

2021 No. 468

SHERIFF APPEAL COURT

Act of Sederunt (Sheriff Appeal Court Rules) 2021

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CONTENTS

PART 1

PRELIMINARY MATTERS

CHAPTER 1

CITATION, COMMENCEMENT AND APPLICATION ETC.

- 1.1. Citation and commencement, etc.
- 1.2. Application
- 1.3. Interpretation
- 1.4. Computation of periods of time
- 1.5. Administrative provisions
- 1.6. Forms

PART 2

GENERAL PROVISIONS

CHAPTER 2

RELIEF FOR FAILURE TO COMPLY

- 2.1. Relief for failure to comply with rules

CHAPTER 3

SANCTIONS FOR FAILURE TO COMPLY

- 3.1. Circumstances where a party is in default
- 3.2. Sanctions where a party is in default

CHAPTER 4

REPRESENTATION AND SUPPORT

- 4.1. Representation and support
- 4.2. Legal representation
- 4.3. Lay representation: applications
- 4.4. Lay representation: functions, conditions and duties
- 4.5. Lay support: applications
- 4.6. Lay support: functions, conditions and duties

CHAPTER 5
INTIMATION AND LODGING ETC.

- 5.1. Interpretation of this Chapter
- 5.2. Intimation
- 5.3. Methods of intimation
- 5.4. Methods of intimation: recorded delivery
- 5.5. Methods of intimation: by sheriff officer
- 5.6. Additional methods of intimation where receiving party represented by solicitor
- 5.7. Lodging

PART 3
INITIATION AND PROGRESS OF AN APPEAL

CHAPTER 6
INITIATION AND PROGRESS OF AN APPEAL

- 6.1. Application of this Chapter
- 6.2. Form of appeal
- 6.3. Time for appeal
- 6.4. Applications to appeal out of time
- 6.5. Order for intimation and answers
- 6.6. Cross-appeals
- 6.7. Urgent disposal procedure
- 6.8. Urgent disposal objection: determination
- 6.9. Questions about competency
- 6.10. Questions about competency: determination
- 6.11. Initial case management of appeals
- 6.12. Sist of appeals

CHAPTER 7
PROCEDURE BEFORE THREE APPEAL SHERIFFS

- 7.1. Application of this Chapter
- 7.2. Timetable in appeal
- 7.3. Variation of timetable
- 7.4. Appeal print
- 7.5. Appendix to appeal print: contents
- 7.6. Appendix to appeal print considered unnecessary
- 7.7. Notes of argument
- 7.8. Estimates of duration of appeal hearing
- 7.9. Procedural hearing
- 7.10. Authorities
- 7.11. Transmission of sheriff court process
- 7.12. Extension of notes of evidence
- 7.13. Referral to family mediation
- 7.14. Application to transfer appeal to Chapter 8 procedure

CHAPTER 8
PROCEDURE BEFORE ONE APPEAL SHERIFF

- 8.1. Application of this Chapter
- 8.2. Hearing of appeal
- 8.3. Notes of argument
- 8.4. Authorities

- 8.5. Application to transfer appeal to Chapter 7 procedure

PART 4
DISPOSAL OF AN APPEAL
CHAPTER 9

REFUSAL OF APPEAL DUE TO DELAY

- 9.1. Application to refuse appeal due to delay
9.2. Determination of application to refuse appeal due to delay

CHAPTER 10
ABANDONMENT OF APPEAL

- 10.1. Application to abandon appeal

CHAPTER 11
REMIT TO THE COURT OF SESSION

- 11.1. Application to remit appeal to the Court of Session

CHAPTER 12
APPLICATIONS FOR PERMISSION TO APPEAL TO THE COURT OF SESSION

- 12.1. Application of this Chapter
12.2. Applications for permission to appeal
12.3. Applications for leave to appeal

PART 5
INCIDENTAL PROCEDURE: STANDARD PROCEDURES

CHAPTER 13
MOTIONS: GENERAL

- 13.1. Interpretation
13.2. Making of motions
13.3. Oral motions
13.4. Written motions
13.5. Provision of email addresses to the Clerk
13.6. Grounds for written motion
13.7. Determination of unopposed motions in writing
13.8. Issuing of orders by email

CHAPTER 14
MOTIONS LODGED BY EMAIL

- 14.1. Intimation of motions by email
14.2. Opposition to motions
14.3. Consent to motions
14.4. Lodging unopposed motions
14.5. Lodging opposed motions by email
14.6. Variation of periods of intimation

CHAPTER 15
MOTIONS LODGED BY OTHER MEANS

- 15.1. Intimation of motions by other means
15.2. Opposition to motions
15.3. Consent to motions
15.4. Lodging of motions

- 15.5. Joint motions
- 15.6. Hearing of opposed motions
- 15.7. Modification of Chapter 5

CHAPTER 16
MINUTES

- 16.1. Application of this Chapter
- 16.2. Form and lodging of minute
- 16.3. Orders for intimation and answers
- 16.4. Consent to minute
- 16.5. Minutes of sist and transference
- 16.6. Applications to enter process as respondent

CHAPTER 17
AMENDMENT OF PLEADINGS

- 17.1. Amendment of sheriff court pleadings
- 17.2. Amendment of note of appeal and answers etc.

CHAPTER 18
WITHDRAWAL OF SOLICITORS

- 18.1. Interpretation of this Chapter
- 18.2. Giving notice of withdrawal to the Court
- 18.3. Arrangements for peremptory hearing
- 18.4. Peremptory hearing

CHAPTER 19
CAUTION AND SECURITY

- 19.1. Application of this Chapter
- 19.2. Form of application to find caution or give security
- 19.3. Orders for caution or other security: time for compliance
- 19.4. Methods of finding caution or giving security
- 19.5. Cautioners and other guarantors
- 19.6. Form of bond of caution
- 19.7. Caution or other security: sufficiency and objections
- 19.8. Insolvency or death of cautioner or guarantor
- 19.9. Failure to find caution or give security

CHAPTER 20
EXPENSES

- 20.1. Taxation of expenses
- 20.2. Time for lodging account of expenses
- 20.3. Diet of taxation
- 20.4. Auditor's statement
- 20.5. Objections to taxed account
- 20.6. Decree for expenses in name of solicitor
- 20.7. Expenses of curator *ad litem* appointed to a respondent

CHAPTER 21
QUALIFIED ONE-WAY COSTS SHIFTING

- 21.1. Application and interpretation of this Chapter
- 21.2. Application for an award of expenses

- 21.3. Award of expenses
- 21.4. Procedure
- 21.5. Award against legal representatives

PART 6
INCIDENTAL PROCEDURE: SPECIAL PROCEDURES
CHAPTER 22
DEVOLUTION ISSUES

- 22.1. Interpretation
- 22.2. Raising a devolution issue
- 22.3. Raising a devolution issue: intimation and service
- 22.4. Raising a devolution issue: permission to proceed
- 22.5. Participation by the relevant authority
- 22.6. Reference to the Inner House or Supreme Court
- 22.7. Reference to the Inner House or Supreme Court: further procedure
- 22.8. Reference to the Inner House or Supreme Court: procedure following determination

CHAPTER 23
PRELIMINARY REFERENCES TO THE CJEU – CITIZENS’ RIGHTS

- 23.1. Interpretation of this Chapter
- 23.2. Applications for a reference
- 23.3. Preparation of reference
- 23.4. Transmission of reference to European Court
- 23.5. Sist of appeal

CHAPTER 24
INTERVENTIONS BY CEHR AND SCHR

- 24.1. Application and interpretation of this Chapter
- 24.2. Applications to intervene
- 24.3. Applications to intervene: determination
- 24.4. Invitations to intervene
- 24.5. Form of intervention

CHAPTER 25
PROOF

- 25.1. Taking proof in the course of an appeal
- 25.2. Preparation for proof
- 25.3. Conduct of proof
- 25.4. Administration of oath or affirmation to witnesses
- 25.5. Recording of evidence
- 25.6. Transcripts of evidence
- 25.7. Recording objections where recording of evidence dispensed with

CHAPTER 26
VULNERABLE WITNESSES

- 26.1. Application and interpretation of this Chapter
- 26.2. Form of notices and applications
- 26.3. Determination of notices and applications
- 26.4. Determination of notices and applications: supplementary orders
- 26.5. Intimation of orders

- 26.6. Taking of evidence by commissioner: preparatory steps
- 26.7. Taking of evidence by commissioner: interrogatories
- 26.8. Taking of evidence by commissioner: conduct of commission
- 26.9. Taking of evidence by commissioner: lodging and custody of video record and documents

CHAPTER 27
USE OF LIVE LINKS

- 27.1. Interpretation
- 27.2. Application for use of live link

CHAPTER 28
REPORTING RESTRICTIONS

- 28.1. Application and interpretation of this Chapter
- 28.2. Interim orders
- 28.3. Representations
- 28.4. Notification of reporting restrictions
- 28.5. Applications for variation or revocation

PART 7
SPECIAL APPEAL PROCEEDINGS

CHAPTER 29
APPLICATION FOR NEW JURY TRIAL OR TO ENTER JURY VERDICT

- 29.1. Application of this Chapter
- 29.2. Form of application for new trial
- 29.3. Application for new trial: restrictions
- 29.4. Applications out of time
- 29.5. Timetable in application for new trial
- 29.6. Sist of application for new trial and variation of timetable
- 29.7. Questions about competency of application
- 29.8. Questions about competency: determination
- 29.9. Appendices to print: contents
- 29.10. Appendices to print considered unnecessary
- 29.11. Notes of argument
- 29.12. Estimates of duration of hearing of application for new trial
- 29.13. Procedural hearing
- 29.14. Application to enter jury verdict

CHAPTER 30
APPEALS FROM SUMMARY CAUSES

- 30.1. Application of this Chapter
- 30.2. Transmission of appeal
- 30.3. Transmission of appeal: time to pay direction
- 30.4. Hearing of appeal
- 30.5. Determination of appeal
- 30.6. Appeal to the Court of Session: certification

CHAPTER 31
APPEALS FROM SIMPLE PROCEDURE

- 31.1. Appeals from Simple Procedure

CHAPTER 32

APPEALS BY STATED CASE UNDER PART 15 OF THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

- 32.1. Application and interpretation of this Chapter
- 32.2. Transmission of appeal
- 32.3. Hearing of appeal
- 32.4. Determination of appeal
- 32.5. Leave to appeal to the Court of Session

CHAPTER 33

APPEALS UNDER PART 4 OF THE AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019

- 33.1. Application of this Chapter
- 33.2. Form of appeal
- 33.3. Hearing of appeal
- 33.4. Determination of appeal

CHAPTER 34

ANCILLARY PROVISIONS

- 34.1. Revocation
- 34.2. Consequential amendment
- 34.3. Saving provision
- 34.4. Transitional provision

SCHEDULE 1 — ADMINISTRATIVE PROVISIONS

SCHEDULE 2 — FORMS

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council with such modifications as it thinks appropriate.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 14(7) of the Scottish Commission for Human Rights Act 2006(b), section 104(1) of the Courts Reform (Scotland) Act 2014(c) and all other powers enabling it to do so.

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).
(b) 2006 asp 16. Section 14 was amended by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 2, paragraph 12, S.S.I. 2013/211 and S.S.I. 2015/402.
(c) 2014 asp 18.

PART 1
PRELIMINARY MATTERS
CHAPTER 1
CITATION, COMMENCEMENT AND APPLICATION ETC.

Citation and commencement, etc.

1.1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Appeal Court Rules) 2021.

(2) It comes into force on 6th January 2022.

(3) A certified copy is to be inserted in the Books of Sederunt.

Application

1.2. These Rules apply to any appeal or application made under chapters 6 and 29 to 33 of these Rules.

Interpretation

1.3.—(1) In this Act of Sederunt—

“the 2014 Act” means the Courts Reform (Scotland) Act 2014;

“advocate” means a practising member of the Faculty of Advocates;

“Chapter 7 procedure” has the meaning given by rule 7.1;

“Chapter 8 procedure” has the meaning given by rule 8.1;

“the Clerk” means the Clerk of the Sheriff Appeal Court;

“the Court” means the Sheriff Appeal Court;

“grounds of appeal” is to be construed in accordance with rule 6.2(2)(b);

“party litigant” has the meaning given by rule 4.1;

“procedural Appeal Sheriff” has the meaning given by paragraph 2(1) of schedule 1;

“procedural hearing” means a hearing under rule 7.9 or rule 29.13;

“sheriff court process” means—

(a) the sheriff court process for the cause that is appealed to the Court; or

(b) where the cause is recorded in an official book of the sheriff court, a copy of the record in that book certified by the sheriff clerk;

“sheriff’s note” means a note setting out the reasons for the decision appealed against;

“solicitor” means a person qualified to practise as a solicitor under section 4 of the Solicitors (Scotland) Act 1980(a);

“timetable” means a timetable in—

(a) Form 7.2 issued under—

(i) rule 6.12(5)(a);

(ii) rule 7.2(1); or

(iii) rule 7.3(4)(b); or

(b) Form 29.5 issued under—

(i) rule 29.5(1);

(a) 1980 c.46.

(ii) rule 29.6(6)(a); or

(iii) rule 29.6(7)(b).

(2) In relation to an application under section 69(1) or 71(2) of the 2014 Act—

“appeal” includes that application;

“appellant” includes the applicant;

“note of appeal” includes an application in Form 29.2 or Form 29.14.

Computation of periods of time

1.4. If any period of time specified in these Rules expires on a Saturday, Sunday or public or court holiday, it is extended to expire on the next day that the office of the Clerk is open for civil business.

Administrative provisions

1.5. Schedule 1 makes provision about administrative arrangements for the Court, including its quorum.

Forms

1.6.—(1) Where there is a reference in these Rules to a form, it is a reference to that form in schedule 2.

(2) Where these Rules require a form to be used, that form may be varied where the circumstances require it.

PART 2

GENERAL PROVISIONS

CHAPTER 2

RELIEF FOR FAILURE TO COMPLY

Relief for failure to comply with rules

2.1.—(1) The Court may relieve a party from the consequences of a failure to comply with a provision in these Rules.

(2) The Court may do so only where the party shows that the failure is due to—

(a) mistake;

(b) oversight; or

(c) any other excusable cause.

(3) Where relief is granted, the Court may—

(a) impose conditions that must be satisfied before relief is granted;

(b) make an order to enable the appeal to proceed as if the failure had not occurred.

CHAPTER 3

SANCTIONS FOR FAILURE TO COMPLY

Circumstances where a party is in default

3.1. A party is in default if that party fails—

- (a) to comply with the timetable;
- (b) to implement an order of the Court within the period specified in the order;
- (c) to appear or be represented at any hearing; or
- (d) otherwise to comply with any requirement imposed on that party by these Rules.

Sanctions where a party is in default

3.2.—(1) This rule—

- (a) applies where a party is in default;
 - (b) but does not apply where a party is in default because the party has failed to comply with rule 18.4(1).
- (2) The Court may make any order to secure the expeditious disposal of the appeal.
- (3) In particular, the Court may either—
- (a) refuse the appeal, where the party in default is the appellant; or
 - (b) allow the appeal, if the condition in paragraph (4) is satisfied, where either—
 - (i) the party in default is the sole respondent; or
 - (ii) every respondent is in default.
- (4) The condition is that the appellant must show cause why the appeal should be allowed.

CHAPTER 4

REPRESENTATION AND SUPPORT

Representation and support

- 4.1.**—(1) A natural person who is a party to proceedings may appear and act on that party's behalf.
- (2) That person is to be known as a party litigant.
- (3) A party may be represented in any proceedings by—
- (a) a legal representative (see rule 4.2); or
 - (b) a lay representative (see rule 4.3).
- (4) A lay supporter (see rule 4.5) may assist a party litigant with the conduct of any proceedings.

Legal representation

4.2. A party is represented by a legal representative if that party is represented by an advocate or a solicitor.

Lay representation: applications

- 4.3.**—(1) This rule does not apply where any other enactment makes provision for a party to a particular type of case to be represented by a lay representative.
- (2) A party is represented by a lay representative if that party is represented by a person who is not a legal representative.
- (3) A party litigant may apply to the Court for permission to be represented by a lay representative.
- (4) An application is to be—
- (a) made by motion;
 - (b) accompanied by a document in Form 4.3 signed by the prospective lay representative.

(5) The Court may grant an application only if it considers that it would be in the interests of justice to do so.

(6) Where the Court grants permission, it may—

- (a) do so in respect of one or more specified hearings;
- (b) withdraw permission of its own accord or on the motion of any party.

Lay representation: functions, conditions and duties

4.4.—(1) A lay representative may represent a party at any hearing at which permission has been granted under rule 4.3 or where any other enactment makes provision for a party to be represented by a lay representative.

(2) The party must appear along with the lay representative at any hearing where the lay representative is to represent the party.

(3) Where permission is granted under rule 4.3, the lay representative may do anything in the preparation or conduct of the hearing that the party may do.

(4) A party may show any document (including a court document) or communicate any information about the proceedings to that party's lay representative without contravening any prohibition or restriction on the disclosure of the document or information.

(5) Where a document or information is disclosed under paragraph (4), the lay representative is subject to any prohibition or restriction on the disclosure in the same way that the party is.

(6) A lay representative must not receive, directly or indirectly, from the party any remuneration or other reward for assisting the party.

(7) Any expenses incurred by a party in connection with a lay representative are not recoverable expenses in the proceedings.

Lay support: applications

4.5.—(1) A party litigant may apply to the Court for permission for a named person to assist the party litigant in the conduct of proceedings, and such a person is to be known as a lay supporter.

(2) An application is to be made by motion.

(3) The Court may refuse an application only if it is of the opinion that—

- (a) the named person is an unsuitable person to act as a lay supporter (whether generally or in the proceedings concerned); or
- (b) it would be contrary to the efficient administration of justice to grant it.

(4) The Court, if satisfied that it would be contrary to the efficient administration of justice for permission to continue, may withdraw permission—

- (a) of its own accord; or
- (b) on the motion of any party.

Lay support: functions, conditions and duties

4.6.—(1) A lay supporter may assist a party by accompanying the party at hearings in court or in chambers.

(2) A lay supporter may, if authorised by the party, assist the party by—

- (a) providing moral support;
- (b) helping to manage court documents and other papers;
- (c) taking notes of the proceedings;
- (d) quietly advising on—
 - (i) points of law and procedure;
 - (ii) issues which the party litigant might wish to raise with the Court.

(3) A party may show any document (including a court document) or communicate any information about the proceedings to that party's lay supporter without contravening any prohibition or restriction on the disclosure of the document or information.

(4) Where a document or information is disclosed under paragraph (3), the lay supporter is subject to any prohibition or restriction on the disclosure in the same way that the party is.

(5) A lay supporter must not receive, directly or indirectly, from the party any remuneration or other reward for assisting the party.

(6) Any expenses incurred by a party in connection with a lay supporter are not recoverable expenses in the proceedings.

CHAPTER 5 INTIMATION AND LODGING ETC.

Interpretation of this Chapter

5.1.—(1) In this Chapter—

“first class post” means a postal service which seeks to deliver documents or other things by post no later than the next working day in all or the majority of cases;

“intimating party” means any party who has to give intimation in accordance with rule 5.2(1);

“receiving party” means any party to whom intimation is to be given in accordance with rule 5.2;

“recorded delivery” means a postal service which provides for the delivery of documents or other things by post to be recorded.

(2) Where this Chapter authorises intimation to be given by electronic means—

(a) intimation may only be given by this method if the intimating party and the solicitor for the receiving party have notified the Court that they will accept intimation by electronic means at a specified email address;

(b) the intimation is to be sent to the specified email address of the solicitor for the receiving party.

(3) Where this Chapter authorises a document to be lodged by electronic means, it must be sent to the email address of the Court.

Intimation

5.2.—(1) Unless the Court orders otherwise, where—

(a) any provision in these Rules requires a party to—

(i) lodge any document;

(ii) intimate any other matter; or

(b) the Court orders a party to intimate something,

intimation must be given to every other party.

(2) Where intimation relates to the lodging of a document, a copy of that document must be provided at the same time as intimation is made.

(3) Where the Court makes an order, the Clerk is to intimate the order to every party.

Methods of intimation

5.3.—(1) Intimation may be given to a receiving party who is a party litigant by—

(a) the method specified in rule 5.4;

(b) any of the methods specified in rule 5.5.

- (2) Intimation may be given to a receiving party who is represented by a solicitor by—
- (a) the method specified in rule 5.4;
 - (b) any of the methods specified in rule 5.5;
 - (c) any of the methods specified in rule 5.6.

Methods of intimation: recorded delivery

5.4. An intimating party may give intimation by recorded delivery to the receiving party.

Methods of intimation: by sheriff officer

5.5.—(1) A sheriff officer may give intimation on behalf of an intimating party by—

- (a) delivering it personally to the receiving party; or
- (b) leaving it in the hands of—
 - (i) a resident at the receiving party's dwelling place; or
 - (ii) an employee at the receiving party's place of business.

(2) Where a sheriff officer has been unsuccessful in giving intimation in accordance with paragraph (1), the sheriff officer may give intimation by—

- (a) depositing it in the receiving party's dwelling place or place of business; or
- (b) leaving it at the receiving party's dwelling place or place of business in such a way that it is likely to come to the attention of that party.

Additional methods of intimation where receiving party represented by solicitor

5.6.—(1) An intimating party may give intimation to the solicitor for the receiving party by—

- (a) delivering it personally to the solicitor;
- (b) delivering it to a document exchange of which the solicitor is a member;
- (c) first class post;
- (d) fax;
- (e) electronic means.

(2) Where intimation is given by the method in paragraph (1)(a), (d) or (e) no later than 1700 hours on any day, the date of intimation is that day.

(3) Where intimation is given by the method in—

- (a) paragraph (1)(b) or (c); or
- (b) paragraph (1)(a), (d) or (e) after 1700 hours on any day,

the date of intimation is the next day.

Lodging

5.7.—(1) Where any provision in these Rules requires a party to lodge a document, it is to be lodged with the Clerk.

(2) A document may be lodged by—

- (a) delivering it personally to the office of the Clerk;
- (b) delivering it to a document exchange of which the Clerk is a member;
- (c) first class post;
- (d) fax;
- (e) electronic means, provided that parties have provided an email address in terms of rule 13.5.

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(a) (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(b) (see Chapter 32);
- (f) an appeal under section 38(3), 44(3) or 67(3) of the Age of Criminal Responsibility (Scotland) Act 2019(c) (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)(d);
- (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)(e).

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;
 - (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

(a) 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.

(b) 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).

(c) 2019 asp 7.

(d) 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.

(e) Rule 33A.74 was inserted by S.S.I. 2005/638 and amended by S.S.I. 2015/419.

- (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.)**(a)**;
- (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;

(a) 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.

- (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.

(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.

CHAPTER 7
PROCEDURE BEFORE THREE APPEAL SHERIFFS

Application of this Chapter

7.1. This Chapter applies to an appeal which has been appointed to proceed under procedure before three Appeal Sheriffs, to be known as Chapter 7 procedure.

Timetable in appeal

7.2.—(1) The Clerk must issue a timetable in Form 7.2 when an appeal is appointed to Chapter 7 procedure.

(2) When the Clerk issues a timetable, the Clerk must also fix a procedural hearing to take place after completion of the procedural steps specified in paragraph (4).

(3) The timetable specifies—

- (a) the dates by which parties must comply with those procedural steps;
- (b) the date and time of the procedural hearing.

(4) The procedural steps are the steps mentioned in the first column of the following table, provision in respect of which is found in the rule mentioned in the second column—

<i>Procedural step</i>	<i>Rule</i>
Lodging of appeal print	7.4(1)
Lodging of appendices to appeal print	7.5(1)
Giving notice that the appellants considers appendix unnecessary	7.6(1)
Lodging of notes of argument	7.7(1)
Lodging of estimates of duration of appeal hearing	7.8

Variation of timetable

7.3.—(1) Any party may apply by motion to vary the timetable.

(2) An application to vary the timetable 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 varying the timetable, the Clerk must—

- (a) discharge the procedural hearing fixed under rule 7.2(2);
- (b) issue a revised timetable in Form 7.2;
- (c) fix a procedural hearing.

Appeal print

7.4.—(1) The appellant must lodge an appeal print within 21 days after the timetable is issued under rule 7.2(1).

(2) An appeal print must contain—

- (a) the pleadings in the sheriff court process;
- (b) the interlocutors in the sheriff court process;
- (c) the sheriff's note setting out the reasons for the decision appealed against, if it is available.

(3) Where the appeal is directed at the refusal of the sheriff to allow the pleadings to be amended, the appeal print must also contain the text of the proposed amendment.

Appendix to appeal print: contents

7.5.—(1) The appellant must lodge an appendix to the appeal print no later than 14 days before the procedural hearing, unless rule 7.6(1) is complied with.

(2) The appendix must contain—

- (a) any document lodged in the sheriff court process that is founded upon in the grounds of appeal;
- (b) the notes of evidence from any proof, if it is sought to submit them for consideration by the Court.

(3) Where the sheriff's note has not been included in the appeal print and it subsequently becomes available, the appellant must—

- (a) include it in the appendix where the appendix has not yet been lodged; or
- (b) lodge a supplementary appendix containing the sheriff's note.

(4) The parties must—

- (a) discuss the contents of the appendix;
- (b) co-operate in making up the appendix.

(5) Where the Court at any stage considers further documents are necessary for the determination of the appeal, the appellant must lodge a supplementary appendix containing those documents.

Appendix to appeal print considered unnecessary

7.6.—(1) Where the appellant considers that it is not necessary to lodge an appendix, the appellant must, no later than 14 days before the procedural hearing—

- (a) give written notice of that fact to the Clerk;
- (b) intimate that notice to every respondent.

(2) Where the appellant complies with paragraph (1), the respondent may apply by motion for an order requiring the appellant to lodge an appendix.

(3) An application under paragraph (2) must specify the documents or notes of evidence that the respondent considers should be included in the appendix.

(4) In disposing of an application, the procedural Appeal Sheriff may—

- (a) grant the application and make an order requiring the appellant to lodge an appendix;
- (b) refuse the application and make an order requiring the respondent to lodge an appendix;
- or
- (c) refuse the application and make no order.

(5) Where the procedural Appeal Sheriff makes an order under paragraph (4)(a) or (b), that order must specify—

- (a) the documents or notes or evidence to be included in the appendix;
- (b) the time within which the appendix must be lodged.

Notes of argument

7.7.—(1) The parties must lodge notes of argument no later than 14 days before the procedural hearing.

(2) A note of argument must summarise briefly the submissions the party intends to develop at the appeal hearing.

(3) A note of argument must—

- (a) state, in brief numbered paragraphs, the points that the party intends to make;
- (b) after each point, identify by means of a page or paragraph reference the relevant passage in any notes of evidence or other document on which the party relies in support of the point;
- (c) for every authority that is cited—
 - (i) state the proposition of law that the authority demonstrates;
 - (ii) identify the page or paragraph references for the parts of the authority that support the proposition;
- (d) cite only one authority for each proposition of law, unless additional citation is necessary for a proper presentation of the argument.

(4) Where a note of argument has been lodged and the party lodging it subsequently becomes aware that an argument in the note is not to be insisted upon, that party must—

- (a) give written notice of that fact to the Clerk;
- (b) intimate that notice to every other party.

(5) Where a party wishes to advance an argument at a hearing that is not contained in that party's note of argument, the party must apply by motion for leave to advance the argument.

Estimates of duration of appeal hearing

7.8. The parties must lodge estimates of the duration of any appeal hearing required to dispose of the appeal in Form 7.8 no later than 14 days before the procedural hearing.

Procedural hearing

7.9.—(1) At a procedural hearing, the procedural Appeal Sheriff must ascertain the state of preparation of the parties, so far as reasonably practicable.

(2) The procedural Appeal Sheriff may—

- (a) determine that parties are ready to proceed to an appeal hearing; or
- (b) determine that further procedure is required.

(3) Where the procedural Appeal Sheriff determines that parties are ready to proceed—

- (a) the procedural Appeal Sheriff must fix an appeal hearing;
- (b) the Clerk must intimate the date and time of that hearing to the parties;
- (c) the procedural Appeal Sheriff may make an order specifying further steps to be taken by the parties before the hearing.

(4) Where the procedural Appeal Sheriff determines that further procedure is required, the procedural Appeal Sheriff—

- (a) must make an order to secure the expeditious disposal of the appeal;
- (b) may direct the Clerk to fix a further procedural hearing and intimate the date and time of that hearing to parties.

Authorities

7.10.—(1) When an appeal hearing is fixed, the appellant must, after consultation with the respondent and any other party to the appeal, lodge a joint list of authorities upon which each party intends to rely at the hearing.

(2) The appellant must lodge the joint list by the date specified in the interlocutor that fixes the appeal hearing.

(3) The joint list of authorities must not include—

- (a) authorities for propositions not in dispute;
- (b) more than 10 authorities, unless permission has previously been granted by the Court on cause shown for the lodging of additional authorities.

(4) The Court may make an order requiring parties to lodge a joint bundle of photocopies or electronic versions of the authorities or digital links to them.

(5) Joint lists of authorities which do not conform with this rule may be rejected.

(6) The Court may find no expenses are payable, or may modify any expenses, where authorities are included unnecessarily.

Transmission of sheriff court process

7.11.—(1) The Court may order—

- (a) of its own accord;
- (b) on cause shown, where any party to the appeal applies for such an order by motion,

that the sheriff court process, or any part of it, must be transmitted to the Clerk.

(2) Where the procedural Appeal Sheriff makes such an order, the Clerk must send a copy of the order to the sheriff clerk.

(3) Within 4 days after receipt of the order, the sheriff clerk must—

- (a) send written notice to each party to the cause;
- (b) certify on the interlocutor sheet that sub-paragraph (a) has been complied with;
- (c) transmit the sheriff court process, or the specified part of it, to the Clerk.

(4) On receipt of the sheriff court process, the Clerk must—

- (a) mark the date of receipt on—
 - (i) the interlocutor sheet, where the entire process is transmitted;
 - (ii) the part of process that has been transmitted, where the procedural Appeal Sheriff has specified that only part of the process is to be transmitted;
- (b) send written notice of that date to the parties.

(5) Where the Clerk or a sheriff clerk fails to comply with this rule—

- (a) that does not affect the validity of the appeal;
- (b) the procedural Appeal Sheriff may, as the procedural Appeal Sheriff thinks fit, make an order to enable the appeal to proceed as if the failure had not occurred.

Extension of notes of evidence

7.12. It is not necessary to produce notes of evidence in relation to any issue in respect of which the parties are agreed that the decision appealed against is not to be submitted to review.

Referral to family mediation

7.13.—(1) Where the decision appealed against concerns an order made by the sheriff under section 11(1) of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.)(a), the procedural Appeal Sheriff may refer that matter to a family mediator.

(2) In this rule, “family mediator” means a person accredited as a mediator in family mediation to an organisation which is concerned with such mediation and which is approved for the purposes of the Civil Evidence (Family Mediation) (Scotland) Act 1995(b) by the Lord President of the Court of Session.

Application to transfer appeal to Chapter 8 procedure

7.14.—(1) The procedural Appeal Sheriff may—

- (a) of the procedural Appeal Sheriff’s own accord; or
- (b) on the application of any party,

order that an appeal is to proceed under Chapter 8 procedure instead of Chapter 7 procedure.

(2) An application is to be made by motion.

(3) The procedural Appeal Sheriff may only make such an order if satisfied that, taking into account the matters in rule 6.11(3), it is no longer appropriate for the appeal to proceed under Chapter 7 procedure.

(4) That order must appoint the appeal to proceed under Chapter 8 procedure and specify—

- (a) the procedure to be followed in the appeal;
- (b) the periods for complying with each procedural step.

CHAPTER 8

PROCEDURE BEFORE ONE APPEAL SHERIFF

Application of this Chapter

8.1. This Chapter applies to an appeal which has been appointed to proceed under procedure before one Appeal Sheriff, to be known as Chapter 8 procedure.

Hearing of appeal

8.2.—(1) When an appeal has been appointed to proceed under Chapter 8 procedure, the Court must order the Clerk to—

- (a) fix a hearing and intimate the date and time of that hearing to parties; or
- (b) intimate to parties that the appeal will be considered on written submissions and specify the date by which such submissions are to be lodged.

(2) The Court may make any order required to regulate procedure in the appeal.

Notes of argument

8.3.—(1) This rule applies where parties are ordered to lodge notes of argument.

(a) 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.

(b) 1995 c.6.

(2) The parties must lodge notes of argument by the date specified in the order that fixes the hearing or in such other order the Court may make to regulate procedure in the appeal.

(3) A note of argument must summarise briefly the submissions the party intends to develop at the hearing.

(4) A note of argument must—

- (a) state, in brief numbered paragraphs, the points that the party intends to make;
- (b) after each point, identify by means of a page or paragraph reference the relevant passage in any notes of evidence or other document on which the party relies in support of the point;
- (c) for every authority that is cited—
 - (i) state the proposition of law that the authority demonstrates;
 - (ii) identify the page or paragraph references for the parts of the authority that support the proposition;
- (d) cite only one authority for each proposition of law, unless additional citation is necessary for a proper presentation of the argument.

(5) Where a note of argument has been lodged and the party lodging it subsequently becomes aware that an argument in the note is not to be insisted upon, that party must—

- (a) give written notice of that fact to the Clerk;
- (b) intimate that notice to every other party.

(6) Where a party wishes to advance an argument at a hearing that is not contained in that party's note of argument, the party must apply by motion for leave to advance the argument.

Authorities

8.4.—(1) This rule applies where parties are ordered to lodge authorities.

(2) The appellant must, after consultation with the respondent and any other party to the appeal, lodge a joint list of authorities upon which each party intends to rely at the hearing.

(3) The appellant must lodge the joint list by the date specified in the order that fixes the hearing or in such other order the Court may make to regulate procedure in the appeal.

(4) The joint list of authorities must not include—

- (a) authorities for propositions not in dispute;
- (b) more than 10 authorities, unless permission has previously been granted by the Court on cause shown for the lodging of additional authorities.

(5) The Court may make an order requiring parties to lodge a joint bundle of photocopies or electronic versions of the authorities or digital links to them.

(6) Joint lists of authorities which do not conform with this rule may be rejected.

(7) The Court may find no expenses are payable, or may modify any award of expenses, where authorities are included unnecessarily.

Application to transfer appeal to Chapter 7 procedure

8.5.—(1) The procedural Appeal Sheriff may—

- (a) of the procedural Appeal Sheriff's own accord; or
- (b) on the application of any party,

order that an appeal is to proceed as an appeal under Chapter 7 procedure instead of Chapter 8 procedure.

(2) An application is to be made by motion.

(3) The procedural Appeal Sheriff may only make such an order if satisfied that, taking into account the matters in rule 6.11(3), it is no longer appropriate for the appeal to proceed under Chapter 8 procedure.

(4) That order must appoint the appeal to proceed under Chapter 7 procedure and specify the procedure to be followed in the appeal.

PART 4
DISPOSAL OF AN APPEAL
CHAPTER 9
REFUSAL OF APPEAL DUE TO DELAY

Application to refuse appeal due to delay

9.1.—(1) Any party may apply to the procedural Appeal Sheriff to refuse the appeal if the conditions in paragraph (2) are met.

(2) The conditions are that—

- (a) there has been an inordinate and inexcusable delay by—
 - (i) another party;
 - (ii) another party’s solicitor, lay representative or other agent; and
- (b) unfairness has resulted from that delay.

(3) An application is to be made by motion.

(4) That motion must specify the grounds on which refusal of the appeal is sought.

Determination of application to refuse appeal due to delay

9.2.—(1) The procedural Appeal Sheriff may refuse the appeal if the procedural Appeal Sheriff considers that—

- (a) there has been an inordinate and inexcusable delay on the part of—
 - (i) any party;
 - (ii) any party’s solicitor, lay representative or other agent; and
- (b) such delay results in unfairness specific to the factual circumstances, including the procedural circumstances, of the appeal.

(2) The procedural Appeal Sheriff must take into account the procedural consequences of allowing the appeal to proceed for—

- (a) the parties to the appeal;
- (b) the efficient disposal of business in the Court.

CHAPTER 10
ABANDONMENT OF APPEAL

Application to abandon appeal

10.1.—(1) An appellant may apply to the Court to abandon an appeal by lodging a minute of abandonment.

(2) The appellant must, at the same time as lodging a minute of abandonment, apply by motion to abandon in terms of the minute of abandonment.

(3) Where all of the parties consent to the abandonment of the appeal, the Court must refuse the appeal.

(4) Where the other parties do not consent to the abandonment of the appeal, the Court may either—

- (a) refuse the application; or
- (b) grant the application and refuse the appeal.

(5) If the Court refuses an appeal under this rule, it may make an order as to the expenses of the appeal.

(6) If the Court refuses an application, it may make an order as to the expenses of the application.

CHAPTER 11

REMIT TO THE COURT OF SESSION

Application to remit appeal to the Court of Session

11.1.—(1) An application under section 112 of the 2014 Act (remit of appeal from the Sheriff Appeal Court to the Court of Session) is to be made by motion.

(2) Within 4 days after the Court has made an order remitting an appeal to the Court of Session, the Clerk must—

- (a) give notice of the remit to each party;
- (b) certify on the interlocutor sheet that sub-paragraph (a) has been complied with;
- (c) transmit the process to the Deputy Principal Clerk of Session.

(3) Failure by the Clerk to comply with paragraph (2)(a) or (b) does not affect the validity of a remit.

CHAPTER 12

APPLICATIONS FOR PERMISSION TO APPEAL TO THE COURT OF SESSION

Application of this Chapter

12.1. This Chapter applies where a party seeks the permission of the Court to appeal to the Court of Session against a decision of the Court constituting final judgment in civil proceedings under section 113 of the 2014 Act (appeal from the Sheriff Appeal Court to the Court of Session).

Applications for permission to appeal

12.2.—(1) An application to the Court for permission to appeal to the Court of Session is to be made in Form 12.2.

(2) Such an application must be lodged within 14 days after the date on which the Court gave its final judgment on the appeal.

(3) When an application is made, the Court must order the Clerk to either—

- (a) fix a hearing and intimate the time and date of that hearing to the parties to the appeal; or
- (b) intimate to parties that the application is to be considered on written submissions and specify the date by which such submissions are to be lodged.

(4) The application is, so far as reasonably practicable, to be considered by the Appeal Sheriff or Appeal Sheriffs who made the decision in respect of which permission to appeal is sought.

Applications for leave to appeal

12.3.—(1) In any appeal to which section 113(4) of the Courts Reform (Scotland) Act 2014 applies and leave to appeal is required, a motion seeking leave of the Court must be lodged within 14 days after the date on which the Court gave its final judgment on the appeal.

(2) When such a motion is lodged, the Court must order the Clerk to either—

- (a) fix a hearing and intimate the time and date of that hearing to the parties to the appeal; or
- (b) intimate to parties that the motion is to be considered on written submissions and specify the date by which such submissions are to be lodged.

(3) The motion is, so far as reasonably practicable, to be considered by the Appeal Sheriff or Appeal Sheriffs who made the decision in respect of which leave to appeal is sought.

PART 5

INCIDENTAL PROCEDURE: STANDARD PROCEDURES

CHAPTER 13

MOTIONS: GENERAL

Interpretation

13.1.—(1) In this Chapter, Chapter 14 and Chapter 15—

“court day” means a day on which the office of the Clerk is open;

“court day 1” means the court day on which a motion is treated as being intimated under rule 14.1;

“court day 3” means the second court day after court day 1;

“court day 4” means the third court day after court day 1;

“lodging party” means the party lodging the motion;

“receiving party” means a party receiving the intimation of the motion from the lodging party;

“transacting motion business” means—

- (a) intimating and lodging motions;
- (b) receiving intimation of motions;
- (c) intimating consent or opposition to motions;
- (d) receiving intimation of opposition to motions.

(2) In this Chapter and Chapter 14, a reference to—

(a) the address of a party is a reference to the email address included in the list maintained under rule 13.5(4) of either—

- (i) that party’s solicitor; or
- (ii) that party;

(b) the address of the court is a reference to the email address of the court included in that list under rule 13.5(5).

Making of motions

13.2. A motion may be made either—

- (a) orally, in accordance with rule 13.3; or
- (b) in writing, in accordance with rule 13.4.

Oral motions

- 13.3.**—(1) A motion may be made orally during any hearing.
- (2) Such a motion may only be made with leave of the Court.

Written motions

13.4.—(1) A motion in writing is made by lodging it with the Clerk in accordance with Chapter 14 or Chapter 15.

(2) Chapter 14 applies where each party to an appeal has provided to the Clerk an email address for the purpose of transacting motion business.

(3) Chapter 15 applies where a party to an appeal has not provided to the Clerk an email address for the purpose of transacting motion business.

Provision of email addresses to the Clerk

13.5.—(1) A solicitor representing a party in an appeal must provide to the Clerk an email address for the purpose of transacting motion business.

(2) A solicitor who does not have suitable facilities for transacting motion business by email may make a declaration in writing to that effect, which must be—

- (a) sent to the Clerk;
- (b) intimated to each of the other parties to the appeal.

(3) A party who is not represented by a solicitor may provide to the Clerk an email address for the purpose of transacting motion business.

(4) The Clerk must maintain a list of the email addresses provided for the purpose of transacting motion business, which must be published in up to date form on the website of the Scottish Courts and Tribunals Service.

(5) The Clerk must also include on that list an email address of the Court for the purpose of lodging motions.

Grounds for written motion

13.6. A motion in writing must specify the grounds on which it is made.

Determination of unopposed motions in writing

13.7.—(1) The Clerk may determine any unopposed motion in writing other than a motion which seeks a final interlocutor.

(2) Where the Clerk considers that such a motion should not be granted, the Clerk must refer the motion to the procedural Appeal Sheriff.

(3) The procedural Appeal Sheriff is to determine—

- (a) a motion referred under paragraph (2);
- (b) an unopposed motion which seeks a final interlocutor,

in chambers without the appearance of parties, unless the procedural Appeal Sheriff otherwise determines.

Issuing of orders by email

13.8. Where the Court makes an order determining a motion which was lodged in accordance with Chapter 14, the Clerk must email a copy of the order to the addresses of the lodging party and every receiving party.

CHAPTER 14 MOTIONS LODGED BY EMAIL

Intimation of motions by email

14.1.—(1) The lodging party must give intimation of that party's intention to lodge the motion, and of the terms of the motion, to every other party by sending an email in Form 14.1 to the addresses of every party.

(2) The requirement under paragraph (1) to give intimation of a motion to a party by email does not apply where that party—

- (a) has not lodged answers within the period of notice for lodging those answers;
- (b) has withdrawn or is deemed to have withdrawn those answers; or
- (c) became a party to the appeal by minute, but has withdrawn or is deemed to have withdrawn that minute.

(3) A motion intimated under this rule must be intimated no later than 1700 hours on a court day.

Opposition to motions

14.2.—(1) A receiving party must intimate any opposition to a motion by sending an email in Form 14.2 to the address of the lodging party.

(2) Any opposition to a motion must be intimated to the lodging party no later than 1700 hours on court day 3.

(3) Late opposition to a motion must be sent to the address of the Court and may only be allowed with the leave of the procedural Appeal Sheriff, on cause shown.

Consent to motions

14.3. Where a receiving party seeks to consent to a motion, that party may do so by sending an email confirming the consent to the address of the lodging party.

Lodging unopposed motions

14.4.—(1) This rule applies where no opposition to a motion has been intimated.

(2) The motion must be lodged by the lodging party no later than 1230 hours on court day 4 by sending an email in Form 14.1 headed "Unopposed motion" to the address of the court.

(3) That motion is to be determined by 1700 hours on court day 4.

(4) Where for any reason it is not possible for that motion to be determined in accordance with paragraph (3), the Clerk must advise the parties of that fact and give reasons.

Lodging opposed motions by email

14.5.—(1) This rule applies where opposition to a motion has been intimated.

(2) The motion must be lodged by the lodging party no later than 1230 hours on court day 4 by—

- (a) sending an email in Form 14.1 headed "Opposed motion", to the address of the court; and

- (b) attaching to that email the opposition in Form 14.2 intimated by the receiving party to the lodging party.
- (3) That motion is to be heard by the procedural Appeal Sheriff on the first suitable court day after court day 4.
- (4) The Clerk must intimate the date and time of the hearing to the parties.

Variation of periods of intimation

14.6. Where either—

- (a) every receiving party in an appeal consents to a shorter period of intimation; or
- (b) the Court shortens the period of intimation,

the motion may be lodged by the lodging party, or heard or otherwise determined by the Court at an earlier time and date than that which is specified in this Chapter.

CHAPTER 15

MOTIONS LODGED BY OTHER MEANS

Intimation of motions by other means

15.1.—(1) The lodging party must give intimation of that party's intention to lodge the motion, and of the terms of the motion, to every other party in Form 15.1.

- (2) That intimation must be accompanied by a copy of any document referred to in the motion.

Opposition to motions

15.2.—(1) A receiving party may oppose a motion by lodging a notice of opposition in Form 15.2.

(2) Any notice of opposition must be lodged within 7 days after the date of intimation of the motion.

- (3) The procedural Appeal Sheriff may, on the application of the lodging party, either—

- (a) vary the period of 7 days mentioned in paragraph (2); or
- (b) dispense with intimation on any party.

- (4) An application mentioned in paragraph (3) must—

- (a) be included in the motion;
- (b) give reasons for varying the period or dispensing with intimation, as the case may be.

(5) The procedural Appeal Sheriff may allow a notice of opposition to be lodged late, on cause shown.

Consent to motions

15.3. Where a receiving party seeks to consent to a motion, that party may do so by lodging a notice to that effect.

Lodging of motions

15.4.—(1) The motion must be lodged by the lodging party within 5 days after the date of intimation of the motion, unless paragraph (3) applies.

- (2) The lodging party must also lodge—

- (a) a certificate of intimation in Form 6.5-A;

(b) so far as practicable, any document referred to in the motion that has not already been lodged.

(3) Where the procedural Appeal Sheriff varies the period for lodging a notice of opposition to a period of 5 days or less, the motion must be lodged no later than the day on which that period expires.

Joint motions

15.5.—(1) A joint motion by all parties need not be intimated.

(2) Such a motion is to be lodged by any of the parties.

Hearing of opposed motions

15.6.—(1) Where a notice of opposition in Form 15.2 is lodged, the motion is to be heard by the procedural Appeal Sheriff on the first suitable court day after the lodging of the notice of opposition.

(2) The Clerk must intimate the date and time of the hearing to the parties.

Modification of Chapter 5

15.7. For the purposes of this Chapter, the following provisions in Chapter 5 do not apply—

(a) rule 5.6(1)(e);

(b) rule 5.7(2)(e).

CHAPTER 16

MINUTES

Application of this Chapter

16.1. This Chapter applies to any application to the Court that is made by minute, other than a joint minute, a minute of abandonment or a minute of amendment.

Form and lodging of minute

16.2.—(1) A minute is to be made in Form 16.

(2) A minute must—

(a) specify the order sought from the Court;

(b) contain a statement of facts supporting the granting of that order;

(c) where appropriate, contain pleas-in-law.

(3) A minute is to be lodged in the process of the appeal to which it relates.

Orders for intimation and answers

16.3.—(1) On the first available court day after being lodged, a minute must be brought before the procedural Appeal Sheriff for an order—

(a) for intimation, within 7 days after the date of the order, to—

(i) every other party to the appeal;

(ii) any other person who appears to have an interest in the minute;

(b) for any person to whom the minute is intimated to lodge answers, if so advised, within 14 days after the date of intimation;

- (c) fixing a hearing on the minute and any answers no sooner than 28 days after the date of the order.
- (2) The procedural Appeal Sheriff may vary the periods of 7 days, 14 days and 28 days mentioned in paragraph (1) either—
 - (a) of the procedural Appeal Sheriff’s own accord; or
 - (b) on cause shown, on the application of the applicant.
- (3) An application mentioned in paragraph (2)(b) must—
 - (a) be included in the minute;
 - (b) give reasons for varying the period.
- (4) Where a minute is intimated in accordance with an order under this rule, the applicant must lodge a certificate of intimation in Form 6.5-A within 14 days after the date of intimation.

Consent to minute

- 16.4.**—(1) Where a person to whom a minute is intimated seeks to consent to the minute, that person may do so by lodging a notice to that effect.
- (2) Where every person to whom a minute is intimated consents to the minute, the procedural Appeal Sheriff is to determine the minute in chambers without the appearance of those persons, unless the procedural Appeal Sheriff otherwise determines.

Minutes of sist and transference

- 16.5.**—(1) This rule applies where a party to an appeal (“P”) dies or comes under legal incapacity while the appeal is depending before the Court.
- (2) Any person who claims to represent P or P’s estate may apply to the Court by minute to be sisted as a party to the appeal.
- (3) If no person makes an application under paragraph (2), any other party may apply to the Court by minute to transfer the appeal in favour of or against (as the case may be) the person who represents P or P’s estate.
- (4) An application under paragraph (3) must be intimated to the person specified in the minute as representing P or P’s estate.

Applications to enter process as respondent

- 16.6.**—(1) A person to whom the appeal has not been intimated may apply by minute for leave to enter the process as a party minuter and lodge answers.
- (2) A minute under paragraph (1) must specify—
 - (a) the applicant’s title and interest to enter the process;
 - (b) the basis for the answers that the applicant proposes to lodge.
- (3) At the hearing fixed under rule 16.3(1)(c), the procedural Appeal Sheriff must determine whether the applicant has shown title and interest to enter the process.
- (4) If the procedural Appeal Sheriff is satisfied, the procedural Appeal Sheriff may grant the applicant leave to enter the process and lodge answers.
- (5) Where leave is granted, the procedural Appeal Sheriff is to make such further order as the procedural Appeal Sheriff thinks fit.
- (6) In particular, such an order may include an order—
 - (a) varying any timetable;
 - (b) as to the expenses of the application.

CHAPTER 17
AMENDMENT OF PLEADINGS

Amendment of sheriff court pleadings

17.1.—(1) Any party to an appeal may apply by motion to amend the pleadings in the sheriff court process.

(2) A party seeking to amend must lodge a minute of amendment setting out the proposed amendment and, at the same time, lodge a motion to allow—

- (a) the minute of amendment to be received;
- (b) any other person to lodge answers, if so advised, within a specified period.

(3) Where the procedural Appeal Sheriff makes an order allowing a minute of amendment to be received and answered, the procedural Appeal Sheriff may—

- (a) allow a period of adjustment of the minute of amendment and answers; and
- (b) fix a hearing on the minute of amendment and answers as adjusted.

(4) Each party must, no later than 2 days before the hearing fixed under paragraph (3)(b), lodge a copy of their minute of amendment or answers with any adjustments made thereto in italic or bold type, or underlined.

(5) The procedural Appeal Sheriff may make such order in relation to expenses, and may impose such conditions, as the procedural Appeal Sheriff thinks fit.

(6) Where the procedural Appeal Sheriff—

- (a) allows an amendment to the pleadings in the sheriff court process; and
- (b) considers that the amendment makes a material change to the pleadings,

the procedural Appeal Sheriff may recall the decision appealed against and remit the matter to the sheriff for a further hearing.

Amendment of note of appeal and answers etc.

17.2.—(1) A party who has lodged a document specified in paragraph (2) may apply by motion to amend that document.

(2) The documents are—

- (a) a note of appeal;
- (b) answers to a note of appeal;
- (c) grounds of appeal in a cross-appeal;
- (d) answers to grounds of appeal in a cross-appeal.

(3) Such a motion must include the text of the proposed amendment.

(4) An application under paragraph (1) must be accompanied by an application to vary the timetable under rule 7.3(1) or rule 29.6(1)(c) if such an application is necessary.

CHAPTER 18
WITHDRAWAL OF SOLICITORS

Interpretation of this Chapter

18.1. In this Chapter, “peremptory hearing” means a hearing at which a party whose solicitor has withdrawn from acting must appear or be represented in order to state whether or not the party intends to proceed.

Giving notice of withdrawal to the Court

18.2.—(1) Where a solicitor withdraws from acting on behalf of a party, the solicitor must give notice in writing to the Clerk and to every other party.

(2) Paragraph (1) does not apply if the solicitor withdraws from acting at a hearing in the presence of the other parties or their representatives.

(3) Paragraph (4) applies if a solicitor who withdraws from acting is aware that the address of the party for whom the solicitor acted has changed from that specified in the instance of the note of appeal or answers to the note of appeal.

(4) The solicitor must disclose to the Clerk and every other party the last known address of the party for whom the solicitor acted.

Arrangements for peremptory hearing

18.3.—(1) On the first available court day after notice is given under rule 18.2(1), the procedural Appeal Sheriff must make an order—

- (a) ordaining the party whose solicitor has withdrawn from acting to appear or be represented at a peremptory hearing;
- (b) fixing a date and time for the peremptory hearing;
- (c) appointing any other party to the appeal to intimate the order and a notice in Form 18.3 to that party within 7 days after the date of the order.

(2) A peremptory hearing must be fixed no sooner than 14 days after the date on which an order is made under paragraph (1).

(3) The procedural Appeal Sheriff may vary the period of 7 days mentioned in paragraph (1) or the period of 14 days mentioned in paragraph (2) either—

- (a) of the procedural Appeal Sheriff's own accord; or
- (b) on cause shown, on the application of any other party to the appeal.

(4) Where any previously fixed hearing is to occur within 14 days after the date on which the procedural Appeal Sheriff is to make an order under paragraph (1), the procedural Appeal Sheriff may continue consideration of the matter to the previously fixed hearing instead of making an order under paragraph (1).

(5) Where an order and a notice in Form 18.3 are intimated under this rule, the party appointed to intimate them must lodge a certificate of intimation in Form 6.5-A either—

- (a) within 14 days after the date of intimation; or
- (b) before the peremptory hearing,

whichever is sooner.

Peremptory hearing

18.4.—(1) At a peremptory hearing, the party must appear or be represented in order to state whether the party intends to proceed.

(2) Where the party fails to comply with paragraph (1), the Court may make an order mentioned in paragraph (3) only if it is satisfied that the order and notice in Form 18.3 have been intimated to that party.

(3) The orders are either—

- (a) if the party is the appellant, an order refusing the appeal; or
- (b) if the party is the respondent and the condition in paragraph (4) is satisfied, an order allowing the appeal.

(4) The condition is that the appellant must show cause why the appeal should be allowed.

(5) If the Court is not satisfied that the order and notice in Form 18.3 have been intimated to that party, it may make—

- (a) an order fixing a further peremptory hearing;
- (b) any other order that the Court considers appropriate to secure the expeditious disposal of the appeal.

CHAPTER 19 CAUTION AND SECURITY

Application of this Chapter

19.1. This Chapter applies to any appeal in which the Court has power to order a person to find caution or give other security.

Form of application to find caution or give security

19.2. An application—

- (a) for an order for caution or other security;
- (b) to vary or recall such an order,

is to be made by motion.

Orders for caution or other security: time for compliance

19.3. Where the Court makes an order for caution or to give other security, the order must specify the period within which caution is to be found or security given.

Methods of finding caution or giving security

19.4.—(1) A person who is ordered to find caution must do so by obtaining a bond of caution.

(2) A person who is ordered to consign a sum of money into court must do so by consignment under the Sheriff Courts Consignations (Scotland) Act 1893(a) in the name of the Clerk.

(3) The Court may order a person to give security by—

- (a) a method other than those mentioned in paragraphs (1) and (2);
- (b) a combination of two or more methods of security.

(4) Any document by which an order to find caution or give security is satisfied must be lodged in process.

(5) A document lodged under paragraph (4) may not be borrowed from process.

Cautioners and other guarantors

19.5. A bond of caution or other security may only be given by a person who is an authorised person within the meaning of section 31 of the Financial Services and Markets Act 2000 (authorised persons)(b).

Form of bond of caution

19.6.—(1) A bond of caution must oblige the cautioner to make payment of the sums as validly and in the same manner as the party is obliged.

(a) 1893 c.44, amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 (c.42), section 6(2); the Sheriff Courts (Scotland) Act 1971 (c.58), section 4 and Schedule 1, paragraph 1; the Statute Law (Repeals) Act 1986 (c.12), Schedule 1, Part 1, Group 4 and Schedule 2, paragraph 1; S.I. 1974/1274 and S.S.I. 2015/402.

(b) 2000 c.8. Section 31 was amended by the Financial Services Act 2012 (c.21), section 11(1) and S.I. 2018/1149.

(2) In this rule—

“cautioner” includes the cautioner’s heirs and executors;

“party” means the person to whom the cautioner is bound, and that person’s heirs and successors;

“the sums” are the sums for which the cautioner is bound to the party.

Caution or other security: sufficiency and objections

19.7.—(1) The Clerk must be satisfied that any document lodged in process under rule 19.4(4) is in proper form.

(2) A party who is dissatisfied with the sufficiency or form of any document lodged in process under rule 19.4(4) may apply to the Court by motion for an order under rule 19.9(1).

Insolvency or death of cautioner or guarantor

19.8.—(1) This rule applies where caution has been found by bond of caution or security has been given by guarantee.

(2) Where one of the events specified in paragraph (3) occurs, the party entitled to benefit from the caution or guarantee may apply to the Court by motion for further caution to be found or further security to be given.

(3) The events are that the cautioner or guarantor—

(a) becomes apparently insolvent within the meaning of section 16 of the Bankruptcy (Scotland) Act 2016 (meaning of “apparent insolvency”)(a);

(b) calls a meeting of the cautioner or guarantor’s creditors to consider the state of that person’s affairs;

(c) dies unrepresented; or

(d) is a company and—

(i) an administration, bank administration or building society special administration order has been made in respect of it;

(ii) a winding up, bank insolvency or building society insolvency order has been made in respect of it;

(iii) a resolution for its voluntary winding up has been passed;

(iv) a receiver of all or any part of its undertaking has been appointed;

(v) a voluntary arrangement within the meaning of section 1(1) of the Insolvency Act 1986 (those who may propose an arrangement)(b) has been approved under Part I of that Act.

Failure to find caution or give security

19.9.—(1) Where a person who has been ordered to find caution or give security fails to do so, any other party may apply to the Court by motion for a finding that the person is in default.

(2) Despite rule 3.1, a person who fails to find caution or give security is only in default if the Court grants a motion under paragraph (1) and makes a finding that the person is in default.

(a) 2016 asp 21. Section 16 was amended by S.S.I. 2019/94.

(b) 1986 c.45. Section 1(1) was amended by the Enterprise Act 2002 (c.40), Schedule 17, paragraph 10.

CHAPTER 20

EXPENSES

Taxation of expenses

20.1.—(1) Where the Court makes an award of expenses in any appeal, those expenses must be taxed before decree is granted for them.

(2) This rule does not apply where the Court modifies those expenses to a fixed sum.

Time for lodging account of expenses

20.2.—(1) A party found entitled to expenses must lodge an account of expenses in process—

(a) no later than 4 months after the final judgment; or

(b) at any time with permission of the court, but subject to such conditions, if any, as the Court thinks fit to impose.

(2) Where the account of expenses is lodged by the Scottish Legal Aid Board in reliance on regulation 39(2)(a) of the Civil Legal Aid (Scotland) Regulations 2002 (recovery of expenses)(a), paragraph (1)(a) applies as if the period specified there is 8 months.

(3) In this rule, “final judgment” has the meaning assigned by section 136(1) of the 2014 Act (interpretation).

Diet of taxation

20.3.—(1) Where an account of expenses is lodged for taxation, the Clerk must transmit the account and the process to the auditor of court.

(2) Subject to paragraph (3), the auditor of court must fix a diet of taxation on receipt of—

(a) the account of expenses;

(b) the process;

(c) vouchers in respect of all outlays claimed in the account, including counsel’s fees; and

(d) a letter addressed to the auditor of court—

(i) confirming that the items referred to in sub-paragraphs (a) and (c) have been intimated to the party found liable in expenses; and

(ii) providing such information as is required to enable the auditor of court to give intimation to the party found liable in expenses in accordance with paragraph (4)(b).

(3) The auditor of court may fix a diet of taxation where paragraph (2)(c) or (d), or both, have not been complied with.

(4) The auditor of court must intimate the diet of taxation to—

(a) the party found entitled to expenses;

(b) the party found liable in expenses.

(5) The party found liable in expenses must, no later than 1600 hours on the fourth business day before the diet of taxation, intimate to the auditor of court and to the party found entitled to expenses particular points of objection, specifying each item objected to and stating concisely the nature and ground of objection.

(6) Subject to paragraph (7), if the party found liable in expenses fails to intimate points of objection under paragraph (5) within the time limit set out there, the auditor of court must not take account of them at the diet of taxation.

(a) S.S.I. 2002/494, last amended by S.S.I. 2021/333.

(7) Where a failure to comply with the requirement contained in paragraph (5) was due to mistake, oversight or other excusable cause, the auditor of court may relieve a party of the consequences of such failure on such conditions, if any, as the auditor thinks fit.

(8) At the diet of taxation, or within such reasonable period of time thereafter that the auditor of court may allow, the party found entitled to expenses must make available to the auditor of court all documents, drafts or copies of such documents sought by the auditor and relevant to the taxation.

(9) In this rule, a “business day” means any day other than a Saturday, Sunday or public or court holiday.

Auditor’s statement

20.4.—(1) The auditor of court must—

- (a) prepare a statement of the amount of expenses as taxed;
- (b) transmit the process, the taxed account and the statement to the Clerk;
- (c) on the day on which the documents referred to in sub-paragraph (b) are transmitted, intimate that fact and the date of the report to each party to whom the auditor intimated the diet of taxation.

(2) The party found entitled to expenses must, within 7 days after the receipt of intimation under paragraph (1)(c), send a copy of the taxed account to the party found liable in expenses.

(3) Where no objections are lodged under rule 20.5(1), the court may grant decree for the expenses as taxed.

Objections to taxed account

20.5.—(1) A party to an appeal who has appeared or been represented at a diet of taxation may object to the auditor of court’s statement by lodging in process a note of objection within 14 days after the date of the statement.

(2) The party lodging a note of objection is referred to in this rule as “the objecting party”.

(3) On lodging the note of objection the objecting party must apply by motion for an order—

- (a) allowing the note to be received;
- (b) allowing a hearing on the note of objection.

(4) On the granting of the order mentioned in paragraph (3), the objecting party must intimate to the auditor of court—

- (a) the note of objection;
- (b) the interlocutor containing the order.

(5) Within 14 days after receipt of intimation of the items mentioned in paragraph (4), the auditor of court must lodge in process a statement of reasons in the form of a minute stating the reasons for the auditor’s decision in relation to the items to which objection is taken in the note.

(6) On the lodging of the statement of reasons, the Clerk must fix a hearing on the note of objection.

(7) At the hearing, the Court may—

- (a) sustain or repel any objection in the note of objection or remit the account of expenses to the auditor of court for further consideration;
- (b) find any party liable in the expenses of the procedure on the note of objection.

Decree for expenses in name of solicitor

20.6. The Court may allow a decree for expenses to be extracted in the name of the solicitor who conducted the appeal.

Expenses of curator *ad litem* appointed to a respondent

20.7.—(1) This rule applies where a curator *ad litem* is appointed to any respondent to an appeal.

(2) The appellant is responsible in the first instance for the payment of the expenses of a curator *ad litem* mentioned in paragraph (3).

(3) Those expenses are any fees of the curator *ad litem* and any outlays incurred by the curator from the date of appointment until any of the following steps occur—

- (a) the lodging of a minute stating that the curator does not intend to lodge answers to the note of appeal;
- (b) the lodging of answers by the curator, or the adoption of answers that have already been lodged; or
- (c) the discharge of the curator before either of the steps in sub-paragraphs (a) or (b) occurs.

CHAPTER 21

QUALIFIED ONE-WAY COSTS SHIFTING

Application and interpretation of this Chapter

21.1.—(1) This Chapter applies in civil proceedings, where either or both—

- (a) an application for an award of expenses is made to the Court;
- (b) such an award is made by the Court.

(2) Where this Chapter applies—

- (a) rules 10.1(5) and (6);
- (b) any common law rule entitling a pursuer to abandon an appeal, to the extent that it concerns expenses,

are disapplied.

(3) In this Chapter—

“the 2018 Act” means the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018(a);

“the applicant” has the meaning given in rule 21.2(1), and “applicants” is construed accordingly;

“civil proceedings” means civil proceedings to which section 8 of the 2018 Act (restriction on pursuer’s liability for expenses in personal injury claims) applies.

Application for an award of expenses

21.2.—(1) Where civil proceedings have been brought by a pursuer, another party to the action (“the applicant”) may make an application to the Court for an award of expenses to be made against the pursuer, on one or more of the grounds specified in either or both—

- (a) section 8(4)(a) to (c) of the 2018 Act;
- (b) paragraph (2) of this rule.

(2) The grounds specified in this paragraph, which are exceptions to section 8(2) of the 2018 Act, are as follows—

- (a) failure by the pursuer to obtain an award of damages greater than the sum offered by way of a tender lodged in process;

(a) 2018 asp 10.

- (b) unreasonable delay on the part of the pursuer in accepting a sum offered by way of a tender lodged in process;
- (c) abandonment of the appeal by the pursuer in terms of rule 10.1(1) to (4), or at common law.

Award of expenses

21.3.—(1) Subject to paragraph (2), the determination of an application made under rule 21.2(1) is at the discretion of the Court.

(2) Where, having determined an application made under rule 21.2(1), the Court makes an award of expenses against the pursuer on the ground specified in rule 21.2(2)(a) or (b)—

- (a) the pursuer's liability is not to exceed the amount of expenses the applicant has incurred after the date of the tender;
- (b) the liability of the pursuer to the applicant, or applicants, who lodged the tender is to be limited to an aggregate sum, payable to all applicants (if more than one) of 75% of the amount of damages awarded to the pursuer and that sum is to be calculated without offsetting against those expenses any expenses due to the pursuer by the applicant, or applicants, before the date of the tender;
- (c) the Court must order that the pursuer's liability is not to exceed the sum referred to in sub-paragraph (b), notwithstanding that any sum assessed by the Auditor of Court as payable under the tender procedure may be greater or, if modifying those expenses to a fixed sum in terms of rule 20.1(2), that such sum does not exceed that referred to in sub-paragraph (b);
- (d) where the award of expenses is in favour of more than one applicant the Court, failing agreement between the applicants, must apportion the award of expenses recoverable under the tender procedure between them.

(3) In the event that the Court makes an award of expenses against the pursuer on the ground specified in rule 21.2(2)(c), the Court may make such orders in respect of expenses, subject to such conditions, if any, as it considers appropriate.

Procedure

21.4.—(1) An application under rule 21.2(1)—

- (a) must be made by motion, in writing;
- (b) may be made at any stage in the case prior to the granting of an order disposing of the expenses of the appeal.

(2) Where an application under rule 21.2(1) is made, the Court may make such orders as it thinks fit for dealing with the application, including an order—

- (a) requiring the applicant to intimate the application to any other person;
- (b) requiring any party to lodge a written response;
- (c) requiring the lodging of any document;
- (d) fixing a hearing.

Award against legal representatives

21.5. Section 8(2) of the 2018 Act does not prevent the Court from making an award of expenses against a pursuer's legal representative in terms of section 11 (awards of expenses against legal representatives) of that Act.

PART 6
INCIDENTAL PROCEDURE: SPECIAL PROCEDURES
CHAPTER 22
DEVOLUTION ISSUES

Interpretation

22.1. In this Chapter—

“devolution issue” means a devolution issue under—

- (a) Schedule 6 to the Scotland Act 1998(a);
- (b) Schedule 10 to the Northern Ireland Act 1998(b);
- (c) Schedule 9 to the Government of Wales Act 2006(c);

and any reference to Schedule 6, Schedule 10 or Schedule 9 is a reference to that Schedule in that Act;

“relevant authority” means—

- (a) the Advocate General;
- (b) in the case of a devolution issue under Schedule 6, the Lord Advocate;
- (c) in the case of a devolution issue under Schedule 10, the Attorney General for Northern Ireland, and the First Minister and deputy First Minister acting jointly;
- (d) in the case of a devolution issue under Schedule 9, the Counsel General to the Welsh Government.

Raising a devolution issue

22.2.—(1) A devolution issue is raised by specifying a devolution issue in Form 22.2.

(2) A devolution issue in Form 22.2 is to be lodged—

- (a) by an appellant, when the note of appeal is lodged;
- (b) by a respondent, when answers to the note of appeal are lodged,

unless the Court allows an appellant or a respondent to raise a devolution issue at a later stage in proceedings.

(3) An application to allow a devolution issue to be raised after the note of appeal has been lodged or answers to the note of appeal have been lodged, as the case may be, is to be made by motion.

(4) The party raising a devolution issue must specify, in sufficient detail to enable the Court to determine whether a devolution issue arises—

- (a) the facts and circumstances;
- (b) the contentions of law,

on the basis of which it is alleged that the devolution issue arises in the appeal.

(5) The Court may not determine a devolution issue unless permission has been given for the devolution issue to proceed.

(a) 1998 c.46. Schedule 6 was last amended by the European Union (Withdrawal) Act 2018 (c.16), Schedule 3, paragraph 23.
(b) 1998 c.47. Schedule 10 was last amended by the European Union (Withdrawal) Act 2018 (c.16), Schedule 3, paragraph 23.
(c) 2006 c.32. Schedule 9 was last amended by the Senedd and Elections (Wales) Act 2020 anaw.1, Schedule 1, paragraph 2.

Raising a devolution issue: intimation and service

22.3.—(1) This rule applies to the intimation of a devolution issue on a relevant authority under—

- (a) paragraph 5 of Schedule 6;
- (b) paragraph 23 of Schedule 10(a);
- (c) paragraph 14(1) of Schedule 9.

(2) When a devolution issue is raised, the party raising it must intimate the devolution issue to the relevant authority unless the relevant authority is a party to the appeal.

(3) Within 14 days after intimation, the relevant authority may give notice to the Clerk that it intends to take part in the appeal as a party under—

- (a) paragraph 6 of Schedule 6;
- (b) paragraph 24 of Schedule 10(b);
- (c) paragraph 14(2) of Schedule 9.

Raising a devolution issue: permission to proceed

22.4.—(1) When a devolution issue is raised, the Clerk must fix a hearing and intimate the date and time of that hearing to the parties.

(2) Within 14 days after the Clerk intimates the date and time of the hearing, each party must lodge a note of argument.

(3) That note of argument must summarise the submissions the party intends to make on the question of whether a devolution issue arises in the appeal.

(4) At the hearing, the procedural Appeal Sheriff must determine whether a devolution issue arises in the appeal.

(5) Where the procedural Appeal Sheriff determines that a devolution issue arises, the procedural Appeal Sheriff must grant permission for the devolution issue to proceed.

(6) Where the procedural Appeal Sheriff determines that no devolution issue arises, the procedural Appeal Sheriff must refuse permission for the devolution issue to proceed.

(7) At the hearing the procedural Appeal Sheriff may make any order, including an order concerning expenses.

(8) In this rule, “party” includes a relevant authority that has given notice to the Clerk that it intends to take part in the appeal as a party, and “parties” is construed accordingly.

Participation by the relevant authority

22.5.—(1) Paragraph (2) applies where a relevant authority has given notice to the Clerk that it intends to take part in the appeal as a party.

(2) Within 7 days after permission to proceed is given, the relevant authority must lodge a minute containing the relevant authority’s written submissions in respect of the devolution issue.

Reference to the Inner House or Supreme Court

22.6.—(1) This rule applies to the reference of a devolution issue to the Inner House of the Court of Session for determination under—

- (a) paragraph 7 of Schedule 6(c);

(a) Paragraph 23 was amended by the Justice (Northern Ireland) Act 2002 (c.26), Schedule 7, paragraph 2.
(b) Paragraph 24 was amended by the Justice (Northern Ireland) Act 2002 (c.26), Schedule 13, paragraph 1.
(c) Paragraph 7 was amended by the Constitutional Reform Act 2005 (c.4), Schedule 9(2), paragraph 103(2).

- (b) paragraph 25 of Schedule 10(a);
- (c) paragraph 15 of Schedule 9.

(2) This rule also applies where the Court has been required by a relevant authority to refer a devolution issue to the Supreme Court under—

- (a) paragraph 33 of Schedule 6(b);
- (b) paragraph 33 of Schedule 10(c);
- (c) paragraph 29 of Schedule 9.

(3) The Court is to make an order concerning the drafting and adjustment of the reference.

(4) The reference must specify—

- (a) the questions for the Inner House or the Supreme Court;
- (b) the addresses of the parties;
- (c) a concise statement of the background to the matter, including—
 - (i) the facts of the case, including any relevant findings of fact;
 - (ii) the main issues in the case and contentions of the parties with regard to them;
- (d) the relevant law including the relevant provisions of the Scotland Act 1998, the Northern Ireland Act 1998 or the Government of Wales Act 2006;
- (e) the reasons why an answer to the questions is considered necessary for the purpose of disposing of the proceedings.

(5) The reference must have annexed to it—

- (a) a copy of all orders made in the appeal;
- (b) a copy of any judgments in the proceedings.

(6) When the reference has been drafted and adjusted, the Court is to make and sign the reference.

(7) The Clerk must—

- (a) send a copy of the reference to the parties to the proceedings;
- (b) certify on the back of the principal reference that sub-paragraph (a) has been complied with.

Reference to the Inner House or Supreme Court: further procedure

22.7.—(1) On a reference being made, the appeal must, unless the Court orders otherwise, be sisted until the devolution issue has been determined.

(2) Despite a reference being made, the Court continues to have the power to make any interim order required in the interests of the parties.

(3) The Court may recall a sist for the purpose of making such interim orders.

(4) On a reference being made the Clerk must send the principal copy of the reference to either (as the case may be)—

- (a) the Deputy Principal Clerk of the Court of Session; or
- (b) the Registrar of the Supreme Court (together with 7 copies).

(5) Unless the Court orders otherwise, the Clerk must not send the principal copy of the reference where an appeal against the making of the reference is pending.

(6) An appeal is to be treated as pending either—

(a) Paragraph 25 was amended by the Constitutional Reform Act 2005 (c.4), Schedule 9(2), paragraph 117(2).
 (b) Paragraph 33 was amended by the Justice (Northern Ireland) Act 2002, Schedule 7, paragraph 4(c) and the Constitutional Reform Act 2005, Schedule 9(2), paragraph 106(4).
 (c) Paragraph 33 was amended by the Justice (Northern Ireland) Act 2002, Schedule 7, paragraph 2(6) and the Constitutional Reform Act 2005, Schedule 9(2), paragraph 118(4).

- (a) until the expiry of the time for making that appeal; or
- (b) where an appeal has been made, until that appeal has been determined.

Reference to the Inner House or Supreme Court: procedure following determination

22.8.—(1) This rule applies where either the Inner House of the Court of Session or the Supreme Court has determined a devolution issue.

(2) Upon receipt of the determination, the Clerk must place a copy of the determination before the Court.

(3) The Court may, on the motion of any party or otherwise, order such further procedure as may be required.

(4) Where the Court makes an order other than on the motion of a party, the Clerk must intimate a copy of the order on all parties to the appeal.

CHAPTER 23

PRELIMINARY REFERENCES TO THE CJEU – CITIZENS’ RIGHTS

Interpretation of this Chapter

23.1. In this Chapter, “reference” means a reference to the European Court for a preliminary ruling under Article 158 of the Agreement between the European Union and the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community^(a).

Applications for a reference

23.2.—(1) An application for a reference by a party is to be made by motion.

(2) The Court may make a reference of its own accord.

Preparation of reference

23.3.—(1) Where the Court decides that a reference is to be made, it must make an order specifying—

- (a) by whom the reference is to be drafted and adjusted;
- (b) the periods within which the reference is to be drafted and adjusted.

(2) A reference is to be drafted in Form 23.3 unless the Court directs otherwise when it makes an order under paragraph (1).

(3) In drafting and adjusting the reference, parties are to have regard to the Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings issued by the European Court^(b).

(4) When the reference has been drafted and any adjustments required by the Court have been made, the Court must make and sign the reference.

(5) When the reference is made, the Clerk must notify the parties.

(a) OJ C 384, 12.11.2019, p. 81.

(b) OJ C 380, 8.11.2019, p. 1.

Transmission of reference to European Court

23.4. A copy of the reference is to be certified by the Clerk and sent to the Registrar of the European Court.

Sist of appeal

23.5.—(1) When a reference is made, the Court is to sist the appeal until the European Court determines the reference, unless the Court orders otherwise.

(2) Where an appeal is sisted under paragraph (1), the Court may recall the sist for the purposes of making an interim order.

CHAPTER 24

INTERVENTIONS BY CEHR AND SCHR

Application and interpretation of this Chapter

24.1.—(1) This Chapter applies to—

- (a) interventions in legal proceedings by the CEHR under section 30(1) of the Equality Act 2006 (judicial review and other legal proceedings)(a);
- (b) interventions in civil proceedings (other than children’s hearing proceedings) by the SCHR under section 14(2) of the Scottish Commission for Human Rights Act 2006 (power to intervene)(b).

(2) In this Chapter—

“the CEHR” means the Commission for Equality and Human Rights;

“the SCHR” means the Scottish Commission for Human Rights.

Applications to intervene

24.2.—(1) An application for leave to intervene is to be made in Form 24.2.

(2) Such an application must be lodged in the process of the appeal to which it relates.

(3) When an application is lodged, rule 5.2(1) applies as if the applicant were a party.

(4) The parties may request a hearing on the application within 14 days after the application is lodged.

(5) Where a hearing is requested—

- (a) the Court must appoint a date and time for a hearing;
- (b) the Clerk must notify the date and time of the hearing to the parties and the applicant.

(6) Where no hearing is requested, the Court may appoint a date and time for a hearing of its own accord and the Clerk must notify the date and time of the hearing to the parties and the applicant.

Applications to intervene: determination

24.3.—(1) The Court may determine an application for leave to intervene without a hearing, unless a hearing is fixed under rule 24.2(5) or (6).

(a) 2006 c.3.

(b) 2006 asp 16. Section 14 was amended by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 2, paragraph 12; S.S.I. 2013/211 and S.S.I. 2015/402.

(2) In an application for leave to intervene under section 30(1) of the Equality Act 2006, the Court may grant leave only if it is satisfied that the proposed submissions are likely to assist the Court.

(3) Where the Court grants leave to intervene, it may impose any conditions that it considers desirable in the interests of justice.

(4) In particular, the Court may make provision about any additional expenses incurred by the parties as a result of the intervention.

(5) When an application is determined, the Clerk must notify the parties and the applicant of the outcome.

Invitations to intervene

24.4.—(1) An invitation to intervene under section 14(2)(b) of the Scottish Commission for Human Rights Act 2006 is to be in Form 24.4.

(2) The Clerk must send a copy of Form 24.4 to the parties to the proceedings and to the SCHR.

(3) When the Clerk sends a copy of Form 24.4 to the SCHR, the Clerk must also send—

(a) a copy of the note of appeal and any answers to it;

(b) the appeal print, if it is available;

(c) any other documents relating to the appeal that the Court thinks are relevant.

(4) Where the Court invites the SCHR to intervene, it may impose any conditions that it considers desirable in the interests of justice.

(5) In particular, the Court may make provision about any additional expenses incurred by the parties as a result of the intervention.

Form of intervention

24.5.—(1) An intervention is to be by way of written submission.

(2) A written submission (including any appendices) must not exceed 5,000 words.

(3) The intervener must lodge the written submission within such time as the Court may direct.

(4) In exceptional circumstances, the Court may allow—

(a) a written submission exceeding 5,000 words to be made;

(b) an oral submission to be made.

(5) Where the Court allows an oral submission to be made, it must appoint a date and time for the submission to be made.

(6) The Clerk must notify that date and time to the parties and the intervener.

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.

CHAPTER 26

VULNERABLE WITNESSES

Application and interpretation of this Chapter

26.1.—(1) This Chapter applies where a proof or an additional proof is ordered to be taken under rule 25.1(1).

(2) In this Chapter—

“the 2004 Act” means the Vulnerable Witnesses (Scotland) Act 2004(a);

“child witness notice” has the meaning given by section 12(2) of the 2004 Act (orders authorising the use of special measures for vulnerable witnesses);

“review application” means an application under section 13(1)(a) of the 2004 Act (review of arrangements for vulnerable witnesses);

“vulnerable witness application” has the meaning given by section 12(6) of the 2004 Act (orders authorising the use of special measures for vulnerable witnesses).

(a) 2004 asp 3, amended by the Children’s Hearings (Scotland) Act 2011 (asp 1), section 176 and schedule 6, paragraph 1; the Victims and Witnesses (Scotland) Act 2014 (asp 1), section 22 and is prospectively amended by the Children (Scotland) Act 2020 (asp 16), sections 4 and 5.

Form of notices and applications

- 26.2.**—(1) A child witness notice is to be made in Form 26.2–A.
(2) A vulnerable witness application is to be made in Form 26.2–B.
(3) A review application is to be made—
(a) in Form 26.2–C; or
(b) orally, if the Court grants leave.

Determination of notices and applications

- 26.3.**—(1) When a notice or application under this Chapter is lodged, the Court may require any of the parties to provide further information before determining the notice or application.
(2) The Court may—
(a) determine the notice or application by making an order under section 12(1) or (6) or 13(2) of the 2004 Act without holding a hearing;
(b) fix a hearing at which parties are to be heard on the notice or application before determining it.
(3) The Court may make an order altering the date of the proof in order that the notice or application may be determined.

Determination of notices and applications: supplementary orders

26.4. Where the Court determines a notice or application under this Chapter and makes an order under section 12(1) or (6) or 13(2) of the 2004 Act, the Court may make further orders to secure the expeditious disposal of the appeal.

Intimation of orders

- 26.5.**—(1) Where the Court makes an order—
(a) fixing a hearing under rule 26.3(2)(b);
(b) altering the date of a proof or other hearing under rule 26.3(3); or
(c) under section 12(1) or (6) or 13(2) of the 2004 Act,
the Clerk must intimate the order in accordance with this rule.
(2) Intimation must be given to—
(a) every party to the proceedings;
(b) any other person named in the order.
(3) Intimation must be made—
(a) on the day that the hearing is fixed or the order is made;
(b) in the manner ordered by the Court.

Taking of evidence by commissioner: preparatory steps

- 26.6.**—(1) This rule applies where the Court authorises the special measure of taking evidence by a commissioner under section 19(1) of the 2004 Act (taking of evidence by a commissioner).
(2) The commission is to proceed without interrogatories unless the Court otherwise orders.
(3) The order of the Court authorising the special measure is sufficient authority for citing the vulnerable witness to appear before the commissioner.
(4) The party who cited the vulnerable witness—
(a) must give the commissioner—
(i) a certified copy of the order of the Court appointing the commissioner;

- (ii) a copy of the appeal documents;
- (iii) where rule 26.7 applies, the approved interrogatories and cross-interrogatories;
- (b) must instruct the clerk to the commission;
- (c) is responsible in the first instance for the fee of the commissioner and the clerk.
- (5) The commissioner is to fix a hearing at which the commission will be carried out.
- (6) The commissioner must consult the parties before fixing the hearing.
- (7) An application by a party for leave to be present in the room where the commission is carried out is to be made by motion.
- (8) In this rule, “appeal documents” means any of the following documents that have been lodged in process by the time the use of the special measure is authorised—
 - (a) the note of appeal and answers;
 - (b) where there is a cross-appeal, the grounds of appeal and answers;
 - (c) the appeal print and appendices;
 - (d) the notes of argument.

Taking of evidence by commissioner: interrogatories

- 26.7.**—(1) This rule applies where the Court—
- (a) authorises the special measure of taking evidence by a commissioner under section 19(1) of the 2004 Act; and
 - (b) orders that interrogatories are to be prepared.
- (2) The party who cited the vulnerable witness must lodge draft interrogatories in process.
- (3) Any other party may lodge cross-interrogatories.
- (4) The parties may adjust their interrogatories and cross-interrogatories.
- (5) At the expiry of the adjustment period, the parties must lodge the interrogatories and cross-interrogatories as adjusted in process.
- (6) The Court is to resolve any dispute as to the content of the interrogatories and cross-interrogatories, and approve them.
- (7) When the Court makes an order for interrogatories to be prepared, it is to specify the periods within which parties must comply with the steps in this rule.

Taking of evidence by commissioner: conduct of commission

- 26.8.**—(1) The commissioner must administer the oath *de fidei administratione* to the clerk.
- (2) The commissioner is to administer the oath to the vulnerable witness in Form 25.4-A unless the witness elects to affirm.
- (3) Where the witness elects to affirm, the commissioner must administer the affirmation in Form 25.4-B.

Taking of evidence by commissioner: lodging and custody of video record and documents

- 26.9.**—(1) The commissioner must lodge the video record of the commission and any relevant documents with the Clerk.
- (2) When the video record and any relevant document are lodged, the Clerk must notify every party—
- (a) that the video record has been lodged;
 - (b) whether any relevant documents have been lodged;
 - (c) of the date on which they were lodged.
- (3) The video record and any relevant documents must be kept by the Clerk.

- (4) Where the video record has been lodged—
- (a) the name and address of the vulnerable witness and the record of the witness's evidence are to be treated as being in the knowledge of the parties;
 - (b) the parties need not include—
 - (i) the name of the witness in any list of witnesses; or
 - (ii) the record of evidence in any list of productions.

CHAPTER 27 USE OF LIVE LINKS

Interpretation

27.1. In this Chapter—

“evidence” means the evidence of—

- (a) the party; or
- (b) a person who has been or may be cited to appear before the court as a witness;

“live link” means—

- (a) a live television link; or
- (b) where the Court gives permission in accordance with rule 27.2(4), an alternative arrangement;

“submission” means any oral submission which would otherwise be made to the Court by a party or that party's representative, including an oral submission in support of a motion.

Application for use of live link

27.2.—(1) A party may apply to the Court to use a live link to make a submission or to give evidence.

(2) An application to use a live link is to be made by motion.

(3) Where a party seeks to use a live link other than a live television link, the motion must specify the proposed arrangement.

(4) The Court must not grant a motion to use a live link other than a live television link unless the proposed arrangement meets the requirements in paragraph (5).

(5) The requirements are that the person using the live link is able to—

- (a) be seen and heard, or heard without being seen, in the courtroom; and
- (b) see and hear, or hear without seeing, the proceedings in the courtroom.

CHAPTER 28 REPORTING RESTRICTIONS

Application and interpretation of this Chapter

28.1.—(1) This Chapter applies to orders which restrict the reporting of proceedings.

(2) In this Chapter “interested person” means a person—

- (a) who has asked to see any order made by the Court which restricts the reporting of proceedings, including an interim order; and
- (b) whose name is included on a list kept by the Lord President for the purposes of this Chapter.

Interim orders

28.2.—(1) Where the Court is considering making an order, the Court must first make an interim order.

(2) The Clerk must immediately send a copy of the interim order to any interested person.

(3) The Court must specify in the interim order why the Court is considering making an order.

Representations

28.3.—(1) An interested person who would be directly affected by the making of an order must be given an opportunity to make representations to the Court before the order is made.

(2) Representations must—

(a) be made in Form 28.3;

(b) include reasons why an urgent hearing is necessary, if an urgent hearing is sought;

(c) be lodged no later than 2 days after the interim order is sent to interested persons in accordance with rule 28.2(2).

(3) If representations are made—

(a) the Court must appoint a date and time for a hearing—

(i) on the first suitable court day; or

(ii) where the Court considers that an urgent hearing is necessary, at an earlier date and time;

(b) the Clerk must—

(i) notify the date and time of the hearing to the parties to the proceedings and any person who has made representations;

(ii) send a copy of the representations to the parties.

(4) Where no interested person makes representations in accordance with paragraph (3), the Clerk must put the interim order before the Court in chambers in order that the Court may resume consideration of whether to make an order.

(5) Where the Court, having resumed consideration, makes no order, it must recall the interim order.

(6) Where the Court recalls an interim order, the Clerk must immediately notify any interested person.

Notification of reporting restrictions

28.4. Where the Court makes an order, the Clerk must immediately—

(a) send a copy of the order to any interested person;

(b) arrange for the publication of the making of the order on the Scottish Courts and Tribunals Service website.

Applications for variation or revocation

28.5.—(1) A person aggrieved by an order may apply to the Court for its variation or revocation.

(2) An application is to be made in Form 28.5.

(3) When an application is made—

(a) the Court must appoint a date and time for a hearing;

(b) the Clerk must—

(i) notify the date and time of the hearing to the parties to the proceedings and the applicant;

(ii) send a copy of the application to the parties.

(4) The hearing is, so far as reasonably practicable, to be before the Appeal Sheriff or Appeal Sheriffs who made the order.

PART 7
SPECIAL APPEAL PROCEEDINGS
CHAPTER 29
APPLICATION FOR NEW JURY TRIAL OR TO ENTER JURY VERDICT

Application of this Chapter

29.1. This Chapter applies to an application—

- (a) for a new trial under section 69(1) of the 2014 Act (application for new trial);
- (b) to enter a verdict under section 71(2) of the 2014 Act (verdict subject to opinion of the Sheriff Appeal Court).

Form of application for new trial

29.2.—(1) An application for a new trial is to be made in Form 29.2.

(2) Such an application must be made within 7 days after the date on which the jury have returned their verdict.

(3) The application must specify the grounds on which the application is made.

(4) When an application for a new trial is lodged, the party lodging it must also lodge—

- (a) a print containing—
 - (i) the pleadings in the sheriff court process;
 - (ii) the interlocutors in the sheriff court process;
 - (iii) the issues and counter-issues;
- (b) the verdict of the jury;
- (c) any exception and the determination on it of the sheriff presiding at the trial.

Application for new trial: restrictions

29.3.—(1) An application for a new trial which specifies the ground in section 69(2)(a) of the 2014 Act (misdirection by sheriff) may not be made unless the procedure in rule 36B.8 of the Ordinary Cause Rules 1993 (exceptions to sheriff's charge)(a) has been complied with.

(2) An application for a new trial which specifies the ground in section 69(2)(b) of the 2014 Act (undue admission or rejection of evidence) may not be made unless objection was taken to the admission or rejection of evidence at the trial and recorded in the notes of evidence under the direction of the sheriff presiding at the trial.

(3) An application for a new trial which specifies the ground in section 69(2)(c) of the 2014 Act (verdict contrary to evidence) may not be made unless it sets out in brief specific numbered propositions the reasons the verdict is said to be contrary to the evidence.

Applications out of time

29.4.—(1) An application to allow an application for a new trial to be lodged outwith the period specified in rule 29.2(2) is to be included in the application made under rule 29.2(1).

(a) The Ordinary Cause Rules 1993 are in Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (c.51). Rule 36B.8 was inserted by S.S.I. 2015/227, and is prospectively repealed by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 4(h).

(2) Where the procedural Appeal Sheriff allows such an application, the application for a new trial is to be received on such conditions as to expenses or otherwise as the procedural Appeal Sheriff thinks fit.

Timetable in application for new trial

29.5.—(1) The Clerk must issue a timetable in Form 29.5 when an application is lodged under rule 29.2(1).

(2) When the Clerk issues a timetable, the Clerk must also fix a procedural hearing to take place after completion of the procedural steps specified in paragraph (4).

(3) The timetable specifies—

- (a) the dates by which parties must comply with those procedural steps; and
- (b) the date and time of the procedural hearing.

(4) The procedural steps are the steps mentioned in the first column of the following table, provision in respect of which is found in the rule mentioned in the second column—

<i>Procedural step</i>	<i>Rule</i>
Referral of question about competency of application	29.7(3)
Lodging of appendices to print	29.9(1)
Giving notice that the applicant considers appendix unnecessary	29.10(1)
Lodging of notes of argument	29.11(1)
Lodging of estimates of duration of hearing of application for new trial	29.12

Sist of application for new trial and variation of timetable

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

- (a) sist the application for a new trial for a specified period;
- (b) recall a sist;
- (c) vary the timetable.

(2) An application is to be determined by the procedural Appeal Sheriff.

(3) An application to sist the application for a new trial or to vary the timetable may only be granted on special cause shown.

(4) 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.

(5) Where the procedural Appeal Sheriff makes an order sisting the application for a new trial, the Clerk must discharge the procedural hearing fixed under rule 29.5(2).

(6) When a sist is recalled or expires, the Clerk must—

- (a) issue a revised timetable in Form 29.5;
- (b) fix a procedural hearing.

(7) Where the procedural Appeal Sheriff makes an order varying the timetable, the Clerk must—

- (a) discharge the procedural hearing fixed under rule 29.5(2);
- (b) issue a revised timetable in Form 29.5;
- (c) fix a procedural hearing.

Questions about competency of application

29.7.—(1) A question about the competency of an application for a new trial may be referred to the procedural Appeal Sheriff by a party, other than the applicant.

(2) A question is referred by lodging a reference in Form 29.7.

(3) A question may be referred within 7 days after the date on which the application for a new trial was lodged.

(4) Where a reference is lodged, the Clerk must fix a hearing and intimate the time and date of that hearing to the parties.

(5) Within 7 days after the date on which the reference is lodged, each party must lodge a note of argument.

(6) That note of argument must—

(a) give fair notice of the submissions the party intends to make on the question of competency;

(b) comply with the requirements in rule 29.11(3).

(7) Paragraphs (4) and (5) of rule 29.11 apply to a note of argument lodged under paragraph (5).

Questions about competency: determination

29.8.—(1) At a hearing on the competency of an application for a new trial, the procedural Appeal Sheriff may—

(a) refuse the application as incompetent;

(b) find the application to be competent;

(c) reserve the question of competency until the hearing of the application; or

(d) 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 application as incompetent;

(b) find the application to be competent; or

(c) reserve the question of competency until the hearing of the application.

(4) The Court may make an order as to the expenses of the reference.

Appendices to print: contents

29.9.—(1) The applicant must lodge an appendix to the print mentioned in rule 29.2(4)(a) no later than 7 days before the procedural hearing, unless rule 29.10(1) is complied with.

(2) The appendix must contain—

(a) any document lodged in the sheriff court process that is founded upon in the application for a new trial;

(b) the notes of evidence from the trial, if it is sought to submit them for consideration by the Court.

(3) Where the sheriff's note has not been included in the print and it subsequently becomes available, the applicant must—

(a) include it in the appendix where the appendix has not yet been lodged; or

(b) lodge a supplementary appendix containing the sheriff's note.

(4) The parties must—

(a) discuss the contents of the appendix;

(b) so far as possible, co-operate in making up the appendix.

Appendices to print considered unnecessary

29.10.—(1) Where the applicant considers that it is not necessary to lodge an appendix, the applicant must, no later than 7 days before the procedural hearing—

- (a) give written notice of that fact to the Clerk;
- (b) intimate that notice to every respondent.

(2) Where the applicant complies with paragraph (1), the respondent may apply by motion for an order requiring the applicant to lodge an appendix.

(3) An application under paragraph (2) must specify the documents or notes of evidence that the respondent considers should be included in the appendix.

(4) In disposing of an application under paragraph (2), the procedural Appeal Sheriff may—

- (a) grant the application and make an order requiring the applicant to lodge an appendix;
- (b) refuse the application and make an order requiring the respondent to lodge an appendix;
or
- (c) refuse the application and make no order.

(5) Where the procedural Appeal Sheriff makes an order requiring the applicant or the respondent to lodge an appendix, that order must specify—

- (a) the documents or notes or evidence to be included in the appendix;
- (b) the time within which the appendix must be lodged.

Notes of argument

29.11.—(1) The parties must lodge notes of argument no later than 7 days before the procedural hearing.

(2) A note of argument must summarise briefly the submissions the party intends to develop at the hearing of the application for a new trial.

(3) A note of argument must—

- (a) state, in brief numbered paragraphs, the points that the party intends to make;
- (b) after each point, identify by means of a page or paragraph reference the relevant passage in any notes of evidence or other document on which the party relies in support of the point;
- (c) for every authority that is cited—
 - (i) state the proposition of law that the authority demonstrates;
 - (ii) identify the page or paragraph references for the parts of the authority that support the proposition;
- (d) cite only one authority for each proposition of law, unless additional citation is necessary for a proper presentation of the argument.

(4) Where a note of argument has been lodged and the party lodging it subsequently becomes aware that an argument in the note is not to be insisted upon, that party must—

- (a) give written notice of that fact to the Clerk;
- (b) intimate that notice to every other party.

(5) Where a party wishes to advance an argument at a hearing that is not contained in that party's note of argument, the party must apply by motion for leave to advance the argument.

Estimates of duration of hearing of application for new trial

29.12. The parties must lodge estimates of the duration of any hearing required to dispose of the application for a new trial in Form 29.12 no later than 7 days before the procedural hearing.

Procedural hearing

29.13.—(1) At the procedural hearing, the procedural Appeal Sheriff must ascertain the state of preparation of the parties, so far as reasonably practicable.

(2) The procedural Appeal Sheriff may—

- (a) determine that parties are ready to proceed to a hearing of the application for a new trial; or
- (b) determine that further procedure is required.

(3) Where the procedural Appeal Sheriff determines that parties are ready to proceed—

- (a) the procedural Appeal Sheriff must fix a hearing of the application for a new trial;
- (b) the Clerk is to intimate the date and time of that hearing to the parties;
- (c) the procedural Appeal Sheriff may make an order specifying further steps to be taken by the parties before the hearing.

(4) Where the procedural Appeal Sheriff determines that further procedure is required, the procedural Appeal Sheriff—

- (a) must make an order to secure the expeditious disposal of the appeal;
- (b) may direct the Clerk to fix a further procedural hearing and intimate the date and time of that hearing to parties.

Application to enter jury verdict

29.14.—(1) This rule applies to an application under section 71(2) of the 2014 Act (verdict subject to opinion of the Court).

(2) Such an application is to be made in Form 29.14.

(3) When an application is lodged, the party lodging it must also lodge—

- (a) a print containing—
 - (i) the pleadings in the sheriff court process;
 - (ii) the interlocutors in the sheriff court process;
 - (iii) the issues and counter-issues;
- (b) the verdict of the jury;
- (c) any exception and the determination on it of the sheriff presiding at the trial.

(4) Unless the procedural Appeal Sheriff otherwise directs—

- (a) it is not necessary for the purposes of such a motion to print the notes of evidence;
- (b) but the notes of the sheriff presiding at the trial may be produced at any time if required.

(5) The procedural Appeal Sheriff may refer an application referred to in paragraph (1) to the Court in cases of complexity or difficulty.

CHAPTER 30
APPEALS FROM SUMMARY CAUSES

Application of this Chapter

30.1. This Chapter applies to an appeal under section 38 of the Sheriff Courts (Scotland) Act 1971 (appeal in summary causes)(a) arising from the decision of a sheriff in proceedings under the Summary Cause Rules 2002(b).

Transmission of appeal

30.2.—(1) Within 4 days after the sheriff has signed the stated case, the sheriff clerk must—

- (a) send the parties a copy of the stated case;
- (b) transmit to the Clerk—
 - (i) the stated case;
 - (ii) all documents and productions in the case.

(2) On receipt of the stated case, the Clerk must fix a hearing and intimate the date, time and place of that hearing to the parties.

Transmission of appeal: time to pay direction

30.3.—(1) Within 4 days after the sheriff states in writing the reasons for the sheriff's original decision in accordance with rule 25.4(4) of the Summary Cause Rules 2002 (appeal in relation to time to pay direction), the sheriff clerk must transmit to the Clerk—

- (a) the appeal in Form 33 of the Summary Cause Rules 2002(c);
- (b) the sheriff's written reasons for the sheriff's original decision.

(2) On receipt of those documents, the Clerk must fix a hearing and intimate the date, time and place of that hearing to the parties.

Hearing of appeal

30.4.—(1) Any party may apply by motion for the question of liability for expenses to be heard after the Court gives its decision on the appeal.

(2) At the hearing, a party may only raise questions of law of which notice has not been given if the Court permits the party to do so.

(3) The Court may permit a party to amend any question of law or to add any new question of law.

(4) Where the Court grants permission under paragraph (2) or (3), it may do so on such conditions as to expenses or otherwise as the Court thinks fit.

Determination of appeal

30.5.—(1) At the conclusion of the hearing, the Court may either give its decision orally or reserve judgment.

(2) Where the Court reserves judgment, it must give its decision in writing within 28 days.

(3) The President of the Sheriff Appeal Court may vary the period in paragraph (2).

(a) 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(1), paragraph 6(2) which has effect subject to transitional provision specified in S.S.I. 2016/291.

(b) The Summary Cause Rules 2002 are in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002 (S.S.I. 2002/132, last amended by S.S.I. 2021/226).

(c) Form 33 was amended by S.S.I. 2015/419.

- (4) The Court may—
- (a) adhere to or vary the decision appealed against;
 - (b) recall the decision and substitute another decision for it; or
 - (c) remit the matter to the sheriff for further procedure.
- (5) The Court may not remit the matter to the sheriff in order that further evidence may be led.

Appeal to the Court of Session: certification

30.6.—(1) This rule applies where the Court has determined an appeal arising from the decision of a sheriff in proceedings under the Summary Cause Rules 2002.

(2) An application under section 38(b) of the Sheriff Courts (Scotland) Act 1971 (appeal in summary causes) for a certificate that a cause is suitable for appeal to the Court of Session is to be made in Form 30.6.

(3) Such an application must be lodged within 14 days after the date on which the Court gave its decision on the appeal.

(4) An application may only be disposed of after the procedural Appeal Sheriff has heard parties on it.

CHAPTER 31

APPEALS FROM SIMPLE PROCEDURE

Appeals from Simple Procedure

31.1. Part 16 of the Simple Procedure Rules(a) applies to an appeal of a decision made under the simple procedure.

CHAPTER 32

APPEALS BY STATED CASE UNDER PART 15 OF THE CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

Application and interpretation of this Chapter

32.1.—(1) This Chapter applies to an appeal by stated case under section 163(1) (appeals to sheriff principal and Court of Session: children's hearings etc.), 164(1) (appeals to sheriff principal and Court of Session: relevant persons), 165(1) (appeals to sheriff principal and Court of Session: contact and permanence orders) and 167(1) (appeals to sheriff principal: section 166) of the Children's Hearings (Scotland) Act 2011(b).

(2) In this Chapter, "parties" means the parties specified in rule 3.59(2) of the Act of Sederunt (Child Care and Maintenance Rules) 1997 (appeals: applications for stated case)(c).

Transmission of appeal

- 32.2.**—(1) Within 4 days after the sheriff has signed the stated case, the sheriff clerk must—
- (a) send the parties a copy of the stated case;
 - (b) transmit to the Clerk—

(a) S.S.I. 2016/200, last amended by S.S.I. 2021/295.

(b) 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(1) to (6).

(c) S.I. 1997/291, last amended by S.S.I. 2019/147. Rule 3.59 was last amended by S.S.I. 2016/194.

- (i) the stated case;
- (ii) all documents and productions in the case.

(2) On receipt of the stated case, the Clerk must fix a hearing and intimate the date, time and place of that hearing to the parties.

Hearing of appeal

32.3.—(1) At the hearing, a party may only raise questions of law or procedural irregularities of which notice has not been given if the Court permits the party to do so.

(2) Where the Court grants permission, it may do so on such conditions as to expenses or otherwise as the Court thinks fit.

Determination of appeal

32.4.—(1) At the conclusion of the hearing, the Court may either give its decision orally or reserve judgment.

(2) Where the Court reserves judgment, it must give its decision in writing within 28 days.

(3) The President of the Sheriff Appeal Court may vary the period in paragraph (2).

Leave to appeal to the Court of Session

32.5.—(1) This rule applies to applications for leave to appeal to the Court of Session under sections 163(2), 164(2) or 165(2) of the Children’s Hearings (Scotland) Act 2011.

(2) An application is to be made in Form 32.5.

(3) Such an application must be lodged within 7 days after the date on which the Court gave its decision on the appeal.

(4) On receipt of an application, the Clerk must—

- (a) fix a hearing to take place before the procedural Appeal Sheriff no later than 14 days after the application is received;
- (b) intimate the date, time and place of that hearing to the parties.

CHAPTER 33

APPEALS UNDER PART 4 OF THE AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019

Application of this Chapter

33.1. This Chapter applies to an appeal against the decision of a sheriff under section 38(3), 44(3) and 67(3) of the Age of Criminal Responsibility (Scotland) Act 2019(a).

Form of appeal

33.2.—(1) An appeal is made by lodging a note of appeal in Form 33.2.

(2) Rule 6.2(2)(a) to (c) and (g) to (h) applies for the purpose of making an appeal under this rule.

(a) 2019 asp 7.

Hearing of appeal

33.3. On receipt of the appeal, the Clerk must fix forthwith a hearing to take place within 3 working days (within the meaning of section 76 of the Age of Criminal Responsibility (Scotland) Act 2019) and intimate the date, time and place of that hearing to—

- (a) the constable who applied for the order to which the decision relates;
- (b) the child or person acting on behalf of the child to whom the decision relates;
- (c) any other person the court considers has an interest in proceedings.

Determination of appeal

33.4.—(1) At the conclusion of the hearing, the Court may either give its decision orally or reserve judgment.

- (2) Where the Court reserves judgment, it must give its decision in writing within 28 days.
- (3) The President of the Sheriff Appeal Court may vary the period in paragraph (2).

CHAPTER 34 ANCILLARY PROVISIONS

Revocation

34.1. Act of Sederunt (Sheriff Appeal Court Rules) 2015(a) is revoked.

Consequential amendment

34.2.—(1) The Simple Procedure Rules are amended in accordance with this paragraph.

(2) In rule 16.4(8) (what will the Sheriff Appeal Court do with an appeal?)(b), for “Act of Sederunt (Sheriff Appeal Court Rules) 2015” substitute “Act of Sederunt (Sheriff Appeal Court Rules) 2021”.

Saving provision

34.3.—(1) Subject to paragraphs (2) to (4), Act of Sederunt (Sheriff Appeal Court Rules) 2015 (“the 2015 Rules”) is saved in so far as it applies to any proceedings commenced before the coming into force of this Act of Sederunt.

(2) Rules 21.1 and 21.5 of the 2015 Rules are saved in respect of appeals in which a reference to the European Court is made before IP completion day.

(3) In paragraph (2), “reference” has the meaning given in rule 21.1 of the 2015 Rules.

(4) Paragraph (1) does not apply to rules 21.2 to 21.4 of the 2015 Rules.

Transitional provision

34.4. The Appeal Sheriff may direct that this Act of Sederunt applies to any proceedings commenced before the coming into force of this Act of Sederunt but only after giving the parties an opportunity to be heard.

(a) S.S.I. 2015/356, last amended by S.S.I. 2021/452.

(b) Rule 16.4(8) was inserted by S.S.I. 2016/315.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
9th December 2021

SCHEDULE 1

Rule 1.5

ADMINISTRATIVE PROVISIONS

Quorum of the Court

1.—(1) The quorum of the Court for the types of business specified in sub-paragraph (3) is one Appeal Sheriff but more than one Appeal Sheriff may sit where the Court considers that to be appropriate.

(2) The quorum of the Court for any other business is three Appeal Sheriffs but more than three Appeal Sheriffs may sit where the Court considers that to be appropriate.

(3) The types of business are—

- (a) relieving a party from the consequences of a failure to comply with a provision in these Rules under rule 2.1(1);
- (b) making an order to secure the expeditious disposal of the appeal under rule 3.2(2);
- (c) granting permission for lay representation under rule 4.3;
- (d) granting an application for lay support under rule 4.5;
- (e) ordering otherwise where a party is to intimate to every other party under rule 5.2;
- (f) disposing of an application for leave to receive an appeal out of time under rule 6.4(2);
- (g) a hearing fixed under rule 6.7;
- (h) a hearing fixed under rule 6.8;
- (i) a hearing fixed under Chapter 8;
- (j) disposing of an application to abandon an appeal under rule 10.1;
- (k) disposing of an application for permission to appeal to the Court of Session under rule 12.2(1), where the decision in respect of which permission to appeal is sought was made by one Appeal Sheriff;
- (l) a peremptory hearing under rule 18.4;
- (m) disposing of an application for sanction for the employment of counsel, unless the application seeks sanction in respect of appearing at a hearing before more than one Appeal Sheriff;
- (n) ordering caution or giving security under rule 19.3;
- (o) ordering caution or giving security under rule 19.4;
- (p) ordering further caution to be found or further security to be given under rule 19.8(2);
- (q) granting a motion for a finding that a person is in default under rule 19.9(1);
- (r) granting decree for expenses as taxed under rule 20.4(3);
- (s) disposing of a note of objections under rule 20.5(7), where the order allowing expenses was made by one Appeal Sheriff;
- (t) allowing decree for expenses to be extracted in the name of the solicitor who conducted the appeal under rule 20.6;
- (u) disposing of an application to allow a devolution issue to be raised after the note of appeal has been lodged or answers to the note of appeal have been lodged under rule 22.2(3);
- (v) making an order concerning the drafting and adjustment of a reference to the Inner House of the Court of Session or to the Supreme Court under rule 22.6(3);
- (w) making and signing a reference under rule 22.6(6);
- (x) ordering a sist under rule 22.7;

- (y) ordering further procedure under rule 22.8;
- (z) appointing a hearing under rule 24.2(5);
- (aa) determining an application under rule 24.3;
- (bb) making an order under rule 24.5;
- (cc) ordering a party to provide further information under Chapter 26;
- (dd) determining an application to use a live link under Chapter 27;
- (ee) making an interim order under Chapter 28;
- (ff) a hearing fixed under Chapter 30;
- (gg) a hearing fixed by virtue of Chapter 31;
- (hh) a hearing fixed under Chapter 33;
- (ii) disposing of an application for authority to address the Court in Gaelic or to give oral evidence in Gaelic under paragraph 5 of this schedule;
- (jj) any business where the Rules provide for that business to be disposed of by the procedural Appeal Sheriff.

Procedural Appeal Sheriff

2.—(1) Every Appeal Sheriff is a procedural Appeal Sheriff.

(2) Where the Court considers it appropriate to do so, the Court may dispose of any business where the Rules provide for that business to be disposed of by the procedural Appeal Sheriff.

Signature of interlocutors etc.

3.—(1) Any order made by the Court under these Rules is to be contained in an interlocutor.

(2) An interlocutor must be signed in accordance with sub-paragraphs (3) to (5).

(3) Where the Court is constituted by more than one Appeal Sheriff when an order is made, the interlocutor must be signed by either—

- (a) the Appeal Sheriff who presided over the Court when the order was made; or
- (b) in the event of the death, disability or absence of that Appeal Sheriff, the next senior Appeal Sheriff who sat on that occasion, after such consultation with the other Appeal Sheriffs who sat as may be necessary.

(4) Where the Court is constituted by one Appeal Sheriff, the interlocutor must be signed by that Appeal Sheriff.

(5) Where the Clerk determines an unopposed motion in writing in accordance with rule 13.7(1), the interlocutor must be signed by the Clerk unless the procedural Appeal Sheriff directs otherwise.

(6) The Clerk may sign any other interlocutor if directed to do so by the procedural Appeal Sheriff.

(7) A direction under sub-paragraph (6) need not be in writing.

(8) An interlocutor signed in accordance with sub-paragraphs (5) and (6) is to be treated for all purposes as if it had been signed by an Appeal Sheriff.

(9) An extract of an interlocutor which is not signed in accordance with the provisions of this rule is void and has no effect.

(10) An interlocutor may, on cause shown, be corrected or altered at any time before extract by either—

- (a) the Appeal Sheriff who signed it;
- (b) in the event of the death, disability or absence of that Appeal Sheriff, by any other Appeal Sheriff; or
- (c) where the interlocutor was signed by the Clerk, by any Appeal Sheriff.

Decrees, extracts and execution

- 4.—(1) In this paragraph, “decree” includes any order or interlocutor which may be extracted.
- (2) A decree may be extracted at any time after whichever is the later of—
- (a) the expiry of the period within which an application for leave to appeal may be made, if no such application is made;
 - (b) the date on which leave to appeal is refused, if there is no right to appeal from that decision;
 - (c) the expiry of the period within which an appeal may be made, if no such appeal is made; or
 - (d) the date on which an appeal is finally disposed of.
- (3) A party may apply by motion to the procedural Appeal Sheriff to allow an extract to be issued earlier than a date referred to in sub-paragraph (2).
- (4) Nothing in this paragraph affects the power of the Court to supersede extract.
- (5) Where execution may follow on an extract decree, the decree is to include the warrant for execution specified in sub-paragraph (6).
- (6) That warrant is “This extract is warrant for all lawful execution hereon.”.
- (7) Where interest is included in, or payable under, a decree, the rate of interest is 8 per cent a year unless otherwise stated.

Use of Gaelic

- 5.—(1) This paragraph applies where the use of Gaelic by a party has been authorised by the sheriff in the proceedings out of which an appeal arises.
- (2) That party may apply by motion for authority to address the Court in Gaelic at—
- (a) an appeal hearing fixed under rule 7.9(3)(a) or rule 8.2(1)(a);
 - (b) a hearing under rule 30.4.
- (3) Where proof or additional proof is ordered in accordance with rule 25.1 and that party wishes to give oral evidence in Gaelic, the party may apply by motion for authority to do so.
- (4) Where the Court grants authority under sub-paragraph (2) or (3), an interpreter must be provided by the Court.

SCHEDULE 2

Rule 1.6(1)

FORMS

Form 4.3

Rule 4.3(4)(b)

Statement of prospective lay representative for appellant or respondent

IN THE SHERIFF APPEAL COURT

STATEMENT

by

PROSPECTIVE LAY REPRESENTATIVE FOR APPELLANT [*or* RESPONDENT]

in the appeal in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

Name and address of prospective lay representative who requests permission to represent party litigant:

Identify hearing(s) in respect of which permission for lay representation is sought:

The prospective lay representative declares that:

- (a) I have no financial interest in the outcome of the case.
[*or* I have the following financial interest in the outcome of the case: (*state briefly the financial interest*).]
- (b) I am not receiving remuneration or other reward directly or indirectly from the litigant for my assistance and will not receive directly or indirectly such remuneration or other reward from the litigant.
- (c) I accept that documents and information are provided to me by the litigant on a confidential basis and I undertake to keep them confidential.

(d) I have no previous convictions.

[or I have the following convictions: (*list the convictions*).]

(e) I have not been declared a vexatious litigant under the Vexatious Actions (Scotland) Act 1898.

[or I was declared a vexatious litigant under the Vexatious Actions (Scotland) Act 1898 on (*date*).]

(Signed)

[X.Y.], Prospective lay representative

Form 6.2

Rule 6.2(1)

Note of appeal

APPEAL

to

THE SHERIFF APPEAL COURT

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

1. The appellant appeals to the Sheriff Appeal Court against the decision of the sheriff at (*place*) (*specify nature of decision*) made on (*date*). The court reference number is (*insert court reference number*).

GROUND(S) OF APPEAL

2. (*State briefly (in numbered paragraphs) the ground(s) of appeal.*)

AVAILABILITY OF SHERIFF'S NOTE

3. The sheriff has provided a note setting out the reasons for the decision appealed against, and a copy is appended.

[*or* The appellant has requested that the sheriff write a note, but the note is not yet available.]

[*or* The sheriff has not provided a note setting out the reasons for the decision appealed against, and the appellant requests that the sheriff write a note.]

[*or* The sheriff has not provided a note setting out the reasons for the decision appealed against. The appellant considers that the appeal is sufficiently urgent that the Sheriff Appeal Court should hear and determine the appeal without the sheriff's note. (*State briefly (in numbered paragraphs) why the appeal is sufficiently urgent to justify its determination without the sheriff's note.*)]

INITIAL CASE MANAGEMENT: APPELLANT'S VIEWS

4. The appellant considers that the appeal should be appointed to procedure before three Appeal Sheriffs (Chapter 7 procedure) [*or* procedure before one Appeal Sheriff (Chapter 8 procedure)] because:

(state briefly (in numbered paragraphs) why the appellant considers that the appeal should be appointed to that procedure, taking into account the matters mentioned in rule 6.11(3).)

IN RESPECT WHEREOF

[A.B.] [*or* [C.D.]], Appellant

[*or* [X.Y.], Solicitor for Appellant

(insert business address of solicitor)]

Form 6.5

Rule 6.5(1)(b)

IN THE SHERIFF APPEAL COURT

ANSWERS

in the appeal in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

1. The appellant has appealed to the Sheriff Appeal Court against the decision of the sheriff at (*place*) (*specify nature of decision*) made on (*date*).
2. The respondent answers the appeal. (*State briefly (in numbered paragraphs) the answers to the ground(s) of appeal.*)

INITIAL CASE MANAGEMENT: RESPONDENT'S VIEWS

3. The respondent considers that the appeal should be appointed to procedure before three Appeal Sheriffs (Chapter 7 procedure) [*or* procedure before one Appeal Sheriff (Chapter 8 procedure)] because:

(*state briefly (in numbered paragraphs) why the respondent considers that the appeal should be appointed to that procedure, taking into account the matters mentioned in rule 6.11(3).*)

IN RESPECT WHEREOF

[A.B.] [*or* [C.D.]], Respondent
[*or* [X.Y.], Solicitor for Respondent
(*insert business address of solicitor*)]

Form 6.5-A

Rules 6.5(4), 6.6(1), 15.4(2)(a), 16.3(4) and 18.3(5)

Certificate of intimation

IN THE SHERIFF APPEAL COURT

CERTIFICATE OF INTIMATION

in the appeal in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

1. I certify that I gave intimation of (*specify document or other matter to be intimated*) to (*insert name of receiving party*).
2. Intimation was given by (*specify method of intimation authorised by rule 5.3*).
3. Intimation was given on (*insert date*).

[A.B.] [*or C.D.*], [Appellant/Respondent]

[*or X.Y.*], Solicitor for [Appellant/Respondent]

[*or P.Q.*], Sheriff Officer]

(*insert business address of solicitor or sheriff officer*)

Form 6.6

Rule 6.6(1)

Grounds of cross-appeal

IN THE SHERIFF APPEAL COURT

GROUND(S) OF APPEAL FOR RESPONDENT

in the appeal in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

1. The appellant has appealed to the Sheriff Appeal Court against the decision of the sheriff at (*place*) to (*specify nature of decision*) made on (*date*).
2. The respondent appeals against the decision of the sheriff at (*place*) to (*specify nature of decision*) made on (*date*).

[*or* The respondent challenges the grounds on which the sheriff made the decision against which the appellant has appealed.]
3. (*State briefly (in numbered paragraphs) the ground(s) of appeal.*)

IN RESPECT WHEREOF

[A.B.] [*or* [C.D.]], Respondent

[*or* [X.Y.], Solicitor for Respondent

(*insert business address of solicitor*)]

Form 6.9

Rule 6.9(2)

Reference of question about competency of appeal

IN THE SHERIFF APPEAL COURT

REFERENCE OF QUESTION ABOUT COMPETENCY OF APPEAL

by

[A.B.] [or [C.D.]] (*designation and address*)

RESPONDENT

in the appeal in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

1. The respondent refers the following question about the competency of the appeal to the procedural Appeal Sheriff:

(state briefly (in numbered paragraphs) the question(s) about the competency of the appeal).

2. *(State briefly (in numbered paragraphs) the grounds for referring the question(s).)*

[A.B.] [or [C.D.]], Respondent
[or [X.Y.], Solicitor for Respondent
(insert business address of solicitor)]

Form 7.2

Rules 6.12(5)(a), 7.2(1) and 7.3(4)(b)

Timetable in appeal

IN THE SHERIFF APPEAL COURT

TIMETABLE IN APPEAL

in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

Date of issue of timetable: (*date*)

[This is a revised timetable issued under rule 6.12(5)(a) [*or* rule 7.3(4)(b)] which replaces the timetable issued on (*date*).]

1. The appellant must lodge the appeal print under rule 7.4(1) no later than (*date*).
2. The appellant must lodge the appendix to the appeal print under rule 7.5(1) no later than (*date*).
3. If the appellant does not consider that it is necessary to lodge an appendix to the appeal print, the appellant must lodge written notice under rule 7.6(1) no later than (*date*).
4. The parties must lodge notes of argument under rule 7.7(1) no later than (*date*).
5. The parties must lodge estimates of the duration of any appeal hearing required to dispose of the appeal under rule 7.8 no later than (*date*).
6. A procedural hearing will take place at (*place*) on (*date and time*).

Form 7.8

Rule 7.8

Estimate of duration of appeal hearing

IN THE SHERIFF APPEAL COURT

ESTIMATE OF DURATION OF APPEAL HEARING

in the appeal in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

I, (*name and designation*) estimate that the likely duration of an appeal hearing in this appeal is (*state estimated duration*).

[A.B.] [*or* [C.D.]], [Appellant/
Respondent]
[*or* [X.Y.], Solicitor for [Appellant/
Respondent]
(*insert business address of solicitor*)]

Form 12.2

Rule 12.2(1)

Form of application for permission to appeal to the Court of Session

IN THE SHERIFF APPEAL COURT

APPLICATION

for

PERMISSION TO APPEAL TO THE COURT OF SESSION

under section 113 of the Courts Reform (Scotland) Act 2014

by

[A.B.] (*designation and address*)

APPLICANT

against

A DECISION OF THE SHERIFF APPEAL COURT

1. On (*date*) the Sheriff Appeal Court (*briefly describe decision in respect of which permission to appeal to the Court of Session is sought*).

GROUND(S) OF APPEAL

2. (*State briefly (in numbered paragraphs) the ground(s).*)

PERMISSION TO APPEAL

3. The appeal raises an important point of principle or practice because (*state briefly the reasons*).

[*or* The appeal does not raise an important point of principle or practice but there is some other compelling reason for the Court of Session to hear the appeal because (*state briefly the reasons*).]

[A.B.], Applicant

[*or* [X.Y.], Solicitor for Applicant

(*insert business address of solicitor*)]

Form 14.1

Rules 14.1(1), 14.4(2), and 14.5(2)(a)

Form of motion by email

IN THE SHERIFF APPEAL COURT

Unopposed [*or* Opposed] motion

To: (email address of the Court)

1. Case name:

2. Court ref number:

3. Is the case in court in the next 7 days?

4. Solicitors or party lodging motion:
 - (a) Reference:

 - (b) Telephone number:

 - (c) Email address:

5. Lodging motion on behalf of:

6. Motion (in brief terms):

7. Submissions in support of motion (if required):

8. Date of lodging of motion:

9. Intimation made to:
 - (a) Provided email address(es):

 - (b) Additional email address(es) of fee-earner or other person(s) dealing with the case on behalf of a receiving party (if applicable):

10. Date intimations sent:

11. Opposition must be intimated to opponent no later than 1700 hours on:

12. Is motion opposed or unopposed?

13. Has consent to the motion been provided?

14. Document(s) intimated and lodged with motion:

EXPLANATORY NOTE TO BE ADDED WHERE RECEIVING PARTY IS NOT LEGALLY REPRESENTED

OPPOSITION TO THE MOTION MAY BE MADE by completing Form 14.2 (Form of opposition to motion by email) and intimating it to the party intending to lodge the motion (insert email address) on or before the last date for intimating opposition (see paragraph 11 above).

IN THE EVENT OF A FORM OF OPPOSITION BEING INTIMATED, the party intending to lodge the motion will lodge an opposed motion and the clerk of the Sheriff Appeal Court will assign a date, time and place for hearing parties on the motion. Intimation of this hearing will be sent to parties by the clerk.

IF NO NOTICE OF OPPOSITION IS LODGED, OR IF CONSENT TO THE MOTION IS INTIMATED TO THE PARTY INTENDING TO LODGE THE MOTION, the motion will be considered without the attendance of parties.

IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may also obtain advice from a Citizens Advice Bureau or other advice agency.

Form 14.2

Rules 14.2(1) and 14.5(2)(b)

Form of opposition to motion by email

IN THE SHERIFF APPEAL COURT

TO BE INTIMATED TO THE PARTY INTENDING TO LODGE THE MOTION

1. Case name:

2. Court ref number:

3. Date of intimation of motion:

4. Date of intimation of opposition to motion:

5. Solicitors or party opposing motion:
 - (a) Reference:

 - (b) Telephone number:

 - (c) Email address:

6. Opposing motion on behalf of:

7. Grounds of opposition:

8. Estimated duration of hearing:

Form 15.1

Rule 15.1(1)

Form of motion

IN THE SHERIFF APPEAL COURT

MOTION FOR THE APPELLANT [*or* RESPONDENT]

in the appeal in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

Date: (*insert date of intimation*)

1. The appellant (*or* respondent) moves the Court to (*insert details of the motion*).
2. (*State briefly (in numbered paragraphs) the grounds for the motion*).
3. The last date for lodging opposition to the motion is (*insert last date for lodging opposition*).
4. (*Where a copy of a document accompanies the motion in accordance with rule 15.1(2), list the document(s) in question.*)

[A.B.] [*or* [C.D.]], [Appellant/
Respondent]
[*or* [X.Y.], Solicitor for [Appellant/
Respondent]
(*insert business address of solicitor*)]

EXPLANATORY NOTE TO BE INSERTED WHERE RECEIVING PARTY IS NOT LEGALLY REPRESENTED.

YOU MAY OPPOSE THE MOTION BY COMPLETING FORM 15.2 (Form of Opposition to Motion) and lodging it with the Clerk of the Sheriff Appeal Court.

You must do so on or before the last date for lodging opposition.

IF YOU OPPOSE THE MOTION, the Clerk will arrange a hearing. The Clerk will tell you the date, time and place for the hearing. You will have to attend the hearing or be represented at it.

IF YOU DO NOT OPPOSE THE MOTION, the Court may decide how to dispose of the motion without a hearing.

IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE, you should consult a solicitor. You may also obtain advice from a Citizens Advice Bureau or other advice agency.

Form 15.2

Rule 15.2(1)

Form of opposition to motion

IN THE SHERIFF APPEAL COURT

OPPOSITION BY APPELLANT [*or* RESPONDENT] TO MOTION

in the appeal in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

Date of intimation of motion: (*insert date of intimation*)

Date of intimation of opposition to motion: (*insert date of intimation*)

1. The appellant (*or* respondent) opposes the motion by the respondent [*or* appellant].
2. (*State briefly (in numbered paragraphs) the grounds for opposing the motion.*)

[A.B.] [*or* [C.D.]], [Appellant/
Respondent]
[*or* [X.Y.], Solicitor for [Appellant/
Respondent]
(*insert business address of solicitor*)]

Form 16

Rule 16.2(1)

IN THE SHERIFF APPEAL COURT

MINUTE

in the appeal in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

1. The minuter asks the Court to make the following order:
(state briefly (in numbered paragraphs) the order sought from the Court).
2. *(State briefly (in numbered paragraphs) the facts supporting the making of that order.)*
3. *(Where appropriate, state the pleas-in-law.)*

IN RESPECT WHEREOF

[A.B.], Minuter

[or [X.Y.], Solicitor for Minuter

(insert business address of solicitor)]

Form 18.3

Rule 18.3(1)(c)

Notice of peremptory hearing

IN THE SHERIFF APPEAL COURT

NOTICE OF PEREMPTORY HEARING

in the appeal in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

1. The Court has been informed that your solicitor no longer represents you.
2. As a result, the Court has made an order that you should attend or be represented at a peremptory hearing at (*insert place*) on (*insert date and time*).
3. At the peremptory hearing, you will have to tell the Court whether you intend to continue with the appeal [*or your answers to the appeal*].

[A.B.] [*or* [C.D.]], [Appellant/
Respondent]

[*or* [X.Y.], Solicitor for [Appellant/
Respondent]

(*insert business address of solicitor*)]

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE, you should consult a solicitor.
You may also obtain advice from a Citizens Advice Bureau or other advice agency.**

Form 22.2

Rule 22.2(1)

Devolution issue

IN THE SHERIFF APPEAL COURT

DEVOLUTION ISSUE

in the appeal in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

The appellant [*or* respondent] wishes to raise a devolution issue in this appeal.

(*State briefly (in numbered paragraphs) the following information—*

- (a) *the facts and circumstances and contentions of law on the basis of which it is alleged that the devolution issue arises;*

- (b) *details of the relevant law (including the relevant provisions of the Scotland Act 1998, the Northern Ireland Act 1998 or the Government of Wales Act 2006, as the case may be.)*

[A.B.] [*or* [C.D.]], [Appellant/
Respondent]

[*or* [X.Y.], Solicitor for [Appellant/
Respondent]

(*insert business address of solicitor*)

Form 23.3

Rule 23.3(2)

Reference to the European Court

REQUEST

for

PRELIMINARY RULING

of

THE COURT OF JUSTICE OF THE EUROPEAN UNION

from

THE SHERIFF APPEAL COURT IN SCOTLAND

in the appeal in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

(Set out a clear and succinct statement of the case giving rise to the request for the ruling of the European Court in order to enable the European Court to consider and understand the issues of EU law raised and to enable governments of Member States and other interested parties to submit observations. The statement of case should include:

- (a) *particulars of the parties;*
- (b) *the history of the dispute between the parties;*
- (c) *the history of the proceedings;*
- (d) *the relevant facts as agreed by the parties or found by the court or, failing such agreement or finding, the contentions of the parties on such facts;*
- (e) *the nature of the issues of law and fact between the parties;*
- (f) *the Scots law, so far as it is relevant;*
- (g) *the Treaty provisions or other acts, instruments or rules of EU law concerned; and*
- (h) *an explanation of why the reference is being made.)*

The preliminary ruling of the Court of Justice of the European Union is accordingly requested on the following questions:

(state (in numbered paragraphs) the questions on which the ruling is sought).

Dated the *(day)* day of *(month and year)*.

Appeal Sheriff

Form 24.2

Rule 24.2(1)

Application for leave to intervene by the CEHR or SCHR

IN THE SHERIFF APPEAL COURT

APPLICATION FOR LEAVE TO INTERVENE

by

THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS (“the CEHR”)

[or THE SCOTTISH COMMISSION FOR HUMAN RIGHTS (“the SCHR”)]

in the appeal in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

1. The CEHR [or The SCHR] seeks leave to intervene in this appeal under section 30(1) of the Equality Act 2006 [or section 14(2) of the Scottish Commission for Human Rights Act 2006].
2. The CEHR considers that this appeal is relevant to a matter in connection with which it has a function because:
(state briefly (in numbered paragraphs) the reasons).

[or The SCHR considers that an issue arising in this appeal is relevant to its general duty and raises a matter of public interest because:
(state briefly (in numbered paragraphs) the reasons).]
3. The issue in this appeal which the CEHR [or the SCHR] intends to address is:
(state briefly (in numbered paragraphs) the reasons).
4. The CEHR [or The SCHR] intends to make the following submission if leave to intervene is granted:
(state briefly (in numbered paragraphs) a summary of the proposed submissions).

[X.Y.], Solicitor for the CEHR [or the
SCHR]

(insert business address of solicitor)

Form 24.4

Rule 24.4(1)

Invitation to the SCHR to intervene

IN THE SHERIFF APPEAL COURT

INVITATION

to

THE SCOTTISH COMMISSION FOR HUMAN RIGHTS (“the SCHR”)

TO INTERVENE

in the appeal in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

1. The Sheriff Appeal Court invites the SCHR to intervene in this appeal under section 14(2)(b) of the Scottish Commission for Human Rights Act 2006.
2. (*State briefly (in numbered paragraphs) the procedural history, facts and issues in the appeal.*)
3. The Court seeks a submission from the SCHR on the following issue:
(*state briefly (in numbered paragraphs) the issue.*)

Appeal Sheriff

Form 25.4–A

Rules 25.4(1) and 26.8(2)

Form of oath for witness

I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth.

Form 25.4–B

Rules 25.4(2) and 26.8(3)

Form of affirmation for witness

I solemnly, sincerely and truly declare and affirm that I will tell the truth, the whole truth and nothing but the truth.

Form 26.2–A

Rule 26.2(1)

Child witness notice

IN THE SHERIFF APPEAL COURT

CHILD WITNESS NOTICE

under section 12 of the Vulnerable Witnesses (Scotland) Act 2004

in the appeal in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

1. The applicant is the appellant [*or respondent*].
2. The applicant has cited [*or intends to cite*] [E.F.] (*date of birth*) as a witness.
3. [E.F.] is a child witness under section 11 of the Vulnerable Witnesses (Scotland) Act 2004 [and was under the age of eighteen on the date of the commencement of proceedings.]
4. The applicant considers that the following special measure[s] is [are] the most appropriate for the purpose of taking the evidence of [E.F.] [*or that [E.F.] should give evidence without the benefit of any special measure*]:

(*specify any special measure(s) sought*).
5. The reason[s] this [these] special measure[s] is [are] considered the most appropriate is [are] as follows:

(*specify the reason(s) for the special measure(s) sought*).

[*or* The reason[s] it is considered that [E.F.] should give evidence without the benefit of any special measure is [are]:

(*explain why it is felt that no special measures are required*).]

6. [E.F.] and the parent[s] of [*or* person[s] with parental responsibility for] [E.F.] has [have] expressed the following view[s] on the special measure[s] that is [are] considered most appropriate [*or* the appropriateness of [E.F.] giving evidence without the benefit of any special measure]:

(specify the view(s) expressed and how they were obtained).

7. Other information considered relevant to this application is as follows:

(state briefly any other information relevant to the child witness notice).

8. The applicant asks the Court to—

- (a) consider this child witness notice; and
- (b) make an order authorising the special measure[s] sought;

[or make an order authorising the giving of evidence by [E.F.] without the benefit of special measures.]

[A.B.] [*or* [C.D.]], Applicant
[*or* [X.Y.], Solicitor for Applicant
(insert business address of solicitor)]

Form 26.2–B

Rule 26.2(2)

Vulnerable witness application

IN THE SHERIFF APPEAL COURT

VULNERABLE WITNESS APPLICATION

under section 12 of the Vulnerable Witnesses (Scotland) Act 2004

in the appeal in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

1. The applicant is the appellant [*or respondent*].
2. The applicant has cited [*or intends to cite*] [E.F.] (*date of birth*) as a witness.
3. The applicant considers that [E.F.] is a vulnerable witness under section 11(1)(b) of the Vulnerable Witnesses (Scotland) Act 2004 for the following reasons:

(*specify why the witness is considered to be a vulnerable witness*).
4. The applicant considers that the following special measure[s] is [are] the most appropriate for the purpose of taking the evidence of [E.F.]:

(*specify any special measure(s) sought*).
5. The reason[s] this [these] special measure[s] is [are] considered the most appropriate is [are] as follows:

(*specify the reason(s) for the special measure(s) sought*).
6. [E.F.] has expressed the following view[s] on the special measure[s] that is [are] considered most appropriate:

(*specify the view(s) expressed and how they were obtained*).

7. Other information considered relevant to this application is as follows:
(state briefly any other information relevant to the vulnerable witness application).
8. The applicant asks the Court to—
 - (a) consider this vulnerable witness application; and
 - (b) make an order authorising the special measure[s] sought.

[A.B.] [*or* [C.D.]], Applicant
[*or* [X.Y.], Solicitor for Applicant
(insert business address of solicitor)]

Form 26.2–C

Rule 26.2(3)(a)

Application for review of arrangements for vulnerable witness

IN THE SHERIFF APPEAL COURT

APPLICATION FOR REVIEW OF ARRANGEMENTS FOR VULNERABLE WITNESSES

under section 13 of the Vulnerable Witnesses (Scotland) Act 2004

in the appeal in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

1. The applicant is the appellant [*or respondent*].
2. A proof [*or hearing*] is fixed for (*date*) at (*time*).
3. [E.F.] is a witness who is to give evidence at, or for the purposes of, the proof [*or hearing*]. [E.F.] is a child witness [*or vulnerable witness*] under section 11 of the Vulnerable Witnesses (Scotland) Act 2004.
4. The current arrangements for taking the evidence of [E.F.] are (*specify the current arrangements*).
5. The current arrangements should be reviewed because (*specify reasons for review*).
6. [E.F.] [and the parent[s] of [*or person[s] with parental responsibility for*] [E.F.]] has [have] expressed the following view[s] on [the special measure[s] that is [are] considered most appropriate] [*or the appropriateness of [E.F.] giving evidence without the benefit of any special measure*]:

(*specify the view(s) expressed and how they were obtained*).
7. The applicant seeks (*specify the order sought*).

[A.B.] [*or [C.D.]*], Applicant
[*or [X.Y.]*], Solicitor for Applicant
(*insert business address of solicitor*)

Form 28.3

Rule 28.3(2)(a)

Representations about a proposed order restricting the reporting of proceedings

IN THE SHERIFF APPEAL COURT

REPRESENTATIONS

by

[A.B.] (*designation and address*)

APPLICANT

1. On (*date*) the Sheriff Appeal Court made an interim order under rule 28.2(1) of the Act of Sederunt (Sheriff Appeal Court Rules) 2021.
2. The applicant is a person who would be directly affected by an order restricting the reporting of proceedings because:

(state briefly (in numbered paragraphs) the reasons).
3. The applicant wishes to make the following representations:

(state briefly (in numbered paragraphs) the representations).
- [4. The applicant seeks an urgent hearing on these representations because:

(state briefly (in numbered paragraphs) why an urgent hearing is necessary).]

[A.B.], Applicant

[or [X.Y.], Solicitor for Applicant

(insert business address of solicitor)]

Form 28.5

Rule 28.5(2)

Application for variation or revocation of an order restricting the reporting of proceedings

IN THE SHERIFF APPEAL COURT

APPLICATION

by

[A.B.] (*designation and address*)

APPLICANT

1. On (*date*) the Sheriff Appeal Court made an order restricting the reporting of proceedings in (*name of case (and court reference, if known)*).
2. The applicant seeks variation [*or revocation*] of the order because:

(*state briefly (in numbered paragraphs) the reasons for the application*).
- [3. The applicant seeks to vary the order by:

(*state briefly (in numbered paragraphs) the proposed variation(s)*.)]

[A.B.], Applicant
[*or* [X.Y.], Solicitor for Applicant
(*insert business address of solicitor*)]

Form 29.2

Rule 29.2(1)

Application for new trial

APPLICATION

to

THE SHERIFF APPEAL COURT

for

A NEW TRIAL

under section 69 of the Courts Reform (Scotland) Act 2014

by

[A.B.] (*designation and address*)

APPLICANT

[C.D.] (*designation and address*)

RESPONDENT

1. On (*date*), a jury trial was held before the Sheriff of Lothian and Borders at Edinburgh in the cause [A.B.] (*designation and address*), pursuer, against [C.D.] (*designation and address*), defender. The court reference number is (*insert court reference number*).
2. The verdict of the jury was (*state the verdict returned in accordance with section 68 of the Courts Reform (Scotland) Act 2014*).
3. The applicant applies to the Sheriff Appeal Court for a new trial under section 69(1) of the Court Reform (Scotland) Act 2014.

GROUND(S) FOR APPLICATION

(*State briefly (in numbered paragraphs) the ground(s) for the application including references to section 69(2) of the Court Reform (Scotland) Act 2014*).

IN RESPECT WHEREOF

[A.B.], Applicant

[or [X.Y.], Solicitor for Applicant

(*insert business address of solicitor*)]

Form 29.5

Rules 29.5(1), 29.6(6)(a) and (7)(b)

Timetable in application for new trial

IN THE SHERIFF APPEAL COURT

TIMETABLE IN APPLICATION FOR NEW TRIAL

by

[A.B.] (*designation and address*)

APPLICANT

against

[C.D.] (*designation and address*)

RESPONDENT

Date of issue of timetable: (*date*)

[This is a revised timetable issued under rule 29.6(6)(a) [*or* rule 29.6(7)(b)] which replaces the timetable issued on (*date*).]

1. The respondent may refer a question of competency under rule 29.7(3) no later than (*date*).

Note: if a reference is lodged, parties must lodge notes of argument under rule 29.7(5) within 7 days after the date on which the reference is lodged.

2. The applicant must lodge the appendix to the print under rule 29.9(1) no later than (*date*).
3. If the applicant does not consider that it is necessary to lodge an appendix to the print, the applicant must lodge written notice under rule 29.10(1) no later than (*date*).
4. The parties must lodge notes of argument under rule 29.11(1) no later than (*date*).
5. The parties must lodge estimates of the duration of any hearing required to dispose of the application for a new trial under rule 29.12 no later than (*date*).
6. A procedural hearing will take place at (*place*) on (*date and time*).

Form 29.7

Rule 29.7(2)

Reference of question about competency of application for new trial

IN THE SHERIFF APPEAL COURT

REFERENCE OF QUESTION ABOUT COMPETENCY OF APPLICATION FOR NEW TRIAL

by

[C.D.] (*designation and address*)

RESPONDENT

in the appeal by

[A.B.] (*designation and address*)

APPLICANT

against

[C.D.] (*designation and address*)

RESPONDENT

1. The respondent refers the following question about the competency of the application for a new trial to the procedural Appeal Sheriff:

(state briefly (in numbered paragraphs) the question(s) about the competency of the application for a new trial).

2. *(State briefly (in numbered paragraphs) the grounds for referring the question(s).)*

[C.D.], Respondent

[or [X.Y.], Solicitor for Respondent

(insert business address of solicitor)]

Form 29.12

Rule 29.12

Estimate of duration of hearing

IN THE SHERIFF APPEAL COURT
ESTIMATE OF DURATION OF HEARING

in the application for a new trial

[A.B.] (*designation and address*)

APPLICANT

against

[C.D.] (*designation and address*)

RESPONDENT

I, (*name and designation*) estimate that the likely duration of a hearing to dispose of this application for a new trial is (*state estimated duration*).

[A.B.], [or] [C.D.]
[Applicant/Respondent]

[or] [X.Y.], Solicitor for [Applicant/
Respondent]

(*insert business address of solicitor*)

Form 29.14

Rule 29.14(2)

Application to enter jury verdict

APPLICATION

to

THE SHERIFF APPEAL COURT

to

ENTER JURY VERDICT

under section 71(2) of the Courts Reform (Scotland) Act 2014

by

[A.B.] (*designation and address*)

APPLICANT

[C.D.] (*designation and address*)

RESPONDENT

1. On (*date*), a jury trial was held before the Sheriff of Lothian and Borders at Edinburgh in the cause [A.B.] (*designation and address*), pursuer, against [C.D.] (*designation and address*), defender. The court reference number is (*insert court reference number*).
2. The verdict of the jury was (*state the verdict returned in accordance with section 68 of the Courts Reform (Scotland) Act 2014*).
3. The applicant applies to the Sheriff Appeal Court for the verdict instead to be entered in the applicant's favour under section 71(2) of the Court Reform (Scotland) Act 2014.

GROUND(S) FOR APPLICATION

(*State briefly (in numbered paragraphs) the ground(s) for the application.*)

IN RESPECT WHEREOF

[A.B.], [*or* C.D.] Applicant
[*or* [X.Y.], Solicitor for Applicant
(*insert business address of solicitor*)]

Form 30.6

Rule 30.6(2)

Application for certificate of suitability for appeal to the Court of Session

IN THE SHERIFF APPEAL COURT

APPLICATION FOR CERTIFICATE OF SUITABILITY FOR APPEAL TO THE COURT OF
SESSION

in the appeal in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

1. The appellant [*or* respondent] asks the Sheriff Appeal Court to certify that this appeal is suitable for appeal to the Court of Session under section 38(b) of the Sheriff Courts (Scotland) Act 1971.
2. The appellant [*or* respondent] considers that this appeal is suitable for appeal to the Court of Session because:

(*state briefly (in numbered paragraphs) the reasons*).

[A.B.] [*or* [C.D.]], [Appellant/
Respondent]

[*or* [X.Y.], Solicitor for [Appellant/
Respondent]

(*insert business address of solicitor*)]

Form 32.5

Rule 32.5(2)

Application for leave to appeal to the Court of Session

IN THE SHERIFF APPEAL COURT

APPLICATION FOR LEAVE TO APPEAL TO THE COURT OF SESSION

under

SECTION 163(2) [*or* 164(2)] [*or* 165(2)] OF THE CHILDREN'S HEARINGS (SCOTLAND)
ACT 2011

in the appeal in the cause

[A.B.] (*designation and address*)

PURSUER and [APPELLANT/RESPONDENT]

against

[C.D.] (*designation and address*)

DEFENDER and [RESPONDENT/APPELLANT]

1. The appellant [*or* respondent] asks the Sheriff Appeal Court to grant leave to appeal to the Court of Session under section 163(2) [*or* 164(2)] [*or* 165(2)] of the Children's Hearings (Scotland) Act 2011.

GROUND(S) OF APPEAL

2. (*State briefly (in numbered paragraphs) the point(s) of law or procedural irregularity on which the appeal is to proceed.*)

[A.B.] [*or* [C.D.]], [Appellant/
Respondent]

[*or* [X.Y.], Solicitor for [Appellant/
Respondent]

(*insert business address of solicitor*)]

Form 33.2

Rule 33.2(1)

Note of appeal

APPEAL

to

THE SHERIFF APPEAL COURT

[A.B.] (*designation and address*)

APPLICANT and [APPELLANT/RESPONDENT]

[C.D.] (*designation and address*)

RESPONDENT and [RESPONDENT/APPELLANT]

1. The appellant appeals to the Sheriff Appeal Court against the decision of the sheriff at (*place*) (*specify nature of decision*) made on (*date*). The court reference number is (*insert court reference number*). [The appellant's email address is (*insert contact email address of the appellant, if the appellant has one*).] [The respondent's email address is (*insert contact email address of the respondent, if known*).] [The following person[s] [is/are] considered to have an interest in the proceedings: (*insert names and addresses of any parties with an interest in the proceedings and, if known, their contact email addresses*).]

GROUND(S) OF APPEAL

2. (*State briefly (in numbered paragraphs) the ground(s) of appeal.*)

AVAILABILITY OF SHERIFF'S NOTE

3. The sheriff has provided a note setting out the reasons for the decision appealed against, and a copy is appended.

[*or* The appellant has requested that the sheriff write a note, but the note is not yet available.]

[*or* The sheriff has not provided a note setting out the reasons for the decision appealed against, and the appellant requests that the sheriff write a note.]

[*or* The sheriff has not provided a note setting out the reasons for the decision appealed against. The appellant considers that the appeal is sufficiently urgent that the Sheriff Appeal Court should hear and determine the appeal without the sheriff's note. (*State briefly (in numbered paragraphs) why the appeal is sufficiently urgent to justify its determination without the sheriff's note.*)]

IN RESPECT WHEREOF

[P.Q.] (Applicant)

[A.B.] [*or* [C.D.]], Appellant

[*or* [X.Y.] Solicitor for Appellant

(*insert business address of solicitor*)]

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 sists 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.

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