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| **Act of Sederunt (Child Care and Maintenance Rules) 1997**  **Statutory Instrument 1997 No. 291 (S.19)** | |
| **PART IX PROCEDURE IN APPEALS BY STATED CASE UNDER PART 15 OF THE 2011 ACT**  **Applications lodged on or after 24 June 2013** | |
| **3.59** | [**Appeals**](#r0359) |
| **3.59** | [**Appeals: applications for stated case**](#r0359new) |
| **3.60** | [**Lodging reports and information**](#r0360) **in appeals** |
| **3.61** | [**Hearing**](#r0361) |
| **3.61A** | [**Leave of the sheriff principal to appeal to the Court of Session**](#r0361A) |

**Appeals**

**3.59.** (A1) This Part applies to appeals by stated case under section 163(1), 164(1), 165(1) and 167(1) of the 2011 Act

**Applies for appeal against decision of the sheriff made before 1 January 2016**

(1) An application to the sheriff to state a case for the purposes of an appeal to the sheriff principal to which this Part applies shall specify the point of law upon which the appeal is to proceed or the procedural irregularity, as the case may be.

(2) The appellant shall, at the same time as lodging the application for a stated case, intimate the lodging of an appeal from the decision of the sheriff to-

(a) the Principal Reporter;

(b) the child (if not the appellant), except where service on the child has been dispensed with in terms of rule 3.3;

(c) any relevant person (if not the appellant);

(d) any safeguarder;

(e) any other party to proceedings.

(3) The sheriff shall, within 21 days of the lodging of the application for a stated case, issue a draft stated case-

(a) containing findings in fact and law or, where appropriate, a narrative of the proceedings before him;

(b) containing appropriate questions of law or setting out the procedural irregularity concerned; and

(c) containing a note stating the reasons for his decisions in law,

and the sheriff clerk shall send a copy of the draft stated case to the appellant and to parties referred to in paragraph (2).

(4) Within 7 days of the issue of the draft stated case-

(a) the appellant or a party referred to in paragraph (2) may lodge with the sheriff clerk a note of any adjustments which he seeks to make;

(b) the appellant or such a party may state any point of law or procedural irregularity which he wishes to raise in the appeal; and

(c) the note of adjustment and, where appropriate, point of law or procedural irregularity shall be intimated to the appellant and the other such parties.

(5) The sheriff may, on the motion of the appellant or a party referred to in paragraph (2) or of his own accord, and shall where he proposes to reject any proposed adjustment, allow a hearing on adjustments and may provide for such further procedure under this rule prior to the hearing of the appeal as he thinks fit.

(6) The sheriff shall, within 14 days after-

(a) the latest date on which a note of adjustments has been or may be lodged; or

(b) where there has been a hearing on adjustments, that hearing,

and after considering such note and any representations made to him at the hearing, state and sign the case.

(7) The stated case signed by the sheriff shall include-

(a) questions of law, framed by him, arising from the points of law stated by the parties and such other questions of law as he may consider appropriate;

(b) any adjustments, proposed under paragraph (4), which are rejected by him;

(c) a note of the procedural irregularity averred by the parties and any questions of law or other issue which he considers arise therefrom,

as the case may be.

(8) After the sheriff has signed the stated case, the sheriff clerk shall-

(a) place before the sheriff principal all documents and productions in the appeal together with the stated case; and

(b) send to the appellant and the parties referred to in paragraph (2) a copy of the stated case together with a written note of the date, time and place of the hearing of the appeal.

(9) In the hearing of an appeal, a party referred to in paragraph (2) shall not be allowed to raise questions of law or procedural irregularities of which notice has not been given except on cause shown and subject to such conditions as the sheriff principal may consider appropriate.

(10) The sheriff may, on an application by any party or of his own motion, reduce any of the periods mentioned in paragraph (3), (4) or (6) to such period or periods as he considers reasonable.

(11) Where the sheriff is temporarily absent from duty for any reason, the sheriff principal may extend any period specified in paragraph (3) or (6) for such period or periods as he considers reasonable.

**Appeals: applications for stated case**

**3.59.** (A1) This Part applies to appeals by stated case under section 163(1), 164(1), 165(1) and 167(1) of the 2011 Act

(1) An application to the sheriff to state a case for the purposes of an appeal applies shall specify the point of law upon which the appeal is to proceed or the procedural irregularity, as the case may be.

(2) The appellant shall, at the same time as lodging the application for a stated case, intimate the lodging of an appeal from the decision of the sheriff to-

(a) the Principal Reporter;

(b) the child (if not the appellant), except where service on the child has been dispensed with in terms of rule 3.3;

(c) any relevant person (if not the appellant);

(d) any safeguarder;

(e) any other party to proceedings.

(3) The sheriff shall, within 21 days of the lodging of the application for a stated case, issue a draft stated case-

(a) containing findings in fact and law or, where appropriate, a narrative of the proceedings before him;

(b) containing appropriate questions of law or setting out the procedural irregularity concerned; and

(c) containing a note stating the reasons for his decisions in law,

and the sheriff clerk shall send a copy of the draft stated case to the appellant and to parties referred to in paragraph (2).

(4) Within 7 days of the issue of the draft stated case-

(a) the appellant or a party referred to in paragraph (2) may lodge with the sheriff clerk a note of any adjustments which he seeks to make;

(b) the appellant or such a party may state any point of law or procedural irregularity which he wishes to raise in the appeal; and

(c) the note of adjustment and, where appropriate, point of law or procedural irregularity shall be intimated to the appellant and the other such parties.

(5) The sheriff may, on the motion of the appellant or a party referred to in paragraph (2) or of his own accord, and shall where he proposes to reject any proposed adjustment, allow a hearing on adjustments and may provide for such further procedure under this rule prior to the hearing of the appeal as he thinks fit.

(6) The sheriff shall, within 14 days after-

(a) the latest date on which a note of adjustments has been or may be lodged; or

(b) where there has been a hearing on adjustments, that hearing,

and after considering such note and any representations made to him at the hearing, state and sign the case.

(7) The stated case signed by the sheriff shall include-

(a) questions of law, framed by him, arising from the points of law stated by the parties and such other questions of law as he may consider appropriate;

(b) any adjustments, proposed under paragraph (4), which are rejected by him;

(c) a note of the procedural irregularity averred by the parties and any questions of law or other issue which he considers arise therefrom,

as the case may be.

(10) The sheriff may, on an application by any party or of his own motion, reduce any of the periods mentioned in paragraph (3), (4) or (6) to such period or periods as he considers reasonable.

(11) Where the sheriff is temporarily absent from duty for any reason, the sheriff principal may extend any period specified in paragraph (3) or (6) for such period or periods as he considers reasonable.

**Lodging reports and information in appeals**

**3.60** Where, in an appeal-

(a) it appears to the sheriff that any report or information lodged under section 155(2) of the 2011 Act is relevant to any issue which is likely to arise in the stated case; and

(b) the report or information has been returned to the Principal Reporter,

the sheriff may require the Principal Reporter to lodge the report or information with the sheriff clerk.

**Applies for appeal against decision of the sheriff made before 1 January 2016**

**Hearing**

**3.61** (1) The sheriff principal, on hearing the appeal, may either pronounce his decision or reserve judgement.

(2) Where judgement is so reserved, the sheriff principal shall within 28 days give his decision in writing which shall be intimated by the sheriff clerk to the parties.

**Leave of the sheriff principal to appeal to the Court of Session**

**3.61A** (1) This rule applies to applications for leave to appeal under section 163(2), 164(2) or 165(2) of the 2011 Act.

**Applies for appeal against decision of the sheriff made before 1 January 2016**

(2)  An application shall be made by letter addressed to the sheriff clerk, which must—

(a) state the point of law or procedural irregularity upon which the appeal is to proceed;

(b) be lodged with the sheriff clerk before the expiry of the period of 7 days beginning with the day on which the determination or decision appealed against was made.

(3)  On receipt of such application the sheriff clerk shall—

(a) forthwith fix a hearing which should take place no later than 14 days from the date of receipt of the application;

(b) intimate the application and the date of the hearing to the other parties to the proceedings.

(4)  Where leave to appeal is granted, the appeal shall be lodged in accordance with the timescales prescribed in the relevant section of the 2011 Act.