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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 468**

**Act of Sederunt (Sheriff Appeal Court Rules) 2021**

**PART 3**

**INITIATION AND PROGRESS OF AN APPEAL**

**CHAPTER 6**

**INITIATION AND PROGRESS OF AN APPEAL**

**Application of this Chapter**

- 6.1.** This Chapter applies to an appeal against a decision of a sheriff in civil proceedings except—
- (a) an application for a new trial under section 69(1) of the 2014 Act (see Chapter 29);
  - (b) an application to enter a jury verdict under section 71(2) of the 2014 Act (see Chapter 29);
  - (c) an appeal under section 38 of the Sheriff Courts (Scotland) Act 1971(1) (see Chapter 30);
  - (d) an appeal under section 82 of the 2014 Act (see Chapter 31);
  - (e) an appeal by stated case under section 163(1), 164(1), 165(1) or 167(1) of the Children’s Hearings (Scotland) Act 2011(2) (see Chapter 32);
  - (f) an appeal under section 38(3), 44(3) or 67(3) of the Age of Criminal Responsibility (Scotland) Act 2019(3) (see Chapter 33);
  - (g) an appeal against an interlocutor granting decree of divorce in a simplified divorce application (see rule 33.81 of the Ordinary Cause Rules 1993)(4);
  - (h) an appeal against an interlocutor granting decree of dissolution of civil partnership in a simplified dissolution of civil partnership application (see rule 33A.74 of the Ordinary Cause Rules 1993)(5).

**Form of appeal**

- 6.2.—**(1) An appeal is made by lodging a note of appeal in Form 6.2.
- (2) The note of appeal must—
- (a) specify—
    - (i) the decision complained of;
    - (ii) the date on which the decision was made;

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(1) [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 It was also partly repealed by the Courts Reform (Scotland) Act [2014 \(asp 18\)](#), schedule 5, paragraph 6(2) which has effect subject to transitional provision specified in [S.S.I. 2016/291](#).

(2) [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(3) to (6).

(3) [2019 asp 7](#).

(4) The Ordinary Cause Rules 1993 are in Schedule 1 of the Sheriff Courts (Scotland) Act [1907 \(c.51\)](#). Schedule 1 was substituted by [S.I. 1993/1956](#) and was last amended by [S.S.I. 2021/226](#). Rule 33.81 was amended by [S.S.I. 2015/419](#).

(5) Rule 33A.74 was inserted by [S.S.I. 2005/638](#) and amended by [S.S.I. 2015/419](#).

- (iii) the date on which it was intimated to the appellant;
- (iv) any other relevant information;
- (b) state the grounds of appeal in brief specific numbered paragraphs setting out concisely the grounds on which it is proposed that the appeal should be allowed;
- (c) have appended to it a copy of the interlocutor containing the decision appealed against;
- (d) where the sheriff's note is available, have appended to it a copy of the note;
- (e) where the sheriff's note is not available, indicate whether the appellant—
  - (i) has requested that the sheriff writes a note and is awaiting its production;
  - (ii) requests that the sheriff write a note; or
  - (iii) considers that the appeal is sufficiently urgent that the Court should hear and determine the appeal without the sheriff's note;
- (f) state whether, taking into account the matters in rule 6.11(3), the appellant considers that the appeal should be appointed to Chapter 7 procedure or Chapter 8 procedure;
- (g) be signed;
- (h) where the appellant is represented by a solicitor, specify the name and business address of the solicitor.

#### **Time for appeal**

- 6.3.—**(1) An appeal must be made either—
- (a) within 28 days after the date on which the decision appealed against was given; or
  - (b) where permission to appeal is required, within 7 days after the date on which permission was granted if that results in a later date.
- (2) This rule does not apply where the enactment under which the appeal is made specifies a period within which the appeal must be made.

#### **Applications to appeal out of time**

- 6.4.—**(1) This rule applies where the enactment under which the appeal is made—
- (a) specifies a period within which the appeal must be made; and
  - (b) provides that a party may apply to the Court to allow an appeal to be made outwith that period.
- (2) An application to allow an appeal to be received out of time is to be made by motion.
- (3) That motion is to be made when the note of appeal is lodged.
- (4) The application is to be determined by a procedural Appeal Sheriff.
- (5) Where a motion to allow an appeal to be received out of time is determined—
- (a) the Clerk is to—
    - (i) notify the sheriff clerk of the outcome of the application;
    - (ii) transmit the note of appeal and the Court's interlocutor to the sheriff clerk;
  - (b) the sheriff clerk is to place the note of appeal in the process.
- (6) Where an application to allow an appeal to proceed out of time is granted, the appeal will proceed as if it had been made in time.

### **Order for intimation and answers**

**6.5.**—(1) Subject to paragraph (2), on the first available court day after the appeal is lodged, the Clerk must make an order for—

- (a) intimation of the appeal, within 7 days after the date of the order, to be given to—
  - (i) the respondent;
  - (ii) any other person who appears to have an interest in the appeal;
- (b) any person on whom the appeal is intimated to lodge answers in Form 6.5, if so advised, within 14 days after the date of intimation.

(2) The procedural Appeal Sheriff may vary the periods of 7 days and 14 days mentioned in paragraph (1)—

- (a) of the procedural Appeal Sheriff’s own accord; or
- (b) on cause shown, on the application of the appellant.

(3) That application must—

- (a) be included in the note of appeal;
- (b) give reasons for varying the period.

(4) Where an appeal is intimated under this rule, the appellant must lodge a certificate of intimation in Form 6.5-A within 14 days after the date of intimation, or such other period as the procedural Appeal Sheriff may direct.

(5) In the answers, the respondent or other interested party must state—

- (a) his or her view on whether the appeal should be appointed to Chapter 7 procedure or Chapter 8 procedure;
- (b) why he or she has reached that view, taking into account the matters mentioned in rule 6.11(3).

### **Cross-appeals**

**6.6.**—(1) A respondent who seeks to—

- (a) appeal against any decision of the sheriff; or
- (b) challenge the grounds on which the sheriff made the decision appealed against,

may lodge grounds of cross-appeal in Form 6.6 within the period for lodging answers in accordance with an order under rule 6.5(1)(b) or, as the case may be, rule 6.5(2), together with a certificate of intimation in Form 6.5-A.

(2) The appellant may lodge answers to the respondent’s grounds of cross-appeal within 14 days after the grounds are intimated to the appellant.

### **Urgent disposal procedure**

**6.7.**—(1) The procedural Appeal Sheriff may order urgent disposal of an appeal—

- (a) of the procedural Appeal Sheriff’s own accord; or
- (b) on the application of the appellant or a respondent.

(2) The Clerk may refer an appeal to the procedural Appeal Sheriff to consider ordering urgent disposal.

(3) Where the appellant or a respondent seeks urgent disposal, an application for urgent disposal is to be made by motion.

(4) An application may be made—

- (a) by the appellant, when the note of appeal is lodged;
  - (b) by the respondent, no later than the expiry of the period for lodging answers specified in rule 6.5(1)(b).
- (5) Where the decision appealed against concerns an order made by the sheriff—
- (a) under section 11(1) of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.)(6);
  - (b) in relation to adoption; or
  - (c) in relation to permanence,
- the appellant must seek urgent disposal.
- (6) Where the procedural Appeal Sheriff proposes to order urgent disposal of the procedural Appeal Sheriff's own accord—
- (a) the Clerk must notify every party to the appeal;
  - (b) any party who objects to urgent disposal may make representations within such time and in such manner as the procedural Appeal Sheriff orders.

### **Urgent disposal objection: determination**

**6.8.**—(1) Where an application for urgent disposal made under rule 6.7(4) is opposed or a party makes representations objecting to urgent disposal in accordance with rule 6.7(6)(b), before ordering urgent disposal the procedural Appeal Sheriff must—

- (a) give parties an opportunity to be heard on the matter; or
  - (b) order the Clerk to intimate to parties that the matter will be considered on written submissions and specify the date by which such submissions are to be lodged.
- (2) At a hearing under paragraph (1)(a) or in written submissions lodged under paragraph (1)(b), the parties must provide the procedural Appeal Sheriff with an assessment of the likely duration of the hearing to determine the appeal.
- (3) When ordering urgent disposal of an appeal, the procedural Appeal Sheriff must make an order specifying—
- (a) the procedure to be followed in the appeal;
  - (b) the number of appeal sheriffs who will hear the appeal, taking into account the matters mentioned in rule 6.11(3); and
  - (c) where the appeal is to proceed under Chapter 7 procedure, the periods for complying with each procedural step.
- (4) The procedural Appeal Sheriff must not make an order under rule 6.11(2) until the matter of urgent disposal has been determined.

### **Questions about competency**

- 6.9.**—(1) A question about the competency of an appeal or cross-appeal may be referred to the procedural Appeal Sheriff by—
- (a) any party; or
  - (b) the Clerk.

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(6) 1995 c.36. Section 11 was amended by the Family Law (Scotland) Act 2006 (asp 2), section 24; the Adoption and Children (Scotland) Act 2007 (asp 4), section 107, schedule 2, paragraph 9(2) and schedule 3, paragraph 1; the Human Fertilisation and Embryology Act 2008 (c.22), Schedule 6, paragraph 52; the Children (Scotland) Act 2020 (asp 16), section 15(2); S.S.I. 2001/36; S.S.I. 2005/42; S.S.I. 2016/21 and S.I. 2018/1413.

- (2) A party may refer a question by lodging a reference in Form 6.9.
- (3) A party may refer a question within the period for lodging answers, in accordance with rule 6.5(1)(b) or, as the case may be, rule 6.6(2).
- (4) The Clerk may refer a question at any time until the procedural Appeal Sheriff makes an order under rule 6.11(2).
- (5) When a reference is made, the Clerk must fix a hearing and intimate the date and time of that hearing to the parties.
- (6) When a reference is made by the Clerk and the procedural Appeal Sheriff considers that a question of competency arises, the order fixing the hearing must specify the question about the competency of the appeal or cross-appeal.
- (7) The order fixing the hearing on a reference must specify the date by which notes of argument are to be lodged.
- (8) The note of argument must—
  - (a) give fair notice of the submissions the party intends to make on the question of competency; and
  - (b) comply with the requirements in rule 7.7(3).
- (9) Paragraphs (4) and (5) of rule 7.7 apply to the note of argument.

#### **Questions about competency: determination**

- 6.10.**—(1) At a hearing on the competency of an appeal, the procedural Appeal Sheriff may—
- (a) refuse the appeal as incompetent;
  - (b) find the appeal to be competent; or
  - (c) 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 appeal as incompetent; or
  - (b) find the appeal to be competent.
- (4) The Court may make an order as to the expenses of the reference.

#### **Initial case management of appeals**

- 6.11.**—(1) This rule does not apply to an appeal that has been ordered for urgent disposal.
- (2) Subject to rule 6.8(4), on expiry of the period for lodging answers and any grounds of cross-appeal, the procedural Appeal Sheriff must appoint an appeal to—
- (a) Chapter 7 procedure; or
  - (b) Chapter 8 procedure.
- (3) An appeal is to be appointed to such procedure as the procedural Appeal Sheriff considers proportionate for the disposal of the appeal, having regard to the following—
- (a) any representations made by the parties;
  - (b) the value and importance of the claim;
  - (c) the complexity of the issues of fact and law raised by the appeal or the cross appeal;
  - (d) the presumption in paragraph (4).

(4) Without prejudice to the generality of paragraph (3), the following are presumed to be appropriate for Chapter 8 procedure in the absence of special circumstances—

- (a) appeals from procedural decisions;
- (b) appeals against decisions—
  - (i) granting decree by default;
  - (ii) refusing a reponing note;
  - (iii) granting interim or summary decree;
  - (iv) sisting an action.

(5) The Clerk must intimate an order under this rule to parties.

### **Sist of appeals**

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

- (a) sist the appeal for a specified period; or
- (b) recall the sist.

(2) An application to sist the appeal may only be granted on cause shown.

(3) 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.

(4) Where the procedural Appeal Sheriff makes an order sisting the appeal, the Clerk must discharge any hearing already fixed under rule 7.2(2), rule 7.9(3)(a) or rule 8.2(1)(a).

(5) When a sist in an appeal under Chapter 7 procedure is recalled or expires, the Clerk must—

- (a) issue a revised timetable in Form 7.2; and
- (b) fix a procedural hearing.

(6) When a sist in an appeal under Chapter 8 procedure is recalled or expires, the Clerk must—

- (a) fix a procedural hearing or a hearing of the appeal; and
- (b) intimate the date and time of the procedural hearing or appeal to parties.