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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 30**

**COURT OF SESSION**

**Act of Sederunt (Rules of the Court of Session  
Amendment No. 2) (Causes in the Inner House) 2010**

*Made* - - - - *4th February 2010*

*Coming into force* - - *5th April 2010*

The Lords of Council and Session, under and by virtue of the powers conferred 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. 2) (Causes in the Inner House) 2010 and comes into force on 5th April 2010.

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

**Causes in the Inner House**

2. Subject to paragraph 8, the Rules of the Court of Session 1994(2) shall be amended in accordance with paragraphs 3 to 7.

3. In rule 4.7(1) (lodging of documents in Inner House causes)(3)—

- (a) in subparagraph (d), for “38.6(2)” substitute “38.5(2)”;
- (b) in subparagraph (f), for “40.7(2)(a)(ii)” substitute “40.7(2)(b)”;
- (c) in subparagraph (g)—
  - (i) for “39.5” substitute “39.8”; and
  - (ii) for “40.17” substitute “40.19”.

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(1) 1988 c.36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c.32), section 2(3), the Law Reform (Miscellaneous Provisions) (Scotland) Act 1995 (c.40), Schedule 9, the Children (Scotland) Act 1990 (c.36), Schedule 4, paragraph 45, the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1) and the Judiciary and Courts (Scotland) Act 2008 (asp 6), section 46(3).

(2) S.I. 1994/1443, last amended by S.S.I. 2010/16.

(3) Rule 4.7(1) was amended by S.I. 1996/1756.

4.—(1) In rule 4.16 (Inner House interlocutors), in paragraph (1), after “Inner House” insert “, except interlocutors mentioned in rule 4.16A (Inner House interlocutors relating to procedural business)”.

(2) After rule 4.16, insert—

**“Inner House interlocutors relating to procedural business**

**4.16A.**—(1) This rule applies to interlocutors pronounced in the Inner House in relation to procedural business dealt with by a procedural judge within the meaning of rule 37A.1 (quorum of Inner House for certain business) and rule 37A.2 (procedural judges in the Inner House).

(2) An interlocutor may be written by the clerk of court and shall be adjusted and signed by the procedural judge who determined the matter dealt with in the interlocutor.

(3) An interlocutor may be signed during session or in vacation.

(4) An extract of an interlocutor which is not signed in accordance with the provisions of this rule shall be void and of no effect.

(5) An interlocutor may, on cause shown, be corrected or altered at any time before extract by—

(a) the judge who signed it; or

(b) in the event of the death, disability or absence of that judge, any other procedural judge.”.

5. Rule 6.3 (allocation of diets in the Inner House)(4) is revoked.

6. For Chapters 38, 39 and 40 there shall be substituted the following Chapters—

**“CHAPTER 37A**

**PROCEDURAL BUSINESS IN THE INNER HOUSE**

**Quorum of Inner House for certain business**

**37A.1.**—(1) In relation to such procedural business of the Inner House as is specified in paragraph (2), the quorum of a Division of the Inner House shall be one judge.

(2) The procedural business mentioned in paragraph (1) is such business as arises under—

(a) a reclaiming motion, up to and including the procedural steps mentioned in rule 38.16(2);

(b) an application for a new trial under section 29 of the Act of 1988(5) or to enter a jury verdict under section 31 of the Act of 1988 up to and including the procedural steps mentioned in rule 39.7(2) or, as the case may be, rule 39.9; and

(c) an appeal from an inferior court within the meaning of rule 40.1(2)(c), up to and including the procedural steps mentioned in rule 40.14(2).

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(4) Rule 6.3 was substituted by S.I. 1998/890 and amended by S.S.I. 2007/548.

(5) 1988 c.36.

### **Procedural judges in the Inner House**

**37A.2.**—(1) The Lord President shall from time to time nominate judges of the Inner House as procedural judges before whom proceedings in the Inner House shall be brought in accordance with Chapters 38 to 40.

(2) In this rule and in Chapters 38 to 40, “procedural judge” means a judge who is nominated in accordance with paragraph (1).

(3) A Division of the Inner House comprising three or more judges may deal with a matter which would otherwise be dealt with by a procedural judge in accordance with those Chapters where the Division considers that to be appropriate; and references in those Chapters to a procedural judge shall be construed accordingly.

## **CHAPTER 38 RECLAIMING**

### **Introduction**

**38.1.**—(1) This Chapter applies subject to any other provision in these Rules or any enactment.

- (2) Any party to a cause who is dissatisfied with an interlocutor pronounced by—
- (a) the Lord Ordinary;
  - (b) the Lord Ordinary in Exchequer Causes; or
  - (c) the vacation judge,

and who seeks to submit that interlocutor to review by the Inner House shall do so by reclaiming within the reclaiming days in accordance with the provisions of this Chapter.

(3) In this Chapter, “reclaiming days” means the days within which an interlocutor may be reclaimed against.

### **Reclaiming days**

**38.2.**—(1) An interlocutor disposing, either by itself or taken along with a previous interlocutor, of—

- (a) the whole subject matter of the cause; or
- (b) the whole merits of the cause whether or not the question of expenses is reserved or not disposed of,

may be reclaimed against, without leave, within 21 days after the date on which the interlocutor was pronounced.

(2) Where an interlocutor which reserves or does not dispose of the question of expenses is the subject of a reclaiming motion under paragraph (1)(b), any party to the cause who seeks an order for expenses before the disposal of the reclaiming motion shall apply by motion to the Lord Ordinary for such an order within 14 days of the date of enrolment of that reclaiming motion.

(3) An interlocutor disposing of the merits of the action and making an award of provisional damages under section 12(2)(a) of the Administration of Justice Act 1982<sup>(6)</sup>

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(6) 1982 c.53; section 12 was modified by the Consumer Protection Act 1987 (c.43), sections 6(1)(d), 41(2) and 47(1) and (2).

may be reclaimed against, without leave, within 21 days after the date on which the interlocutor was pronounced.

(4) An interlocutor mentioned in paragraph (5) may be reclaimed against, without leave, within 14 days after the date on which the interlocutor was pronounced.

(5) Those interlocutors are—

- (a) an interlocutor disposing of part of the merits of a cause;
- (b) an interlocutor allowing or refusing proof, proof before answer or jury trial (but, in the case of refusal, without disposing of the whole merits of the cause);
- (c) an interlocutor limiting the mode of proof;
- (d) an interlocutor adjusting issues for jury trial;
- (e) an interlocutor granting, refusing, recalling, or refusing to recall, interim interdict or interim liberation;
- (f) an interlocutor in relation to an exclusion order under section 4 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981(7);
- (g) an interlocutor granting, refusing or recalling a sist of execution or procedure;
- (h) an interlocutor loosing, restricting or recalling an arrestment or recalling in whole or in part an inhibition used on the dependence of an action or refusing to loose, restrict or recall such an arrestment or inhibition;
- (i) an interlocutor granting authority to move an arrested vessel or cargo;
- (j) an interlocutor deciding (other than in a summary trial) that a reference to the European Court should be made.

(6) An interlocutor (other than a decree in absence or an interlocutor mentioned in paragraph (2), (3) or (5) of this rule) may be reclaimed against, with leave, within 14 days after the date on which the interlocutor was pronounced.

#### **Leave to reclaim etc. in certain cases**

**38.3.**—(1) An interlocutor granting or refusing a motion for summary decree may be reclaimed against only with the leave of the Lord Ordinary within 14 days after the date on which the interlocutor was pronounced.

(2) In the application of section 103(3) of the Debtors (Scotland) Act 1987 (appeals on questions of law arising from making, variation or recall of time to pay directions)(8)—

- (a) leave to appeal shall be sought within 14 days after the date of the decision of the Lord Ordinary appealed against; and
- (b) an appeal shall be made by motion to the Inner House within 14 days after the date on which leave was granted.

(3) An interlocutor, other than an interlocutor determining the application, pronounced under Chapter 58 (applications for judicial review) may be reclaimed against only with the leave of the Lord Ordinary within 14 days after the date on which the interlocutor was pronounced.

(4) The decision of the Lord Ordinary on a note of objection to the report of the Auditor under rule 42.4(9) may be reclaimed against only with the leave of the Lord Ordinary within 7 days after the date on which the decision was made.

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(7) 1981 c.59; section 4 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), sections 13(5) and 60(6).

(8) 1987 c.18.

(9) Rule 42.4 was amended by S.I. 1996/1756.

(5) An interlocutor granting or refusing a motion under rule 47.10(1) (appointing action to be a commercial action)(10) may be reclaimed against only with the leave of the commercial judge within 14 days after the date on which the interlocutor was pronounced.

(6) An interlocutor pronounced on the Commercial Roll, other than an interlocutor which makes such disposal as is mentioned in rule 38.2(1), may be reclaimed against only with the leave of the commercial judge within 14 days after the date on which the interlocutor was pronounced.

### **Applications for leave to reclaim**

**38.4.**—(1) An application for leave to reclaim against an interlocutor shall be made by motion.

(2) A motion under paragraph (1) shall be brought—

- (a) before the Lord Ordinary who pronounced the interlocutor;
- (b) where that Lord Ordinary is, for whatever reason, unavailable, before another Lord Ordinary; or
- (c) before the vacation judge.

(3) Where a motion under paragraph (1) is brought before a judge under paragraph (2) (b) or (c), that judge shall—

- (a) continue the motion until the Lord Ordinary who pronounced the interlocutor is available; or
- (b) where the matter is of such urgency that a continuation would not be appropriate, grant or refuse leave, as the case may be.

(4) Any period during which a motion under paragraph (1) is continued by virtue of an order under paragraph (3)(a) shall not be taken into account in calculating the reclaiming days under rule 38.2(6) (reclaiming days and leave) or rule 38.3 (leave to reclaim etc. in certain cases).

(5) In granting leave to reclaim, the Lord Ordinary may impose such conditions, if any, as he thinks fit.

(6) The decision of the Lord Ordinary or the vacation judge to grant or refuse leave to reclaim shall be final and not subject to review.

(7) Leave to reclaim against an interlocutor shall not excuse obedience to or implement of the interlocutor unless by order of the Lord Ordinary, a procedural judge or the vacation judge.

### **Method of reclaiming**

**38.5.**—(1) A party who seeks to reclaim against an interlocutor shall mark a reclaiming motion by enrolling a motion for review in Form 38.5 before the expiry of the reclaiming days.

(2) On enrolling a motion for review under paragraph (1), the claimer shall lodge a reclaiming print in the form of a record which shall contain—

- (a) the whole pleadings and interlocutors in the cause;
- (b) where the reclaiming motion is directed at the refusal of the Lord Ordinary to allow the pleadings to be amended in terms of a minute of amendment and answers, the text of such minute and answers; and

- (c) where available, the opinion of the Lord Ordinary.
- (3) A party who reclaims against an interlocutor adjusting issues for jury trial shall, on enrolling the motion for review—
  - (a) lodge in process the issue or counter-issue proposed by him showing the amendment to the issues, as adjusted, sought to be made; and
  - (b) send a copy of the issue or counter-issue, as the case may be, to every other party.

### **Effect of reclaiming**

**38.6.**—(1) Subject to paragraph (2), a reclaiming motion shall have the effect of submitting to the review of the Inner House all previous interlocutors of the Lord Ordinary or any interlocutor of the Lord Ordinary in a motion under rule 38.2(2), not only at the instance of the party reclaiming but also at the instance of any other party who appeared in the cause, and without the necessity of any counter-reclaiming motion.

(2) Where an interlocutor, either by itself or taken along with a previous interlocutor, has disposed of the whole merits of the cause, a reclaiming motion against a subsequent interlocutor dealing with expenses shall have the effect of submitting to review only that interlocutor and any other interlocutor so far as it deals with expenses.

(3) After a reclaiming motion has been enrolled, the claimer shall not be at liberty to withdraw it without the consent of the other parties who have appeared in the cause; and if he does not insist on the reclaiming motion, any other party may do so in the same way as if the motion had been enrolled at his instance.

(4) An unopposed motion by a party to refuse a reclaiming motion shall be treated as if all parties consented to it.

(5) Where an interlocutor contains an award of custody, access or aliment, the marking of a reclaiming motion shall not excuse obedience to or implement of the award of custody, access or aliment, as the case may be, unless by order of the court.

### **Effect of extracted interlocutor**

**38.7.** Review by the Inner House of an interlocutor shall not be prevented by reason only that extract has been issued before the expiry of the reclaiming days.

### **Appeals treated as reclaiming motions**

**38.8.** In respect of the following appeals, the rules in this Chapter shall apply to those appeals as they apply to reclaiming—

- (a) an appeal from a decision of the Lord Ordinary under section 6 of and Article 37 or 41 of the convention in Schedule 1 or 3C to, the Civil Jurisdiction and Judgments Act 1982 (appeals in relation to decisions on enforcement)(**11**); and
- (b) an appeal from a decision of the Lord Ordinary under section 6A of the Civil Jurisdiction and Judgments Act 1982 and Article 44 and Annex IV to the Lugano Convention, as defined in rule 62.26(2) (application and interpretation of Part V of Chapter 62(**12**) of these Rules); and

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(11) 1982 c.27. Section 6 was amended by the Civil Jurisdiction and Judgments Act 1991 (c.12), Schedule 2, paragraph 3(b). Schedule 1 was substituted by S.I. 1990/2591 and Schedule 3C was inserted by section 1(3) of the Act of 1991.

(12) Section 6A of the Civil Jurisdiction and Judgments Act 1982 was inserted by regulation 7(3) of the Civil Jurisdiction and Judgments Regulations 2009 (S.I. 2009/3131). The definition of “the Lugano Convention” was inserted into rule 62.26(2) by S.S.I. 2009/450.

- (c) an appeal from a decision of the Lord Ordinary under section 103(3) of the Debtors (Scotland) Act 1987 (appeals on questions of law)(13).

### **Reclaiming against decree by default**

**38.9.**—(1) Where decree by default has been granted against a party in respect of his failure to lodge a step of process or other document, a motion for review by that party of the interlocutor granting such decree shall be refused unless the document is lodged on or before the date on which the motion is enrolled.

(2) A decree by default may, if reclaimed against, be recalled on such conditions, if any, as to expenses or otherwise as the court thinks fit.

### **Reclaiming out of time**

**38.10.**—(1) In a case of mistake or inadvertence, a procedural judge may, on an application made in accordance with paragraph (2), allow a motion for review to be received outwith the reclaiming days and to proceed out of time on such conditions as to expenses or otherwise as the judge thinks fit.

(2) An application under paragraph (1) shall be made by motion included in the motion for review made under rule 38.5(1).

### **Urgent disposal of reclaiming motion**

**38.11.**—(1) Where the claimer seeks urgent disposal of a reclaiming motion, he shall include in his motion under rule 38.5(1) either the words “and for urgent disposal on the Summar Roll” or the words “and for urgent disposal in the Single Bills”.

(2) Where a respondent seeks urgent disposal of a reclaiming motion, he shall, within the period allowed for opposing the motion, endorse on the motion of the claimer under rule 38.5(1), or send by post or facsimile transmission a notice of opposition in Form 23.4 including the words “The respondent (*name*) seeks urgent disposal on the Summar Roll” or the words “The respondent (*name*) seeks urgent disposal in the Single Bills”, as the case may be.

(3) The entry in the rolls in respect of the motion for urgent disposal shall be starred; and the motion shall call before a procedural judge.

(4) At the hearing of the motion, the parties shall provide the procedural judge with an assessment of the likely duration of the hearing to determine the reclaiming motion.

(5) The procedural judge may—

(a) grant the motion for urgent disposal and either appoint the reclaiming motion to the Summar Roll for a hearing or direct that the reclaiming motion be heard in the Single Bills; or

(b) refuse the motion for urgent disposal.

(6) Where the procedural judge grants the motion for urgent disposal, he may make such order as to the future timetabling of, and procedure in, the reclaiming motion as he thinks fit.

(7) Rules 38.12 to 38.16 shall apply to a reclaiming motion in respect of which the procedural judge has granted a motion for urgent disposal only to the extent that he so directs.

### **Objections to the competency of reclaiming**

**38.12.**—(1) Any party other than the claimer may object to the competency of a reclaiming motion by—

- (a) lodging in process; and
- (b) serving on the claimer,

a note of objection in Form 38.12.

(2) Where the Deputy Principal Clerk considers that a reclaiming motion may be incompetent he may (whether or not any party has lodged and served a note of objection under paragraph (1)) refer the question of competency to a procedural judge.

(3) Where the Deputy Principal Clerk refers a question of competency, he shall intimate to the parties the grounds on which he considers that question of competency arises.

(4) A note of objection may be lodged, and the Deputy Principal Clerk may refer a question of competency, only in the period of 14 days after the date on which the reclaiming motion was marked.

(5) Where a note of objection is lodged, or the Deputy Principal Clerk has referred a question of competency, the Keeper of the Rolls shall—

- (a) allocate a diet for a hearing before a procedural judge; and
- (b) intimate the date and time of that diet to the parties.

(6) Each party shall, within the period of 14 days after the date on which a note of objection is lodged or a question of competency is referred by the Deputy Principal Clerk—

- (a) lodge in process; and
- (b) serve on the other party,

a note of argument giving fair notice of the submissions which the party intends to make as to competency.

(7) At the hearing allocated under paragraph (5), the procedural judge may—

- (a) refuse the reclaiming motion as incompetent;
- (b) direct that the reclaiming motion is to proceed as if the note of objection had not been lodged or the question not been referred, whether under reservation of the question of competency or having found the reclaiming motion to be competent; or
- (c) refer the question of competency to a bench of three or more judges;

and he may make such order as to expenses or otherwise as he thinks fit.

(8) Where a procedural judge refers a question of competency under paragraph (7)(c), the cause shall be put out for a hearing in the Single Bills before a Division of the Inner House comprising three or more judges.

(9) At the hearing in the Single Bills arranged under paragraph (8), the Inner House may—

- (a) dispose of the objection to competency;
- (b) appoint the cause to the Summar Roll for a hearing on the objection;
- (c) reserve the objection until grounds of appeal have been lodged and order such grounds to be lodged;
- (d) reserve the objection for hearing with the merits.



### **Timetable in reclaiming motion**

- 38.13.**—(1) The Keeper of the Rolls shall—
- (a) issue a timetable in Form 38.13, calculated by reference to such periods as are specified in this Chapter and such other periods as may be specified from time to time by the Lord President, stating the date by which the parties shall comply with the procedural steps listed in paragraph (2) and the date and time of the hearing allocated in terms of subparagraph (b) of this paragraph; and
  - (b) allocate a diet for a procedural hearing in relation to the reclaiming motion, to follow on completion of the procedural steps listed in paragraph (2).
- (2) The procedural steps are—
- (a) the lodging of grounds of appeal and answers;
  - (b) the lodging of any appendices to the reclaiming print or, as the case may be, the giving of intimation that the claimer does not intend to lodge any appendices;
  - (c) the lodging of notes of argument; and
  - (d) the lodging of estimates of the length of any hearing on the Summar Roll or in the Single Bills which is required to dispose of the reclaiming motion.
- (3) The Keeper of the Rolls shall take the steps mentioned in paragraph (1)—
- (a) where no note of objection has been lodged and no question of competency has been referred by the Deputy Principal Clerk within the period mentioned in rule 38.12(4), within 7 days of the expiry of that period;
  - (b) where a procedural judge has made a direction under rule 38.12(7)(b), within 7 days after the date that direction was made; or
  - (c) where a question of competency has been referred to a bench of three or more judges and—
    - (i) an interlocutor has been pronounced sustaining the competency of the reclaiming motion under rule 38.12(9)(a) or following a Summar Roll hearing under rule 38.12(9)(b), or
    - (ii) an interlocutor has been pronounced under rule 38.12(9)(c) or (d), within 7 days after the date of that interlocutor.

### **Sist or variation of timetable in reclaiming motion**

- 38.14.**—(1) A reclaiming motion may be sisted or the timetable may be varied on the application by motion of any party.
- (2) An application under paragraph (1) shall be—
- (a) placed before a procedural judge; and
  - (b) granted only on special cause shown.
- (3) The procedural judge before whom an application under paragraph (1) is placed may—
- (a) determine the application;
  - (b) refer the application to a bench of three or more judges; or
  - (c) make such other order as he thinks fit to secure the expeditious disposal of the reclaiming motion.
- (4) Where the timetable is varied, the Keeper of the Rolls shall—
- (a) discharge the procedural hearing fixed under rule 38.13(1)(b);

- (b) fix a date for a procedural hearing; and
  - (c) issue a revised timetable in Form 38.13.
- (5) Upon recall of a sist, the Keeper of the Rolls shall—
- (a) fix a date for a procedural hearing; and
  - (b) issue a revised timetable in Form 38.13.

#### **Failure to comply with timetable in reclaiming motion**

**38.15.**—(1) Where a party fails to comply with the timetable, the Keeper may, whether on the motion of a party or otherwise, put the reclaiming motion out for a hearing before a procedural judge.

- (2) At a hearing under paragraph (1), the procedural judge may—
- (a) in any case where the claimer or a respondent fails to comply with the timetable, make such order as he thinks fit to secure the expeditious disposal of the reclaiming motion;
  - (b) in particular, where the claimer fails to comply with the timetable, refuse the reclaiming motion; or
  - (c) in particular, where a sole respondent fails or all respondents fail to comply with the timetable, grant the reclaiming motion.

#### **Procedural hearing in reclaiming motion**

**38.16.**—(1) At the procedural hearing fixed under rules 38.13(1)(b) or 38.14(4)(b) or (5)(a), the procedural judge shall ascertain, so far as reasonably practicable, the state of preparation of the parties.

- (2) The procedural judge may—
- (a) appoint the reclaiming motion to the Summar Roll for a hearing and allocate a date and time for that hearing;
  - (b) appoint the reclaiming motion to the Single Bills for a hearing and allocate a date and time for that hearing; or
  - (c) make such other order as he thinks fit to secure the expeditious disposal of the reclaiming motion.

#### **Amendment of pleadings in reclaiming motion**

**38.17.**—(1) Where, after a reclaiming motion has been marked, any party applies by motion to have the pleadings amended in terms of a minute of amendment and answers, he shall apply for a direction as to further procedure.

(2) Where it appears that the amendment makes a material change to the pleadings, the Inner House may recall the interlocutor of the Lord Ordinary reclaimed against and remit the cause back to the Lord Ordinary for a further hearing.

#### **Grounds of appeal in reclaiming motion**

**38.18.**—(1) Grounds of appeal shall consist of brief specific numbered propositions stating the grounds on which it is proposed to submit that the reclaiming motion should be granted.

- (2) On lodging grounds of appeal, the party lodging them shall—

- (a) lodge three copies of them in process; and
- (b) send a copy of them to every other party.

(3) A party who has lodged grounds of appeal or answers to the grounds of appeal may apply by motion to amend the grounds or answers, on cause shown.

(4) An application under paragraph (3) shall include any necessary application under rule 38.14(1) (sist or variation of timetable).

### **Lodging of appendices in reclaiming motion**

**38.19.**—(1) Where, in a reclaiming motion, the reclaimer considers that it is not necessary to lodge an appendix to the reclaiming print, the reclaimer shall, by the relevant date specified in the timetable—

- (a) give written intimation of that fact to the Deputy Principal Clerk; and
- (b) send a copy of that intimation to each respondent.

(2) Where the reclaimer provides intimation under paragraph (1), a respondent may apply to a procedural judge, by motion, for an order requiring the reclaimer to lodge an appendix.

(3) An application under paragraph (2) shall include specification of the documents that the respondent seeks to have included in the appendix.

(4) Where an application is made under paragraph (2), a procedural judge may make an order requiring the reclaimer to lodge any appendix that the procedural judge considers necessary, within such time as the procedural judge may specify.

(5) An order under paragraph (4) may only be granted by a procedural judge after having heard parties.

(6) Paragraph (7) applies where—

- (a) a respondent seeks to submit for consideration by the court notes of evidence or documents in respect of which the reclaimer has given written intimation to the respondent that the reclaimer does not intend to include in his appendix; and
- (b) a procedural judge has not made an order under paragraph (2) requiring the reclaimer to lodge an appendix which includes such notes of evidence or documents.

(7) The respondent shall incorporate such notes or documents in an appendix which he shall lodge within such period as is specified by the procedural judge in disposing of the application under paragraph (4).

(8) Where, in any reclaiming motion other than one in which intimation is given under paragraph (1)—

- (a) the opinion of the Lord Ordinary has not been included in the reclaiming print; or
- (b) it is sought to submit notes of evidence or documents for consideration by the court,

the reclaimer shall lodge an appendix incorporating such documents within such period as shall be specified in the timetable.

### **Notes of evidence not extended when agreed**

**38.20.** Where, in a reclaiming motion, the parties are agreed that on any particular issue the interlocutor reclaimed against is not to be submitted to review, it shall not be necessary to reproduce the notes of evidence or documents relating to that issue.

### Single Bills

**38.21.** At any hearing of a reclaiming motion in the Single Bills, the Inner House may determine the motion or make such other order as it thinks fit.

## CHAPTER 39

### APPLICATIONS FOR NEW TRIAL OR TO ENTER JURY VERDICTS

#### Applications for new trial

**39.1.**—(1) An application under section 29(1) of the Act of 1988 (application for new trial)(14) shall be made to a procedural judge, by motion, within 7 days after the date on which the verdict of the jury was written on the issue and signed.

(2) A motion under paragraph (1) shall specify the grounds on which the application is made.

(3) An application under section 29(1)(a), (b) or (c) of the Act of 1988 may not be made unless—

- (a) in the case of an application under section 29(1)(a) (misdirection of judge), the procedure in rule 37.7 (exceptions to judge's charge) has been complied with;
- (b) in the case of an application under section 29(1)(b) (undue admission or rejection of evidence), objection was taken to the admission or rejection of evidence at the trial and recorded in the notes of evidence under the direction of the judge presiding at the trial; or
- (c) in the case of an application under section 29(1)(c) (verdict contrary to evidence), it sets out in brief specific numbered propositions the reasons the verdict is said to be contrary to the evidence.

(4) On enrolling a motion for a new trial under paragraph (1), the party enrolling it shall lodge—

- (a) a print of the whole pleadings and interlocutors in the cause incorporating the issues and counter-issues;
- (b) the verdict of the jury; and
- (c) any exception and the determination on it of the judge presiding at the trial.

(5) Rule 38.6 (effect of reclaiming) shall, with the necessary modifications, apply to an application for a new trial under section 29 of the Act of 1988 as it applies to a reclaiming motion.

#### Applications out of time

**39.2.**—(1) A procedural judge may, on an application made in accordance with paragraph (2), allow an application for a new trial under section 29(1) of the Act of 1988 to be received outwith the period specified in rule 39.1(1) and to proceed out of time on such conditions as to expenses or otherwise as the procedural judge thinks fit.

(2) An application under paragraph (1) shall be made by motion included in the motion made under rule 39.1(1).

### **Objections to the competency of application**

**39.3.**—(1) Any party other than the applicant may object to the competency of an application for a new trial under section 29(1) of the Act of 1988 by—

- (a) lodging in process; and
- (b) serving on the applicant,

a note of objection in Form 39.3.

(2) A note of objection may be lodged only within the period of 7 days after the date on which the motion under rule 39.1(1) was enrolled.

(3) Where a note of objection is lodged, the Keeper of the Rolls shall—

- (a) allocate a diet for a hearing before a procedural judge; and
- (b) intimate the date and time of that diet to the parties.

(4) Each party shall, within the period of 7 days after the date on which a note of objection is lodged—

- (a) lodge in process; and
- (b) serve on the other party,

a note of argument giving fair notice of the submissions which the party intends to make as to competency.

(5) At the hearing allocated under paragraph (3), the procedural judge may—

- (a) refuse the application for a new trial as incompetent;
- (b) direct that the application for a new trial is to proceed as if the note of objection had not been lodged or the question not been referred, whether under reservation of the question of competency or having found the application to be competent; or
- (c) refer the question of competency to a bench of three or more judges;

and he may make such order as to expenses or otherwise as he thinks fit.

(6) Where a procedural judge refers a question of competency under paragraph (5)(c), the cause shall be put out for a hearing in the Single Bills before a Division of the Inner House comprising three or more judges.

(7) At the hearing in the Single Bills arranged under paragraph (6), the Inner House may—

- (a) dispose of the objection to competency;
- (b) appoint the cause to the Summar Roll for a hearing on the objection; or
- (c) reserve the objection for hearing with the merits.

### **Timetable in application for a new trial**

**39.4.**—(1) The Keeper of the Rolls shall—

- (a) issue a timetable in Form 39.4, calculated by reference to such periods as are specified in this Chapter and such other periods as may be specified from time to time by the Lord President, stating the date by which the parties shall comply with the procedural steps listed in paragraph (2) and the date and time of the hearing allocated in terms of subparagraph (b) of this paragraph; and
- (b) allocate a diet for a procedural hearing in relation to the application for a new trial, to follow on completion of the procedural steps listed in paragraph (2).

(2) The procedural steps are—

- (a) the lodging of any appendices to the documents mentioned in rule 39.1(4) or, as the case may be, the giving of notice that the applicant does not intend to lodge any appendices;
  - (b) the lodging of any notes of argument; and
  - (c) the lodging of estimates of the length of any hearing required to dispose of the application for a new trial.
- (3) The Keeper of the Rolls shall take the steps mentioned in paragraph (1)—
- (a) where no note of objection has been lodged within the period mentioned in rule 39.3(2), within 7 days of the expiry of that period;
  - (b) where a procedural judge has made a direction under rule 39.3(5)(b), within 7 days after the date that direction was made; or
  - (c) where a question of competency has been referred to a bench of three or more judges and—
    - (i) an interlocutor has been pronounced sustaining the competency of the application for a new trial under rule 39.3(7)(a) or following a Summar Roll hearing under rule 39.3(7)(b), or
    - (ii) an interlocutor has been pronounced under rule 39.3(7)(c),
 within 7 days after the date of that interlocutor.

#### **Sist or variation of timetable in application for a new trial**

- 39.5.**—(1) An application for a new trial may be sisted or the timetable may be varied on the application by motion of any party.
- (2) An application under paragraph (1) shall be—
- (a) placed before a procedural judge; and
  - (b) granted only on special cause shown.
- (3) The procedural judge before whom an application under paragraph (1) is placed may—
- (a) determine the application;
  - (b) refer the application to a bench of three or more judges; or
  - (c) make such other order as he thinks fit to secure the expeditious disposal of the application.
- (4) Where the timetable is varied, the Keeper of the Rolls shall—
- (a) discharge the procedural hearing fixed under rule 39.4(1)(b);
  - (b) fix a date for a procedural hearing; and
  - (c) issue a revised timetable in Form 39.4.
- (5) Upon recall of a sist, the Keeper of the Rolls shall—
- (a) fix a date for a procedural hearing; and
  - (b) issue a revised timetable in Form 39.4.

#### **Failure to comply with timetable in application for a new trial**

- 39.6.**—(1) Where a party fails to comply with the timetable, the Keeper may, whether on the motion of a party or otherwise, put the application for a new trial out for a hearing before a procedural judge.

- (2) At a hearing under paragraph (1), the procedural judge may—
  - (a) in any case where the applicant or a respondent fails to comply with the timetable, make such order as he thinks fit to secure the expeditious disposal of the application;
  - (b) in particular, where the applicant fails to comply with the timetable, refuse the application; or
  - (c) in particular, where a sole respondent fails or all respondents fail to comply with the timetable, allow the application.

#### **Procedural hearing in application for a new trial**

**39.7.**—(1) At the procedural hearing fixed under rules 39.4(1)(b), 39.5(4)(b) or (5)(a), the procedural judge shall ascertain, so far as reasonably practicable, the state of preparation of the parties.

- (2) The procedural judge may—
  - (a) appoint the application to the Summar Roll for a hearing and allocate a date and time for that hearing;
  - (b) appoint the application to the Single Bills for a hearing and allocate a date and time for that hearing; or
  - (c) make such other order as he thinks fit to secure the expeditious disposal of the application.

#### **Lodging of appendix**

**39.8.** Rule 38.19 (lodging of appendices in reclaiming motion) shall, with the necessary modifications, apply to an application for a new trial under section 29(1) of the Act of 1988 as it applies to a reclaiming motion.

#### **Applications to enter jury verdict**

**39.9.**—(1) An application under section 31(1) of the Act of 1988 (verdict may be returned subject to opinion of Inner House on point reserved) shall be made by motion to a procedural judge.

(2) On enrolling a motion under paragraph (1), the party enrolling it shall lodge in process four copies of the closed record incorporating—

- (a) all interlocutors pronounced in the cause and any amendments to the record allowed;
- (b) the issues and counter-issues;
- (c) any exception taken during the trial and the determination on it of the judge presiding at the trial; and
- (d) the verdict of the jury,

and send one copy of it to every other party.

(3) Unless the procedural judge otherwise directs, it shall not be necessary for the purposes of such a motion to print the notes of evidence, but the notes of the judge presiding at the trial may be produced at any time if required.

(4) In the case of complexity or difficulty, the procedural judge may appoint an application referred to in paragraph (1) to the Summar Roll for hearing.

## Single Bills

**39.10.** At any hearing of an application for a new trial in the Single Bills, the Inner House may determine the application or make such other order as it thinks fit.

## CHAPTER 40

### APPEALS FROM INFERIOR COURTS

#### Application and interpretation of this Chapter

**40.1.**—(1) This Chapter applies to an appeal to the court from any decision pronounced by an inferior court which may be appealed to the court.

(2) In this Chapter—

- (a) “appeal process” means—
  - (i) the process of the inferior court; or
  - (ii) where the cause is recorded in an official book of an inferior court, a copy of the record in that book certified by the clerk of the inferior court;
- (b) “decision” includes interlocutor, judgment or other determination;
- (c) “inferior court” means—
  - (i) the Lyon Court; or
  - (ii) the sheriff with respect to judgments or interlocutors to which section 28 of the Sheriff Courts (Scotland) Act 1907<sup>(15)</sup>, or section 38(b) of the Sheriff Courts (Scotland) Act 1971<sup>(16)</sup>, applies.

#### Applications for leave to appeal from inferior court

**40.2.**—(1) Where leave to appeal is required, an application for such leave shall be made in the first instance to the inferior court unless the enactment allowing the appeal requires the application to be made to the court.

(2) Where—

- (a) the inferior court has refused leave to appeal and such refusal is not final, or
- (b) leave to appeal is required from the court and not the inferior court,

any application to the court for leave to appeal shall be made in Form 40.2 to a procedural judge.

(3) An application to the court under paragraph (2) for leave to appeal shall be lodged in the General Department—

- (a) within the period prescribed by the enactment by virtue of which it is made; or
- (b) where no such period is prescribed, within 14 days after the date specified in paragraph (4).

(4) The date referred to in paragraph (3)(b) is—

- (a) the date on which the decision of the inferior court refusing leave to appeal was intimated to the appellant; or

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<sup>(15)</sup> 1907 c.51. Section 28 was substituted by section 2 of the Sheriff Courts (Scotland) Act 1913 (c.28) and was amended by section 4 of, and Part II of Schedule 2 to the Sheriff Courts (Scotland) Act 1971 (c.58).

<sup>(16)</sup> 1971 c.58. Section 38(b) was amended by section 18 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73).



- (b) where the application for leave to appeal is required to be made to the court and not the inferior court—
  - (i) the date on which the decision of the inferior court complained of was issued; or
  - (ii) where the inferior court issued reasons for its decision later than the decision, the date of issue of the reasons.
- (5) An application to the court for leave to appeal shall include a statement setting out the proposed grounds of appeal and the grounds on which leave to appeal is sought.
- (6) There shall be lodged with an application to the court under paragraph (3)—
  - (a) a process in accordance with rule 4.4 (steps of process);
  - (b) where applicable—
    - (i) evidence that leave to appeal has been refused by the inferior court;
    - (ii) a copy of the grounds of appeal intimated to the inferior court; and
    - (iii) any note by the inferior court setting out the reasons for its refusal;
  - (c) a copy of the decision of the inferior court complained of and any reasons for that decision; and
  - (d) where the inferior court itself exercised an appellate function, a copy of the decision of the tribunal from which that appeal was taken and any reasons given for that decision.

#### **Determination of applications for leave to appeal from inferior court**

**40.3.**—(1) On lodging an application for leave to appeal under rule 40.2, the applicant shall apply by motion to a procedural judge for an order for intimation and service.

(2) On expiry of the period within which answers may be lodged, the applicant may apply by motion to a procedural judge for the application to be granted.

#### **Time and method of appeal**

**40.4.**—(1) An appeal from an inferior court shall be made—

- (a) within the period prescribed by the enactment by virtue of which the appeal is made; or
  - (b) where no such period is prescribed, within 21 days after—
    - (i) the date on which the decision appealed against was given;
    - (ii) where the inferior court issued written reasons for its decision later than the decision, the date on which the written reasons were issued; or
    - (iii) where leave to appeal was granted by the inferior court or application for leave to appeal was made to the court under rule 40.2(2), the date on which leave was granted by the inferior court or the court, as the case may be.
- (2) A party seeking to appeal from an inferior court shall mark an appeal by writing a note of appeal in Form 40.4—
- (a) on the interlocutor sheet, minute of court or other written record containing the decision appealed against; or
  - (b) where such a decision is not available or the proceedings of the inferior court are recorded in an official book, on a separate sheet lodged with the clerk of the inferior court.

- (3) A note of appeal shall—
  - (a) be signed by the appellant or his agent;
  - (b) bear the date on which its is signed; and
  - (c) where the appellant is represented, specify the name and address of the agent who will be acting for him in the appeal.

#### **Leave to appeal out of time**

**40.5.**—(1) An application to allow an appeal to be received outwith the time prescribed for marking an appeal and to proceed out of time shall be included in the note of appeal.

(2) Within 14 days after the date of receipt by the Deputy Principal Clerk of the appeal process from the clerk of the inferior court under rule 40.6(1), the appellant shall apply by motion to allow the appeal to be received outwith the time prescribed for marking an appeal and for leave to proceed out of time.

(3) The motion enrolled in terms of paragraph (2) shall be disposed of by a procedural judge.

- (4) Where a motion under paragraph (2) is refused, the Deputy Principal Clerk shall—
  - (a) give written intimation to the clerk of the inferior court that leave to appeal out of time has been refused; and
  - (b) transmit the appeal process and note of appeal to him.

#### **Transmission of appeal process**

**40.6.**—(1) Within 4 days after an appeal has been marked, the clerk of the inferior court shall—

- (a) give written intimation of the appeal to every other party and certify on the interlocutor sheet, other record or separate note of appeal, as the case may be, that he has done so; and
- (b) transmit—
  - (i) the appeal process, and
  - (ii) any separate note of appeal,to the Deputy Principal Clerk.

(2) On receipt of an appeal process sent to him under paragraph (1), the Deputy Principal Clerk shall—

- (a) mark the date of receipt on the interlocutor sheet, other record or separate note of appeal, as the case may be; and
- (b) give written intimation of that date to the appellant.

(3) Where the clerk of the inferior court or the Deputy Principal Clerk fails to comply with a provision of this rule, the appeal shall not be invalidated; but the court may give such remedy for any disadvantage or inconvenience occasioned thereby as it thinks fit.

#### **Procedure following transmission of appeal process**

**40.7.**—(1) Within 14 days after the date of receipt by the Deputy Principal Clerk of the appeal process, each party seeking to appear in the appeal shall—

- (a) give written intimation to the Deputy Principal Clerk of, or

- (b) state by note written on the interlocutor sheet, minute of court, or other record containing the decision appealed against, or on the separate note of appeal, as the case may be,

his name and address and that of his agent (if any).

(2) Subject to rule 40.15(2) (appeals deemed abandoned), within 28 days after the date of receipt by the Deputy Principal Clerk of the appeal process, or the date of the interlocutor granting a motion made under rule 40.5(2) (leave to appeal out of time), whichever is the later, the appellant shall—

- (a) lodge a process, including each part of the appeal process, in accordance with rule 4.4 (steps of process);
- (b) lodge an appeal print in the form of a record which shall contain—
  - (i) the whole pleadings and interlocutors in the cause;
  - (ii) where the appeal is directed at the refusal of the inferior court to allow the pleadings to be amended, the text of the proposed amendment; and
  - (iii) where available, the judgment of the inferior court (including in an appeal in a summary cause under the Act of Sederunt (Summary Cause Rules) 2002(17) or a small claim under the Act of Sederunt (Small Claim Rules) 2002(18), the stated case of the sheriff); and
- (c) send a copy of the appeal print, in accordance with rule 4.6(1) (intimation of steps of process).

#### **Sist of process of appeal**

**40.8.**—(1) Within 14 days after the date of receipt by the Deputy Principal Clerk of the appeal process, the appellant may apply by motion to a procedural judge for a sist of process.

(2) On enrolling a motion under rule 40.5(2) (leave to appeal out of time) or under paragraph (1) of this rule, the appellant shall lodge a motion sheet and an interlocutor sheet, if not already lodged.

(3) Where the procedural judge grants a motion under paragraph (1), the period of 28 days mentioned in rule 40.7(2) (lodging process etc.) shall not run during any period in which the appeal is sisted.

(4) The provisions of this rule are without prejudice to the power of the court to sist an appeal, as referred to in rule 40.12.

#### **Urgent disposal of appeal**

**40.9.**—(1) Where the appellant seeks urgent disposal of an appeal, he shall, on lodging an appeal print under rule 40.7(2)(b), apply by motion to a procedural judge for urgent disposal of the appeal, specifying in the motion whether he seeks urgent disposal on the Summar Roll or urgent disposal in the Single Bills.

(2) Where a respondent seeks urgent disposal of an appeal, he shall—

- (a) within the period allowed for opposing the motion, endorse on the motion of the appellant under paragraph (1), or send by post or facsimile transmission a notice of opposition in Form 23.4 including the words “The respondent (*name*) seeks urgent disposal in the Summar Roll” or the words “The respondent (*name*) seeks urgent disposal in the Single Bills”, as the case may be; or

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(17) S.S.I. 2002/132, last amended S.S.I. 2009/402.

(18) S.S.I. 2002/133, last amended by S.S.I. 2009/402.

- (b) enrol a motion for urgent disposal on the Summar Roll or for urgent disposal in the Single Bills, within 7 days of the respondent intimating his name and address and that of his agent (if any) in terms of rule 40.7(1).
- (3) The entry in the rolls in respect of a motion for urgent disposal under this rule shall be starred; and the motion shall call before a procedural judge.
- (4) At the hearing of the motion, the parties shall provide the procedural judge with an assessment of the likely duration of the hearing to determine the appeal.
- (5) The procedural judge may—
  - (a) grant the motion for urgent disposal and either appoint the cause to the Summar Roll for hearing or direct that the cause be heard in the Single Bills;
  - (b) refuse the motion for urgent disposal.
- (6) Where the procedural judge grants the motion for urgent disposal, he may make such order as to the future timetabling of, and procedure in, the appeal as he thinks fit.
- (7) Rules 40.10 to 40.14 shall apply to an appeal in respect of which the procedural judge has granted a motion for urgent disposal only to the extent that he so directs.

#### **Objections to the competency of appeals**

**40.10.**—(1) Any party other than the appellant may object to the competency of an appeal made under this Chapter by—

- (a) lodging in process; and
- (b) serving on the appellant,

a note of objection in Form 40.10.

(2) Where the Deputy Principal Clerk considers that an appeal made under this Chapter may be incompetent he may (whether or not any party has lodged and served a note of objection under paragraph (1)) refer the question of competency to a procedural judge.

(3) Where the Deputy Principal Clerk refers a question of competency, he shall intimate to the parties the grounds on which he considers that question of competency arises.

(4) A note of objection may be lodged, and the Deputy Principal Clerk may refer a question of competency, only within 14 days after the expiry of the period specified in rule 40.7(2) (lodging process etc.).

(5) Where a note of objection is lodged, or the Deputy Principal Clerk has referred a question of competency, the Keeper of the Rolls shall—

- (a) allocate a diet for a hearing before a procedural judge; and
- (b) intimate the date and time of that diet to the parties.

(6) Each party shall, within the period of 14 days after the date on which a note of objection is lodged or a question of competency is referred by the Deputy Principal Clerk—

- (a) lodge in process; and
- (b) serve on the other party,

a note of argument giving fair notice of the submissions which the party intends to make as to competency.

(7) At the hearing allocated under paragraph (5), the procedural judge may—

- (a) refuse the appeal as incompetent;

- (b) direct that the appeal is to proceed as if the note of objection had not been lodged or the question not been referred, whether under reservation of the question of competency or having found the appeal to be competent; or
  - (c) refer the question of competency to a bench of three or more judges;
- and he may make such order as to expenses or otherwise as he thinks fit.

(8) Where a procedural judge refers a question of competency under paragraph (7)(c), the cause shall be put out for a hearing in the Single Bills before a Division of the Inner House comprising three or more judges.

(9) At the hearing in the Single Bills arranged under paragraph (8), the Inner House may—

- (a) dispose of the objection to competency;
- (b) appoint the cause to the Summar Roll for a hearing on the objection;
- (c) reserve the objection until grounds of appeal have been lodged and order such grounds to be lodged;
- (d) reserve the objection for hearing with the merits.

#### **Timetable in appeal from inferior court**

**40.11.**—(1) Upon expiry of the period specified in rule 40.7(1), the Keeper of the Rolls shall—

- (a) issue a timetable in Form 40.11, calculated by reference to such periods as are specified in this Chapter and such other periods as may be specified from time to time by the Lord President, stating the date by which the parties shall comply with the procedural steps listed in paragraph (2) and the date and time of the hearing allocated in terms of subparagraph (b) of this paragraph; and
  - (b) allocate a diet for a procedural hearing in relation to the appeal, to follow on completion of the procedural steps listed in paragraph (2).
- (2) The procedural steps are—
- (a) the lodging of a process in accordance with rule 40.7(2)(a);
  - (b) the lodging and sending a copy of the appeal print in accordance with rule 40.7(2)(b);
  - (c) the enrolling of any motion for a sist of process in terms of rule 40.8;
  - (d) the lodging of grounds of appeal and answers;
  - (e) the lodging of appendices to the appeal print or, as the case may be, the giving of intimation that the appellant does not intend to lodge any appendices;
  - (f) the lodging of notes of argument; and
  - (g) the lodging of estimates of the length of any hearing on the Summar Roll or in the Single Bills which is required to dispose of the appeal.
- (3) The Keeper of the Rolls shall take the steps mentioned in paragraph (1)—
- (a) where no note of objection has been lodged and no question of competency has been referred by the Deputy Principal Clerk within the period mentioned in rule 40.10(4), within 7 days of the expiry of that period;
  - (b) where a procedural judge has made a direction under rule 40.10(7)(b), within 7 days after the date that direction was made; or
  - (c) where a question of competency has been referred to a bench of three or more judges and—

- (i) an interlocutor has been pronounced sustaining the competency of the appeal under rule 40.10(9)(a) or following a Summar Roll hearing under rule 40.10(9)(b), or
  - (ii) an interlocutor has been pronounced under rule 40.10(9)(c) or (d),
- within 7 days after the date of that interlocutor.

#### **Sist or variation of timetable in appeal from inferior court**

**40.12.**—(1) An appeal under this Chapter may be sisted or the timetable may be varied on the application by motion of any party.

- (2) An application under paragraph (1) shall be—
  - (a) placed before a procedural judge; and
  - (b) granted only on special cause shown.
- (3) The procedural judge before whom an application under paragraph (1) is placed may—
  - (a) determine the application;
  - (b) refer the application to a bench of three or more judges; or
  - (c) make such other order as he thinks fit to secure the expeditious disposal of the appeal.
- (4) Where the timetable is varied, the Keeper of the Rolls shall—
  - (a) discharge the procedural hearing fixed under rule 40.11(1)(b);
  - (b) fix a date for a procedural hearing; and
  - (c) issue a revised timetable in Form 40.11.
- (5) Upon recall of a sist, the Keeper of the Rolls shall—
  - (a) fix a date for a procedural hearing; and
  - (b) issue a revised timetable in Form 40.11.

#### **Failure to comply with timetable in appeal from inferior court**

**40.13.**—(1) Where a party fails to comply with the timetable, the Keeper may, whether on the motion of a party or otherwise, put the appeal out for a hearing before a procedural judge.

- (2) At a hearing under paragraph (1), the procedural judge may—
  - (a) in any case where the appellant or a respondent fails to comply with the timetable, make such order as he thinks fit to secure the expeditious disposal of the appeal;
  - (b) in particular, where the appellant fails to comply with the timetable, refuse the appeal; or
  - (c) in particular, where a sole respondent fails or all respondents fail to comply with the timetable, allow the appeal.

#### **Procedural hearing in appeal from inferior court**

**40.14.**—(1) At the procedural hearing fixed under rules 40.11(1)(b), 40.12(4)(b) or (5)(a), the procedural judge shall ascertain, so far as reasonably practicable, the state of preparation of the parties.

- (2) The procedural judge may—

- (a) appoint the appeal to the Summar Roll for a hearing and allocate a date and time for that hearing;
- (b) appoint the appeal to the Single Bills for a hearing and allocate a date and time for that hearing; or
- (c) make such other order as he thinks fit to secure the expeditious disposal of the appeal.

### **Appeals deemed abandoned**

**40.15.**—(1) If an appellant fails—

- (a) to apply by motion in accordance with rule 40.5(2) (leave to appeal out of time), or
- (b) to comply with the requirements of rule 40.7(2) (lodging process etc.),

he shall be deemed to have abandoned his appeal on the expiry of the period for marking an appeal or for complying with the requirements of rule 40.7(2), as the case may be.

(2) Where an appeal has been deemed to be abandoned by reason of paragraph (1)(b), a respondent may, within 7 days after the date on which the appeal is deemed to be abandoned, comply with the requirements of rule 40.7(2) (lodging process etc.) and thereafter insist in the appeal as if it had been marked by him; and the following provisions of this Chapter applying to an appellant shall, with the necessary modifications, apply to an appeal by a respondent under this paragraph.

(3) Where a respondent insists on an appeal under paragraph (2), the appellant shall be entitled to insist in the appeal notwithstanding that his appeal has been deemed to be abandoned.

(4) If, on the expiry of the period of 7 days after the date on which an appeal is deemed to be abandoned by virtue of paragraph (1)—

- (a) the appellant has not been reponed under rule 40.16, and
- (b) a respondent does not insist in the appeal under paragraph (2) of this rule,

the decision appealed against shall be treated in all respects as if no appeal had been marked, and the Deputy Principal Clerk shall transmit the appeal process to the clerk of the inferior court in accordance with paragraph (5) of this rule.

(5) Where an appeal process falls to be transmitted to the inferior court under paragraph (4), the Deputy Principal Clerk shall—

- (a) write on the interlocutor sheet, minute of court or other record containing the decision appealed against or on the separate note of appeal, as the case may be, a certificate in Form 40.15;
- (b) send the appeal process to the clerk of the inferior court; and
- (c) give written intimation to each party to the appeal of the date on which the appeal process was transmitted.

(6) Where an appeal is deemed to be abandoned under paragraph (1) and has been transmitted to an inferior court under paragraph (5)—

- (a) a respondent in the appeal may apply by motion to that court for an award of the expenses of the abandoned appeal; and
- (b) the inferior court shall on such motion grant decree for payment to that respondent of those expenses as taxed by the Auditor of the Court of Session.

### **Reponing against deemed abandonment**

**40.16.**—(1) An appellant may, within 7 days after the date on which the appeal has been deemed to be abandoned under rule 40.15(1), apply by motion to a procedural judge to be reponed.

(2) A procedural judge may grant a motion under paragraph (1) on such conditions as to expenses or otherwise as he thinks fit.

(3) On enrolling a motion under paragraph (1), the appellant shall lodge a process (or such necessary steps of process as have not already been lodged) and an appeal print.

### **Amendment of pleadings in appeals**

**40.17.**—(1) Where, after an appeal has been marked, any party applies by motion to have the pleadings amended in terms of a minute of amendment and answers, he shall apply for a direction as to further procedure.

(2) Where it appears that the amendment makes a material change to the pleadings, the Inner House may set aside the decision, or recall the interlocutor of the inferior court appealed against and remit the cause back to the inferior court for a further hearing.

### **Grounds of appeal**

**40.18.**—(1) Grounds of appeal shall consist of brief specific numbered propositions stating the grounds on which it is proposed to submit that the appeal should be allowed.

(2) On lodging grounds of appeal, the party lodging them shall—

- (a) lodge three copies of them in process; and
- (b) send a copy of them to every other party.

(3) A party who has lodged grounds of appeal or answers to the grounds of appeal may apply by motion to amend the grounds or answers, on cause shown.

(4) An application under paragraph (3) shall include any necessary application under rule 40.12(1).

### **Lodging of appendices in appeals**

**40.19.**—(1) Where, in an appeal under this Chapter, the appellant considers that it is not necessary to lodge an appendix to the appeal print, the appellant shall, by the relevant date specified in the timetable—

- (a) give written intimation of that fact to the Deputy Principal Clerk; and
- (b) send a copy of that intimation to each respondent.

(2) Where the appellant provides intimation under paragraph (1), a respondent may apply to a procedural judge, by motion, for an order requiring the appellant to lodge an appendix.

(3) An application under paragraph (2) shall include specification of the documents that the respondent seeks to have included in the appendix.

(4) Where an application is made under paragraph (2), a procedural judge may make an order requiring the appellant to lodge any appendix that the procedural judge considers necessary, within such time as the procedural judge may specify.

(5) An order under paragraph (4) may only be granted by a procedural judge after having heard parties.

(6) Paragraph (7) applies where—



- (a) a respondent seeks to submit for consideration by the court notes of evidence or documents in respect of which the appellant has given written intimation to the respondent that the appellant does not intend to include in his appendix; and
- (b) a procedural judge has not made an order under paragraph (2) requiring the appellant to lodge an appendix which includes such notes of evidence or documents.

(7) The respondent shall incorporate such notes or documents in an appendix which he shall lodge within such period as is specified by the procedural judge in disposing of the application under paragraph (4).

(8) Where, in any appeal other than one in which intimation is given under paragraph (1)

- (a) the judgment of the inferior court has not been included in the appeal print, or
- (b) it is sought to submit notes of evidence or documents for consideration by the court,

the appellant shall lodge an appendix incorporating such documents within such period as shall be specified in the timetable.

#### **Notes of evidence not extended when agreed in appeals**

**40.20.** Where, in an appeal, the parties are agreed that on any particular issue the decision appealed against is not to be submitted to review, it shall not be necessary to reproduce the notes of evidence or documents relating to that issue.

#### **Referral to family mediation in appeals from the sheriff court**

**40.21.** In an appeal from the sheriff court in which an order in relation to parental responsibilities or parental rights under section 11 of the Children (Scotland) Act 1995(19) is in issue, a procedural judge may, where he considers it appropriate to do so, refer that issue to a mediator accredited to a specified family mediation organisation.

#### **Use of Gaelic**

**40.22.**—(1) This rule applies where an inferior court has authorised the use of Gaelic by a party.

(2) If the party wishes to address the Inner House in Gaelic at any hearing fixed under rule 40.14(2), he may—

- (a) at any time up to and including the procedural hearing fixed under rules 40.11(1)(b), 40.12(4)(b) or (5)(a), apply by motion to the procedural judge for authority to do so; or
- (b) at any time after the procedural hearing fixed under rules 40.11(1)(b), 40.12(4)(b) or (5)(a) and before final disposal of the appeal, apply by motion for authority to do so.

(3) Where proof has been ordered by the Inner House, if the party wishes to give oral evidence in Gaelic, he may apply by motion for authority to do so.

(4) Where the court has granted authority under paragraphs (2) or (3), an interpreter shall be provided by the court.

### **Single Bills**

**40.23.** At any hearing of an appeal from a decision pronounced by an inferior court in the Single Bills, the Inner House may determine the motion or make such other order as it thinks fit.”.

**7.** In the Appendix—

- (a) omit Form 6.3;
- (b) for Form 38.6 substitute the Forms 38.5, 38.12, 38.13, 39.3 and 39.4 set out in Schedule 1 to this Act of Sederunt; and
- (c) for Form 40.9 substitute the Forms 40.10, 40.11 and 40.15 set out in Schedule 2 to this Act of Sederunt.

### **Transitional and saving provision**

**8.—(1)** Paragraphs 2 to 7 of this Act of Sederunt shall not apply—

- (a) in relation to reclaiming against a interlocutor pronounced before 5th April 2010;
- (b) in relation to an application for a new trial or to enter a jury verdict where the motion was lodged before that date;
- (c) in relation to an appeal from an inferior court, where an appeal was marked before that date.

(2) The Rules of the Court of Session 1994, as they applied immediately before 5th April 2010, continue to have effect in so far as paragraphs 2 to 7 of this Act of Sederunt do not apply by virtue of subparagraph (1).

Edinburgh  
4th February 2010

*A.C. HAMILTON*  
Lord President  
I.P.D.

SCHEDULE 1

Paragraph 7(b)

Form 38.5

Rule 38.5(1)

**Form of reclaiming motion to be written on Form 23.2**

On behalf of the pursuer [*or as the case may be*], for review by the Inner House of the interlocutor of (*date*) of the Lord Ordinary.

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

## Form 38.12

Rule 38.12(1)

### **Form of note of objection to competency of reclaiming**

(Cause Reference number)

IN THE COURT OF SESSION

NOTE OF OBJECTION TO COMPETENCY OF RECLAIMING

[A.B.]

Pursuer [*or* Petitioner]

against

[C.D.]

Defender [*or* Respondent]

To the Deputy Principal Clerk of Session

*(Name of claimer)*, pursuer [*or* petitioner *or* defender *or* respondent] and claimer, has marked a reclaiming motion in the above cause. *(Name of objecting party)*, [*where applicable*: pursuer *or* petitioner *or* defender and] respondent, objects to the competency of the reclaiming motion on the following grounds:

*(set out the grounds in brief numbered paragraphs)*

Date *(insert date)*

(Signed)

Solicitor for Pursuer/Petitioner/Defender/Respondent

(Address)

## Form 38.13

Rule 38.13(1)(a)

### Form of timetable in reclaiming motion

(Cause Reference number)

IN THE COURT OF SESSION

TIMETABLE IN RECLAIMING MOTION

[A.B.]

Pursuer [or Petitioner]

against

[C.D.]

Defender [or Respondent]

This timetable has effect as if it were an interlocutor of the court signed by the procedural judge. [*Where applicable:* This is a revised timetable issued under rule 38.14(4)(c) [or rule 38.14(5)(b)] which replaces the timetable issued on (*date*).]

1. The diet for a procedural hearing in relation to this reclaiming motion, which will follow on from the procedural steps listed in paragraphs 2 to 7 below, will take place on (*date and time*).
2. The claimer shall lodge grounds of appeal in the reclaiming motion, under rule 38.18(1) and (2), not later than (*date*).
3. Any answers to grounds of appeal lodged under rule 38.18(1) and (2) shall be lodged by a party other than the claimer not later than (*date*).
4. Subject to the terms of any order made by a procedural judge under rule 38.19(2), any appendices to the reclaiming print shall be lodged not later than (*date*).
5. Any written intimation by the claimer under rule 38.19(1) that he does not intend to lodge any appendices to the reclaiming print shall be provided by (*date*).
6. Not later than (*date*) parties shall lodge notes of argument in the reclaiming motion.
7. Not later than (*date*) parties shall lodge estimates of the length of any hearing required to dispose of the reclaiming motion.

(*Date*)

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

## Form 39.3

Rule 39.3(1)

### **Form of note of objection to competency of application for a new trial**

(Cause Reference number)

IN THE COURT OF SESSION

NOTE OF OBJECTION TO COMPETENCY OF APPLICATION

[A.B.]

Applicant

against

[C.D.]

Respondent

To the Deputy Principal Clerk of Session

*(Name of applicant)*, applicant has made an application for a new trial under section 29(1) of the Court of Session Act 1988 in the above cause. *(Name of objecting party)*, respondent, objects to the competency of the application on the following grounds:

*(set out the grounds in brief numbered paragraphs)*

Date *(insert date)*

*(Signed)*

Solicitor for Respondent

*(Address)*

## Form 39.4

Rule 39.4(1)

### Form of timetable in application for a new trial

(Cause Reference number)

IN THE COURT OF SESSION

TIMETABLE IN APPLICATION FOR A NEW TRIAL

[A.B.]

Applicant

against

[C.D.]

Respondent

This timetable has effect as if it were an interlocutor of the court signed by the procedural judge. [Where applicable: This is a revised timetable issued under rule 39.5(4)(c) [or rule 39.5(5)(b)] which replaces the timetable issued on (date).]

1. The date for a procedural hearing in relation to this application, which will follow on from the procedural steps listed in paragraphs 2 to 5 below, will take place on (date and time).
2. Subject to the terms of any order made by a procedural judge under rule 38.19(2), any appendices to the documents mentioned in rule 39.1(4) shall be lodged not later than (date).
3. Any written intimation by the applicant that he does not intend to lodge any appendices to the documents mentioned in rule 39.1(4) shall be provided by (date).
4. Not later than (date) parties shall lodge notes of argument in the application.
5. Not later than (date) parties shall lodge estimates of the length of any hearing required to dispose of the application.

(Date)

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

SCHEDULE 2

Paragraph 7(c)

Form 40.10

Rule 40.10(1)

**Form of note of objection to competency of appeal from inferior court**

(Cause Reference number)

IN THE COURT OF SESSION

NOTE OF OBJECTION TO COMPETENCY OF APPEAL

[A.B.]

Appellant

against

[C.D.]

Respondent

To the Deputy Principal Clerk of Session

*(Name of appellant)*, appellant has marked an appeal from an inferior court in the above cause.  
*(Name of objecting party)*, respondent, objects to the competency of the appeal on the following grounds:

*(set out the grounds in brief numbered paragraphs)*

Date *(insert date)*

*(Signed)*

Solicitor for Respondent

*(Address)*



## Form 40.11

Rule 40.11(1)(a)

### Form of timetable in appeal from inferior court

(Cause Reference number)

IN THE COURT OF SESSION

TIMETABLE IN APPEAL

[A.B.]

Appellant

against

[C.D.]

Respondent

This timetable has effect as if it were an interlocutor of the court signed by the procedural judge. [*Where applicable:* This is a revised timetable issued under rule 40.12(4)(c) [*or* rule 40.12(5)(b)] which replaces the timetable issued on (*date*).]

1. The diet for a procedural hearing in relation to this appeal, which will follow on from the procedural steps listed in paragraphs 2 to 10 below, will take place on (*date and time*).
2. The appellant shall lodge a process under rule 40.7(2)(a) not later than (*date*).
3. The appellant shall send copies of the appeal print under rule 40.7(2)(b) not later than (*date*).
4. Any motion by the appellant to sist the process of the appeal under rule 40.8(1) shall be lodged not later than (*date*).
5. Grounds of appeal under rule 40.18(1) shall be lodged not later than (*date*).
6. Any answers to grounds of appeal lodged under rule 40.18(1) shall be lodged not later than (*date*).
7. Subject to the terms of any order made by a procedural judge under rule 40.19(2), any appendices to the appeal print shall be lodged not later than (*date*).
8. Any written intimation by the appellant under rule 40.19(1) that he does not intend to lodge any appendices to the appeal print shall be provided by (*date*).
9. Not later than (*date*) parties shall lodge notes of argument in the appeal.
10. Not later than (*date*) parties shall lodge estimates of the length of any hearing on the Summar Roll or in the Single Bills which is required to dispose of the appeal.

(Date)

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

## Form 40.15

Rule 40.15(5)(a)

### **Form of certification by Deputy Principal Clerk on retransmitting abandoned appeal**

*(Date)* Retransmitted in respect of the abandonment of the appeal.

*(Signed)*

Deputy Principal Clerk of Session

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### **EXPLANATORY NOTE**

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

This Act of Sederunt makes amendments to the Rules of the Court of Session 1994.

It introduces new rules of procedure for causes in the Inner House. These rules relate to the quorum of the Inner House for dealing with procedural business, as well as the procedures for dealing with reclaiming motions, applications for new trials or to enter jury verdicts and appeals from inferior courts.

Consequential amendments are made to the rules on the lodging of documents in Inner House causes and on the issuing of Inner House interlocutors.

A reclaiming motion against an interlocutor pronounced before 5th April 2010, an application for a new trial or to enter a jury verdict lodged before 5th April 2010 and an appeal from an inferior court marked before 5th April 2010 will all be governed by the rules of procedure in force prior to that date.