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## EXPLANATORY NOTE

*(This note is not part of the Act of Sederunt)*

This Act of Sederunt (“the Rules”) makes provision about the procedure to be followed in appeals to the Sheriff Appeal Court in civil proceedings. Appeals may be made from a decision of the sheriff under section 110 of the Courts Reform (Scotland) Act 2014 (“the 2014 Act”) or under existing appeal provisions as modified by section 109. Additionally, applications for a new trial (section 69(1)) or to enter a jury verdict (section 71(2)) may be made to the Sheriff Appeal Court following a jury trial in the sheriff court. The Rules also make provision about appeals from summary causes and small claims under section 38 of the Sheriff Courts (Scotland) Act 1971.

The Rules come into force on 1st January 2016, when the Sheriff Appeal Court takes up its civil jurisdiction and competence.

### *Part 1 – preliminary matters*

Part 1 makes provision about the commencement, citation and interpretation of the Rules. It also deals with the computation of time periods, administrative provisions and the forms to be used.

### *Part 2 – general provisions*

Part 2 makes provision about general matters which apply to any proceedings under the Rules. Chapters 2 and 3 deal with failures to comply with the Rules, providing for applications for relief and sanctions respectively.

Chapter 4 deals with representation and support before the Sheriff Appeal Court. It contains provision about legal representation, applications for lay representation and support, and the functions, conditions and duties applicable to lay representatives and lay supporters.

Chapter 5 makes provision about intimation and lodging of documents, including provision for intimation and lodging by electronic means in certain circumstances.

### *Part 3 – initiation and progress of an appeal*

Part 3 makes provision about how an appeal is to be brought, including specifying the form of the note appeal. Chapters 6 and 7 do not apply to applications for a new trial or to enter a jury verdict, or appeals from summary causes and small claims: bespoke provision is made instead in Part 7. Chapter 6 includes a mechanism for initial case management of appeals by the procedural Appeal Sheriff, with appeals being appointed to the standard appeal procedure in Chapter 7, or the accelerated appeal procedure in Chapter 27.

Chapter 7 sets out the standard appeal procedure. A timetable is issued, fixing a procedural hearing under rule 7.14 and regulating the dates by which parties must comply with various procedural steps. At the procedural hearing, the procedural Appeal Sheriff may fix an appeal hearing if parties are ready to proceed, or order further procedural steps to be taken.

### *Part 4 – disposal of an appeal*

Part 4 makes provision about how an appeal may come to an end. Chapter 8 deals with applications to refuse an appeal due to delay, Chapter 9 deals with abandonment of an appeal, Chapter 10 provides for applications to remit an appeal to the Court of Session, and Chapter 11 concerns applications for permission to appeal to the Court of Session against a decision of the Sheriff Appeal Court.

### *Part 5 – incidental procedure: standard procedures*

Part 5 makes provision about incidental procedure that is relatively commonly encountered in appeal proceedings. In particular, Chapters 12 to 14 deal with motions. Written motions may be made

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by email in accordance with Chapter 13, or by other means in accordance with Chapter 14. Chapter 15 makes provision about minutes, including specific rules for minutes of sisting and transference (rule 15.5) and applications to enter process as a respondent where the appeal has not been intimated to that person (rule 15.6).

Chapter 16 provides that applications to amend pleadings are to be made by motion. This includes amendment of the sheriff court pleadings (rule 16.1) and amendment of the appeal documents (rule 16.2).

Chapter 17 sets out the procedure to be followed when a party's solicitors withdraw from acting, including the fixing of a peremptory hearing so that the party's intentions may be ascertained.

Chapter 18 makes provision about applications for caution and security.

Chapter 19 makes provision about expenses, including the possibility of applying for an additional fee (rule 19.2). Provision is also made for the payment of the expenses of a curator *ad litem* appointed to a respondent (rule 19.7).

#### *Part 6 – incidental procedure: special procedures*

Part 6 makes provision about more unusual forms of incidental procedure.

Chapter 20 sets out the procedure to be followed where a party wishes to raise a devolution issue for the first time in the course of an appeal.

Chapter 21 specifies how applications for a preliminary reference to the Court of Justice of the European Union are to be made, and how references are to be prepared and transmitted to that Court.

Chapter 22 concerns interventions by the Commission for Equality and Human Rights and the Scottish Commission for Human Rights. It makes provision about applications to intervene and about invitations to the Scottish Commission for Human Rights to intervene in proceedings.

Chapters 23 and 24 make provision about how proof may be taken by the Sheriff Appeal Court. Chapter 23 sets out the procedure for doing so, while Chapter 24 makes provision in terms of the Vulnerable Witnesses (Scotland) Act 2004 for the purposes of such a proof.

Chapter 25 deals with applications to make submissions or give evidence by live link.

Chapter 26 contains the procedure to be followed when the Sheriff Appeal Court is contemplating making an order which restricts the reporting of proceedings.

#### *Part 7 – special appeal proceedings*

Part 7 makes provision for appeals which do not follow the standard appeal procedure in Chapter 7.

Chapter 27 deals with appeals that are appointed to the accelerated appeal procedure. Instead of following the procedure in Chapter 7, an appeal hearing is fixed once the appeal has been appointed to the accelerated appeal procedure. The procedural Appeal Sheriff may remit an appeal to the standard appeal procedure if the procedural Appeal Sheriff considers that it is no longer appropriate for the accelerated appeal procedure to apply.

Chapter 28 applies to applications for a new trial under section 69(1) of the 2014 Act, or to enter a verdict under section 71(2). The procedure in Chapter 28 is closely related to that in Chapter 7, although rule 28.14 makes bespoke provision for applications under section 71(2).

Chapter 29 applies to appeals under section 38 of the Sheriff Courts (Scotland) Act 1971 (appeals arising from summary causes and small claims). A stated case is requested and prepared under the relevant provisions of the Act of Sederunt (Summary Cause Rules) 2002 or the Act of Sederunt (Small Claim Rules) 2002. It is then transmitted to the Sheriff Appeal Court (rule 29.2) and a hearing is fixed. Rule 29.4 specifies how such a hearing is to be conducted. A party who wishes to appeal the decision of the Sheriff Appeal Court (in a summary cause) must obtain a certificate that the cause is suitable for appeal to the Court of Session (rule 29.6).

Chapter 30 applies to appeals by stated case under Part 15 of the Children’s Hearings (Scotland) Act 2011. A stated case is requested and prepared under Part IX of Chapter 3 of the Act of Sederunt (Child Care and Maintenance Rules) 1997. It is then transmitted to the Sheriff Appeal Court (rule 30.2) and a hearing is fixed. Rule 30.3 specifies how such a hearing is to be conducted. A party who wishes to appeal the decision of the Sheriff Appeal Court must obtain leave to appeal to the Court of Session (rule 30.5).

*Schedule 1 – administrative provisions*

Schedule 1 contains administrative provisions about the Sheriff Appeal Court. In particular, paragraph 1 specifies the quorum of the Court for different types of business. The quorum is three Appeal Sheriffs, unless the business is of a type listed in subparagraph (3) when the quorum is one Appeal Sheriff.

Paragraph 2 specifies that every Appeal Sheriff is a procedural Appeal Sheriff, and that where the Rules provide for business to be dealt with by a procedural Appeal Sheriff, the Court may dispose of that business where it considers it appropriate to do so.

Paragraphs 3 to 5 contain technical provision about the signature of interlocutors, the form of process and decrees, extracts and execution.

Paragraph 6 makes provision for the use of Gaelic in certain circumstances.

*Schedule 2 – forms*

Schedule 2 contains the forms referred to in rule 1.5.