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| **Act of Sederunt (Child Care and Maintenance Rules) 1997**  **Statutory Instrument 1997 No. 291 (S.19)** | |
| **PART VIII PROCEDURE IN APPEALS TO THE SHERIFF AGAINST DECISIONS OF CHILDREN’S HEARINGS**  **Applications lodged on or after 24 June 2013** | |
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**Form of appeal**

**3.53** (1) This Part applies to appeals to the sheriff under sections 154(1), 160(1), 161(1) and 162(3) of the 2011 Act.

(1A)  An appeal to the sheriff under the sections of the 2011 Act prescribed in paragraph (1B) must be—

(a) made in the form prescribed in paragraph (1B);

(b) accompanied by a copy of the decision complained of and any document relevant to it that was before the children’s hearing; and

(c) lodged with the sheriff clerk of the sheriff court district in which the child is habitually resident or, on cause shown, such other court as the sheriff may direct.

(1B)  The prescribed sections and form of appeal are—

(a) in the case of an appeal under section 154(1) (appeal to sheriff against decision of children’s hearing), in Form 61;

(b) in the case of an appeal under section 160(1) (appeal to sheriff against relevant person determination), in Form 62;

(c) in the case of an appeal under section 161(1) (appeal to sheriff against decision affecting contact or permanence order), in Form 63;

(d) in the case of an appeal under section 162(3) (appeal to sheriff against decision to implement secure accommodation authorisation), in Form 63A.

(2) Subject to paragraph (3), the appeal shall be signed by the appellant or his representative.

(3) An appeal by a child may be signed on his behalf by any safeguarder.

(4)  Where leave to appeal is required by virtue of section 159(2) of the 2011 Act, such application for leave shall be—

(a) made by letter addressed to the sheriff clerk setting out the grounds on which the application is made;

(b) accompanied by a copy of the decision referred to in section 159(2) of the 2011 Act;

(c) lodged with the sheriff clerk with the relevant form of appeal.

(5)  On receipt of such application the sheriff clerk shall forthwith fix a hearing and intimate the application and the date of the hearing to the other parties to the proceedings.

(6)  Where leave to appeal is granted, the appeal will proceed in accordance with rule 3.54.

**Appointment and intimation of first diet**

**3.54** (1) On the lodging of the appeal, the sheriff clerk shall forthwith assign a date for the hearing and shall at the same time intimate to the appellant or his representative and, together with a copy of the appeal, to-

(a) the Principal Reporter;

(b) subject to the provisions of paragraph (4), the child (if not the appellant);

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

(d) any safeguarder

(e) any other person the sheriff considers necessary, including those referred to in section 155(5)(c) and (e) of the 2011 Act

(f) in the case of appeals under section 162(3), the chief social work officer of the relevant local authority for the child.

(2) The sheriff clerk shall endorse on the appeal a certificate of execution of intimation under paragraph (1).

(3) Intimation to a child in terms of paragraph (1)(b) shall be in Form 64.

(4) The sheriff may dispense with intimation to a child in terms of paragraph (1)(b) where he considers that such dispensation is appropriate.

(5) The date assigned for the hearing under paragraph (1) shall be within the time limits prescribed in, or by virtue of, the 2011 Act and in any event,no later than 28 days after the lodging of the appeal.

**Answers**

**3.55** (1) Subject to paragraph (1A), if any person on whom service of the appeal has been made wishes to lodge answers to the appeal, he or she must do so not later than 7 days before the diet fixed for the hearing of the appeal.

(1A)  Paragraph (1) does not apply to those appeals referred to in section 157(1), 160(1), 161(1) or 162(3) of the 2011 Act..

(2) Any person who has lodged answers shall forthwith intimate a copy thereof to any other person on whom service has been made under rule 3.54(1).

**Procedure at hearing of appeal**

**3.56** (1) Before proceeding to examine the Principal Reporter and the authors or compilers of any reports or statements, the sheriff shall hear the appellant or his representative and any party to the appeal.

(2) On receipt of any further report required by the sheriff under or by virtue of the 2011 Act, the sheriff shall direct the Principal Reporter to send a copy of the report to every party to the appeal.

(3) At any appeal the sheriff may hear evidence-

(a) where a ground of the appeal is an alleged irregularity in the conduct of a hearing, as to that irregularity;

(b) in any other circumstances where he considers it appropriate to do so.

(4) Where the nature of the appeal or of any evidence is such that the sheriff is satisfied that it is in the interests of the child that he should not be present at any stage of the appeal, the sheriff may exclude the child from the hearing during that stage and, in that event, any safeguarder appointed and any relevant person or representative of the child shall be permitted to remain during the absence of the child.

(5) Subject to paragraph (6), the sheriff may exclude any relevant person, or that person and any representative of his, or any such representative from any part or parts of the hearing for so long as he considers it is necessary in the interests of any child, where he is satisfied that-

(a) he must do so in order to obtain the views of the child in relation or

(b) the presence of the person or persons in question is causing, or is likely to cause, significant distress to the child.

(6) Where any relevant person has been excluded under paragraph (5) the sheriff shall, after that exclusion has ended, explain to him the substance of what has taken place in his absence and shall give him an opportunity to respond to any evidence given by the child by leading evidence or otherwise.

(7) Where an appeal has been heard in part and a safeguarder thereafter becomes a party to the appeal, the sheriff may order the hearing of the appeal to commence of new.

**Adjournment or continuation of appeals**

**3.57** (1)The sheriff may, on the motion of any party or on his own motion, adjourn or continue the hearing of the appeal for such reasonable time and for such purpose as may in the circumstances be appropriate.

(2) In the event of such adjournment or continuation the sheriff may make such order as the sheriff deems necessary to secure the expeditious determination of the appeal

**Decision of sheriff in appeals**

**3.58** (1) The sheriff shall give his decision orally either at the conclusion of the appeal or on such day as he shall appoint , subject to the provisions of, or by virtue of, the 2011 Act.

(2) The sheriff may issue a note of the reasons for his decision, and shall require to do so where he takes any of the steps referred to in section 156(2) or (3) of the 2011 Act

(3) Any note in terms of paragraph (2) shall be issued at the time the sheriff gives his decision or within 7 days thereafter.

(4) The sheriff clerk shall forthwith send a copy of the interlocutor containing the decision of the sheriff, and where appropriate of the note referred to in paragraph (2), to the Principal Reporter, to the appellant (and to the child or any relevant person, if not the appellant) and, any safeguarder and such other persons as the sheriff may direct and shall also return to the Principal Reporter any documents lodged with the sheriff clerk.

(5)  Where section 159 of the 2011 Act applies the sheriff clerk shall send a copy of the interlocutor containing the decision of the sheriff to the Scottish Legal Aid Board