

# SHERIFFDOM OF LoTHIAN AND BORDERS

## PRACTICE NOTE NO 1, 2005

### APPEALS TO THE SHERIFF PRINCIPAL

#### CONTENTS

#### A. PRELIMINARY

##### 1. Introduction

	Paragraph
Contents	1.1
Purpose	1.2
Commencement	1.3
Interpretation	1.4

#### B. APPEALS IN ORDINARY CAUSES

##### 2. Competency of appeal

General	2.1
Opinions of Sheriff Principal	2.2
Contact order	2.3
Incompetent interlocutor	2.4
Summary decree	2.5
Warrant for citation	2.6
Leave to appeal	2.7
Time-limits	2.12

##### 3. Marking of appeal

Note of appeal	3.1
Request for note of reasons	3.2
Grounds of appeal	3.3
Amendment of grounds of appeal	3.5
Cross-appeal	3.7

##### 4. Action on marking of appeal

Initial action by Sheriff Principal's Appeals Clerk	
Note on interlocutor sheet	4.1
Appeal questionnaires	4.2
Appeal correspondence	4.3

Initial action by parties	
Appeal questionnaire	4.4
Instruction of counsel	4.5
Time estimate	4.6
Legal aid	4.7
Shorthand notes	4.9
Venue	4.13
<b>5. Action prior to hearing of appeal</b>	
Assigning diet	5.1
Lodging of authorities and documents	5.3
Presentation	5.4
Authorities	5.5
Documents	5.8
Return of process	5.10
Pre-reading by Sheriff Principal	5.11
Limitation of scope of appeal	5.12
Withdrawal of solicitor	5.14
Motions	
General	5.16
Motion to adjourn	5.18
Motion to sist	5.20
Disposal of appeal before hearing	
General	5.21
Abandonment	5.22
Disposal by consent	5.23
<b>6. The hearing of the appeal</b>	
Attendance	6.1
Written submissions	6.4
Expenses	6.5
<b>C. APPEALS BY STATED CASE</b>	
1. General	7.1
2. Specification of points of law, etc	7.2
3. Disputes about events in the court below	7.3
4. Taxation in summary causes	7.4
5. Expenses in small claims	7.5
<b>D. APPEALS IN SUMMARY APPLICATIONS</b>	
1. General	8.1
2. Note of appeal	8.2

## APPENDIX

Appellant's questionnaire  
Respondent's questionnaire

Form A  
Form B

### A. PRELIMINARY

#### 1. Introduction

##### *Contents*

1.1 This Practice Note is in four parts: A – Preliminary; B – Appeals in Ordinary Causes; C – Appeals by Stated Case; D – Appeals in Summary Applications.

##### *Purpose*

1.2 The object of this Practice Note is to provide guidance about the conduct of appeals to the Sheriff Principal of Lothian and Borders. The rules about appeals are prescribed by statute, Act of Sederunt and judicial decisions, and are expounded in standard textbooks. This Practice Note supplements the rules and the textbooks with advice on a variety of matters, some of which have recently caused difficulty.

##### *Commencement*

1.3 This Practice Note applies to all appeals lodged on or after 1 March 2005. Directions 13 (in so far as it relates to appeals) and 14 of Act of Court (Consolidation, etc) 1990 No 1 are repealed by Act of Court 2005 No 2 which also comes into effect on 1 March 2005.

##### *Interpretation*

1.4 In this Practice Note –

- (1) 'OCR' means the Ordinary Cause Rules 1993, as amended up to 28 February 2005;
- (2) 'SCP' means *Sheriff Court Practice* by I D Macphail, second edition by C G B Nicholson and A L Stewart, vol 1 (1998), vol 2 (2002);

(3) any reference to a party means either that party or the solicitor acting in the cause for that party;

(4) cases cited only by date are unreported decisions of the Sheriff Principal which are available online on the Scottish Courts website, [www.scotcourts.gov.uk](http://www.scotcourts.gov.uk).

## B. APPEALS IN ORDINARY CAUSES

### 2. Competency of appeal

#### *General*

2.1 A practitioner who is contemplating an appeal to the Sheriff Principal should consider whether the proposed appeal is competent. The competency of appeals from the Sheriff to the Sheriff Principal is primarily regulated by the provisions of section 27 of the Sheriff Courts (Scotland) Act 1907 ('the 1907 Act'). These provisions are discussed in chapter 18 of *SCP*. Two matters, in particular, are sometimes overlooked. It is important to notice the definition of 'final judgment' in section 3(h) of the Act: see *SCP* paras 18.32 to 18.37. It is also important to check whether it is necessary to apply to the Sheriff for leave to appeal. Whether leave is necessary is usually apparent from the discussion of the relevant interlocutor in *SCP*.

#### *Opinions of Sheriff Principal*

2.2 The present Sheriff Principal has expressed the following views on various questions of competency.

#### CONTACT ORDER

2.3 An interlocutor making a contact order which does not require the other party to do anything is not an interlocutor 'making an order *ad factum praestandum*' (1907 Act, section 27(b)). An appeal against such an order therefore requires the leave of the Sheriff

(*Fergus v Eadie* 16 August 2004, following *Black v Black* 1991 SLT (Sh Ct) 5, 1990 SCLR 817.)

#### INCOMPETENT INTERLOCUTOR

2.4 An appeal may be taken to the Sheriff Principal, without the leave of the Sheriff, against an interlocutor which is incompetent in the sense that the Sheriff had no power or right to pronounce it (*Kirk v Kirk* 14 March 2003, following *VAG Finance Ltd v Smith* 1988 SLT (Sh Ct) 59, 1988 SCLR 598).

#### SUMMARY DECREE

2.5 An appeal against an interlocutor granting a summary decree in terms of OCR Chapter 17 does not require the leave of the Sheriff. While section 28(1)(b) of the 1907 Act refers to an ‘interim decree for payment of money’ and not to a summary decree, the substance and effect of a summary decree and an interim decree are the same. Cf *Hughes’s Trustee v Hughes* 1925 SC 25 at 27-28.

#### WARRANT FOR CITATION

2.6 No appeal is competent against the refusal of a warrant for citation (*Fitzpatrick v Advocate General for Scotland* 2004 SLT (Sh Ct) 93). A party aggrieved by the refusal of a warrant should apply to the Sheriff Principal by letter for a direction that a warrant be granted.

#### *Leave to appeal*

2.7 Where leave to appeal is required, the application for leave may be made either –

- (1) by a motion made orally, with leave of the court (as required by OCR rule 15.1(1)(a)) and in the presence of any other party, to the Sheriff immediately after the Sheriff has pronounced the decision against which it is sought to appeal; or
- (2) by lodging a written motion timeously in terms of OCR rule 31.2(1).

2.8 An oral motion made at the time of the decision is preferable because (1) the matter is fresh in the minds of the Sheriff and the party or parties, (2) the Sheriff is

available, (3) there is none of the delay and expense involved in proceeding by a written motion, and (4) if the Sheriff grants leave and the applicant later decides not to proceed with the appeal, no harm is done.

2.9 Where the application is made by lodging a written motion as mentioned in paragraph 2.7, the procedure in OCR Chapter 15 should be followed. It is immaterial that the motion is not heard and disposed of until more than 7 days after the date of the interlocutor against which it is sought to appeal.

2.10 Any application for leave to appeal should be heard by the Sheriff who pronounced the interlocutor against which it is sought to appeal, unless in wholly exceptional circumstances.

2.11 The object of requiring leave to appeal is to filter out unmeritorious appeals, thus protecting both parties from unnecessary delay and expense. The applicant for leave to appeal should therefore be prepared to indicate to the Sheriff the grounds of the proposed appeal in order that the Sheriff may assess whether it has any realistic prospect of success. See *SCP* paragraphs 18.50-18.54.

#### *Time-limits*

2.12 If the time-limit in OCR rule 31.2(1) is not met, the applicant in his written motion should apply to the Sheriff not only for leave to appeal but also for relief in terms of OCR rule 2.1.

2.13 If the time-limit in OCR rule 31.1 or rule 31.2(2) is not met, the applicant should lodge a written motion applying to the Sheriff Principal for leave to appeal out of time and for relief in terms of OCR rule 2.1.

2.14 In computing the time-limits in the provisions of OCR rules 31.1 and 31.2 no allowance is made for any day on which the Sheriff Clerk's Office is closed. If, however, the last day of a period within which a provision requires a document to be lodged is a

day on which the Office is closed, the period shall be extended to include the next day on which the Office is open.

### **3. Marking of appeal**

#### *Note of appeal*

3.1 An appeal is marked by lodging a note of appeal in Form A1 (OCR, rule 31.4(1)).

#### REQUEST FOR NOTE OF REASONS

3.2 Where the Sheriff has not appended to the interlocutor appealed against a note setting out the reasons for his or her decision, the appellant should take care to comply with rule 31.4(2)(d) by including in the note of appeal a request that the Sheriff write such a note. A failure to request a note may result in the postponement of the hearing of the appeal while a note is obtained and may be taken into account in the determination of any question of expenses.

#### GROUND OF APPEAL

3.3 Form A1 requires the appellant to state the grounds on which the appeal is to proceed. Rule 31.4(3) provides that the grounds of appeal must consist of brief specific numbered propositions stating the grounds on which it is proposed to submit that the appeal shall be allowed or as the case may be. It is helpful to mention the authorities on which each proposition is based. The purpose of the grounds of appeal is to give notice to the other party or parties and to the Sheriff Principal of the points which will be in issue at the hearing of the appeal, the nature of the argument in relation to those points and the remedy or other order which the appellant seeks. A mere statement that the Sheriff 'erred in law' will not suffice (*Smyth v Pearce* 13 July 2004).

3.4 At the hearing of the appeal a party may not rely on a matter not stated in his note of appeal unless the Sheriff Principal gives permission. He may do so of consent or on

cause shown, and on such conditions as to adjournment, expenses or otherwise as he sees fit (*McCaskill v McCaskill* 22 September 2004).

#### AMENDMENT OF GROUNDS OF APPEAL

3.5 OCR rule 31.4(5) allows an appellant to amend the grounds of appeal at any time up to 14 days before the date assigned for the hearing of the appeal. The Sheriff Principal may dispense with that time-limit on cause shown (OCR rule 31.4(7)). It is preferable, however, that any amendment of the grounds of appeal should be made as soon as possible. If the amendment makes material additions or alterations to the grounds already stated, the Sheriff Principal may put the case out by order and invite submissions as to whether he should remit the cause to the Sheriff and ask him or her to provide a note (*Richardson v Rivers* 7 May 2004). The allowance to the Sheriff of a reasonable time in which to provide the note may require the postponement of the hearing of the appeal. If it appears that the amendment should have been lodged early enough to avoid the postponement of the hearing, questions may arise as to liability for the expenses of the by order hearing and the postponement.

3.6 Amendment of the grounds of appeal may be necessary where the Sheriff has not appended a note to the interlocutor against which the appeal is taken and it has not therefore been possible for the appellant to state in the note of appeal propositions which are sufficiently specific. In such a case the appellant should lodge amended grounds as soon as reasonably practicable after the provision by the Sheriff of the note requested in terms of OCR rule 31.4(2)(d).

#### CROSS-APPEAL

3.7 The appeal is available to and may be insisted in by all other parties in the cause (1907 Act, section 29; *SCP* paragraph 18.71). Any party who wishes the Sheriff Principal to vary the interlocutor of the Sheriff should cross-appeal. A party wishing to cross-appeal must lodge and intimate a note of the grounds of appeal (OCR r 31.4(6)). The note should comply with rule 31.4(1), (2) and (3). The provisions of paragraphs 3.3 and 3.4



also apply to a note in a cross-appeal. There is no provision for amendment of the grounds of appeal in such a note.

3.8 OCR rule 31.4(6)(a) requires the note in the cross-appeal to be lodged not less than 7 days before the date assigned for the hearing of the appeal. The Sheriff Principal may shorten or dispense with this time-limit on cause shown (OCR rule 31.4(7)). The time-limit is, however, very short. It is desirable that any party wishing to cross-appeal should lodge a note of the grounds of appeal as soon as possible in order to elide any question of the postponement of the hearing of the appeal.

3.9 If the grounds in the note in the cross-appeal have not been dealt with by the Sheriff in the note appended to his or her interlocutor or in a note already provided in response to a request by the appellant in terms of rule 31.4(2)(d), the note in the cross-appeal should include a request that the Sheriff write a note.

3.10 A respondent who wishes to ask the Sheriff Principal to adhere to the Sheriff's interlocutor for reasons different from or additional to those given by the Sheriff should lodge a note stating these reasons not less than 7 days before the date assigned for the hearing of the appeal.

#### **4. Action on marking of appeal**

*Initial action by Sheriff Principal's Appeals Clerk*

##### NOTE ON INTERLOCUTOR SHEET

4.1 On a note of appeal being lodged, the Appeals Clerk must note on the interlocutor sheet that an appeal has been marked and the date of the appeal (OCR, rule 31.4(8)).

## APPEAL QUESTIONNAIRES

4.2 At the same time the Appeals Clerk must

(a) send to the appellant a questionnaire in Form A in the Appendix to this Practice Note; and

(b) send to every other party a questionnaire in Form B in the Appendix to this Practice Note.

## APPEAL CORRESPONDENCE

4.3 The Appeals Clerk must maintain a file of copies of all correspondence relative to the appeal and retain the file within the process envelope.

*Initial action by parties*

## APPEAL QUESTIONNAIRE

4.4 A party to whom a questionnaire is sent in terms of paragraph 4.2 must complete it and return it to the Appeals Clerk within 21 days of the date of the letter enclosing the questionnaire. If that is not done, the Sheriff Principal may appoint the case to be put out by order for a hearing on further procedure.

## INSTRUCTION OF COUNSEL

4.5 The completed questionnaire must state whether the party intends to instruct counsel for the appeal. If counsel is to be instructed, that should be done as soon as possible in order to obtain without undue haste counsel's advice on the preparation or amendment of the grounds of appeal (see paragraphs 3.3-3.10) and on the preparation and presentation of documents and authorities for the hearing (see paragraphs 5.3-5.9).

## TIME ESTIMATE

4.6 The completed questionnaire must also state the party's estimate of the duration of the hearing of the appeal. This information is necessary to enable the Court to assign a diet for the hearing.

#### LEGAL AID

4.7 The completed questionnaire must also state whether the party intends to apply, or has applied, for legal aid in respect of the appeal; and if so, whether legal aid is sought for (a) the extension of the shorthand notes; (b) the instruction of counsel.

4.8 An application for legal aid should be lodged as soon as possible. The result of the application should be communicated to the Appeals Clerk at once.

#### SHORTHAND NOTES

4.9 When, following a proof, an appeal is marked against an interlocutor which has been issued by the sheriff before the notes have been extended and lodged in process, the appellant must, except in a case to which paragraph 4.10 applies,

- (1) inform the shorthand writers forthwith that the notes of evidence are required, and ascertain from them the date when the notes of evidence will be available; and
- (2) thereafter state that date in the questionnaire.

4.10 Failure by the appellant to comply with paragraph 4.8 above so that the hearing of the appeal is unduly delayed or a diet fixed for the hearing is rendered abortive, may be taken into account in the determination of any question of expenses.

4.11 Where it appears to the appellant that the grounds of appeal are such that it may be unnecessary to have the notes of evidence, or a part of the notes of evidence relating to a particular issue, available for the hearing of the appeal, a motion to dispense with the requirements of paragraph 4.8 may be made to the Sheriff Principal. Any such motion must be made as soon as possible after the marking of the appeal and must be intimated to all other parties.

4.12 On appealing without the notes of evidence see *SCP* paragraphs 16.33, 18.63.

## VENUE

4.13 Appeals from interlocutors pronounced in Edinburgh Sheriff Court are heard in the Sheriff Principal's Appeal Court in Edinburgh. Appeals from interlocutors pronounced in Linlithgow Sheriff Court are also heard in the Sheriff Principal's Appeal Court in Edinburgh in view of the shortage of accommodation in the courthouse in Linlithgow.

4.14 An appeal from an interlocutor pronounced in any of the other courts in the Sheriffdom (the sheriff courts of Haddington, Peebles, Selkirk, Jedburgh and Duns) may be heard either in the Sheriff Principal's Appeal Court in Edinburgh or in the court in which the interlocutor was pronounced (the original court). Each party to such an appeal is invited to state in the questionnaire any preference he or she may have as to the venue for the hearing of the appeal. If no preference is expressed by any party, the appeal will normally be heard in the original court.

## **5. Action prior to hearing of appeal**

### *Assigning diet*

5.1 After the expiry of the time for the return of the appeal questionnaires, the Sheriff Principal will assign a diet for the hearing of the appeal or appoint the case to be put out by order (see paragraph 4.3).

5.2 The Appeals Clerk will send to each party notification of the date, time and venue of the hearing.

### *Lodging of authorities and documents*

5.3 To enable the Sheriff Principal to study the case before the hearing, each party is asked to lodge, seven days before the hearing, bundles containing photocopies of the authorities and documents to which he intends to refer at the hearing. The parties should

consult together when preparing their bundles in order to avoid duplication. Any failure to lodge bundles timeously may be taken into account in the determination of any question of expenses.

#### PRESENTATION

5.4 Where possible the photocopies should be in A4 format. They should be bound together in a lever arch file, ring binder or plastic folder, and may be separated by dividers where appropriate. An index should be included at the front of the bundle, listing all the contents.

#### AUTHORITIES

5.5 Each party's bundle of authorities should be bound in chronological order. The index should state the page numbers of the passages on which the party intends to rely.

5.6 If a case is reported in Session Cases or in the official Law Reports published by the Incorporated Council of Law Reporting for England and Wales, that report should be photocopied and lodged (*McGowan v Summit at Lloyds* 2002 SC 638 at 660G-661E).

5.7 The passages in each case on which the party intends to rely should be marked or highlighted.

#### DOCUMENTS

5.8 Each party's bundle of documents should be bound in chronological order. The bundle should be paginated, each page being numbered individually and consecutively. The page numbers should be inserted in bold figures at the top of the page, in a form that can be clearly distinguished from any other pagination on the document.

5.9 The passages in each document on which the party intends to rely should be marked or highlighted.

*Return of process*

5.10 Any parts of process which have been borrowed should be returned to the Appeals Clerk seven days before the hearing.

*Pre-reading by Sheriff Principal*

5.11 Before the hearing of the appeal the Sheriff Principal will normally have read –

- (1) the record;
- (2) all the interlocutors pronounced in the case, including the interlocutor complained of;
- (3) any note by the Sheriff which is appended to the interlocutor complained of or which has been written by request;
- (4) the note of appeal;
- (5) the note of the grounds of any cross-appeal;
- (6) any note lodged in terms of paragraph 3.10; and
- (7) the authorities and documents lodged and highlighted as requested in paragraphs 5.3-5.9 above.

*Limitation of scope of appeal*

5.12 If the appellant intends to limit the scope of the appeal by making no submissions on any ground stated in the note of appeal, he should so intimate as soon as possible to the Appeals Clerk and to the other party or parties.

5.13 Any such limitation of the scope of the appeal does not qualify the powers of the Sheriff Principal in dealing with the appeal, or the availability of the appeal to the other party or parties.

*Withdrawal of solicitor*

5.14 If a solicitor for any party is no longer prepared to act for his client in the appeal he should, at the same time as he so informs his client, intimate his withdrawal from

acting for his client by letter to the Appeals Clerk and to the other party or parties to the appeal.

5.15 OCR Chapter 24 shall apply, *mutatis mutandis*, to the procedure subsequent to the intimation of the solicitor's withdrawal to the Court.

### *Motions*

#### GENERAL

5.16 The Sheriff Principal may entertain any motion which is competent in the action. OCR Chapter 15 shall apply *mutatis mutandis* to motions made to the Sheriff Principal.

5.17 Before the hearing of the appeal, a party may lodge with the Appeals Clerk and intimate to every other party any motion which he wishes the Sheriff Principal to hear. The party lodging the motion should indicate to the Appeals Clerk whether he wishes the Sheriff Principal to deal with the motion at or before the hearing.

#### MOTION TO ADJOURN

5.18 If a party does not wish the hearing of the appeal to proceed at the diet assigned, he should lodge with the Appeals Clerk and intimate to every other party a motion for an adjournment of the diet. The motion should state the reason or reasons for seeking the adjournment. OCR rules 15.1 to 15.5 shall apply, *mutatis mutandis*, to such a motion.

5.19 All the parties to an appeal may lodge a joint motion in Form G6 for an adjournment of the diet. The joint motion should state the reason or reasons for seeking the adjournment. OCR rules 15.5(4) and (9) shall apply, *mutatis mutandis*, to such a joint motion.

#### MOTION TO SIST

5.20 OCR Chapter 15 shall apply, *mutatis mutandis*, to a motion to sist which is made to the Sheriff Principal.

*Disposal of appeal before hearing*

## GENERAL

5.21 The Sheriff Principal may dispose of an appeal without a hearing if the appeal is abandoned (see paragraph 5.22) or if the parties are agreed by joint minute as to the mode of disposal (see paragraphs 5.23-5.26).

## ABANDONMENT

5.22 An appellant is not entitled to abandon his appeal unless (a) of consent of all other parties (see paragraphs 5.23 to 5.26) or (b) with leave of the Sheriff Principal (OCR rule 31.11). An appellant who seeks the leave of the Sheriff Principal to abandon his appeal should lodge with the Appeals Clerk and intimate to every other party a motion to that effect. The motion should specify the order the appellant seeks as to the expenses of the appeal.

## DISPOSAL BY CONSENT

5.23 If the parties have reached agreement as to how the appeal should be disposed of, they may prepare and lodge a joint minute setting out their agreement in clear and comprehensive terms, including terms as to expenses. The joint minute should also state the terms of the interlocutor they wish the Sheriff Principal to pronounce. A motion asking the Sheriff Principal to interpose authority to the joint minute and to pronounce an interlocutor in the terms stated may be lodged and intimated. If the motion is unopposed or endorsed as consented to, the Sheriff Principal may determine it in chambers without the appearance of parties. A joint motion need not be intimated and may be likewise determined.

5.24 If the parties are agreed that the appeal should be allowed and the interlocutor of the Sheriff should be recalled or varied, the joint minute should set out not only the terms of the interlocutor they wish the Sheriff Principal to pronounce but also the matters relied on as justifying the proposed interlocutor.



5.25 The Sheriff Principal will not allow an appeal on the ground that the decision of the Sheriff was wrong, merely because the parties are agreed that it was wrong (*SCP* paragraph 18.100). If the parties are so agreed, the joint minute should include (a) detailed submissions to that effect with appropriate reference to authority and (b) a motion in terms of OCR rule 31.7(b) asking the Sheriff Principal to dispose of the appeal without ordering an oral hearing.

5.26 The parties may agree that the appeal should be allowed, not because the decision of the Sheriff was wrong, but because they now wish his interlocutor to be set aside or varied for practical reasons. These should be explained in the joint minute. The joint minute should make it clear that the parties do not seek a determination of the merits of the appeal. The Sheriff Principal may then of consent pronounce an interlocutor interponing authority to the joint minute and recalling or varying the Sheriff's interlocutor.

## **6. The hearing of the appeal**

### *Attendance*

6.1 If either party fails to appear or to be represented at the hearing of the appeal, the Sheriff Principal may fix a peremptory diet, but he is not obliged to do so (*Canmore Housing Association Ltd v Scott* 2003 SLT (Sh Ct) 68 at [7], 69F-J).

6.2 If the appellant fails to appear or to be represented, the Sheriff Principal may dismiss the appeal in respect that it is not insisted in and find the appellant liable to the respondent or respondents in the expenses of the appeal.

6.3 If the respondent fails to appear or to be represented, the Sheriff Principal will call on the appellant to show cause why the appeal should be sustained (*SCP* paragraph 18.100).

6.4 If a party fails to attend the hearing or is not prepared to proceed with the appeal, the Sheriff Principal may decern against that party for payment of such expenses as he considers reasonable (Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993, Sched 1, General Regulations, reg 5(c)).

#### *Written submissions*

6.4 At the hearing of the appeal the parties may hand up written submissions or skeleton arguments if they would find that convenient. It is recommended that submissions which include figures or mathematical calculations should be reduced to writing and handed up.

#### *Expenses*

6.5 Each party should either include in his speech submissions as to expenses or move the Sheriff Principal to reserve all questions of expenses and appoint a hearing on expenses after he has issued his interlocutor.

6.6 If a party wishes the Sheriff Principal to certify the appeal as suitable for the employment of counsel, he should make a motion to that effect at the hearing of the appeal.

6.7 Where the Sheriff Principal awards expenses in a final judgment he will normally allow an account of the expenses to be given in, remit it when lodged to the Auditor of Court to tax and to report, and remit the cause to the Sheriff to proceed as accords. It will then be for the Sheriff to dispose of any objections to the Auditor's report and to decern for the taxed amount of expenses. If the party liable in expenses is an assisted person, the Sheriff will decern for such proportion of the taxed amount as he may determine.

6.8 Where the Sheriff Principal awards expenses in a judgment other than a final judgment he may make a finding as to liability for expenses, allow an account thereof to be given in and remit the cause to the Sheriff to proceed as accords. The process will be returned to the original court. At the conclusion of the case the Sheriff will remit to the

Auditor the account of those expenses along with the account of the expenses awarded by the Sheriff at the conclusion of the case. It will then be for the Sheriff to dispose of any objections and decern for the taxed amount of expenses or a proportion thereof if the party liable is an assisted person. The object of this course is to avoid the inconvenience of more than one taxation.

## **C. APPEALS BY STATED CASE**

### **1. General**

7.1 The provisions of parts 4, 5 and 6 of this Practice Note apply to appeals to the Sheriff Principal by way of stated case, in the absence of statutory provision to the contrary, with the following modifications:

- (1) paragraph 4.1 does not apply; and
- (2) in paragraph 5.11, '(1) the stated case' is substituted for sub-paragraphs (1) to (6).

### **2. Specification of points of law, etc**

7.2 Where provision is made for appeal to the Sheriff Principal by way of stated case and the appellant is required to specify, in his application for a stated case, the point of law or other issue upon which the appeal is to proceed, great care should be taken to focus that issue as precisely as possible. If it is proposed to instruct counsel for the appeal, it would be prudent to consult counsel about the formulation of the issue and of any proposed adjustments to the draft stated case. Similar care should be taken by a respondent who is entitled to state any point of law or other issue which he wishes to raise in the appeal. In the absence of any statutory provision or authority to the contrary, the Sheriff Principal will not allow a party to raise issues of which notice has not been given except on cause shown and subject to such conditions as he may consider appropriate (*Cunningham v M* 25 November 2004 at [7] –[11]).

### **3. Disputes about events in the court below**

7.3 If the parties are at variance as to the occurrence of events in the court or tribunal below, the Sheriff Principal will normally accept the account of the matter which is given in the stated case (*T G Norman (Timber) Ltd v Warwick* 10 January 2003 at [8]; *University of Edinburgh v Onifade* 24 December 2004 at [7]).

### **4. Taxation in summary causes**

7.4 Rule 23A of the Summary Cause Rules 2002 provides that an account of expenses may be taxed by the Auditor of Court instead of being assessed by the Sheriff Clerk.

### **5. Expenses in small claims**

7.5 The restrictions on awards of expenses in small claims prescribed by section 36B(1) and (2) of the Sheriff Courts (Scotland) Act 1971 do not apply in relation to an appeal to the Sheriff Principal (see section 36B(3)).

7.6 Section 36B(3)(b), unlike the other provisions of section 36B(3), has not been repeated in rule 21.6(1) of the Small Claim Rules 2002.

## **D. APPEALS IN SUMMARY APPLICATIONS**

### **1. General**

8.1 The provisions of parts 4, 5 and 6 of this Practice Note apply to appeals to the Sheriff Principal in summary applications, in the absence of statutory provision to the contrary.

**2. Note of appeal**

8.2 In the absence of any statutory provision as to the form of the note of appeal, it is recommended that the provisions of OCR rule 31.4 should be followed (*City of Edinburgh Council v Z* 23 December 2004 at [18]).

Sheriff Principal of Lothian and Borders

Edinburgh, 9 February 2005.

Lothian and Borders Practice Note No 1, 2005. Appendix: Form A

**SHERIFFDOM OF LoTHIAN AND BORDERS**

**APPEAL TO THE SHERIFF PRINCIPAL**

**Appellant’s Questionnaire**

**To be completed by the appellant or the appellant’s solicitor**

**Please complete this questionnaire and return it to reach the address below  
by .....20....**

Sheriff Principal’s Appeals Clerk  
Sheriff Clerk’s Office  
Sheriff Court House  
27 Chambers Street  
Edinburgh  
EH1 1LB  
Tel: 0131 225 2525  
DX 550308 EDINBURGH-37  
E-mail: [edinburgh@scotcourts.gov.uk](mailto:edinburgh@scotcourts.gov.uk)

**NAME OF CASE:** .....

**COURT REF NO:** .....

Name, address, telephone number and e-mail address of appellant’s solicitor:

Name:  
Address:

Tel:  
E-mail:

Name of solicitor dealing with the appeal: .....  
Tel (if different from above): .....  
E-mail (if different from above): .....

/OVER

### Questions

1. Is counsel to be instructed for the appeal? **Yes/No\***
  
2. Please give your estimate of the duration of the hearing of the appeal:  
 .....
  
3. Is legal aid to be applied for in respect of -
  - (a) the appeal? **Yes/No\***
  - (b) the extension of shorthand notes of evidence? **Yes/No\***
  - (c) the instruction of counsel? **Yes/No\***

*Note:* An application for legal aid should be lodged as soon as possible. The result of the application should be communicated at once to the Sheriff Principal's Appeals Clerk at the address printed above. See Lothian and Borders Practice Note No 1, 2005, paragraph 4.7.

4. (a) Are shorthand notes to be extended and lodged? **Yes/No\***
  
- (b) If Yes, please state the date by which they will be available: .....

*Note:* You must inform the shorthand writer forthwith that the notes are required, and ascertain from him the date when they will be available. See Lothian and Borders Practice Note No 1, 2005, paragraph 4.8.

5. If the appeal is from the sheriff court at Haddington, Peebles, Selkirk, Jedburgh or Duns, would you like the hearing of the appeal to take place in that court (the original court) or in the Sheriff Principal's Appeal Court in Edinburgh? **Original court/Edinburgh.\***

*Note:* If no party expresses a preference, the appeal will normally be heard in the original court. See Lothian and Borders Practice Note No 1, 2005, paragraph 4.13.

**\*Please delete as appropriate.**

**Guidance about the conduct of appeals to the Sheriff Principal is provided in Lothian and Borders Practice Note No 1, 2005. The Practice Note is available online at [www.scotcourts.gov.uk](http://www.scotcourts.gov.uk) on the Sheriff Courts page. The Sheriff Clerk will provide hard copies to party litigants on request.**

Lothian and Borders Practice Note No 1, 2005. Appendix: Form B

**SHERIFFDOM OF LoTHIAN AND BORDERS**

**APPEAL TO THE SHERIFF PRINCIPAL**

**Respondent’s Questionnaire**

**To be completed by the respondent or the respondent’s solicitor**

**Please complete this questionnaire and return it to reach the address below  
by .....20....**

Sheriff Principal’s Appeals Clerk  
Sheriff Clerk’s Office  
Sheriff Court House  
27 Chambers Street  
Edinburgh  
EH1 1LB  
Tel: 0131 225 2525  
DX 550308 EDINBURGH-37  
E-mail: [edinburgh@scotcourts.gov.uk](mailto:edinburgh@scotcourts.gov.uk)

**NAME OF CASE:** .....

**COURT REF NO:** .....

Name, address, telephone number and e-mail address of respondent’s solicitor:

Name:  
Address:

Tel:  
E-mail:

Name of solicitor dealing with the appeal: .....  
Tel (if different from above): .....  
E-mail (if different from above): .....

OVER/



### Questions

1. Is counsel to be instructed for the appeal? **Yes/No\***
  
2. Please give your estimate of the duration of the hearing of the appeal:  
 .....
  
3. Is legal aid to be applied for in respect of -
  - (a) the appeal? **Yes/No\***
  - (b) the instruction of counsel? **Yes/No\***

*Note:* An application for legal aid should be lodged as soon as possible. The result of the application should be communicated at once to the Sheriff Principal's Appeals Clerk at the address printed above. See Lothian and Borders Practice Note No 1, 2005, paragraph 4.7.

4. If the appeal is from the sheriff court at Haddington, Peebles, Selkirk, Jedburgh or Duns, would you like the hearing of the appeal to take place in that court (the original court) or in the Sheriff Principal's Appeal Court in Edinburgh? **Original court/Edinburgh\***

*Note:* If no party expresses a preference, the appeal will normally be heard in the original court. See Lothian and Borders Practice Note No 1, 2005, paragraph 4.13.

**\*Please delete as appropriate.**

-

**Guidance about the conduct of appeals to the Sheriff Principal is provided in Lothian and Borders Practice Note No 1, 2005. The Practice Note is available online at [www.scotcourts.gov.uk](http://www.scotcourts.gov.uk) on the Sheriff Courts page. The Sheriff Clerk will provide hard copies to party litigants on request.**