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STATUTORY INSTRUMENTS

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**1997 No. 2692 (S.169)**

**COURT OF SESSION, SCOTLAND**

**Act of Sederunt (Rules of the Court of  
Session Amendment No.8) (Early Disposal  
of Reclaiming Motions and Appeals) 1997**

*Made* - - - - *7th November 1997*  
*Coming into force* - - *1st December 1997*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 5 of the Court of Session Act 1988(1) and of all other powers enabling them in that behalf, do hereby enact and declare:

**Citation and commencement**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No 8) (Early Disposal of Reclaiming Motions and Appeals) 1997 and shall come into force on 1st December 1997.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

**Powers of vacation judge as respects early disposal of certain reclaiming motions and appeals.**

2.—(1) Chapter 11 of the Rules of the Court of Session 1994(2) shall be amended as follows.

(2) In rule 11.1 (powers of vacation judge), after paragraph (1) insert—

“(1A) Subject to paragraph (2) of this Rule, the vacation judge may, during vacation, in a case where early disposal of a reclaiming motion or appeal is sought by virtue of rule 38.7A or 40.7A make any order or refusal, or give any direction, under rule 38.14(6) or 40.12(6) which might be made or given during session by the nominated judge.”.

**Early disposal of reclaiming motions**

3.—(1) Chapter 38 of those Rules shall be amended as follows.

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(1) 1988 c. 36. Section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(3) and by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 45.  
(2) S.I.1994/1443.

(2) After rule 38.7 insert–

**“Required application for early disposal of certain reclaiming motions**

**38.7A.** Where a party reclaims against an interlocutor mentioned in paragraph (4) or (5) of rule 38.3, he shall, under rule 38.13(1)(a), seek early disposal of the reclaiming motion.”.

(3) In rule 38.13 (early disposal of reclaiming motion)–

(a) in paragraph (1)–

(i) after the words “reclaiming motion”, where they occur for the first time, insert “(in the case of the claimer, whether or not by virtue of rule 38.7A)”;

(ii) in sub-paragraph (a), for the words “the words “and for early disposal”” substitute “either the words “and for early disposal on the Summar Roll” or the words “and for early disposal in the Single Bills””;

(b) for paragraphs (2) to (4) substitute–

“(2) The entry in the rolls in respect of the motion for early disposal shall be starred; and the parties shall, at the hearing of that motion, provide the Inner House with an assessment of the likely duration of the hearing to determine the reclaiming motion.

(3) At the hearing of the motion for early disposal, the Inner House may–

(a) appoint the cause to the Summar Roll for hearing; or

(b) direct that the cause be heard in the Single Bills,

and may make such order as to the lodging of grounds of appeal as it thinks fit.

(4) At any hearing of the reclaiming motion in the Single Bills, the Inner House may determine the motion or make such other order as it thinks fit.”.

(4) In rule 38.19 (lodging of appendices), after paragraph (4) add–

“(5) In a case where early disposal is sought by virtue of rule 38.7A, the Inner House may, on the application by motion of the claimer, determine that paragraphs (1) to (4) shall not apply or shall apply subject to such modifications as it considers appropriate.”.

**Early disposal of appeals from inferior courts**

4.—(1) Chapter 40 of those Rules shall be amended as follows.

(2) After rule 40.7 insert–

**“Required application for early disposal of appeal against interlocutor other than final judgment**

**40.7A.** On lodging an appeal print under rule 40.7(2)(a)(ii) in respect of an appeal marked against an interlocutor of an inferior court in a case where the interlocutor is not a final judgment, the appellant shall make application under rule 40.11(1)(a) for early disposal of the appeal.”.

(3) In rule 40.9(1) (appeals deemed abandoned), in sub-paragraph (b), at the end add–

“which, in a case where rule 40.7A is applicable, shall mean the requirements of rule 40.7(2) as read with rules 40.7A and 40.11(1)(a)”.

(4) In rule 40.11 (early disposal of appeal)–

(a) in paragraph (1)–

(i) after the words “an appeal” insert “(in the case of the appellant, whether or not by virtue of rule 40.7A)”;

- (ii) at the end of sub-paragraph (a) (but before the word “; or” which immediately follows that sub-paragraph) insert “, specifying in the motion whether he seeks disposal on the Summar Roll or in the Single Bills”; and
- (b) for paragraphs (2) to (4) substitute–
  - “(2) The entry in the rolls in respect of the motion for early disposal shall be starred; and the parties shall, at the hearing of that motion, provide the Inner House with an assessment of the likely duration of the hearing to determine the appeal.
  - (3) At the hearing of the motion for early disposal, the Inner House may–
    - (a) appoint the cause to the Summar Roll for hearing; or
    - (b) direct that the cause be heard in the Single Bills,and may make such order as to the lodging of grounds of appeal as it thinks fit.
  - (4) At any hearing of the appeal in the Single Bills, the Inner House may determine the appeal or make such other order as it thinks fit.”.
- (5) In rule 40.17 (lodging of appendices), after paragraph (4) add–
  - “(5) In a case where early disposal is sought by virtue of rule 40.7A, the Inner House may, on the application by motion of the appellant, determine that paragraphs (1) to (4) shall not apply or shall apply subject to such modifications as it considers appropriate.”.

## **SAVING**

**5.** Paragraphs 2 to 4 of this Act of Sederunt shall not affect the application of the said Chapters 11, 38 and 40 in relation to a reclaiming motion marked before 1st December 1997 or an appeal as respects which the appeal print is lodged before that date.

Edinburgh  
7th November 1997

*Rodger of Earlsferry*  
Lord President, I.P.D.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## **EXPLANATORY NOTE**

*(This note is not part of the Act of Sederunt)*

This Act of Sederunt amends the Rules of the Court of Session 1994 in relation to applications for early disposal of reclaiming motions and appeals, so as to require such an application in a case where the reclaiming motion or appeal does not relate to a final judgment, so as to extend the powers of the vacation judge as respects such an application in such a case and so as to expedite proceedings as respects applications for early disposal of reclaiming motions and appeals generally.

The amendments to the Rules do not affect reclaiming motions marked before the Act of Sederunt comes into force or appeals as respects which the appeal print is lodged before that date.