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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 UNDER SECTION 51(1) OF THE ACT**  **Applications lodged before 24 June 2013** | |
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**Form of appeal**

**3.53** (1) An appeal to the sheriff under section 51(1) of the Act (appeal against decision of children's hearing) shall be in Form 61, 62 or 63 whichever is appropriate and shall be lodged with the sheriff clerk.

(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 appointed by the children's hearing.

**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) the relevant person (if not the appellant);

(d) any safeguarder appointed for the purposes of the appeal by the sheriff or appointed by the chairman of the children's hearing; and

(e) any other person the sheriff thinks necessary.

(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 no later than 28 days after the lodging of the appeal.

**Answers**

**3.55** (1) Except in an appeal under section 51(8) of the Act (appeal against warrant by children's hearing), if any person on whom service of the appeal has been made wishes to lodge answers to the appeal he shall do so not later than 7 days before the diet fixed for the hearing of the appeal.

(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 in accordance with section 51(3) of the Act 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 a further report called for under section 51(3)(c) of the 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 the 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 the 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 the 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 of appeals**

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

**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.

(2) The sheriff may issue a note of the reasons for his decision, and shall require to do so where he decides to follow the course of action provided for in sub-paragraph (i) or (iii) of section 51(5)(c) of the 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 the relevant person, if not the appellant) and to any safeguarder appointed by the sheriff, and shall also return to the Principal Reporter any documents lodged by virtue of section 51(2) or (3) of the Act.