

2015 No. 419

COURT OF SESSION

SHERIFF APPEAL COURT

SHERIFF COURT

Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Sheriff Appeal Court) 2015

Made - - - - - *8th December 2015*

Laid before the Scottish Parliament *10th December 2015*

Coming into force in accordance with paragraph 1(2) and (3)

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 sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(b) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Sheriff Appeal Court) 2015.

(2) Subject to subparagraph (3), it comes into force on 1st January 2016.

(3) Paragraph 19 comes into force on 31st December 2015.

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

Amendment of the Act of Sederunt (Expenses of Party Litigants) 1976

2.—(1) The Act of Sederunt (Expenses of Party Litigants) 1976(c) is amended in accordance with this paragraph.

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3).

(b) 2014 asp 18.

(c) S.I. 1976/1606, amended by S.I. 1983/1438.

- (2) In rule 2 (expenses allowable to party litigants)—
- (a) in paragraph (1)—
 - (i) after “the Court of Session”, insert “, the Sheriff Appeal Court”;
 - (ii) in subparagraph (a), omit “for that work under the table of fees for solicitors in judicial proceedings”;
 - (b) in paragraph (3)—
 - (i) in subparagraph (a), after “the Court of Session” insert “, the Sheriff Appeal Court”;
 - (ii) omit subparagraph (d).

Amendment of the Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986

3.—(1) The Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986(a) is amended in accordance with this paragraph.

- (2) In rule 36 (appeals to the Sheriff Principal or Court of Session)—
- (a) in paragraph (1)—
 - (i) omit “the Sheriff Principal or”;
 - (ii) in subparagraph (b), for “the Sheriff Principal [*or* Court of Session]” substitute “the Court of Session”;
 - (b) in paragraph (3), omit “Where the appeal is to the Court of Session,”;
 - (c) in paragraph (4), for subparagraph (a) substitute—
 - “(a) transmit the process to the Deputy Principal Clerk of Session; and”;
 - (d) the heading becomes “Appeals to the Court of Session”.
- (3) After rule 36, insert—

“Appeals to the Sheriff Appeal Court

36A. Where an appeal to the Sheriff Appeal Court is competent, it is to be made in accordance with Chapter 6 of the Act of Sederunt (Sheriff Appeal Court Rules) 2015(b).”.

Amendment of the Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988

4.—(1) The Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988(c) is amended in accordance with this paragraph.

- (2) In rule 72 (appeals)—
- (a) in paragraph (3)—
 - (i) for “Subject to section 103(2) of the Act, an appeal shall—” substitute “An appeal to the Court of Session is to—”;
 - (ii) in subparagraph (d), omit “where appeal is made to the Court of Session,”;
 - (b) after paragraph (3), insert—
 - “(3A) An appeal to the Sheriff Appeal Court is to be made in accordance with Chapter 6 of the Act of Sederunt (Sheriff Appeal Court Rules) 2015(d).”;

(a) S.I. 1986/2297, last amended by S.S.I. 2014/119.
(b) S.S.I. 2015/356.
(c) S.I. 1988/2013, last amended by S.S.I. 2009/294.
(d) S.S.I. 2015/356.

- (c) for paragraph (4) substitute—
 - “(4) When the appellant appeals to—
 - (a) the Court of Session in accordance with paragraph (3); or
 - (b) the Sheriff Appeal Court in accordance with paragraph (3A),
 the appellant must at the same time intimate to the other parties that an appeal has been made.”;
- (d) for paragraph (5) substitute—
 - “(5) When an appeal is made, the sheriff is to issue a note stating the reasons for the decision appealed against.”;
- (e) omit paragraph (6).

Amendment of the Ordinary Cause Rules 1993

- 5.—**(1) The Ordinary Cause Rules 1993(a) are amended in accordance with this paragraph.
- (2) In rule 1.3 (representation)(b), omit paragraph (2).
 - (3) In rule 11.7 (retention and disposal of parts of process by sheriff clerk)—
 - (a) in paragraph (1)—
 - (i) for “marking” substitute “making”;
 - (ii) for “marked” substitute “made”;
 - (b) in paragraph (2), for “marked” substitute “made”.
 - (4) In rule 11.8(1) (uplifting of productions from process), for “marked” in each place where it occurs substitute “made”.
 - (5) In rule 26.1 (transfer to another sheriff court)(c), omit paragraph (8).
 - (6) In rule 28.3A(9) (optional procedure where there is a party litigant)(d), for “marked” substitute “made”.
 - (7) For rule 29.19 (incidental appeal against rulings on confidentiality of evidence and production of documents) substitute—

“Rulings on admissibility of evidence: leave to appeal

- 29.19.—**(1) This rule applies where a party or any other person objects to—
- (a) the admissibility of oral or documentary evidence on the ground of confidentiality;
 - (b) the production of a document on any ground.
- (2) An application for leave to appeal against the decision of the sheriff on the objection must be made immediately.”.
- (8) In rule 30.4(1)(b)(iii) (when decrees extractable)(e), for “marked” in each place where it occurs substitute “made”.
 - (9) In rule 30.8(1) (date of decree in extract), for “sheriff principal” in each place where it occurs substitute “Sheriff Appeal Court”.
 - (10) In Chapter 31 (appeals)(f)—
 - (a) omit rule 31.1 (time limit for appeal);

(a) The Ordinary Cause Rules 1993 are in Schedule 1 to 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. 2015/312.

(b) Rule 1.3 was amended by S.S.I. 2007/6.

(c) Rule 26.1 was amended by S.S.I. 2015/227.

(d) Rule 28.3A was inserted by S.S.I. 2014/152.

(e) Rule 30.4 was amended by S.I. 1996/2445.

(f) Chapter 31 was last amended by S.S.I. 2008/365.

- (b) in rule 31.2 (applications for leave to appeal)(a), omit paragraph (2);
- (c) omit rule 31.2A (appeals in connection with interim diligence)(b);
- (d) omit rules 31.3 (form of appeal to Court of Session) to 31.8 (fixing of Options Hearing or making other order following appeal);
- (e) in rule 31.9 (appeals in connection with orders under section 11 of the Children (Scotland) Act 1995 or aliment), for “, the sheriff principal or the Court of Session, as the case may be” substitute “or the Sheriff Appeal Court”;
- (f) in rule 31.10 (interim possession etc. pending appeal)—
 - (i) in paragraph (1), omit “or sheriff principal”;
 - (ii) for paragraph (2) substitute—
 - “(2) An order made under paragraph (1) may be reviewed by the Sheriff Appeal Court.”;
- (g) omit rule 31.11 (abandonment of appeal).
- (11) In rule 33.81 (simplified divorce applications: appeals)—
 - (a) the existing rule becomes paragraph (1);
 - (b) after that paragraph, insert—
 - “(2) Within 4 days after receiving an appeal, the sheriff clerk must transmit to the Clerk of the Sheriff Appeal Court—
 - (a) the appeal;
 - (b) all documents and productions in the simplified divorce application.
 - (3) On receipt of the appeal, the Clerk of the Sheriff Appeal Court is to fix a hearing and intimate the date, time and place of that hearing to the parties.”.
- (12) In rule 33.86(1)(a) (variation of Court of Session decrees: transmission of process)—
 - (a) for “marking” substitute “making”;
 - (b) for “marked” substitute “made”.
- (13) In rule 33A.74 (simplified dissolution of civil partnership applications: appeals)—
 - (a) the existing rule becomes paragraph (1);
 - (b) after that paragraph, insert—
 - “(2) Within 4 days after receiving an appeal, the sheriff clerk must transmit to the Clerk of the Sheriff Appeal Court—
 - (a) the appeal;
 - (b) all documents and productions in the simplified dissolution of civil partnership application.
 - (3) On receipt of the appeal, the Clerk of the Sheriff Appeal Court is to fix a hearing and intimate the date, time and place of that hearing to the parties.”.
- (14) In rule 50.5 (access to a recording of a child)(c), after paragraph (2) insert—
 - “(3) An application for leave to appeal against the decision of the sheriff on that motion must be made immediately.”.
- (15) Omit rule 50.6 (incidental appeal against rulings on access to a recording of a child)(d).
- (16) In Appendix 1 (forms), omit Form A1 (form of note of appeal to the sheriff principal)(e).

(a) Rule 31.2 was amended by S.S.I. 2007/6.
 (b) Rule 31.2A was inserted by S.S.I. 2008/365.
 (c) Rule 50.5 was inserted by S.S.I. 2012/271.
 (d) Rule 50.6 was inserted by S.S.I. 2012/271.
 (e) Form A1 was inserted by S.S.I. 1996/2445.

Amendment of the Act of Sederunt (Summary Suspension) 1993

6.—(1) The Act of Sederunt (Summary Suspension) 1993(**a**) is amended in accordance with this paragraph.

(2) In paragraph 2 (summary application for suspension of charge), for “section 5(5) of the Sheriff Courts (Scotland) Act 1907” substitute “ section 38(2)(i) of the Courts Reform (Scotland) Act 2014(**b**)”.

(3) In paragraph 4 (objections), for “sheriff principal” substitute “Sheriff Appeal Court”.

Amendment of the Rules of the Court of Session 1994

7.—(1) The Rules of the Court of Session 1994(**c**) are amended in accordance with this paragraph.

(2) In rule 3.2(2)(b) (General Department), after “sheriff court” insert “and the Sheriff Appeal Court”.

(3) In rule 40.1(2) (application and interpretation of this Chapter)(**d**), for subparagraph (c) substitute—

“(c) inferior court means—

(i) the Lyon Court;

(ii) the Sheriff Appeal Court, in respect of an appeal under section 113(1) of the Act of 2014 or section 38(b) of the Sheriff Courts (Scotland) Act 1971(**e**);

(iii) the sheriff principal, in respect of an appeal under section 114(1) of the Act of 2014;

(d) any reference to leave to appeal includes permission to appeal in terms of section 113(1) of the Act of 2014.”.

(4) In rule 40.21 (referral to family mediation in appeals from the sheriff court)(**f**)—

(a) for “sheriff court” substitute “Sheriff Appeal Court”;

(b) the heading of the rule becomes “Referral to family mediation in appeals from the Sheriff Appeal Court”.

(5) In rule 41.1 (application and interpretation of this Chapter)(**g**), for paragraph (1) substitute—

“(1) This Chapter applies to an appeal from any decision of a tribunal, unless one of the following Chapters applies—

(a) Chapter 38 (reclaiming);

(b) Chapter 39 (applications for new trial or to enter jury verdicts);

(c) Chapter 40 (appeals from inferior courts).”.

(6) In rule 41.37 (lodging of reports and statements with sheriff)(**h**)—

(a) in paragraph (1)(a)—

(i) for “(or as the case may be to the sheriff principal)” substitute “or the Sheriff Appeal Court”;

(ii) for “him or her” substitute “the sheriff or the Sheriff Appeal Court”;

(a) S.I. 1993/3128.

(b) 2014 asp 18.

(c) The Rules of the Court of Session 1994 are in Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443, last amended by S.S.I. 2015/408).

(d) Rule 40.1 was substituted by S.S.I. 2010/30.

(e) 1971 c. 58. Section 38(b) was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 18.

(f) Rule 40.21 was substituted by S.S.I. 2010/30.

(g) Rule 41.1 was substituted by S.S.I. 2011/303.

(h) Rule 41.37 was substituted by S.S.I. 2011/303 and amended by S.S.I. 2013/162.

- (b) in paragraph (2)—
 - (i) for “(or sheriff principal)” substitute “or the Sheriff Appeal Court”;
 - (ii) after “sheriff clerk” in both places where it occurs, insert “or the Clerk of the Sheriff Appeal Court”.
- (7) In rule 41.52(4) (appeals to be heard in the Outer House)(a), after subparagraph (f) insert—
 - “(fa)an appeal from the Sheriff Appeal Court;”.
- (8) In rule 70.1 (interpretation of this Chapter), in the definition of “relevant authority”—
 - (a) after “a sheriff court,” insert “the Sheriff Appeal Court,”;
 - (b) for “Part III of the Social Work (Scotland) Act 1968” substitute “the Children’s Hearings (Scotland) Act 2011(b)”.

Amendment of the Act of Sederunt (Child Care and Maintenance Rules) 1997

8.—(1) The Act of Sederunt (Child Care and Maintenance Rules) 1997(c) is amended in accordance with this paragraph.

- (2) In rule 1.6(3) (lodging audio or audio-visual recordings of children)(d)—
 - (a) in subparagraph (a), for “marked” substitute “made”;
 - (b) in subparagraph (b), for “marked on” substitute “made in relation to”.
- (3) For rule 2.60 (appeals)(e) substitute—

“Appeals

2.60. An appeal to the Sheriff Appeal Court against an order of the sheriff under this Part is to be made in accordance with Chapter 6 of the Act of Sederunt (Sheriff Appeal Court Rules) 2015(f).”.

- (4) In Chapter 3 (children’s hearings: applications to the sheriff)(g)—
 - (a) in rule 3.59 (appeals)(h)—
 - (i) in paragraph (1), omit “to the sheriff principal to which this Part applies”;
 - (ii) in paragraph (8), omit subparagraph (a);
 - (iii) omit paragraph (9);
 - (iv) the heading becomes “Appeals: applications for stated case”;
 - (b) omit rule 3.61 (hearing);
 - (c) omit rule 3.61A (leave of the sheriff principal to appeal to the Court of Session)(i);
 - (d) in rule 3.66 (extent of application of Part XI of Chapter 3)(j), omit “or an appeal is made under Part 15 of the 2011 Act”.

(a) Rule 41.52 was substituted by S.S.I. 2011/303 and last amended by S.S.I. 2014/201.
 (b) 2011 asp 1.
 (c) S.I. 1997/291, last amended by S.S.I. 2015/283.
 (d) Rule 1.6 was inserted by S.S.I. 2012/271.
 (e) Rule 2.60 was substituted by S.S.I. 2010/137.
 (f) S.S.I. 2015/356.
 (g) Chapter 3 was last amended by S.S.I. 2013/172.
 (h) Rule 3.59 was last amended by S.S.I. 2013/172.
 (i) Rule 3.61A was inserted by S.S.I. 2013/172.
 (j) Rule 3.66 was inserted by S.S.I. 2005/190 and amended by S.S.I. 2013/172.

Amendment of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999

9.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(a) is amended in accordance with this paragraph.

(2) In rule 2.21 (transfer to another sheriff court), omit paragraph (8).

(3) In rule 2.25(1)(b)(iii) (when decrees extractable), for “marked” in each place where it occurs substitute “made”.

(4) In rule 2.28 (date of decree in extract), for “sheriff principal” in each place where it occurs substitute “Sheriff Appeal Court”.

(5) In rule 2.42(3) (lodging audio or audio-visual recordings of children)(b), for “marked” in each place where it occurs substitute “made”.

(6) Omit Part XXVI (Protection of Children (Scotland) Act 2003) of Chapter 3 (rules on applications under specific statutes)(c).

(7) In rule 3.35.8 (form of appeal to the sheriff principal)(d)—

(a) omit paragraphs (1) and (3);

(b) the heading becomes “Applications for leave to appeal to the Sheriff Appeal Court”.

(8) In rule 3.45.11 (adjustment of incoming protection measure)(e)—

(a) in paragraph (8), for “marked” substitute “made”;

(b) in paragraph (9), for “mark” substitute “make”.

Amendment of the Act of Sederunt (Proceedings for Determination of Devolution Issues Rules) 1999

10.—(1) The Act of Sederunt (Proceedings for Determination of Devolution Issues Rules) 1999(f) is amended in accordance with this paragraph.

(2) In rule 6(6) (intimation of devolution issue)(g), for “marks an appeal under rule 3.1.3 or 31.4 of the Ordinary Cause Rules 1993 in Schedule 1 to the Sheriff Courts (Scotland) Act 1907” substitute “appeals to the Sheriff Appeal Court in accordance with Chapter 6 of the Act of Sederunt (Sheriff Appeal Court Rules) 2015(h)”.

(3) In rule 7(7) (response to intimation of devolution issue)(i), for “sheriff principal” substitute “Sheriff Appeal Court”.

(4) In Schedule 1 (forms), in Form 2A (form of intimation to relevant authority of appeal in proceedings in which a devolution issue has been raised)(j), for “marked” substitute “made”.

Amendment of the Summary Cause Rules 2002

11.—(1) The Summary Cause Rules 2002(k) are amended in accordance with this paragraph.

(2) In rule 2.1(5) (representation), omit “, other than appeals to the sheriff principal,”.

(3) In rule 8.15 (objections to admissibility of evidence), omit subparagraph (b).

(a) S.I. 1999/929, last amended by S.S.I. 2015/283.

(b) Rule 2.42 was inserted by S.S.I. 2012/271.

(c) Part XXVI was inserted by S.S.I. 2004/334 and renumbered by S.S.I. 2005/648.

(d) Rule 3.35.8 was inserted by S.S.I. 2008/335.

(e) Rule 3.45.11 was inserted by S.S.I. 2014/371.

(f) S.I. 1999/1347, last amended by S.S.I. 2009/323.

(g) Rule 6 was amended by S.S.I. 2007/362.

(h) S.S.I. 2015/356.

(i) Rule 7 was amended by S.S.I. 2007/362.

(j) Form 2A was inserted by S.S.I. 2007/362.

(k) 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. 2015/283).

(4) Omit rule 8.16 (incidental appeal against rulings on confidentiality of evidence and production of documents).

(5) In rule 23.2 (final decree)(a), omit “the sheriff principal or”.

(6) In rule 23.3 (expenses)(b)—

- (a) in paragraph (6), omit “the sheriff principal or”;
- (b) in paragraph (9)(b), omit “the sheriff principal or”;
- (c) in paragraph (10), omit “sheriff principal or the”;
- (d) omit paragraph (11);
- (e) in paragraph (12), omit “the sheriff principal or”;
- (f) in paragraph (13), omit “sheriff principal or”;
- (g) in paragraph (15), omit “sheriff principal or”.

(7) In Chapter 25 (appeals)—

(a) in rule 25.1 (appeals)—

(i) in paragraph (1)—

- (aa) for “the sheriff principal” substitute “the Sheriff Appeal Court”;
- (bb) omit “by note of appeal”;

(ii) in paragraph (2), for “a note of appeal” substitute “Form 31”;

(iii) in paragraph (3), for “a note of appeal” substitute “Form 31”;

(iv) for paragraph (10) substitute—

“(10) After the sheriff has signed the stated case, the appeal is to proceed in accordance with Chapter 29 of the Act of Sederunt (Sheriff Appeal Court Rules) 2015(c).”;

(v) the heading becomes “Appeals: application for stated case”;

(b) omit rules 25.2 (effect of and abandonment of appeal) and 25.3 (hearing of appeal);

(c) in rule 25.4 (appeal in relation to a time to pay direction)—

(i) in paragraph (1), for “sheriff principal” substitute “Sheriff Appeal Court”;

(ii) in paragraph (2), for “Rules 25.1, 25.2, 25.3(2) and (3) and 25.7” substitute “Rule 25.1”;

(iii) omit paragraph (5);

(d) in rule 25.6(c) (provisions for appeal in actions for recovery of heritable property to which rule 30.2 applies), for “note of appeal” substitute “Form 31”;

(e) omit rule 25.7 (appeal to the Court of Session).

(8) In Appendix 1 (forms)(d)—

(a) in Form 31 (form of note of appeal to the sheriff principal)—

(i) for “sheriff principal” substitute “Sheriff Appeal Court”;

(ii) the title of the Form becomes “Form of application for stated case”;

(b) in Form 32 (application for leave to appeal against time to pay direction), for “sheriff principal” substitute “Sheriff Appeal Court”;

(c) in Form 33 (appeal against time to pay direction), for “sheriff principal” substitute “Sheriff Appeal Court”;

(d) omit Form 34 (application for certificate of suitability for appeal to the Court of Session).

(a) Rule 23.2 was amended by S.S.I. 2002/516.

(b) Rule 23.3 was last amended by S.S.I. 2009/164.

(c) S.S.I. 2015/356.

(d) Appendix 1 was last amended by S.S.I. 2015/283.

(9) In Appendix 2 (glossary), in the term “stated case”, for “sheriff principal” substitute “Sheriff Appeal Court”.

Amendment of the Small Claim Rules 2002

- 12.—**(1) The Small Claim Rules 2002(a) are amended in accordance with this paragraph.
- (2) In rule 21.6 (expenses)(b)—
- (a) in paragraph (1)—
 - (i) in subparagraph (b), omit “; or”;
 - (ii) omit subparagraph (c);
 - (b) in paragraph (6), omit “the sheriff principal or”;
 - (c) in paragraph (9)(b), omit “the sheriff principal or”;
 - (d) in paragraph (10), omit “sheriff principal or the”;
 - (e) omit paragraph (11);
 - (f) in paragraph (12), omit “the sheriff principal or”;
 - (g) in paragraph (13), omit “sheriff principal or”;
 - (h) in paragraph (15), omit “sheriff principal or”.
- (3) In Chapter 23 (appeals)—
- (a) in rule 23.1 (appeals)—
 - (i) in paragraph (1)—
 - (aa) for “sheriff principal” substitute “Sheriff Appeal Court”;
 - (bb) omit “by note of appeal”;
 - (ii) in paragraph (2), for “a note of appeal” substitute “Form 21”;
 - (iii) in paragraph (3), for “a note of appeal” substitute “Form 21”;
 - (iv) for paragraph (10) substitute—

“(10) After the sheriff has signed the stated case, the appeal is to proceed in accordance with Chapter 29 of the Act of Sederunt (Sheriff Appeal Court Rules) 2015(c).”;
 - (v) the heading becomes “Appeals: application for stated case”;
 - (b) omit rules 23.2 (effect of and abandonment of appeal) and 23.3 (hearing of appeal);
 - (c) in rule 23.4 (appeal in relation to a time to pay direction)—
 - (i) in paragraph (1), for “sheriff principal” substitute “Sheriff Appeal Court”;
 - (ii) in paragraph (2), for “Rules 23.1, 23.2 and 23.3(2) and (3)” substitute “Rule 23.1”;
 - (iii) omit paragraph (5).
- (4) In Appendix 1 (forms)(d)—
- (a) in Form 21 (form of note of appeal to the sheriff principal)—
 - (i) for “sheriff principal” substitute “Sheriff Appeal Court”;
 - (ii) the title of the Form becomes “Form of application for stated case”;
 - (b) in Form 22 (application for leave to appeal against time to pay direction), for “sheriff principal” substitute “Sheriff Appeal Court”;
 - (c) in Form 23 (appeal against time to pay direction), for “sheriff principal” substitute “Sheriff Appeal Court”.

(a) The Small Claim Rules 2002 are in Schedule 1 to the Act of Sederunt (Small Claim Rules) 2002 (S.S.I. 2002/133, last amended by S.S.I. 2015/283).

(b) Rule 21.6 was last amended by S.S.I. 2009/164.

(c) S.S.I. 2015/356.

(d) Appendix 1 was last amended by S.S.I. 2015/283.

(5) In Appendix 2 (glossary), in the term “stated case”, for “sheriff principal” substitute “Sheriff Appeal Court”.

Amendment of the Rules for Applications in the Sheriff Court under the Debt Arrangement and Attachment (Scotland) Act 2002

13.—(1) The Rules for Applications in the Sheriff Court under the Debt Arrangement and Attachment (Scotland) Act 2002(a) are amended in accordance with this paragraph.

(2) After rule 36 (applying for leave to appeal), insert—

“Appeals to the Sheriff Appeal Court

36A. An appeal to the Sheriff Appeal Court is to be made in accordance with Chapter 6 of the Act of Sederunt (Sheriff Appeal Court Rules) 2015(b).”.

(3) In Appendix 2 (glossary), in the term “stated case”, for “sheriff principal” substitute “Sheriff Appeal Court”.

Amendment of the Sheriff Court Bankruptcy Rules

14.—(1) The Sheriff Court Bankruptcy Rules(c) are amended in accordance with this paragraph.

(2) In rule 8 (appeals to the sheriff principal and the Court of Session(d)—

(a) in paragraph (1)—

(i) after “appeal” insert “to the Court of Session”;

(ii) omit subparagraphs (a) and (d);

(b) in paragraph (2), for “the Sheriff Principal [*or* Court of Session]” substitute “the Court of Session”;

(c) for paragraph (5) substitute—

“(5) The sheriff clerk shall, within four days of the note of appeal being marked, transmit the process to the Deputy Principal Clerk of Session.”;

(d) in paragraph (6), omit subparagraph (c);

(e) omit paragraph (9);

(f) the heading becomes “Appeals to the Court of Session”.

(3) After rule 8, insert—

“Appeals to the Sheriff Appeal Court

8A.—(1) This rule applies to an appeal to the Sheriff Appeal Court under the following provisions of the Act of 1985—

(a) section 15(2A) (order transferring sequestration)(e);

(b) section 15(3) (refusing to award)(f);

(c) section 30(8) (removing commissioner)(g);

(a) The Rules for Applications in the Sheriff Court under the Debt Arrangement and Attachment (Scotland) Act 2002 are in Schedule 1 to the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002 (S.S.I. 2002/560, last amended by S.S.I. 2015/283).

(b) S.S.I. 2015/356.

(c) The Sheriff Court Bankruptcy Rules are in the Schedule to the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008 (S.S.I. 2008/119, last amended by S.S.I. 2015/119).

(d) Rule 8 was amended by S.S.I. 2015/119.

(e) 1985 c. 66. Section 15(2A) was inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 16(2)(c).

(f) 1985 c. 66. Section 15(3) was amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 16(2)(d) and schedule 6, Part 1.

(g) 1985 c. 66. Section 30(8) was inserted by the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11), section 31(b).

(d) section 56J(2) (refusal to annul bankruptcy restrictions order or interim bankruptcy restrictions order)(a).

(2) An appeal to the Sheriff Appeal Court is to be made in accordance with Chapter 6 of the Act of Sederunt (Sheriff Appeal Court Rules) 2015(b).

(3) Within four days of a note of appeal being lodged under rule 6.2(1) (form of appeal) of the Act of Sederunt (Sheriff Appeal Court Rules) 2015, the Clerk of the Sheriff Appeal Court must send written notice of the appeal—

- (a) in an appeal under section 15(3) of the Act of 1985, to any concurring creditor and the debtor, as the case may be;
- (b) in an appeal under section 30(8) of the Act of 1985, to the trustee, the Accountant in Bankruptcy, any commissioner and any creditor;
- (c) in an appeal under section 56J(2) of the Act of 1985, to the Accountant in Bankruptcy and the trustee.

(4) The Clerk of the Sheriff Appeal Court must certify on the interlocutor sheet that notice has been given in accordance with paragraph (3).

(5) Failure by the Clerk of the Sheriff Appeal Court to comply with paragraph (3) or (4) does not affect the validity of an appeal.”.

Amendment of the Sheriff Court Adoption Rules 2009

15.—(1) The Sheriff Court Adoption Rules 2009(c) are amended in accordance with this paragraph.

(2) In rule 5A(3) (lodging audio or audio-visual recordings of children)(d)—

- (a) in subparagraph (a), for “marked” substitute “made”;
- (b) in subparagraph (b), for “marked on” substitute “made in relation to”.

(3) For rule 7 (appeals) substitute—

“Appeals

7. An appeal to the Sheriff Appeal Court against an order of the sheriff under these Rules is to be made in accordance with Chapter 6 of the Act of Sederunt (Sheriff Appeal Court Rules) 2015(e).”.

Amendment of the Money Attachment Rules 2009

16.—(1) The Money Attachment Rules 2009(f) are amended in accordance with this paragraph.

(2) In rule 14 (appeals)—

- (a) omit paragraph (3);
- (b) insert—

“(4) An appeal to the Sheriff Appeal Court is to be made in accordance with Chapter 6 of the Act of Sederunt (Sheriff Appeal Court Rules) 2015(g).”.

-
- (a) 1985 c. 66. Section 56J was inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 2(1) and amended by the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11), section 33(8), schedule 3, paragraph 30 and schedule 4.
 - (b) S.S.I. 2015/356.
 - (c) The Sheriff Court Adoption Rules 2009 are in the Schedule to the Act of Sederunt (Sheriff Court Rules Amendment) (Adoption and Children (Scotland) Act 2007) 2009 (S.S.I. 2009/284, last amended by S.S.I. 2015/5).
 - (d) Rule 5A was inserted by S.S.I. 2012/271.
 - (e) S.S.I. 2015/356.
 - (f) The Money Attachment Rules 2009 are in the Schedule to the Act of Sederunt (Money Attachment Rules) 2009 (S.S.I. 2009/382).
 - (g) S.S.I. 2015/356.

Amendment of the Act of Sederunt (Contempt of Court in Civil Proceedings) 2011

17.—(1) The Act of Sederunt (Contempt of Court in Civil Proceedings) 2011(a) is amended in accordance with this paragraph.

(2) In rule 1 (citation, commencement and application)—

(a) in paragraph (3), insert—

“(c) civil proceedings in the Sheriff Appeal Court.”;

(b) after paragraph (3), insert—

“(4) In this Act of Sederunt, “civil proceedings” has the meaning given by section 136(1) of the Courts Reform (Scotland) Act 2014(b).”.

(3) In rule 10 (recording of proceedings), after paragraph (3) insert—

“(4) Where the court concerned is the Sheriff Appeal Court—

(a) rule 23.5 (recording of evidence) of the Act of Sederunt (Sheriff Appeal Court Rules) 2015(c) applies to the contempt hearing;

(b) rule 23.6 (transcripts of evidence) of the Act of Sederunt (Sheriff Appeal Court Rules) 2015 applies to the contempt hearing, subject to paragraph (3).”.

Amendment of the Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Personal Injury and Remits) 2015

18.—(1) The Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Personal Injury and Remits) 2015(d) is amended in accordance with this paragraph.

(2) For paragraph 5 substitute—

“Transitory provision: applications for new trial or to enter jury verdicts

5. Paragraph 4 has effect in relation to any application made under section 69 or 71 of the Courts Reform (Scotland) Act 2014 before 1st January 2016.”.

Amendment of the Act of Sederunt (Sheriff Appeal Court Rules) 2015

19.—(1) The Act of Sederunt (Sheriff Appeal Court Rules) 2015(e) is amended in accordance with this paragraph.

(2) In rule 5.6(3)(b) (additional methods of intimation where receiving party represented by solicitor), omit “at or”.

(3) In rule 6.1 (application of this Chapter), after paragraph (d) insert—

“(e) an appeal against an interlocutor granting decree of divorce in a simplified divorce application (see rule 33.81 of the Ordinary Cause Rules 1993(f));

(f) 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(g)).”.

(a) S.S.I. 2011/388.

(b) 2014 asp 18.

(c) S.S.I. 2015/356.

(d) S.S.I. 2015/227.

(e) S.S.I. 2015/356.

(f) The Ordinary Cause Rules 1993 are in Schedule 1 to 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. 2015/312.

(g) Rule 33A.74 was inserted by S.S.I. 2005/638.

(4) In rule 7.3(1) (cross-appeals), for “within 28 days after the appeal is intimated in accordance with an order under rule 6.5(1) (order for intimation and answers)” substitute “within 28 days after the timetable is issued under rule 7.2(1)”.

(5) For rule 7.9 (appeal print) substitute—

“Appeal print

7.9.—(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 is to 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 is also to contain the text of the proposed amendment.”.

(6) In rule 13.4(3) (lodging unopposed motions), for “5 p.m.” substitute “1700 hours”.

(7) After rule 19.2 (additional fee), insert—

“Sanction for the employment of counsel

19.2A.—(1) The Court may grant sanction for the employment of counsel to carry out the types of work specified in paragraph (3)—

- (a) of the Court’s own accord; or
- (b) on the application of any party.

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

(3) The types of work are—

- (a) appearing at any hearing;
- (b) preparing any document that is to be lodged in relation to the appeal.

(4) Sanction may be granted before or after the work for which it is sought has been carried out.

(5) A refusal to grant sanction before work is carried out does not prevent sanction being granted for that work after it has been carried out.

(6) In granting sanction, the Court may also—

- (a) grant sanction for more than one person to carry out the work;
- (b) impose any restrictions.”.

(8) In rule 24.6(2) (taking of evidence by commissioner: preparatory steps), after “is” insert “to”.

(9) In rule 27.3 (application to remove appeal from accelerated appeal procedure), after paragraph (1) insert—

“(1A) An application is to be made by motion.”.

(10) In rule 28.2(3) (form of application for new trial), for “motion” substitute “application”.

(11) In rule 28.14(3) (application to enter jury verdict), for “a motion under paragraph (2)” substitute “an application”.

(12) In rule 30.1(1) (application and interpretation of Chapter 30), omit “section” where it second occurs.

- (13) In Schedule 1 (administrative provisions)—
- (a) in paragraph 3 (signature of interlocutors etc.)—
- (i) after subparagraph (5), insert—
- “(5A) The Clerk may sign any other interlocutor if directed to do so by the procedural Appeal Sheriff.
- (5B) A direction under subparagraph (5A) need not be in writing.”;
- (ii) in subparagraphs (6) and (8), for “subparagraph (5)” substitute “subparagraphs (5) and (5A)”;
- (b) in paragraph 5 (decrees, extracts and execution), after subparagraph (6) insert—
- “(7) Where interest is included in or payable under a decree, the rate of interest is 8 per cent a year unless otherwise stated.”.
- (14) In Schedule 2 (forms)—
- (a) in Form 6.2 (note of appeal) at the end of paragraph 1 insert “The court reference number is (*insert court reference number*).”;
- (b) in Form 7.3 (grounds of appeal)—
- (i) for “GROUND” substitute “GROUNDS”;
- (ii) the title of the Form becomes “Grounds of appeal in cross-appeal”;
- (c) in Form 13.1 (Form of motion by email), in paragraph 11, for “5 p.m.” substitute “1700 hours”.

Saving provisions

20.—(1) The following acts of sederunt as they applied immediately before 1st January 2016 continue to apply for the purposes of an appeal against a decision of the sheriff made before 1st January 2016—

- (a) the Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986**(a)**;
- (b) the Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988**(b)**;
- (c) the Act of Sederunt (Child Care and Maintenance Rules) 1997**(c)**;
- (d) the Act of Sederunt (Proceedings for Determination of Devolution Issues Rules) 1999**(d)**;
- (e) the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002**(e)**;
- (f) the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008**(f)**;
- (g) the Act of Sederunt (Sheriff Court Rules Amendment) (Adoption and Children (Scotland) Act 2007) 2009**(g)**;
- (h) the Act of Sederunt (Money Attachment Rules) 2009**(h)**.

(2) In paragraph 5 (amendment of the Ordinary Cause Rules 1993)—

- (a) subparagraphs (2), (10), (14), (15) and (16) do not apply for the purposes of an appeal against a decision of the sheriff made before 1st January 2016;
- (b) subparagraphs (3), (4), (6) and (12) do not apply where the final determination of the cause occurred before 1st January 2016;

(a) S.I. 1986/2297, last amended by S.S.I. 2014/119.
 (b) S.I. 1988/2013, last amended by S.S.I. 2009/294.
 (c) S.I. 1997/291, last amended by S.S.I. 2015/283.
 (d) S.I. 1999/1347, last amended by S.S.I. 2009/323.
 (e) S.S.I. 2002/560, last amended by S.S.I. 2015/283.
 (f) S.S.I. 2008/119, last amended by S.S.I. 2015/119.
 (g) S.S.I. 2009/284, last amended by S.S.I. 2015/5.
 (h) S.S.I. 2009/382.

- (c) subparagraph (5) does not apply where a sheriff transferred a cause to another sheriff court before 1st January 2016;
 - (d) subparagraph (7) does not apply in respect of a ruling of the sheriff on an objection made before 1st January 2016;
 - (e) subparagraph (8) does not apply in respect of a decree pronounced before 1st January 2016;
 - (f) subparagraph (9) does not apply in relation to a decision of a sheriff made before 1st January 2016;
 - (g) subparagraphs (11) and (13) do not apply for the purposes of an appeal against an interlocutor granting decree of divorce or dissolution of civil partnership before 1st January 2016.
- (3) Paragraph 6(3) (amendment of the Act of Sederunt (Summary Suspension) 1993) does not apply to an appeal to the sheriff principal against a decision of the sheriff made before 1st January 2016.
- (4) In paragraph 7 (amendment of the Rules of the Court of Session 1994)—
- (a) despite subparagraph (3), Chapter 40 (appeals from inferior courts) of the Rules of the Court of Session 1994(a) as it applied immediately before 1st January 2016 continues to apply for the purposes of—
 - (i) an appeal against the decision of a sheriff made before 1st January 2016;
 - (ii) an appeal against the decision of a sheriff principal in an appeal under section 27 of the Sheriff Courts (Scotland) Act 1907(b);
 - (b) subparagraph (6) does not apply in respect of an appeal against a decision of a sheriff made before 1st January 2016.
- (5) In paragraph 9 (amendment of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999)—
- (a) subparagraph (2) does not apply where a sheriff transferred a summary application to another sheriff court before 1st January 2016;
 - (b) subparagraph (3) does not apply in respect of a decree pronounced before 1st January 2016;
 - (c) subparagraph (4) does not apply in relation to a decision of a sheriff made before 1st January 2016;
 - (d) subparagraph (5) does not apply where the final determination of the application occurred before 1st January 2016;
 - (e) subparagraphs (7) and (8) do not apply for the purposes of an appeal against a decision of the sheriff made before 1st January 2016.
- (6) In paragraph 11 (amendment of the Summary Cause Rules 2002)—
- (a) subparagraphs (2), (7) and (8) do not apply for the purposes of an appeal against a decision of the sheriff made before 1st January 2016;
 - (b) subparagraphs (3) and (4) do not apply in respect of a ruling of the sheriff on an objection made before 1st January 2016;
 - (c) subparagraph (5) does not apply where the sheriff principal has granted decree before 1st January 2016;
 - (d) subparagraph (6) does not apply where an appeal to the sheriff principal has been marked before 1st January 2016.

(a) The Rules of the Court of Session 1994 are in Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443, last amended by S.S.I. 2015/408). Chapter 40 was substituted by S.S.I. 2010/30.

(b) 1907 c. 51. Section 27 was amended by the Sheriff Courts (Scotland) Act 1913 (c. 28), Schedule 1; the Agricultural Holdings (Scotland) Act 1949 (c. 75), section 24; the Sheriff Courts (Scotland) Act 1971 (c. 58), section 4; and the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), sections 11 and 28, and Schedule 3.

(7) In paragraph 12 (amendment of the Small Claim Rules 2002)—

- (a) subparagraph (2) does not apply where an appeal to the sheriff principal has been marked before 1st January 2016;
- (b) subparagraphs (3) and (4) do not apply for the purposes of an appeal against a decision of the sheriff made before 1st January 2016.

Edinburgh
8th December 2015

CJM Sutherland
Lord Justice Clerk
I.P.D.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session 1994 and various sheriff court rules in consequence of the Sheriff Appeal Court taking up its civil jurisdiction and competence on 1st January 2016. The amendments principally remove inconsistent appeal provisions from individual sets of rules as the procedure in the Sheriff Appeal Court will be regulated instead by the Act of Sederunt (Sheriff Appeal Court Rules) 2015.

Additionally, paragraph 2 amends the Act of Sederunt (Expenses of Party Litigants) 1976 to make provision about the expenses of party litigants in the Sheriff Appeal Court in consequence of the Litigants in Person (Costs and Expenses) (Sheriff Appeal Court) Order 2015. Paragraph 17 amends the Act of Sederunt (Contempt of Court in Civil Proceedings) 2011 to extend the procedure for dealing with certain contempts of court to the Sheriff Appeal Court.

Paragraph 18 amends paragraph 5 of the Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Personal Injury and Remits) 2015, which makes transitory provision about applications for a new trial or to enter a jury verdict arising from proceedings in the all-Scotland personal injury court. That transitory provision is modified to take account of the Sheriff Appeal Court assuming its civil jurisdiction and competence.

Paragraph 19 makes a number of amendments to the Act of Sederunt (Sheriff Appeal Court Rules) 2015. They correct defects, minor typographical errors and omissions. In addition, provision is inserted about sanction for the employment of counsel and to enable the Clerk of the Sheriff Appeal Court to sign certain orders at the direction of a procedural Appeal Sheriff.

Paragraph 20 contains saving provisions that preserve the existing law in respect of decisions of the sheriff made before 1st January 2016.

The Act of Sederunt comes into force on 1st January 2016, except paragraph 19 which comes into force on 31st December 2015 to correct errors in the Act of Sederunt (Sheriff Appeal Court) Rules 2015 before it comes into force.

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£6.00

S201512081001 12/2015 19585

<http://www.legislation.gov.uk/id/ssi/2015/419>

ISBN 978-0-11-103019-6



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