lodging the note of objection the objecting party must apply by motion for an order—
    - (a) allowing the note to be received;
    - (b) allowing a hearing on the note of objection.

(4) On the granting of the order mentioned in paragraph (3), the objecting party must intimate to the auditor of court—

- (a) the note of objection;
- (b) the interlocutor containing the order.

(5) Within 14 days after receipt of intimation of the items mentioned in paragraph (4), the auditor of court must lodge in process a statement of reasons in the form of a minute stating the reasons for the auditor's decision in relation to the items to which objection is taken in the note.

(6) On the lodging of the statement of reasons, the Clerk must fix a hearing on the note of objection.

(7) At the hearing, the Court may—

- (a) sustain or repel any objection in the note of objection or remit the account of expenses to the auditor of court for further consideration;
- (b) find any party liable in the expenses of the procedure on the note of objection.

#### **Decree for expenses in name of solicitor**

**20.6.** The Court may allow a decree for expenses to be extracted in the name of the solicitor who conducted the appeal.

#### **Expenses of curator *ad litem* appointed to a respondent**

**20.7.**—(1) This rule applies where a curator *ad litem* is appointed to any respondent to an appeal.

(2) The appellant is responsible in the first instance for the payment of the expenses of a curator *ad litem* mentioned in paragraph (3).

(3) Those expenses are any fees of the curator *ad litem* and any outlays incurred by the curator from the date of appointment until any of the following steps occur—

- (a) the lodging of a minute stating that the curator does not intend to lodge answers to the note of appeal;
- (b) the lodging of answers by the curator, or the adoption of answers that have already been lodged; or
- (c) the discharge of the curator before either of the steps in sub-paragraphs (a) or (b) occurs.

### **CHAPTER 21**

#### **QUALIFIED ONE-WAY COSTS SHIFTING**

#### **Application and interpretation of this Chapter**

**21.1.**—(1) This Chapter applies in civil proceedings, where either or both—

- (a) an application for an award of expenses is made to the Court;
- (b) such an award is made by the Court.

(2) Where this Chapter applies—

- (a) rules 10.1(5) and (6);
- (b) any common law rule entitling a pursuer to abandon an appeal, to the extent that it concerns expenses,

are disapplied.

(3) In this Chapter—

“the 2018 Act” means the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018(6);

“the applicant” has the meaning given in rule 21.2(1), and “applicants” is construed accordingly;

“civil proceedings” means civil proceedings to which section 8 of the 2018 Act (restriction on pursuer’s liability for expenses in personal injury claims) applies.

### **Application for an award of expenses**

**21.2.**—(1) Where civil proceedings have been brought by a pursuer, another party to the action (“the applicant”) may make an application to the Court for an award of expenses to be made against the pursuer, on one or more of the grounds specified in either or both—

- (a) section 8(4)(a) to (c) of the 2018 Act;
- (b) paragraph (2) of this rule.

(2) The grounds specified in this paragraph, which are exceptions to section 8(2) of the 2018 Act, are as follows—

- (a) failure by the pursuer to obtain an award of damages greater than the sum offered by way of a tender lodged in process;
- (b) unreasonable delay on the part of the pursuer in accepting a sum offered by way of a tender lodged in process;
- (c) abandonment of the appeal by the pursuer in terms of rule 10.1(1) to (4), or at common law.

### **Award of expenses**

**21.3.**—(1) Subject to paragraph (2), the determination of an application made under rule 21.2(1) is at the discretion of the Court.

(2) Where, having determined an application made under rule 21.2(1), the Court makes an award of expenses against the pursuer on the ground specified in rule 21.2(2)(a) or (b)—

- (a) the pursuer’s liability is not to exceed the amount of expenses the applicant has incurred after the date of the tender;
- (b) the liability of the pursuer to the applicant, or applicants, who lodged the tender is to be limited to an aggregate sum, payable to all applicants (if more than one) of 75% of the amount of damages awarded to the pursuer and that sum is to be calculated without offsetting against those expenses any expenses due to the pursuer by the applicant, or applicants, before the date of the tender;
- (c) the Court must order that the pursuer’s liability is not to exceed the sum referred to in sub-paragraph (b), notwithstanding that any sum assessed by the Auditor of Court as payable under the tender procedure may be greater or, if modifying those expenses to a fixed sum in terms of rule 20.1(2), that such sum does not exceed that referred to in sub-paragraph (b);
- (d) where the award of expenses is in favour of more than one applicant the Court, failing agreement between the applicants, must apportion the award of expenses recoverable under the tender procedure between them.

(3) In the event that the Court makes an award of expenses against the pursuer on the ground specified in rule 21.2(2)(c), the Court may make such orders in respect of expenses, subject to such conditions, if any, as it considers appropriate.

## **Procedure**

**21.4.**—(1) An application under rule 21.2(1)—

- (a) must be made by motion, in writing;
- (b) may be made at any stage in the case prior to the granting of an order disposing of the expenses of the appeal.

(2) Where an application under rule 21.2(1) is made, the Court may make such orders as it thinks fit for dealing with the application, including an order—

- (a) requiring the applicant to intimate the application to any other person;
- (b) requiring any party to lodge a written response;
- (c) requiring the lodging of any document;
- (d) fixing a hearing.

## **Award against legal representatives**

**21.5.** Section 8(2) of the 2018 Act does not prevent the Court from making an award of expenses against a pursuer's legal representative in terms of section 11 (awards of expenses against legal representatives) of that Act.