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| **Act of Sederunt (Child Care and Maintenance Rules) 1997****Statutory Instrument 1997 No. 291 (S.19)** |
| **PART VIIIB PROCEDURE IN APPEALS TO THE SHERIFF UNDER SECTION 44A OF THE CPSA 1995****(Comes into force 1st February 2016)** |
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**Form of appeal**

**3.58C** (1) An appeal to the sheriff under section 44A of the CPSA 1995 must be—

(a) made in Form 64C;

(b) accompanied by a copy of the decision complained of and any document relevant to it that was taken into account by the local authority when making that decision;

(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.

(2) The appeal must be signed by the appellant or the appellant’s representative.

**Appointment and intimation of appeal hearing**

**3.58D** (1) On the lodging of an appeal, the sheriff clerk must—

(a) assign a date for the hearing;

(b) intimate the date of the hearing to the appellant or the appellant’s representative;

(c) intimate the date of the hearing, together with a copy of the appeal, to the persons specified in paragraph (2).

(2) Those persons are—

(a) the child, unless the child is the appellant;

(b) the chief social work officer of the appropriate local authority;

(c) any relevant person, other than a relevant person who is the appellant;

(d) any other person that the sheriff considers necessary.

(3) The sheriff clerk must endorse a certificate of execution on the appeal.

(4) Where an appeal is intimated to a child, that intimation must be in Form 64D.

(5) The sheriff may dispense with intimation to a child if the sheriff considers it appropriate to do so.

**Procedure at hearing of appeal**

**3.58E** (1) At any appeal the sheriff may hear evidence where he or she considers it appropriate to do so.

(2) The sheriff must hear the appellant or the appellant’s representative and any party to the appeal before examining—

(a) the chief social work officer;

(b) the authors or compilers of any reports or statements;

(c) the Principal Reporter.

(3) 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 not to be present at any stage of the appeal, the sheriff may exclude the child from the hearing during that stage.

(4) Where the sheriff excludes a child, any relevant person or representative of the child will be permitted to remain during the child’s absence.

(5) Where the sheriff is satisfied that—

(a) it is necessary in order to obtain the views of the child in relation to the hearing; or

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

the sheriff may exclude the persons mentioned in paragraph (6) from the hearing for so long as the sheriff considers it necessary in the interests of the child.

(6) Those persons are—

(a) a relevant person;

(b) any representative of a relevant person.

(7) After the exclusion of any person under paragraph (5), the sheriff must—

(a) explain the substance of what has taken place in that person’s absence;

(b) give that person an opportunity to respond to any evidence given by the child by leading evidence or otherwise.

**Adjournment or continuation of appeals**

**3.58F** (1) The sheriff may adjourn or continue the hearing of the appeal on the motion of any party or on the sheriff’s own motion.

(2) Where the sheriff adjourns or continues a hearing, the sheriff may make any order that is necessary to secure the expeditious determination of the appeal.

**Decision of sheriff in appeals**

**3.58G** (1) The sheriff must give his or her decision orally, either at the conclusion of the appeal or on such day as the sheriff may appoint.

(2) The sheriff may issue a note of the reasons for his or her decision.

(3) Any note in terms of paragraph (2) must be issued at the time the sheriff’s decision is given or within 7 days after the date of the decision.

(4) The sheriff clerk must immediately send to the persons mentioned in paragraph (5)—

(a) a copy of the interlocutor containing the sheriff’s decision;

(b) where a note of reasons has been issued, a copy of that note.

(5) Those persons are—

(a) the appellant;

(b) the child, unless the child is the appellant;

(c) any relevant person, other than a relevant person who is the appellant;

(d) any other person that the sheriff may direct.

(6) The sheriff clerk must return to the Principal Reporter any documents that the Principal Reporter may have lodged with the sheriff clerk.