
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 468

Act of Sederunt (Sheriff Appeal Court Rules) 2021

PART 6

INCIDENTAL PROCEDURE: SPECIAL PROCEDURES

CHAPTER 25

PROOF

Taking proof in the course of an appeal

- 25.1.**—(1) If it is considered necessary, proof or additional proof may be ordered—
- (a) by the procedural Appeal Sheriff at a procedural hearing;
 - (b) by the Court in the course of an appeal hearing.
- (2) Where the procedural Appeal Sheriff orders that proof or additional proof is to be taken—
- (a) the procedural Appeal Sheriff must appoint a date and time for a hearing for that to be done;
 - (b) so far as reasonably practicable, the hearing is to be before the procedural Appeal Sheriff who made the order.
- (3) Where the Court orders that proof or additional proof is to be taken, the Court must—
- (a) remit the proof to be taken before any Appeal Sheriff;
 - (b) appoint a date and time for a hearing for that to be done;
 - (c) continue the appeal hearing until the Appeal Sheriff reports the proof to the Court.
- (4) Where a hearing is fixed under this rule, the Clerk must notify the date and time of the hearing to the parties.

Preparation for proof

- 25.2.**—(1) Where a proof or additional proof is ordered, the Appeal Sheriff before whom it is to be taken must make an order specifying—
- (a) the witnesses whose evidence is to be taken;
 - (b) how those witnesses are to be cited to the hearing.
- (2) An order under paragraph (1) may include provision as to liability for the fees and expenses of a witness.

Conduct of proof

- 25.3.** A proof is to be taken continuously so far as possible, but the Appeal Sheriff may adjourn the hearing from time to time.

Administration of oath or affirmation to witnesses

25.4.—(1) The Appeal Sheriff is to administer the oath to a witness in Form 25.4-A unless the witness elects to affirm.

(2) Where a witness elects to affirm, the Appeal Sheriff must administer the affirmation in Form 25.4-B.

Recording of evidence

25.5.—(1) The evidence given at a hearing is to be recorded, unless the parties agree to dispense with the recording of evidence and the Appeal Sheriff considers that it is appropriate to do so.

(2) The evidence must be recorded by—

- (a) a shorthand writer to whom the oath *de fidei administratione* has been administered in connection with the Court; or
- (b) by tape recording or other mechanical means approved by the Court.

(3) In the first instance, the solicitors for the parties are personally liable to pay, in equal shares—

- (a) the fees of a shorthand writer; or
- (b) the fee payable for recording evidence by tape recording or other mechanical means.

(4) The record of evidence is to include—

- (a) any objection taken to a question or to the line of evidence;
- (b) any submission made in relation to such an objection;
- (c) the ruling of the Appeal Sheriff in relation to the objection and submission.

Transcripts of evidence

25.6.—(1) A transcript of the record of the evidence is to be made only where the Appeal Sheriff orders it to be made.

(2) In the first instance, the solicitors for the parties are personally liable, in equal shares, for the cost of making the transcript.

(3) The transcript provided for the use of the Court must be certified as a faithful record of the evidence by—

- (a) the shorthand writer who recorded the evidence; or
- (b) where the evidence was recorded by tape recording or other mechanical means, by the person who transcribed the record.

(4) The Appeal Sheriff may alter the transcript where the Appeal Sheriff considers it necessary to do so, but only after hearing parties on the proposed alterations.

(5) Where the Appeal Sheriff alters the transcript, the Appeal Sheriff must authenticate the alterations.

(6) The transcript may only be borrowed from process on cause shown.

(7) Where a transcript is required for the purpose of an appeal but the Appeal Sheriff has not directed that it be made—

- (a) the appellant may request a transcript from the shorthand writer or the person in whose possession the recording of the evidence is;
- (b) in the first instance, the solicitor for the appellant is liable for the cost of the transcript;
- (c) the appellant must lodge the transcript in process; and
- (d) any party may obtain a copy by paying the fee of the person who made the transcript.

Recording objections where recording of evidence dispensed with

25.7. Where the recording of evidence has been dispensed with under rule 25.5(1), a party may request that the Appeal Sheriff record in the report of the proof—

- (a) any objection taken to a question or to the line of evidence;
- (b) any submission made in relation to such an objection; and
- (c) the ruling of the Appeal Sheriff in relation to the objection and submission.