



Scottish Civil Justice Council

ANALYSIS OF RESPONSES: To the Inner House Rules consultation

Issued: 11 January 2023

CONTENTS

	<u>Page</u>
SECTION 1 - INTRODUCTION	3
SECTION 2 - THE CONSULTATION QUESTIONS	5
SECTION 3 - FEEDBACK ON THE DRAFT RULES	6

Appendices:

Appendix 1 - Bibliography

Appendix 2 - Table of Amendments Made

Appendix 3 – Relevant Data

SECTION 1 - INTRODUCTION

Purpose

1. The purpose of this paper is to provide an analysis by the secretariat of the seven responses received to the targeted consultation on Inner House Rules.

Timing

2. *Consultation* - This twelve week consultation opened 5 July 2022 and was due to close on 27 September 2022. Following requests from a number of respondents, the closing date was extended by 2 weeks until 11 October 2022.
3. *Rule Changes* - The current Inner House Rules are seen as working well. Any rule changes arising following this consultation will be progressed through the Councils normal drafting and approvals processes.

Why was this targeted consultation undertaken?

4. The Councils statutory remit includes keeping the civil justice system under review. As the current Inner House Rules have been operational for some time the Council wished to identify any relevant learning from the rules in use that would enable the development of improved rules.
5. Providing that feedback requires specialist technical expertise, along with good practical working experience of the rules in use. That expertise sits with the regular recurrent users and hence a Targeted Consultation was undertaken. The alternative of a full Public Consultation was rejected to minimise adverse resource impacts on any other potential respondents.
6. The objectives set for this targeted consultation were:

To capture lessons learned – to access the lived experience of regular recurrent users to identify opportunities for improvement.

To consolidate and simplify the content – to make minor edits that reduce and simplify the wording where that can help to deliver improved readability.

To remove redundant provisions – to withdraw any rules that have become irrelevant due to the changes made by this review, or other enactments.

To depersonalise tasks - where a rule places an obligation on the court to do something, the Councils preference is to state that obligation as resting on the court itself where possible; rather than the judicial office holder or court official who may otherwise be delegated that task on the courts behalf.

Responses

7. There were 7 responses received from organisational bodies, with no responses received from individuals:

NUMBER OF RESPONSES				
CATEGORY	RESPONDENT	Organisations	Individuals	COMBINED TOTAL
Judiciary	Inner House User Group	1	0	1
	Commercial Judges of the Court of Session	1	0	1
	Sheriffs Principal	1	0	1
	Sheriffs & Summary Sheriffs	1	0	1
Practitioners	Faculty of Advocates	1	0	1
	Law Society of Scotland	1	0	1
Officials	Scottish Courts and Tribunals Service	1	0	1
	TOTALS	7	0	7

8. Those 7 responses are available online, within the consultation section of the Councils website.

Next Steps

9. Following the publication of this analysis the next steps will be:

- *Drafting Instructions* – this report will be considered by the Council who will then confirm their drafting instructions for any amendments to these rules;
- *Rules finalised* – once drafted, the finalised rules will be considered by the Council then submitted to the Court of Session for their consideration and approval; and
- *Rules published* – assuming the Council's proposed rules are approved by the Court of Session, an Act of Sederunt would then be laid with the Scottish Parliament and published via legislation.gov.uk.

Secretariat to the Scottish Civil Justice Council
January 2023

SECTION 2 – THE CONSULTATION QUESTIONS

10. The Council invited consultees to provide answers to the following three questions:

Question 1 – Given your experience of the practical operation of the rules in use, can you tell us what has worked well, and what has worked not so well?

11. Several correspondents noted that the existing rules work well and the Inner House is operating efficiently. Cases are handled proactively, there are no delays, most procedural business can be dealt with on the papers, hearings are allocated promptly, substantive hearings are usually completed within two days and judgements are issued expeditiously. There is always room for minor improvements to the rules but there are no issues that would warrant making more fundamental rule changes.
12. The existing urgent disposal procedure is reserved for cases of exceptional and genuine urgency such as cases involving the welfare of children, interim interdict or urgent commercial deadlines. That procedure is rarely used and judgements are issued without delay. Respondents did find it difficult to perceive the driver for change.
13. For the data provided on the volume of appeals it was noted that the management of appeals in the Sheriff Appeal Court may benefit from the provision of a more detailed breakdown.
14. It was observed that the requirement to lodge answers to grounds of appeal in a reclaiming motion can often result in unnecessary expense.

Question 2 – Do you wish to provide comments on any of the proposed changes to the Inner House rules as set out within section 3 of this paper?

15. Respondents did mainly comment on the specific rule changes as proposed in the Consultation Paper. That feedback is summarised in section 3.

Question 3 - Can you suggest any other specific rule changes that might further improve the procedures used by the Inner House?

16. At the same time as lodging authorities the parties could be required to lodge a joint statement of uncontroversial legal propositions.
17. When modernising the terminology, consideration could be given to replacing the terms Single Bills and Summar Roll.
18. It is expected that an updated Practice Note will be issued at the same time as new rules are published.

SECTION 3 - FEEDBACK ON THE DRAFT RULES

19. This section summarises each respondent's feedback on the changes proposed by the Council across the four RCS chapters that were subject to review. Further detail is available within each of the individual responses as published online.

Proposed changes in - CHAPTER 37A: Procedural business in the Inner House

Removing the prohibition on chairs being procedural judges

Original Number	Revised Number	Cross Heading
37A.2	No change	Procedural judges in the Inner House

20. Under existing rule 37A.2 the Lord President and Lord Justice Clerk are prohibited from sitting as procedural judges. The proposed change would remove that prohibition, and simplify the overall wording of rule 37A.2.

21. There was no consultation feedback on this proposed change.

Proposed changes in - CHAPTER 38: Reclaiming:

Introduction

Original Number	Revised Number	Cross Heading
38.1	No change	Introduction

22. The feedback received was:

- This rule had been the subject of argument in a number of appeals and reclaiming motions in recent years. A final check between the rule as amended and those interlocutors which cannot be reclaimed may be useful.
- Adding the phrase "including a commercial judge" may be problematic given that term is not defined in primary legislation. If necessary the term "intellectual property judge" could be added as well.

Rationalising the time limits for reclaiming

Original Number	Revised Number	Cross Heading
38.2	No change	Reclaiming days

23. The existing wording of rule 38.2 sets out whether a particular step in process should be taken within 7, 14 or 21 days, and whether or not that step requires

leave. The proposed change reorders the content to more clearly state the number of reclaiming days alongside the types of interlocutor for which that number of days is applicable. The number of days was reduced in some instances.

24. The feedback received on the proposed changes to timescales was:

- Any 7 day timescale is very tight for practitioners and likely to present difficulties with compliance, particularly if you do add in a new requirement to lodge grounds of appeal earlier. Where leave is required then 14 days is more appropriate to provide advice on reclaiming, obtain instructions and draft the necessary pleadings.
- The decision to reclaim is usually sensitive and complex involving input from clients, agents and counsel. There should be no reduction from 14 days for reclaiming against procedural decisions.
- Decisions on permission for group proceedings - should be able to proceed without leave, or if leave is required then it should be 14 days.
- Decisions on granting or refusing summary decree - should be able to proceed without leave, or if leave is required then it should be 14 days

25. The feedback received on expenses was:

- It would be preferable for issues relating to expenses to all be dealt with at the same time. That would be assisted if the new rule 38.2 (3) was amended to read as: “an order for expenses (including any additional fee)”.

Leave to reclaim

<i>Original Number</i>	<i>Revised Number</i>	<i>Cross Heading</i>
38.3	No change	Leave to reclaim etc. in certain cases

26. The feedback received on Commercial Actions was:

- Under the existing rule 38.3 (5) and (6) interlocutors issued by a Commercial Judge cannot be appealed against without the leave of the Commercial Judge. That aids the speedy determination of commercial actions as it prevents unnecessary delays being caused by appeals. Several respondents insisted those rules should be retained in order to protect the special ethos of the Commercial Court. That will allow the commercial Judges of the Court of Session to continue to manage Commercial Actions efficiently and effectively.

27. The feedback received on objections to the reports of the Auditor was:

- It would be preferable to have 14 days to seek leave to reclaim a note of objection to the report of the Auditor (rather than retain the 7 days specified previously).

Amending the method of reclaiming

<i>Original Number</i>	<i>Revised Number</i>	<i>Cross Heading</i>
38.5	No change	Method of reclaiming

28. The existing rule 38.5 (2) set out the documents a claimer should lodge at the same time as they lodge their reclaiming motion. To reduce the overall timelines for progressing appeals, the proposals made were:

- Rule 38.5 (2) (d) – to add a new requirement for the grounds of appeal to be lodged with the reclaiming motion, instead of waiting to receive those grounds on the date otherwise specified in the timetable issued by the keeper.
- Rule 38.5 (2) (e) – to require the claimer to estimate the likely duration of a hearing earlier in process; and
- Rule 38.5 (2) (f) – to require the claimer to indicate their preference for the procedure to be used (standard or fast track).

29. The feedback received on grounds of appeal was:

- The proposal to lodge grounds of appeal earlier with the reclaiming motion may prove counterproductive. The grounds may be either less well focussed and longer, or simply skeletal. If that happens you are likely to see far more motions being lodged for permission to amend the grounds of appeal. A better quality submission should arise if this is left as a timetabled event that happens later in the process.
- As parties are not usually permitted to alter the grounds of appeal it is vital they are fully and accurately stated from the outset. When lodged earlier in process, some may lack the benefit of having the Lord Ordinaries opinion which will reduce their utility.
- The rules have rightly removed the need to lodge answers to grounds of appeal but it was noted that some references remain listed in the schedule and timetable.

30. The feedback received on duration estimates was:

- The utility of lodging estimates before knowing the extent to which points are accepted by the respondent, or cross appeals are intimated, is questionable.
- When making submissions earlier the parties are likely to under or overestimate the duration, as the real issues in the case will not yet be clear to them. That is likely to result in a less efficient system.
- It may be more efficient to continue with the current approach where estimates for the length of a Summar Roll are the final timetabled event lodged just before the procedural hearing.
- If early estimates do change frequently, the requirement to apply to vary a diet under rule 38.5 (6) may prove problematic for court programming.

31. The feedback received on using reclaiming prints was:

- Under rule 38.5 the ‘reclaiming print’ and the need to lodge one are removed, but several references to reclaiming print remain elsewhere within the rules.

- The term ‘reclaiming print’ should be retained as it’s a readily understood term. It should be lodged later in conformity with an issued timetable. It is not required at the stage of enrolling the reclaiming motion.

32. The feedback received on lodging copies was:

- It is unclear why there is a requirement for three copies of the grounds of appeal, but only one copy of each other document listed.

Establishing a fast track procedure, and withdrawing urgent disposal

33. To modernise the terminology used, the proposed change was to introduce a fast track procedure by inserting the new rule 38.6:

Original Number	Revised Number	Cross Heading
-	38.6	Allocation of reclaiming motion to fast track procedure

34. As a consequence, the existing urgent disposal procedure would be withdrawn:

Original Number	Revised Number	Cross Heading
38.11	-	Urgent disposal of reclaiming motion.
38.11A	-	Required application of certain reclaiming motions for urgent disposal

35. The feedback received on fast track procedure was:

- It should be recognised that the Inner House operates very efficiently and in practice the early disposal of cases is rarely considered to be necessary or appropriate. There are no significant delays in timetabling.
- Rule 38.5 (2) (f) requires the claimer to indicate their preference for using standard or fast track procedure by lodging a statement. Having a further requirement at rule 38.6 (1) to then lodge a motion with a defined form of words would appear to be a duplication.
- Rule 38.6 (5) implies cases must be assigned to fast track procedure except on cause shown. That runs contrary to the Consultation Paper (para. 18) which suggested that fast track procedure would be used rarely.
- Rule 38.6 (6) sets out those cases that must use fast track procedure. That should include the granting or refusing to make a Permanence Order under the Adoption and children (Scotland) Act 2007.

Reclaiming out of time

Original Number	Revised Number	Cross Heading
38.9	38.11	Reclaiming out of time

36. The feedback received was:

- Removal of the requirement to show “mistake or inadvertence” does provide the court with more flexibility and discretion.

Simplifying the procedure used for lodging objections

37. The proposal was to reword Rule 38.12 to simplify how you can lodge and intimate objections to the competency of reclaiming motions:

Original Number	Revised Number	Cross Heading
38.12	38.12	Objections to the competency of reclaiming

38. The feedback received on objections was:

- Rule 38.12 (2) changes “period of 14 days after” to “within 14 days of” which can cause confusion about whether the first day is included.
- The use of the word “marked” has been retained in 38.12 (2). Elsewhere that word has been replaced with “enrolled”.
- The previous provisions for court officials to refer appeals of doubtful competency to a procedural judge are being revoked. It may be preferable to retain broadly equivalent provisions within this rule.

The depersonalisation of tasks

39. Where a rule places an obligation on the court to do something, it is the Councils policy to state that obligation as resting on the court itself; rather than a judicial office holder or court official who may be delegated that task on the courts behalf.

40. The proposal was to implement that depersonalisation of tasks within the following rules:

Original Number	Revised Number	Heading
38.12	38.12	Objections to the competency of reclaiming
38.13	38.14	Timetable in standard procedure
38.14	38.17	Sist or variation of timetable in reclaiming motion
38.15	38.18	Failure to comply with timetable in reclaiming motion
38.19	38.22	Lodging of appendices in reclaiming motion

41. There was no consultation feedback on these changes.

Referral of reclaiming motion for allocation

42. The proposal was to insert a new rule 38.13 to set out the timings within which a reclaiming motion should be placed before a procedural judge. Those timings are specified as 7 days under standard procedure, and ‘the next court day’ under fast track procedure.

Original Number	Revised Number	Cross Heading
-	38.13	Referral of reclaiming motion for allocation

43. The feedback received was:

- Rule 38.13 (a) applies where a note of objection has not been lodged. It refers back to a 14 day timeframe in rule 38.12 (4) which applies when such a note of objection has been lodged. That is potentially confusing.

Timetable in standard procedure

Original Number	Revised Number	Cross Heading
38.13	38.14	Timetable in standard procedure

44. The feedback received was:

- When issuing a timetable under the proposed rule, counsel’s availability will seldom be known. That will create considerable practical difficulty for agents and counsel.
- Under current procedure allocation is sometimes made on the Single Bills, and the new rule should provide for that.
- At present the Summar Roll hearing is only fixed once all documents are in final form. The proposed new rule would fix that hearing date much earlier in process and the risks with making that change include:
 - *The volume of motions* - there will be a significant rise in motions lodged to amend hearing dates, which will impact on court programming and the management of practitioner’s diaries to meet wider court commitments.
 - *Judicial resourcing* - it will be more difficult for the keeper to allocate those who have specialist expertise in the right areas to judge’s benches, and factor in their reading in time and writing time.
- There is a Practice Note requirement for lodging the core bundle. It was suggested this requirement could also be brought within this rule.

Notes of Argument

45. The requirements for lodging Notes of Argument are set out within the Practice Note (at paragraph 89). The proposal was to insert rule 38.15 which would bring that requirement within the body of the rules:

Original Number	Revised Number	Cross Heading
-	38.15	Notes of argument

46. The feedback received was:

- The consultation paper did not specify a reason for this change.
- It may be preferable to leave these matters within a Practice Note, as they can be changed more easily to reflect experience (compared to having rules that are specified within secondary legislation).
- Rule 38.15 (c) supports the exchange of notes of argument, but requires parties to agree. Making the exchange of that information mandatory before

finalising the Notes of Argument would be helpful in distilling the issues that are genuinely in dispute.

- A timing provision that did require the reclaimer to lodge their note of argument seven days prior to the respondent would be helpful.

47. The Councils guiding principles include the need to provide for consistency of practice and procedure across the courts. In that regard readers should note that for the Sheriff Appeal Court these requirements for lodging Notes of Argument (rules 7.7 & 8.3) have been included within those rules since they were first commenced in 2016.

Authorities

48. The requirements when lodging Authorities are as set out within the Practice Note (at paragraphs 90 to 91). The proposal was to insert rule 38.16 which would specify that requirement within the body of the rules, along with a new requirement for permission if lodging more than ten authorities.

Original Number	Revised Number	Cross Heading
-	38.16	Authorities

49. The feedback received was:

- The Consultation Paper did not specify a reason for this change.
- It may be preferable to leave these matters within a Practice Note, as they can be changed more easily to reflect experience (compared to rules specified within secondary legislation).
- Rather than setting a default limit, the rule could say that a) parties should not lodge authorities for uncontroversial propositions and b) parties should not lodge multiple authorities for more than one proposition.
- Scarce court time should not be wasted debating whether extra authorities are required over an arbitrary limit of ten.
- Adding the ability to limit expenses at rule 38.16 (6) seems at odds with the courts general reluctance to modify awards to reflect mixed or partial success.

50. For consistency within the appellate courts, it is noted that within the 2021 rules review for the Sheriff Appeal Court the requirements for lodging authorities (rules 7.10 & 8.4) were shifted from the Practice Note to the rules, and a threshold of 10 authorities applies.

Procedural hearing in reclaiming motion

Original Number	Revised Number	Cross Heading
38.16	38.19	Procedural hearing in reclaiming motion

51. The feedback received was:

- Rule 38.19 (2) (a) - may be a duplication, as the date of the Summar Roll hearing would already have been fixed under rule 38.14 (c).
- Rule 38.19 (2) (b) – is potentially confusing given rule 38.16 and 38.19C.

Applications by motion

Original Number	Revised Number	Cross Heading
38.17	38.20	Amendment of pleadings in reclaiming motions
38.18	38.21	Amendment of grounds of appeal in reclaiming motion

52. The feedback received was:

- For rule 38.20 (1) and rule 38.21 (1) - deleting the words “by motion” may be inappropriate as it removes the previous clarity on how the party is supposed to apply. It may also create unnecessary confusion over whether a court fee would apply.

Appendices

53. The existing rule on lodging appendices has been amended to make it clearer that an appendix can only consist of material that was before the Lord Ordinary, unless on cause shown.

Original Number	Revised Number	Cross Heading
38.19	38.22	Lodging of appendices in reclaiming motion

54. The feedback received was:

- It would be preferable for the rules to reflect the current practice whereby prior to a procedural hearing the parties do try to agree a joint appendix, or where that is too large a core bundle.
- The Practice Note references to core bundles have not been brought within the rules. They are a particular useful tool when dealing with large appendices (over 500 pages).
- References to “reclaiming print” remain within this rule whereas they have been removed elsewhere.
- The Consultation Paper indicated that the changes made were to clarify that only documents which had been before the Lord Ordinary would be included in an appendix, unless on cause shown. In the absence of references to cause shown within this rule it’s not clear that the full policy intent has been met.

Proposed changes in - CHAPTER 39: Applications for new trials or to render jury verdicts:

Removal of redundant rules

55. From 1 January 2016 applications for new trials or to render jury verdicts in the sheriff courts have been directed to the Sheriff Appeal Court (SAC). The proposed change withdraws two redundant rules to recognise that change:

Original Number	Revised Number	Cross Heading
39.1A	-	Applications for new trial: sheriff court cases
39.9A	-	Application to enter jury verdict: sheriff court cases

56. There was no consultation feedback on this proposed change.

Other rules being withdrawn

57. Simplifying and consolidating rules resulted in the relocation of some procedural information within Chapter 39, allowing the following rules to be withdrawn:

Original Number	Revised Number	Heading
39.3	-	Objections to the competency of application
39.5	-	Sist or variation of timetable in application for a new trial
39.6	-	Failure to comply with timetable in application for a new trial
39.8	-	Lodging of appendix
39.10	-	Single Bills

58. There was no consultation feedback on these changes.

The depersonalisation of tasks

59. Changes that put an obligation to do something onto the court (rather than the Keeper) were made in the following rule:

Original Number	Revised Number	Heading
39.4	39.5	Timetable in application for a new trial

60. There was no consultation feedback on this change.

Proposed changes in - CHAPTER 40: Appeals from lower courts:

Modernising the terminology

61. To modernise the language used; the proposed change was to replace the term “*inferior courts*” with “*lower courts*” within the chapter title, and wherever that term appears within a relevant rule.

62. There was no consultation feedback on this proposed change.

Applications for leave to appeal

Original Number	Revised Number	Cross Heading
40.2	No change	Applications for leave to appeal from lower court

63. The feedback received was:

- Rule 40.2 (5) requires three copies of the grounds of appeal. The purpose of having that rule is unclear when those grounds are already included within the application for leave.
- It may be helpful if rule 40.3 was to appear before rule 40.2.

Procedure following transmission

Original Number	Revised Number	Cross Heading
40.7	40.8	Procedure following transmission of appeal process

64. The feedback received was:

- Rule 40.8 (2) retains references to an 'appeal print' whereas such references have been removed elsewhere in the rules.

Establishing a fast track procedure and withdrawing urgent disposal procedure

65. Refer to the above comments on chapter 38, for feedback on these changes.

Other rules that can be withdrawn

66. Simplifying and consolidating rules results in the relocation of some procedural information, allowing the following rules to be withdrawn:

Original Number	Revised Number	Heading
40.8	-	Sist of process of appeal
40.10	-	Objections to the competency of appeals

67. There was no consultation feedback on these proposed changes.

The depersonalisation of tasks

68. The proposed changes that put a legislative obligation to do something onto the court (rather than the clerk of the lower court, the Deputy Principal Clerk or the Keeper) are evident in the following rules:

Analysis of Responses: to the Inner House Rules consultation

Original Number	Revised Number	Heading
40.3	40.4	Determination of applications for leave to appeal from lower court
40.4	40.5	Time and method of appeal
40.5	40.6	Leave to appeal out of time
40.6	40.7	Transmission of appeal process
40.7	40.8	Procedure following transmission of appeal process
40.11	40.9	Timetable in appeal from lower court
40.15	40.10	Appeals deemed abandoned

69. There are exceptions where that obligation to do something should remain with a named court official, which is evident within the following rules and forms:

Original Number	Revised Number	Heading
40.1	40.1	Interpretation
40.6	40.7	Transmission of Appeal Process
FORM 40.11	FORM 40.15	Form of certification by Deputy Principal Clerk on retransmitting abandoned appeal

70. There was no consultation feedback on these proposed changes

Notes of Argument and Authorities

71. Refer to the above comments on chapter 38, for feedback on these changes.

Appendices

72. Refer to the above comments on chapter 38, for feedback on these changes.

ANNEX 1 - BIBLIOGRAPHY

Primary Legislation:

Courts Reform (Scotland) Act 2004:

Part 5: Civil Appeals:

- Section 113: Appeal from the Sheriff Appeal Court to the Court of Session
- Section 114: Appeal from the sheriff principal to the Court of Session
- Section 115: Appeals: granting of leave or permission and assessment of grounds of appeal
- Section 116: Effect of appeal
- Section 117: Appeals to the Supreme Court

Court of Session Act 1988:

Part IV Appeals and Review:

- Section 28: Reclaiming
- Section 29: Application for new trial
- Section 30: Restrictions on granting of application for new trial
- Section 31: Verdict may be returned subject to opinion of Inner House on point reserved.
- Section 31A: Power to provide for single judge of Inner House to determine leave or permission and assess grounds of appeal
- Section 32: Appeals
- Section 33: Transmission for sheriff to court on grounds of contingency
- Section 40: Appeals to the Supreme Court
- Section 40A: Permission for appeal under section 40

Rules of the Court of Session (RCS):

The Court of Session rules are available [here](#).

The chapters within scope for this review of the Inner House Rules are:

- CHAPTER 37A Procedural business in the Inner House
- CHAPTER 38 Reclaiming
- CHAPTER 39 Applications for new trials or to render jury verdicts
- CHAPTER 40 Appeals from inferior courts

The chapters that are out of scope for this review are:

- CHAPTER 41 Appeals under statute
- CHAPTER 41A Appeals to the Supreme Court

Practice Notes:

- [No.3 of 2011](#).- Causes in the Inner House
- [No.2 of 2021](#) - Causes in the Inner House – hearings by video conference

ANNEX 2 – TABLE OF AMENDMENTS MADE

SEP 1994 - The Rules of the Court of Session 1994 were commenced via:

<i>Statutory Instrument</i>	<i>SSI</i>	<i>W.E.F</i>	<i>Commentary</i>
Act of Sederunt (Rules of the Court of Session 1994) 1994	1194/1443	05 Sep 1994	

Within the original Rules of the Court of Session 1994, the principal Inner House rules were set out in three chapters:

- RCS CH 38 (reclaiming)
- RCS CH 38 (applications for new trials or to enter jury verdicts)
- RCS CH 40 (appeals from inferior courts)

APR 2010 – Following a review the existing chapters 38, 39 and 40 were replaced and a **new chapter (37A) added**

- RCS CH 37A (procedural business in the inner house)
- RCS CH 38 (reclaiming)
- RCS CH 38 (applications for new trials or to enter jury verdicts)
- RCS CH 40 (appeals from inferior courts)

<i>Statutory Instrument</i>	<i>SSI</i>	<i>W.E.F</i>	<i>Explanatory Note</i>
Act of Sederunt (Rules of the Court of Session Amendment No. 2) (Causes in the Inner House) 2010	2010/30	05 Apr 2010	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.

ANNEX 2 – TABLE OF AMENDMENTS MADE ...continued

SEP 2011 – A new chapter (41) was added to cover appeals under statute. The principal Inner House rules were now set out across five chapters:

- RCS CH 37A (procedural business in the inner house)
- RCS CH 38 (reclaiming)
- RCS CH 38 (applications for new trials or to enter jury verdicts)
- RCS CH 40 (appeals from inferior courts)
- RCS CH 41 (appeals under statute)

<i>Statutory Instrument</i>	<i>SSI</i>	<i>W.E.F</i>	<i>Explanatory Note</i>
Act of Sederunt (Rules of the Court of Session Amendment No. 5) (Causes in the Inner House) 2011	2011/303	27 Sep 2011	<p>It introduces new rules of procedure for causes in the Inner House. These rules relate to appeals under statute. A new Chapter 41 is substituted into the Rules. Some amendments are also made to the rules relating to the quorum of the Inner House for dealing with procedural business, and the procedural rules for dealing with reclaiming motions, applications for new trials or to enter jury verdicts and appeals from inferior courts.</p> <p>Appeals under statute which are lodged before 27th September 2011 will be governed by the rules of procedure in force prior to that date.</p>

ANNEX 2 – TABLE OF AMENDMENTS MADE ...continued

SEP 2015 – A new chapter (41A) was added to cover appeals to the UK Supreme Court. The principal Inner House rules are now set out across the following chapters:

- RCS CH 37A (procedural business in the inner house)
- RCS CH 38 (reclaiming)
- RCS CH 38 (applications for new trials or to enter jury verdicts)
- RCS CH 40 (appeals from inferior courts)
- RCS CH 41 (appeals under statute)
- RCS CH 41A (appeals to the supreme court)

<i>Statutory Instrument</i>	<i>SSI</i>	<i>W.E.F</i>	<i>Explanatory Note</i>
Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No. 3) (Courts Reform (Scotland) Act 2014) 2015	2015/228	27 Sep 2015	<p>Paragraph 5 of this Act of Sederunt inserts a new Chapter 41A into the Rules in consequence of amendments to the Court of Session Act 1988 ("the 1988 Act") made by the 2014 Act.</p> <p>Previously, appeals from decisions of the Inner House of the Court of Session could be made to the Supreme Court under section 40 of the 1988 Act without any requirement to seek prior permission to appeal from the Inner House. Section 117 of the 2014 Act replaces the provisions of section 40 of the 1988 Act with a new section 40, so that permission to appeal must be granted by the Inner House or, if the Inner House refuses permission, by the Supreme Court.</p> <p>New Chapter 41A sets out the procedure to be followed by an applicant who wishes to seek permission to appeal to the Supreme Court. A new Form 41A.2 (application for permission to appeal to the Supreme Court) is prescribed for this purpose.</p>

ANNEX 3 – RELEVANT DATA

The following statistics reflect the volume of appeals initiated within the Inner House over the last 4 years:

Appeals initiated in the Inner House of the Court of Session, by case type 2017-18 to 2020-21					
Case Type	2017-18	2018-19	2019-20	2020-21	
					% <i>Mix</i>
<u>Reclaiming Motions</u>	64	73	93	107	<u>56%</u>
- <i>general department</i>	28	35	33	61	
- <i>petition department</i>	36	38	60	46	
<u>Sheriff Court Appeals</u>	31	21	21	9	<u>5%</u>
<i>Damages</i>	3	0	1	0	
<i>Debt</i>	1	0	1	0	
<i>Family: Divorce</i>	0	0	0	0	
<i>Family: Other</i>	0	1	0	0	
<i>Land / Heritable</i>	1	0	0	0	
<i>Personal Injury</i>	0	0	0	0	
<i>Other</i>	26	20	19	9	
<u>Other Courts / Tribunals Appeals</u>	87	92	117	74	<u>39%</u>
All Appeals	182	186	231	190	<u><u>100%</u></u>

Note - this data is sourced from the [supplementary tables](#) to the latest [Civil Justice Statistics](#) in Scotland publication, as published by the Scottish Government on 22 April 2022: