

---

## EXPLANATORY NOTE

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

This Act of Sederunt (“the Rules”) consolidates and restates the Act of Sederunt (Sheriff Appeal Court Rules) 2015 (S.S.I. 2015/356) with modifications. It 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”). Additionally, applications for a new trial (section 69(1) of the 2014 Act) or to enter a jury verdict (section 71(2) of the 2014 Act) 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 under section 38 of the Sheriff Courts (Scotland) Act 1971 and provide that Part 16 of the Simple Procedure Rules applies to an appeal of a decision made under the simple procedure.

The Rules come into force on 6th January 2022.

### *Part 1 – preliminary matters*

Part 1 makes provision about the commencement, citation, application 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 of 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: 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 procedure before three Appeal Sheriffs in Chapter 7, or the procedure before one Appeal Sheriff in Chapter 8.

Chapter 7 sets out the procedure before three Appeal Sheriffs. A timetable is issued, fixing a procedural hearing under rule 7.9 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. The procedural Appeal Sheriff may transfer an appeal to Chapter 8 procedure if the procedural Appeal Sheriff considers that Chapter 7 procedure is no longer appropriate.

Chapter 8 deals with appeals that are appointed to the procedure before one Appeal Sheriff. Instead of following the procedure in Chapter 7, an appeal hearing is fixed once the appeal has been appointed to Chapter 8 procedure. The procedural Appeal Sheriff may remit an appeal to Chapter 7 procedure if the procedural Appeal Sheriff considers that Chapter 8 procedure is no longer appropriate.

#### *Part 4 – disposal of an appeal*

Part 4 makes provision about how an appeal may come to an end. Chapter 9 deals with applications to refuse an appeal due to delay, Chapter 10 deals with abandonment of an appeal, Chapter 11 provides for applications to remit an appeal to the Court of Session, and Chapter 12 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 13 to 15 deal with motions. Written motions may be made by email in accordance with Chapter 14, or by other means in accordance with Chapter 15. Chapter 16 makes provision about minutes, including specific rules for minutes of sisting and transference (rule 16.5) and applications to enter process as a respondent where the appeal has not been intimated to that person (rule 16.6).

Chapter 17 provides that applications to amend pleadings are to be made by motion. This includes amendment of the sheriff court pleadings (rule 17.1) and amendment of the appeal documents (rule 17.2).

Chapter 18 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 19 makes provision about applications for caution and security.

Chapter 20 makes provision about expenses. Provision is also made for the payment of the expenses of a curator ad litem appointed to a respondent (rule 20.7).

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

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

Chapter 21 sets out the procedure to be followed in relation to Qualified One-Way Costs Shifting in appeals to which section 8 of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 applies.

Chapter 22 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 23 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 24 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 25 and 26 make provision about how proof may be taken by the Sheriff Appeal Court. Chapter 25 sets out the procedure for doing so, while Chapter 26 makes provision in terms of the Vulnerable Witnesses (Scotland) Act 2004 for the purposes of such a proof.

Chapter 27 deals with applications to make submissions or give evidence by live link.

Chapter 28 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 Chapter 7 procedure or Chapter 8 procedure.

Chapter 29 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 29 is closely related to that in Chapter 7, although rule 29.14 makes bespoke provision for applications under section 71(2).

Chapter 30 applies to appeals under section 38 of the Sheriff Courts (Scotland) Act 1971 (appeal in summary causes). A stated case is requested and prepared under the relevant provisions of Act of Sederunt (Summary Cause Rules) 2002. It is then transmitted to the Sheriff Appeal Court (rule 30.2) and a hearing is fixed. Rule 30.4 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 30.6).

Chapter 31 provides that part 16 of the Simple Procedure Rules applies to an appeal of a decision made under the simple procedure.

Chapter 32 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 32.2) and a hearing is fixed. Rule 32.3 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 32.5).

Chapter 33 applies to appeals under Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019. It provides that an appeal to the Sheriff Appeal Court under section 38(1), section 46(1) and section 67(1) of the Age of Criminal Responsibility (Scotland) Act 2019 is made by lodging a note of appeal in Form 33.2.

Chapter 34 revokes Act of Sederunt (Sheriff Appeal Court Rules) 2015 (“the 2015 instrument”). It also saves the 2015 instrument in respect of any appeals which were commenced and not concluded before 6th January 2022 with specific saving in relation to references to the Court of Justice of the European Union. Transitional provision is also made to allow an Appeal Sheriff to direct that this Act of Sederunt applies to proceedings commenced before 6th January 2022.

#### *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 (but more than three Appeal Sheriffs may sit where the Court considers that to be appropriate), unless the business is of a type listed in sub-paragraph (3) when the quorum is one Appeal Sheriff (but more than one Appeal Sheriff may sit where the Court considers that to be appropriate).

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 and 4 contain technical provision about the signature of interlocutors, and decrees, extracts and execution.

Paragraph 5 makes provision for the use of Gaelic in certain circumstances.

#### *Schedule 2 – forms*

Schedule 2 contains the forms referred to in rule 1.6.

**Changes to legislation:**

There are currently no known outstanding effects for the Act of Sederunt (Sheriff Appeal Court Rules) 2021.