

POLICY NOTE

ACT OF SEDERUNT (SHERIFF APPEAL COURT RULES) 2021

SSI 2021/468

Introduction

1. This Policy Note is published to accompany the Act of Sederunt (Sheriff Appeal Court Rules) 2021 made by the Court of Session on 9th December 2021. The rules will come into force on 6th January 2022.
2. This Policy Note has been prepared by the Scottish Civil Justice Council secretariat and sets out the policy underpinning the rules. It does not form part of the rules.

Background

3. The Sheriff Appeal Court (SAC) took up its civil jurisdiction on 1 January 2016. On the same date, the Act of Sederunt (Sheriff Appeal Court Rules) 2015 (SSI 2015/356) (“the 2015 rules”) came into force to support the court’s day-to-day operations. A number of amendments to the 2015 rules have been made since that time as noted in Appendix 1.
4. The 2015 rules will be revoked on commencement of this Act of Sederunt (Sheriff Appeal Court Rules) 2021 (SSI 2021/468) (“the 2021 rules”).
5. From the date of commencement, the Sheriff Appeal Court will operate under the revised court procedures set out in the 2021 rules.

Policy Objectives

6. The 2021 rules have been developed following upon an operational review of the 2015 rules conducted by the Sheriffs Principal. The policy objectives for the review were to deliver an improved appeals process where:
 - appeals can be progressed more timeously;
 - the court can operate more efficiently and with greater flexibility;
 - the court procedure better supports appeals being heard by a bench size proportionate to the appeal points raised; and
 - the court procedure narrates the rules in a manner that all participants will find much easier to use and understand.

The Sheriff Appeal Court Rules Review

Key issues raised by court users

7. The 2015 rules made provision for determining the most appropriate size of bench for a civil appeal hearing and set out the test to be applied when a procedural Appeal Sheriff was making a decision on procedure. Thereafter, the rules provided two separate procedures reflecting the differing steps that would be taken following that decision:

- *Standard Procedure* – which implied hearings by a bench of three in what was seen as a default position; and
- *Accelerated Procedure* - which provided the alternative mechanism for proceeding with hearings by a bench of one.

8. Feedback from court users identified the main concerns with the 2015 rules as:

- *Improving the terminology* - The terms ‘standard procedure’ and ‘accelerated procedure’ were generally perceived as confusing to practitioners. The rules would be easier to use and understand for practitioners if (a) the layout of the rules was reorganised so that the two core court procedures were co-located and found immediately after the test to be applied; and (b) the two procedures were re-named in a more meaningful way to help minimise any potential confusion.
- *Removing unnecessary constraints within the rules* – Some procedural options only become available after a case has been allocated to standard procedure e.g. the ability to lodge a cross appeal, to seek urgent disposal or to raise questions on the competency of an appeal. The court could run more effectively if the rules directed parties to raise those matters prior to the court deciding which procedure is most appropriate.
- *Shifting the point where a decision on procedure is taken* - The 2015 rules require a procedural Appeal Sheriff to issue provisional procedural orders at an early stage when only the appellant’s position is known. The court could run more effectively if further information from respondents was available before issuing directions.

Structural changes in the 2021 rules

9. To respond to users' feedback the rules review concluded that there was a clear need to rename and rearrange the chapters and to move individual rules between chapters. Reorganising the overall layout of the rules would provide a more logical flow for court users.
10. These requirements underpinned the practical decision to revoke the 2015 rules and issue the rules of new as the Sheriff Appeal Court Rules 2021. The key structural changes in the new rules are:
 - to support a greater level of information being provided to the court earlier in the appeal process - a number of rules have been relocated within *Chapter 6: Initiation and progress of an appeal* alongside the test that is to be applied before the procedural Appeal Sheriff decides which procedure an appeal will be appointed to.
 - to minimise confusion around the appropriate destination for an appeal - the two relevant procedures have been re-named and co-located immediately after the test that is to be applied i.e. *Chapter 7: Procedure before three appeals sheriffs* and *Chapter 8: Procedure before one appeal sheriff*.

Policy changes in the 2021 rules

11. The principle policy changes underpinning the new rules are:
 - A change to frontloading the information required e.g. obtaining representations from both appellants and respondents about their views on appropriate procedure; and requiring information earlier in the appeals process for:
 - a) cross-appeals and responses to cross appeals;
 - b) requests for urgent disposal;
 - c) questions raised on the competency of an appeal; and
 - d) requests to sist an appeal.
 - Clarifying the content of the test to be applied before a procedural Appeal Sheriff issues orders on the most appropriate size of bench, including those where urgent disposal applies.

Additional rules provision

12. The Scottish Government announced its decision to commence all remaining provisions in the Age of Criminal Responsibility (Scotland) Act 2019 ("the 2019 Act") on 17 December 2021.

13. The Council agreed that a new chapter should be created within these rules to cover timescales, appeal avenues and form requirements due to the unique demands of the case types arising under the provisions of the 2019 Act.
14. The 2021 rules therefore provide that appeals under the 2019 Act follow the procedure set out in new chapter 33. New chapter 33 provides that an appeal to the court under section 38(1) (appeal against decision under section 36), section 46(1) (appeal against decision under section 44) and section 67(1) (appeal against decision under section 63) of the 2019 Act is made by lodging a note of appeal in Form 33.2.

Administrative changes in the 2021 rules

15. A number of rule changes have been made throughout the 2021 rules to improve administrative procedures and create operational efficiencies:
 - Abolishing provisional procedural orders (as they are redundant when earlier information supports more informed decision-making);
 - Allowing orders for intimation and answers to be issued administratively (unless there is a reason for judicial involvement);
 - Adjusting the timescales for lodging documents;
 - Clarifying that when intimating that a document has been lodged, a copy of that document is to be provided;
 - Clarifying the timescales for lodging appeals, where leave to appeal is a pre-requisite;
 - Ensuring a procedural Appeal Sheriff can deal with motions for an appeal to be received out of time;
 - Clarifying procedure for determinations made on urgent disposal;
 - Clarifying procedure for sisting appeals;
 - Clarifying the flexibility of the court to determine appeals on the papers or at a hearing and to make orders regulating procedure;
 - Clarifying that applications for onward appeal to the Court of Session can be considered on the papers;
 - Adjusting how the procedure for leave to appeal to the Court of Session can better respond for adults with incapacity;
 - Adding a requirement to lodge authorities into the rules (rather than leaving that requirement within Practice Notes);
 - Adding the flexibility to transfer appeals between chapter 7 and chapter 8 procedure (and vice versa);
 - Clarifying the need to lodge minutes with motions;
 - Adding a power for the court to vary the timing for issuing judgments where the President of the Sheriff Appeal Court thinks that is appropriate;
 - Signposting users to the appeal procedure that was set out in 2016 when the core Simple Procedure Rules came into force; and

- Making saving provision for any references to the European Court of Justice made before IP completion day.

Schedule 1 (Administrative Provisions)

- Adding the flexibility to change the quorum of the court (for those very rare occasions where the court may choose to add further appeal sheriffs onto the standard bench size as specified under the two procedures).

Schedule 2 (Forms)

- Renumbering some forms in line with their associated rule;
- Adding three new forms (Form 6.5 Answers, Form 16: Minutes; and Form 33.2 Appeal to the Sheriff Appeal Court); and
- Withdrawing one redundant form (Form 6.7: Representations about a provisional order).

Compatibility with SCJC guiding principles

16. In developing these rules, the Scottish Civil Justice Council has complied, in so far as possible with the guiding principles set out in section 3 of The Scottish Civil Justice Council and Criminal Legal Assistance Act 2013.

17.

Principle

Compatibility

The civil justice system should be fair, accessible and efficient

Fairness – is improved by: seeking representations from the respondent on the procedure they think is most applicable; and, changes that support the procedural Appeal Sheriff being more informed before orders are issued.

Efficiency – is improved through: the provision of more information to the procedural Appeal Sheriff prior to deciding on the appropriate procedure; and changing the timelines for lodging documents.

Rules relating to practice and procedure should be as clear and easy to understand as possible

Re-organising the content - the rules become easier to use and understand by: renaming chapters and co-locating content; and, frontloading the information required prior to

a decision on procedure being taken.

Practice and procedure should, where appropriate, be similar in all civil courts

Alignment – A rules review for procedures in the Inner House of the Court of Session is being progressed in parallel with this exercise.

Methods of resolving disputes which do not involve the courts should, where appropriate, be promoted

Not Applicable – these rules do not provide any scope to promote methods of resolving disputes which do not involve the courts.

Consultation

18. In 2018, an informal three-week consultation was undertaken with the Faculty of Advocates, the Law Society of Scotland and the Sheriffs Association. These bodies represent the key external stakeholders that have regular interactions with: a) the court rules, and b) the judiciary and staff within the Sheriff Appeal Court.

**Scottish Civil Justice Council Secretariat
December 2021**

Appendix 1

Amendments to the 2015 rules:

<i>Statutory Instrument</i>	<i>SSI</i>	<i>W.E.F</i>	<i>Commentary</i>
Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Sheriff Appeal Court) 2015	2015/419	31 Dec 2015 & 1 Jan 2016	To amend various other rules in consequence of the SAC taking up its civil jurisdiction
Act of Sederunt (Sheriff Appeal Court Rules 2015 and Sheriff Court Rules Amendment) (Miscellaneous) 2016	2016/194	07 Jul 2016	To amend the 2015 rules, and various other rules, to address issues that had been identified within the first months of the new court operating
Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Bankruptcy (Scotland) Act 2016) 2016	2016/312	30 Nov 2016	To recognise the Bankruptcy (Scotland) Act 2016
Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 4) (Simple Procedure) 2016	2016/315	28 Nov 2016	To amend the references to small claims within Chapter 29: Appeals from Summary Cause (as a consequence of introducing Simple Procedure)
Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Lay Representation) 2017	2017/186	03 Jul 2017	To recognise an extension in the role of lay representatives
Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Ordinary Cause Rules Amendment) (Taxation of Judicial Expenses) 2019	2019/74	29 Apr 2019	To recognise the changes made to Judicial Taxation procedure
Act of Sederunt (Rules of the Court of Session 1994, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Qualified One-Way Costs Shifting) 2021	2021/226	30 Jun 2021	To recognise the introduction of QOCS