
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 468

Act of Sederunt (Sheriff Appeal Court Rules) 2021

PART 7

SPECIAL APPEAL PROCEEDINGS

CHAPTER 29

APPLICATION FOR NEW JURY TRIAL OR TO ENTER JURY VERDICT

Application of this Chapter

29.1. This Chapter applies to an application—

- (a) for a new trial under section 69(1) of the 2014 Act (application for new trial);
- (b) to enter a verdict under section 71(2) of the 2014 Act (verdict subject to opinion of the Sheriff Appeal Court).

Form of application for new trial

29.2.—(1) An application for a new trial is to be made in Form 29.2.

(2) Such an application must be made within 7 days after the date on which the jury have returned their verdict.

(3) The application must specify the grounds on which the application is made.

(4) When an application for a new trial is lodged, the party lodging it must also lodge—

- (a) a print containing—
 - (i) the pleadings in the sheriff court process;
 - (ii) the interlocutors in the sheriff court process;
 - (iii) the issues and counter-issues;
- (b) the verdict of the jury;
- (c) any exception and the determination on it of the sheriff presiding at the trial.

Application for new trial: restrictions

29.3.—(1) An application for a new trial which specifies the ground in section 69(2)(a) of the 2014 Act (misdirection by sheriff) may not be made unless the procedure in rule 36B.8 of the Ordinary Cause Rules 1993 (exceptions to sheriff's charge)(1) has been complied with.

(2) An application for a new trial which specifies the ground in section 69(2)(b) of the 2014 Act (undue admission or rejection of evidence) may not be made unless objection was taken to

(1) The Ordinary Cause Rules 1993 are in Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (c.51). Rule 36B.8 was inserted by S.S.I. 2015/227, and is prospectively repealed by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 4(h).

the admission or rejection of evidence at the trial and recorded in the notes of evidence under the direction of the sheriff presiding at the trial.

(3) An application for a new trial which specifies the ground in section 69(2)(c) of the 2014 Act (verdict contrary to evidence) may not be made unless it sets out in brief specific numbered propositions the reasons the verdict is said to be contrary to the evidence.

Applications out of time

29.4.—(1) An application to allow an application for a new trial to be lodged outwith the period specified in rule 29.2(2) is to be included in the application made under rule 29.2(1).

(2) Where the procedural Appeal Sheriff allows such an application, the application for a new trial is to be received on such conditions as to expenses or otherwise as the procedural Appeal Sheriff thinks fit.

Timetable in application for new trial

29.5.—(1) The Clerk must issue a timetable in Form 29.5 when an application is lodged under rule 29.2(1).

(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; and
- (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>
Referral of question about competency of application	29.7(3)
Lodging of appendices to print	29.9(1)
Giving notice that the applicant considers appendix unnecessary	29.10(1)
Lodging of notes of argument	29.11(1)
Lodging of estimates of duration of hearing of application for new trial	29.12

Sist of application for new trial and variation of timetable

29.6.—(1) Any party may apply by motion to—

- (a) sist the application for a new trial for a specified period;
- (b) recall a sist;
- (c) vary the timetable.

(2) An application is to be determined by the procedural Appeal Sheriff.

(3) An application to sist the application for a new trial or to vary the timetable may only be granted on special cause shown.

(4) 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.
- (5) Where the procedural Appeal Sheriff makes an order sisting the application for a new trial, the Clerk must discharge the procedural hearing fixed under rule 29.5(2).
- (6) When a sist is recalled or expires, the Clerk must—
 - (a) issue a revised timetable in Form 29.5;
 - (b) fix a procedural hearing.
- (7) Where the procedural Appeal Sheriff makes an order varying the timetable, the Clerk must—
 - (a) discharge the procedural hearing fixed under rule 29.5(2);
 - (b) issue a revised timetable in Form 29.5;
 - (c) fix a procedural hearing.

Questions about competency of application

- 29.7.**—(1) A question about the competency of an application for a new trial may be referred to the procedural Appeal Sheriff by a party, other than the applicant.
- (2) A question is referred by lodging a reference in Form 29.7.
 - (3) A question may be referred within 7 days after the date on which the application for a new trial was lodged.
 - (4) Where a reference is lodged, the Clerk must fix a hearing and intimate the time and date of that hearing to the parties.
 - (5) Within 7 days after the date on which the reference is lodged, each party must lodge a note of argument.
 - (6) That note of argument must—
 - (a) give fair notice of the submissions the party intends to make on the question of competency;
 - (b) comply with the requirements in rule 29.11(3).
 - (7) Paragraphs (4) and (5) of rule 29.11 apply to a note of argument lodged under paragraph (5).

Questions about competency: determination

- 29.8.**—(1) At a hearing on the competency of an application for a new trial, the procedural Appeal Sheriff may—
 - (a) refuse the application as incompetent;
 - (b) find the application to be competent;
 - (c) reserve the question of competency until the hearing of the application; or
 - (d) refer the question of competency to the Court.
- (2) The procedural Appeal Sheriff may make an order as to the expenses of the reference.
 - (3) Where the question of competency is referred to the Court, it may—
 - (a) refuse the application as incompetent;
 - (b) find the application to be competent; or
 - (c) reserve the question of competency until the hearing of the application.
 - (4) The Court may make an order as to the expenses of the reference.

Appendices to print: contents

29.9.—(1) The applicant must lodge an appendix to the print mentioned in rule 29.2(4)(a) no later than 7 days before the procedural hearing, unless rule 29.10(1) is complied with.

(2) The appendix must contain—

- (a) any document lodged in the sheriff court process that is founded upon in the application for a new trial;
- (b) the notes of evidence from the trial, if it is sought to submit them for consideration by the Court.

(3) Where the sheriff's note has not been included in the print and it subsequently becomes available, the applicant 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) so far as possible, co-operate in making up the appendix.

Appendices to print considered unnecessary

29.10.—(1) Where the applicant considers that it is not necessary to lodge an appendix, the applicant must, no later than 7 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 applicant complies with paragraph (1), the respondent may apply by motion for an order requiring the applicant 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 under paragraph (2), the procedural Appeal Sheriff may—

- (a) grant the application and make an order requiring the applicant 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 requiring the applicant or the respondent to lodge an appendix, 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

29.11.—(1) The parties must lodge notes of argument no later than 7 days before the procedural hearing.

(2) A note of argument must summarise briefly the submissions the party intends to develop at the hearing of the application for a new trial.

(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 hearing of application for new trial

29.12. The parties must lodge estimates of the duration of any hearing required to dispose of the application for a new trial in Form 29.12 no later than 7 days before the procedural hearing.

Procedural hearing

- 29.13.**—(1) At the 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 a hearing of the application for a new trial; 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 a hearing of the application for a new trial;
 - (b) the Clerk is to 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.

Application to enter jury verdict

- 29.14.**—(1) This rule applies to an application under section 71(2) of the 2014 Act (verdict subject to opinion of the Court).
- (2) Such an application is to be made in Form 29.14.
 - (3) When an application is lodged, the party lodging it must also lodge—
 - (a) a print containing—
 - (i) the pleadings in the sheriff court process;
 - (ii) the interlocutors in the sheriff court process;
 - (iii) the issues and counter-issues;

- (b) the verdict of the jury;
- (c) any exception and the determination on it of the sheriff presiding at the trial.
- (4) Unless the procedural Appeal Sheriff otherwise directs—
 - (a) it is not necessary for the purposes of such a motion to print the notes of evidence;
 - (b) but the notes of the sheriff presiding at the trial may be produced at any time if required.
- (5) The procedural Appeal Sheriff may refer an application referred to in paragraph (1) to the Court in cases of complexity or difficulty.

CHAPTER 30

APPEALS FROM SUMMARY CAUSES

Application of this Chapter

30.1. This Chapter applies to an appeal under section 38 of the Sheriff Courts (Scotland) Act 1971 (appeal in summary causes)⁽²⁾ arising from the decision of a sheriff in proceedings under the Summary Cause Rules 2002⁽³⁾.

Transmission of appeal

30.2.—(1) Within 4 days after the sheriff has signed the stated case, the sheriff clerk must—

- (a) send the parties a copy of the stated case;
- (b) transmit to the Clerk—
 - (i) the stated case;
 - (ii) all documents and productions in the case.

(2) On receipt of the stated case, the Clerk must fix a hearing and intimate the date, time and place of that hearing to the parties.

Transmission of appeal: time to pay direction

30.3.—(1) Within 4 days after the sheriff states in writing the reasons for the sheriff's original decision in accordance with rule 25.4(4) of the Summary Cause Rules 2002 (appeal in relation to time to pay direction), the sheriff clerk must transmit to the Clerk—

- (a) the appeal in Form 33 of the Summary Cause Rules 2002⁽⁴⁾;
- (b) the sheriff's written reasons for the sheriff's original decision.

(2) On receipt of those documents, the Clerk must fix a hearing and intimate the date, time and place of that hearing to the parties.

Hearing of appeal

30.4.—(1) Any party may apply by motion for the question of liability for expenses to be heard after the Court gives its decision on the appeal.

(2) At the hearing, a party may only raise questions of law of which notice has not been given if the Court permits the party to do so.

(2) [1971 c.58](#). Section 38 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 ([c.73](#)), section 18(4). It was also partly repealed by the Courts Reform (Scotland) Act 2014 ([asp 18](#)), schedule 5(1), paragraph 6(2) which has effect subject to transitional provision specified in [S.S.I. 2016/291](#).

(3) The Summary Cause Rules 2002 are in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002 ([S.S.I. 2002/132](#), last amended by [S.S.I. 2021/226](#)).

(4) Form 33 was amended by [S.S.I. 2015/419](#).

(3) The Court may permit a party to amend any question of law or to add any new question of law.

(4) Where the Court grants permission under paragraph (2) or (3), it may do so on such conditions as to expenses or otherwise as the Court thinks fit.

Determination of appeal

30.5.—(1) At the conclusion of the hearing, the Court may either give its decision orally or reserve judgment.

(2) Where the Court reserves judgment, it must give its decision in writing within 28 days.

(3) The President of the Sheriff Appeal Court may vary the period in paragraph (2).

(4) The Court may—

(a) adhere to or vary the decision appealed against;

(b) recall the decision and substitute another decision for it; or

(c) remit the matter to the sheriff for further procedure.

(5) The Court may not remit the matter to the sheriff in order that further evidence may be led.

Appeal to the Court of Session: certification

30.6.—(1) This rule applies where the Court has determined an appeal arising from the decision of a sheriff in proceedings under the Summary Cause Rules 2002.

(2) An application under section 38(b) of the Sheriff Courts (Scotland) Act 1971 (appeal in summary causes) for a certificate that a cause is suitable for appeal to the Court of Session is to be made in Form 30.6.

(3) Such an application must be lodged within 14 days after the date on which the Court gave its decision on the appeal.

(4) An application may only be disposed of after the procedural Appeal Sheriff has heard parties on it.

CHAPTER 31

APPEALS FROM SIMPLE PROCEDURE

Appeals from Simple Procedure

31.1. Part 16 of the Simple Procedure Rules(5) applies to an appeal of a decision made under the simple procedure.

CHAPTER 32

APPEALS BY STATED CASE UNDER PART 15 OF THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

Application and interpretation of this Chapter

32.1.—(1) This Chapter applies to an appeal by stated case under section 163(1) (appeals to sheriff principal and Court of Session: children's hearings etc.), 164(1) (appeals to sheriff principal and Court of Session: relevant persons), 165(1) (appeals to sheriff principal and Court of

Session: contact and permanence orders) and 167(1) (appeals to sheriff principal: section 166) of the Children's Hearings (Scotland) Act 2011(6).

(2) In this Chapter, "parties" means the parties specified in rule 3.59(2) of the Act of Sederunt (Child Care and Maintenance Rules) 1997 (appeals: applications for stated case)(7).

Transmission of appeal

32.2.—(1) Within 4 days after the sheriff has signed the stated case, the sheriff clerk must—

- (a) send the parties a copy of the stated case;
- (b) transmit to the Clerk—
 - (i) the stated case;
 - (ii) all documents and productions in the case.

(2) On receipt of the stated case, the Clerk must fix a hearing and intimate the date, time and place of that hearing to the parties.

Hearing of appeal

32.3.—(1) At the hearing, a party may only raise questions of law or procedural irregularities of which notice has not been given if the Court permits the party to do so.

(2) Where the Court grants permission, it may do so on such conditions as to expenses or otherwise as the Court thinks fit.

Determination of appeal

32.4.—(1) At the conclusion of the hearing, the Court may either give its decision orally or reserve judgment.

- (2) Where the Court reserves judgment, it must give its decision in writing within 28 days.
- (3) The President of the Sheriff Appeal Court may vary the period in paragraph (2).

Leave to appeal to the Court of Session

32.5.—(1) This rule applies to applications for leave to appeal to the Court of Session under sections 163(2), 164(2) or 165(2) of the Children's Hearings (Scotland) Act 2011.

- (2) An application is to be made in Form 32.5.
- (3) Such an application must be lodged within 7 days after the date on which the Court gave its decision on the appeal.
- (4) On receipt of an application, the Clerk must—
 - (a) fix a hearing to take place before the procedural Appeal Sheriff no later than 14 days after the application is received;
 - (b) intimate the date, time and place of that hearing to the parties.

(6) 2011 asp 1. Section 164 was amended by the Children (Scotland) Act 2020 (asp 16), section 26(3). Sections 163, 164, 165 and 167 are prospectively amended by the Children (Scotland) Act 2020, section 27(1) to (6).

(7) S.I. 1997/291, last amended by S.S.I. 2019/147. Rule 3.59 was last amended by S.S.I. 2016/194.

CHAPTER 33

APPEALS UNDER PART 4 OF THE AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019

Application of this Chapter

33.1. This Chapter applies to an appeal against the decision of a sheriff under section 38(3), 44(3) and 67(3) of the Age of Criminal Responsibility (Scotland) Act 2019⁽⁸⁾.

Form of appeal

33.2.—(1) An appeal is made by lodging a note of appeal in Form 33.2.

(2) Rule 6.2(2)(a) to (c) and (g) to (h) applies for the purpose of making an appeal under this rule.

Hearing of appeal

33.3. On receipt of the appeal, the Clerk must fix forthwith a hearing to take place within 3 working days (within the meaning of section 76 of the Age of Criminal Responsibility (Scotland) Act 2019) and intimate the date, time and place of that hearing to—

- (a) the constable who applied for the order to which the decision relates;
- (b) the child or person acting on behalf of the child to whom the decision relates;
- (c) any other person the court considers has an interest in proceedings.

Determination of appeal

33.4.—(1) At the conclusion of the hearing, the Court may either give its decision orally or reserve judgment.

- (2) Where the Court reserves judgment, it must give its decision in writing within 28 days.
- (3) The President of the Sheriff Appeal Court may vary the period in paragraph (2).

CHAPTER 34

ANCILLARY PROVISIONS

Revocation

34.1. Act of Sederunt (Sheriff Appeal Court Rules) 2015⁽⁹⁾ is revoked.

Consequential amendment

34.2.—(1) The Simple Procedure Rules are amended in accordance with this paragraph.

(2) In rule 16.4(8) (what will the Sheriff Appeal Court do with an appeal?)⁽¹⁰⁾, for “Act of Sederunt (Sheriff Appeal Court Rules) 2015” substitute “Act of Sederunt (Sheriff Appeal Court Rules) 2021”.

⁽⁸⁾ 2019 asp 7.

⁽⁹⁾ S.S.I. 2015/356, last amended by S.S.I. 2021/452.

⁽¹⁰⁾ Rule 16.4(8) was inserted by S.S.I. 2016/315.

Saving provision

34.3.—(1) Subject to paragraphs (2) to (4), Act of Sederunt (Sheriff Appeal Court Rules) 2015 (“the 2015 Rules”) is saved in so far as it applies to any proceedings commenced before the coming into force of this Act of Sederunt.

(2) Rules 21.1 and 21.5 of the 2015 Rules are saved in respect of appeals in which a reference to the European Court is made before IP completion day.

(3) In paragraph (2), “reference” has the meaning given in rule 21.1 of the 2015 Rules.

(4) Paragraph (1) does not apply to rules 21.2 to 21.4 of the 2015 Rules.

Transitional provision

34.4. The Appeal Sheriff may direct that this Act of Sederunt applies to any proceedings commenced before the coming into force of this Act of Sederunt but only after giving the parties an opportunity to be heard.