

## CHAPTERS 37A TO 40 OF THE RULES OF THE COURT OF SESSION

### TRACKED CHANGES

#### CHAPTER 37A

##### PROCEDURAL BUSINESS IN THE INNER HOUSE

###### Quorum of Inner House for certain business

37A.—(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~~ is one judge ("procedural 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.~~46~~<sup>19</sup>(2);
- (b) an application for a new trial under section 29 of the Act of 1988 or to enter a jury verdict under section 31 of the Act of 1988 up to and including the procedural steps ~~either~~ mentioned in rule 39.~~7(2)~~<sup>4</sup> or, ~~as the case may be, under the application of rule~~ 39.~~92~~<sup>1</sup>(1)(e);
- (c) an appeal from ~~an inferior lower~~ court within the meaning of rule 40.1~~(2)~~(c), up to and including the procedural steps ~~mentioned in rule 40.14(2) taken in a procedural hearing fixed—~~
  - (i) after the completion of the procedural steps set down by a timetable issued under rule 40.9; or
  - (ii) under the application of rule 40.3(e);
- (d) an appeal to the court under Chapter 41 (appeals under statute)—
  - (i) in the case of an appeal under Part II of that Chapter (appeals by stated case etc.), up to and including the procedural steps mentioned in rule 41.21(2);
  - (ii) in the case of an appeal under Part III of that Chapter (appeals in Form 41.25), up to and including the procedural steps mentioned in rule 41.32(2).

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

~~37A.2–(1) All judges of the Inner House, except the Lord President and the Lord Justice Clerk, are procedural judges before whom proceedings in the Inner House shall be brought in accordance with Chapters 38 to 41.~~

~~(2) In this rule and in Chapters 38 to 41, “procedural judge” means a judge as referred to in paragraph (1).~~

~~(2) 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 that is considered 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;(including a commercial judge);
- (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 is to~~ 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 mentioned in paragraph (2) may be reclaimed, without leave, within 21 days.~~

~~(2) An interlocutor—~~

~~(a) disposing, either by itself or taken along with a previous interlocutor, of—~~

(a) the whole subject matter of the cause; or

(b) disposing, either by itself or taken along with a previous interlocutor, of the whole, or part, of the 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(c) 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 ~~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(d) 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(e) limiting the mode of proof;

(d) an interlocutor(f) adjusting issues for jury trial;

(e) an interlocutor(g) granting, refusing, recalling, or refusing to recall, interim interdict or interim liberation;

(f) an interlocutor(h) in relation to an exclusion order under section 4 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981;

(g) an interlocutor(i) granting or recalling a sist of execution or procedure;

(h) an interlocutor(j) 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 k)~~ granting authority to move an arrested vessel or cargo;
- (j) ~~an interlocutor l)~~ deciding (other than in a summary trial) that a reference to the European Court should be made.

~~(63) Where an interlocutor which reserves or does not dispose of the question of expenses is the subject of a reclaiming motion, any party who seeks an order for expenses before the disposal of the reclaiming motion must 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 (other than a decree in absence or an interlocutor mentioned in paragraph (2), or (3) or (5) of this rule) may be reclaimed against, with leave of the Lord Ordinary, within 14 days after the date on which the interlocutor was pronounced 7 days.~~

#### Leave to reclaim etc. in certain cases decisions on a note of objection to the report of the Auditor

~~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)—~~

- ~~(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~~

- ~~(a) deciding whether to give permission (including the giving of permission either subject to conditions or only on particular grounds) for group proceedings to be brought under Chapter 26A (group procedure);~~
- ~~(b) deciding whether to grant permission for the application to proceed under section 27B(1) of the Act of 1988 or 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(b) may be reclaimed against only with the leave of the Lord Ordinary within 7 days after the date on which the decision was made.

(5) An interlocutor granting or refusing a motion under rule 47.10(1) (appointing action to be a commercial action) (e) 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) 38.4.—(1) A motion under paragraph (1) shall for leave to reclaim must be brought—

- (a) before the Lord Ordinary who pronounced the interlocutor which the party seeks to reclaim;
- (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 (e), that judge shall—(2) The judge must either—

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

(75) Leave to reclaim against an interlocutor shall does 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 must enrol 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 must lodge—

(a) a reclaiming print in copy of 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 the text of any minute of amendment and answers, the text of such minute and answers and;

(c) where available, the opinion of the Lord Ordinary; ;

(2) 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 (d) three copies of the issue or counter issue, as the case may be grounds of appeal;

(e) an assessment of the likely duration of the hearing to determine the reclaiming motion; and

(f) a statement that the claimer wishes the reclaiming motion to proceed under the standard or the fast track procedure to every other party.

(3) Grounds of appeal must be brief, specific, numbered propositions.

(4) In response to every the lodging of the information set out in paragraph (2), any other party.—may lodge a notice—

- (a) giving an assessment of the likely duration of the hearing; and
- (b) stating whether the reclaiming motion should proceed under the standard or the fast track procedure.

(5) A notice under paragraph (4) may be lodged—

- (a) where no objection to the competency of the reclaiming motion has been lodged, within 14 days after the date on which the reclaiming motion was marked; or
- (b) where an objection to the competency has been lodged and referred to a procedural judge under rule 38.12(3), within 14 days after the date on which competency is determined.

(6) Where a hearing has been fixed in accordance with a party's assessment of duration and that party's assessment changes, that party must, as soon as reasonably practicable, apply to vary the diet for the hearing.

#### Allocation of reclaiming motion to fast track procedure

38.6.—(1) Where the claimant seeks allocation of a reclaiming motion to the fast track procedure, the claimant must include in the motion the words “and for allocation to the fast track procedure”.

(2) In cases other than those to which paragraph (1) applies, where the respondent seeks allocation to the fast track procedure, the respondent may, within the period allowed for opposing the reclaiming motion, lodge a notice of opposition in Form 23.4 including the words “The respondent (name) seeks allocation to the fast track procedure.”.

(3) The motion for allocation to the fast track procedure must be placed before a procedural judge.

(4) The procedural judge may—

- (a) grant the motion and appoint the reclaiming motion to the Summar Roll or the Single Bills;
- (b) refuse the motion and appoint the reclaiming motion to the standard procedure; or
- (c) direct that the motion must call for a hearing before a procedural judge.

(5) Reclaiming motions other than those relating to the application of section 103(3) of the Debtors (Scotland) Act 1987 (appeals on question of law arising from making, variation or recall of time to pay directions) must be appointed to the fast track procedure unless the procedural judge, on cause shown, otherwise directs.

(6) The claimer must seek allocation to the fast track procedure where the interlocutor claimed relates to an order under section 11(1) of the Children (Scotland) Act 1995.

(7) Where a reclaiming motion is appointed to the fast track procedure the procedural judge must, with or without hearing parties, make such order on the timetabling of, and procedure in, the reclaiming motion as the procedural judge thinks fit.

### **Effect of reclaiming**

**38.67.**—(1) Subject to paragraph (2), a reclaiming motion ~~shall have the effect of submitting~~ submits 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)(3)~~, 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~~in respect of a subsequent interlocutor dealing with expenses ~~shall have the effect of submitting~~ submits 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~~cannot withdraw it without the consent of the other parties ~~who have appeared in the cause~~; and if ~~he~~the claimer 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~~the other party's instance.

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

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

### **Effect of extracted interlocutor**

~~38.78. Review by the Inner House of an interlocutor shall~~ A reclaiming motion is not be prevented~~rendered incompetent~~ by reason only that extract of the relative interlocutor has been issued before the expiry of the reclaiming days.

### Appeals treated as reclaiming motions

~~38.89.~~ In respect of the following appeals, the rules in this Chapter ~~shall apply to those appeals~~ as they apply to a reclaiming—motion—

- ~~(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);~~
- ~~(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 of these Rules);~~
- ~~(c) an appeal from a decision (a) an appeal against an interlocutor of the Lord Ordinary under section 103(3) of the Debtors (Scotland) Act 1987 (appeals on questions of law);~~
- ~~(d) an appeal from a decision against an interlocutor of the Lord Ordinary concerning on permission to proceed in petitions for judicial review under section 27D of the Act of 1988 (appeal following oral hearings).~~

### Reclaiming ~~against decree~~decrees by default

~~38.910.~~—(1) Where decree by default has been granted ~~against a party~~ in respect of ~~his a party's~~ failure to lodge a step of process or other document, a motion for review by that party of the ~~interlocutor granting such~~ decree ~~shall~~must 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

~~38.1011.~~—(1) ~~In a case of mistake or inadvertence, a~~ A procedural judge may, on ~~an application made in accordance with paragraph (2), cause shown,~~ 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~~ A motion under paragraph (1) ~~shall~~must 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 claimant 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 claimant 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.

### ~~Required application for urgent disposal of certain reclaiming motions~~

~~38.11A. Where a party reclaims against an interlocutor in relation to an order under section 11(1) of the Children (Scotland) Act 1995, the claimer shall seek urgent disposal of the reclaiming motion under rule 38.11(1).~~

### Objections to the competency of reclaiming

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

- ~~(a) lodging in process; and~~
- ~~(b) serving on intimating to the claimer and any other party,~~

~~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 within 14 days after of 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 will be allocated and intimated to the parties by the court.~~

~~(b) intimate the date and time of that diet to the parties.~~

~~(6) (4) Each party shall must, 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 intimate to the other party,~~

~~parties, a note of argument giving fair notice of the submissions which the party intends to make as to competency on competence in accordance with rule 38.15.~~

~~(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 its competency or having found the reclaiming motion to be competent; or~~
- (c) refer the ~~question of~~ competency to a ~~bench~~Division of ~~three or more judges; the court.~~  
~~and he may make such order as to expenses or otherwise as he thinks fit.~~
- (8~~6~~) Where a procedural judge refers a question of competency ~~under paragraph (7)(e), to a Division,~~ the cause ~~shall~~is to be put out for a hearing in the Single Bills ~~before a Division of the Inner House comprising three or more judges.~~
- (9~~7~~) At the hearing in the Single Bills ~~arranged under paragraph (8),~~ the ~~Inner House~~court may—
- (a) ~~dispose of determine~~ the objection ~~to competency;~~ or
  - (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 the hearing within the merits.~~

#### Timetable in

#### Referral of reclaiming motion for allocation

- 38.13.—(1) ~~The Keeper~~A reclaiming motion will be referred to the procedural judge—
- (a) ~~where no note of objection has been lodged, within 7 days after the expiry of the Rolls shall period in rule 38.12(4);~~
  - (b) ~~where a procedural judge has made a direction under rule 38.12(5)(b), within 7 days after that direction;~~
  - (c) ~~where a question of competency has been referred to a Division and an interlocutor has been pronounced sustaining the competency, within 7 days after the date of that interlocutor; or~~
  - (d) ~~where the claimant or respondent has sought disposal under the fast track procedure, on the next court date after the date on which such disposal was sought.~~

## Timetable in standard procedure

~~38.13.14.~~ — (1) The Keeper of the Rolls shall Where a reclaiming motion is appointed to standard procedure the court must—

- (a) issue a timetable in Form 38.~~13~~<sup>14</sup>, 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~~<sup>must</sup> 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); and
- (c) allocate a diet for a hearing on the Summar Roll.

(2) The procedural steps are—

(a) the lodging of—

- (a) any grounds of ~~cross-appeal and answers~~;
- (b) ~~the lodging of~~ any appendices to the reclaiming ~~print~~<sup>motion</sup> or, ~~as the case may be~~, the giving of intimation that the claimant does not intend to lodge any appendices; and
- (c) ~~the lodging of~~ notes of argument; ~~and (d) the lodging of estimates of the length of any hearing in 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.~~

### Notes of argument

#### 38.15.—(1) A note of argument must—

- (a) be a concise summary of the submissions to be developed under reference to each ground of appeal;
- (b) consist of a numbered list of propositions;
- (c) following each proposition, contain a reference to any transcription of evidence, and any other document, upon which the party seeks to rely, and identify the relevant passage in the document;
- (d) state, in respect of each authority which is cited—
  - (i) the proposition of law that the authority vouches; and
  - (ii) the parts of the authority (identified by page or paragraph number) that support the proposition;
- (e) cite no more than one authority in support of each proposition, unless the additional citation is necessary for a proper presentation of the argument.

#### (2) A note of argument which does not conform with paragraph (1) may be rejected.

#### (3) Parties may exchange draft versions of their notes of argument and, in such cases, parties must aim to do so 7 days in advance of either—

- (a) the date for the lodging of the notes of argument; or
- (b) the date specified by the procedural judge.

### Authorities

#### 38.16.—(1) When a reclaiming motion has been appointed to the Summar Roll or in the Single Bills for a hearing, the claimer must, after consultation with the respondent, lodge a joint list of the authorities upon which each party intends to rely at the hearing.

#### (2) The joint list of authorities must not include—

- (a) authorities for propositions which are not in dispute;

(b) more than 10 authorities, unless permission has previously been granted by the procedural judge on cause shown for the lodging of additional authorities.

(3) The joint list of authorities must be lodged-

(a) at least 7 days before the hearing; or

(b) where the period of notice of the hearing is less than 7 days, as soon as practicable.

(4) The court may make an order requiring parties to lodge a joint bundle of photocopies or electronic versions of the authorities or digital links to them.

(5) Joint lists of authorities which do not conform with this rule may be rejected.

(6) The court may find that no expenses are payable, or may modify any award of expenses, where authorities are included unnecessarily.

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

38.1417.—(1) A reclaiming motion may be listed 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 or a sist recalled, the Keeper of the Rolls court may—

(a) discharge the procedural hearing fixed under rule 38.13(1)(b);

(b) fix a (a) alter the date for a procedural hearing; and

(eb) issue a revised timetable in Form 38.13.

(5) Upon recall of a ~~sist~~, the Keeper of the Rolls may—

(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

38.1518.—(1) Where a party fails to comply with the timetable, the ~~Keeper~~court may, whether on the motion of a party or otherwise, put the reclaiming motion out for ~~appoint~~ a hearing before a procedural judge.

(2) The procedural judge may—

(a) make such order as the procedural judge thinks fit to secure the expeditious disposal of the reclaiming motion;

(2) At a hearing under paragraph (1), the procedural judge may—

(a) in any case where the claimant 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 claimant 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 allow the reclaiming motion.

### Procedural hearing in reclaiming motion

38.1619.—(1) At the procedural hearing ~~fixed under rules 38.13(1)(b) or 38.14(4)(b) or (5)(a)~~, the procedural judge shall must 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 on the date and time for that hearing previously allocated or on another date;

(b) appoint the reclaiming motion to require that—

(i) a joint list of authorities be lodged;

(ii) copies of these authorities be lodged in such form and at such time as the Single Bills for a hearing and allocate a date and time for that hearing; or procedural judge sees fit; and

(iii) the list of authorities must not exceed 10 cases; or

(c) make such other order as ~~he~~the procedural judge thinks fit to secure the expeditious disposal of the reclaiming motion.

~~(3) Where this paragraph applies the procedural judge is to make an order under paragraph~~

~~(2)(c) appointing the reclaiming motion to be determined in chambers without appearance unless satisfied that cause exists for making some other order.~~

~~(4) Paragraph (3) applies where~~

~~(a) the interlocutor reclaimed against is an interlocutor disposing of an application for a protective expenses order under Chapter 58A of these Rules; and~~

~~(b) the grounds of appeal do not seek to submit to the review of the Inner House any other interlocutor, other than a subsequent interlocutor dealing with any expenses.~~

### **Amendment of pleadings in reclaiming motions**

**38.1720.**—(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, the party must~~ apply for a direction as to further procedure.

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

### **GroundsAmendment of grounds of appeal in reclaiming motion**

**38.1821.**—(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~~–(1) A party who has lodged grounds of appeal or ~~answers to the~~ grounds of ~~cross~~-appeal may apply ~~by motion~~ to amend the grounds ~~or answers~~, on cause shown.

(42) An application under paragraph (~~3~~ shall) must include any necessary application under rule 38.~~44~~17(1) (sist or variation of timetable).

### Lodging of appendices in reclaiming motion

38.~~19~~22.—(1) Where, in ~~a~~any reclaiming motion, ~~other than one in which intimation is given under paragraph (2)~~—

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

~~the reclainer must lodge an appendix incorporating such documents within such period as is specified in the timetable.~~

(2) Where the reclainer considers that it is not necessary to lodge an appendix to the reclaiming print, the reclainer ~~shall~~must, by the relevant date specified in the timetable—

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

(23) Where the reclainer provides intimation under paragraph (42), a respondent may apply ~~to a procedural judge, by motion,~~ for an order requiring the reclainer to lodge an appendix.

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

(45) Where an application is made under paragraph (23), the procedural judge may make an order requiring the reclainer to lodge ~~any~~an appendix ~~containing any document~~ that the procedural judge considers necessary ~~for the proper disposal of the reclaiming motion~~, 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~~wishes to ~~submit for consideration by~~ refer to a transcription of the ~~court notes of~~evidence or documents ~~in respect of~~which the reclainer ~~has given written~~

~~intimation to the respondent that the claimant~~ does not intend to include in ~~his~~ the appendix; and

(b) a procedural judge has not made an order under paragraph (23) requiring the claimant ~~to~~ lodge an appendix which includes such ~~notes of evidence~~ ~~transcription~~ or documents.

(7) The respondent ~~shall~~ ~~must~~ incorporate such ~~notes~~ ~~transcription~~ or documents in an appendix which ~~he shall~~ ~~the respondent must~~ 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 claimant shall lodge an appendix incorporating such documents within such period as shall be specified in the timetable.~~

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

38.~~20~~23. Where, in a reclaiming motion, the parties are agreed that on any particular issue the interlocutor claimed against is not to be submitted to review, it ~~shall~~ ~~is~~ not necessary to reproduce ~~the notes~~ ~~a transcription~~ of evidence or documents relating to that issue.

#### **Single Bills**

38.~~21~~24. At any hearing of a reclaiming motion in the Single Bills, the ~~Inner House~~ ~~court~~ 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~~A motion for a new trial under section 29(1) of the Act of 1988 (~~application for new trial~~) shall ~~is to~~ 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~~The motion ~~under paragraph (1)~~ shall ~~must~~ specify the grounds on which the ~~application~~motion is made.

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

- (a) in the case of ~~an application~~a motion under section 29(1)(a) ~~of the Act of 1988~~ (misdirection of judge), the procedure in rule 37.7 (exceptions to judge's charge) has been complied with;
- (b) ~~(b)~~ in the case of ~~an application~~a motion under section 29(1)(b) ~~of the Act of 1988~~ (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) ~~(c)~~ in the case of ~~an application~~a motion under section 29(1)(c) ~~of the Act of 1988~~ (verdict contrary to evidence), it sets out in brief specific numbered propositions the reasons why the verdict is ~~said to be~~ contrary to the evidence.

(4) ~~On~~The party enrolling ~~a~~the motion for a new trial ~~under paragraph (1), the party enrolling it~~ shall ~~must~~ 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 note of exception and the determination of 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 for new trial: sheriff court cases**

~~39.1A.~~—(1) ~~An application under section 69(1) of the Act of 2014 (application for new trial) must be made to a procedural judge, by motion, within 7 days after the date on which the jury have returned their verdict.~~

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

~~(3) An application under section 69(1) of the Act of 2014 may not be made unless in the case of an application specifying the ground in—~~

- ~~(a) section 69(2)(a) of the Act of 2014 (misdirection by sheriff), the procedure in rule 36B.8 of the Ordinary Cause Rules (exceptions to sheriff's charge) has been complied with;~~
- ~~(b) section 69(2)(b) of the Act of 2014 (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 sheriff presiding at the trial; or~~
- ~~(c) section 69(2)(c) of the Act of 2014 (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, the party enrolling it must 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 sheriff presiding at the trial.~~

~~(5) In this rule—~~

~~"the Ordinary Cause Rules" means the Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907.~~

## **Application of rules to this Chapter**

**39.2.—(1) The following rules—**

- (a) rule 38.7 (effect of reclaiming);
- (b) rule 38.12 (objections to the competency of reclaiming);
- (c) rule 38.17 (sist or variation of timetable in reclaiming motion);
- (d) rule 38.18 (failure to comply with timetable in reclaiming motion);
- (e) rule 38.19 (procedural hearing in reclaiming motion), in relation to a procedural hearing fixed under rule 39.5(1)(b) or under the application of paragraph (c);
- (f) rule 38.22 (lodging of appendices in reclaiming motion);
- (g) rule 38.24 (single bills),

apply, with the necessary modifications, to an application for a new trial under section 29 of the Act of 1988 as they apply to a reclaiming motion.

**(2) A note of objection, under the application of paragraph (1)(b), is in Form 39.2.**

## **Applications out of time**

~~39.23.~~—(1) A procedural judge may, on ~~an application made in accordance with paragraph (2), cause shown~~, allow ~~an application~~ a motion for a new trial ~~under section 29(1) of the Act of 1988 or section 69(1) of the Act of 2014~~ to be received outwith the period specified in rule 39.1(1) or rule 39.1A(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) or rule 39.1A.~~

#### **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 or section 69(1) of the Act of 2014~~ 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

**39.45.—(1)** The ~~Keeper of the Rolls shall~~court must—

- (a) ~~(a)~~ issue a timetable in Form 39.45, 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~~must 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) ~~(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) ~~(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;  
~~(aa) the lodging of any appendices to the documents mentioned in rule 39.1A(4) or, as the case may be, the giving of notice that the applicant does not intend to lodge any appendices;~~  
(b) ~~(b)~~ the lodging of any notes of argument; and  
(c) ~~(c)~~ the lodging of estimates of the length of any hearing required to dispose of the application for a new trial.

(3) ~~(3)~~ The ~~Keeper of the Rolls shall~~court must take the steps mentioned in paragraph (1)—

- (a) ~~(a)~~ where no note of objection has been lodged within the period mentioned provided under the application of rule 39.2(b) in rule 39.3(2), within 7 days of the expiry of that period;  
(b) ~~(b)~~ where a procedural judge has made a direction under the application of rule 39.3(5)(b) 39.2(b) that a new trial is to proceed as if a note of objection had not been lodged or the question not having been referred, whether under reservation of the question of competency or having found the application to be competent, 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 judgesDivision and—~~(i)~~ an interlocutor has been pronounced sustaining the

competency of the application motion for a new trial under rule 39.3(7)(a) or following a Summary Roll hearing under rule 39.3(7)(b), or  
(ii) an interlocutor has been pronounced under rule 39.3(7)(e), 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 may—  
(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 may—  
(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;~~
- ~~(a) (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 or section 69(1) of the Act of 2014 as it applies to a reclaiming motion.~~

## Applications to enter jury verdict

~~39.94.~~—(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~~ is to be made by motion ~~to a procedural judge~~.

~~(2) On enrolling a motion under paragraph (1), the~~ The party enrolling ~~it shall~~ the motion must 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~~ is not ~~be~~ necessary for the purposes of such a motion to ~~print~~ transcribe 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.~~

#### ~~Application to enter jury verdict: sheriff court cases~~

~~39.9A. (1) An application under section 71(2) of the Act of 2014 (verdict subject to opinion of the Court) must be made by motion to a procedural judge.~~

~~(2) On enrolling a motion under paragraph (1), the party enrolling it must lodge in process four copies of—~~

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

~~and send one copy of it to every other party.~~

~~(3) Unless the procedural judge otherwise directs, it will not be necessary for the purposes of such a motion to print the notes of evidence, but the notes of the sheriff 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 LOWER~~ 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) Interpretation

40.1. In this Chapter—

- (a) “appeal process” means—

- (i) the process of the ~~inferior~~lower court; or
  - (ii) where the cause is recorded in an official book of an ~~inferior~~lower court, a copy of the record in that book certified by the clerk of the ~~inferior~~lower court;
- (b) “decision” includes interlocutor, judgment or other determination;
- (c) “~~inferior~~lower court” means—
- (i) the Lyon Court;
  - (ii) the Sheriff Appeal Court, ~~in respect of an appeal under section 113(1) of the Act of 2014 or section 38(b) of the Sheriff Courts (Scotland) Act 1971~~;
  - (iii) the sheriff principal, ~~in respect of an appeal under section 114(1) of the Act of 2014~~;
  - (iv) the sheriff;
- (d) any reference to leave to appeal includes permission to appeal ~~in terms of section 113(1) of the Act of 2014~~.

#### **Applications for leave to appeal from ~~inferior~~lower 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~~lower court unless the enactment allowing ~~the~~an appeal requires ~~the application~~ it to be made to the court.

(2) Where—

- (a) the ~~inferior~~lower 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~~lower court, ~~any~~ an 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 that on which the decision of the inferior lower court refusing leave to appeal was intimated to the appellant; or
- (b) where the application for leave to appeal is required to be made to the court and not the inferior lower court—
  - (i) the date on which the decision of the inferior lower court complained of was issued; or
  - (ii) where the inferior lower 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 must include a statement setting out the proposed three copies of the grounds of appeal and the grounds on which leave to appeal is sought.

(6) Grounds of appeal must be of brief, specific, numbered propositions.

(6Z) There shall must be lodged with an application to the court under paragraph (3) for leave to appeal—

- (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 a copy of the interlocutor of the inferior lower court which refused leave;
  - (ii) a copy of the grounds of appeal intimated to the inferior lower court; and
  - (iii) any note by the inferior lower court setting out the reasons for its refusal;
- (c) a copy of the decision of the inferior lower court complained of and any reasons for that decision; and
- (d) where the inferior lower 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.

## **Application of rules to this Chapter**

### **40.3.—(1) The following rules—**

- (a) rule 38.6 (allocation of reclaiming motion to fast track procedure);
- (b) rule 38.12 (objections to the competency of reclaiming);
- (c) rule 38.15 (notes of argument in reclaiming motion);
- (d) rule 38.16 (authorities);
- (e) rule 38.17 (sist or variation of timetable in reclaiming motion);
- (f) rule 38.18 (failure to comply with timetable in reclaiming motion);
- (g) rule 38.19 (procedural hearing in reclaiming motion), in relation to a procedural hearing fixed—
  - (i) after the completion of the procedural steps set down by a timetable issued under rule 40.9; or
  - (ii) under the application of paragraph (e);
- (h) rule 38.20 (amendment of pleadings in reclaiming motion);
- (i) rule 38.22 (lodging of appendices in reclaiming motion);
- (j) rule 38.24 (single bills),

apply, with the necessary modifications, to proceedings to which this Chapter applies as they apply to a reclaiming motion.

(2) A note of objection, under the application of paragraph (1)(b), is in Form 40.3.

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

**40.34.—(1) An application for leave to appeal under rule 40.2 ~~shall~~is, without a motion being enrolled—**

- (a) ~~during session, to~~ be brought before a procedural judge on the first available day after ~~being made for~~ an order for —
  - (i) service of the application on the respondent and such other person as the procedural judge thinks fit within 7 days of the date of the order or such other period as the procedural judge thinks fit; and
  - (ii) any person on whom the application has been served, to lodge answers, if so advised, within 14 days after the date of service or within such other period as the procedural judge thinks fit; and
- (b) ~~during vacation, to~~ be brought before the vacation judge for such an order.

(2) An order for service ~~under paragraph (1) shall~~is to include a requirement to intimate the application to the ~~clerk of the inferior~~lower court.

(3) Where an application for leave to appeal is served ~~under paragraph (1)~~, evidence of service ~~in accordance with Chapter 16 of these Rules shall~~must be provided to the ~~General Department~~court within 14 days from the date of service.

(4) Within 14 days after expiry of the period within which answers may be lodged, the applicant may apply by motion for the application to be granted.

### Time and method of appeal

**40.45.**—(1) An appeal from an ~~inferior~~lower court ~~shall~~must 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) ~~(ii)~~ where the ~~inferior~~lower court issued written reasons for its decision later than the decision, the date on which the written reasons were issued; or

(iii) ~~(iii)~~ where leave to appeal was granted by the ~~inferior~~lower 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~~lower court or the court, ~~as the case may be~~.

(2) A party seeking to appeal from an ~~inferior~~lower court ~~shall~~must mark an appeal by writing a note of appeal in Form 40.45—

(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~~lower court are recorded in an official book, on a separate sheet lodged with ~~the clerk of~~ the ~~inferior~~lower court.

(3) A note of appeal ~~shall~~must—

- (a) be signed by the appellant or ~~his~~the appellant's agent;
- (b) bear the date on which it is signed; and
- (c) where the appellant is represented, specify the name and address of the agent who will be acting for ~~him~~the appellant in the appeal.

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

**40.56.**—(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~~must be included in the note of appeal.

(2) Within 14 days after the date of receipt by the ~~Deputy Principal Clerk~~court of the appeal process from ~~the clerk of the inferior~~lower court ~~under rule 40.6(1)~~, the appellant ~~shall~~must 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~~is to be ~~disposed of~~determined by a procedural judge.

(4) Where a motion ~~under paragraph (2)~~ is refused, the ~~Deputy Principal Clerk~~shall ~~court is to~~—

- (a) give written intimation to ~~the clerk of the inferior~~lower court that leave to appeal out of time has been refused; and
- (b) transmit the appeal process and note of appeal to ~~him~~the lower court.

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

**40.67.**—(1) Within 4 days after an appeal has been marked, the ~~clerk of the inferior~~lower court ~~shall~~is to—

- (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~~the lower court has done so; and

(b) transmit—

(i) the appeal process; and

(ii) any separate note of appeal,  
to the ~~Deputy Principal Clerk~~~~court~~.

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

(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 lower court or the Deputy Principal Clerk~~ fails to comply with a provision of this rule, the appeal ~~shall~~is 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**

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

(a) give written intimation to the ~~Deputy Principal Clerk~~~~court~~ 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 or her name and address and that of his or her agent (if any).

(2) Subject to rule 40.~~45~~10(2) (appeals deemed abandoned), within 28 days after the date of receipt by the ~~Deputy Principal Clerk~~~~court~~ of the appeal process, or the date of the interlocutor granting a motion made under rule 40.~~56~~56(2) (leave to appeal out of time), whichever is the later, the appellant ~~shall~~must—

(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~~must contain—

(i) the whole pleadings and interlocutors in the cause;

- (ii) where the appeal is directed at the refusal of the ~~inferior~~lower court to allow the pleadings to be amended, the text of the proposed amendment; and
- (iii) where available, the judgment of the ~~inferior~~lower court (including in an appeal in a summary cause under the Act of Sederunt (Summary Cause Rules) 2002, the stated case of the sheriff, or in an appeal in a simple procedure case, the Decision Form and Appeal Report); 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~~

~~(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 Summary 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.

#### Required application for urgent disposal of appeal against certain interlocutors

**40.9A.** On lodging an appeal print under rule 40.7(2)(b) in respect of an appeal marked against an interlocutor of an inferior court containing an order made under section 11(1) of the Children (Scotland) Act 1995, the appellant shall seek urgent disposal of the appeal under rule 40.9(1).

#### 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 at any time within the period of 14 days after receipt by the Deputy Principal Clerk of the appeal process.

(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 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 lower~~ court

40.119.—(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). Rule 39.5(1) and (3) (timetable in application)

for a new trial) apply, with the necessary modifications, to proceedings to which this Chapter applies as they apply to a reclaiming motion.

(2) A timetable is issued in Form 40.9.

(2)(3) The procedural steps provided under this rule, under the application of paragraph (1), 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 list 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) ~~(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) ~~(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 listed 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 may—

- (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 list, the Keeper of the Rolls may—

- (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

40.1510.—(1) If an appellant fails—

- (a) to apply by motion in accordance with rule 40.56(2) (leave to appeal out of time), or
- (b) to comply with the requirements of rule 40.78(2) (lodging process etc.),

~~he shall be the appellant is~~ deemed to have abandoned ~~his their~~ appeal on the expiry of the period for marking an appeal or for complying with the requirements of rule 40.78(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 40.78(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 apply~~, 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~~ is entitled to insist in the appeal notwithstanding that his ~~or her~~ 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 40.1611, and
- (b) a respondent does not insist in the appeal under paragraph (2) of this rule,

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

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

- (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.~~45~~10;
- (b) send the appeal process to the clerk of the ~~inferior lower~~ 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 lower~~ 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 lower~~ court ~~shall~~must, 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**

**40.1611.**—(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 such a motion ~~under paragraph (1)~~ on such conditions as to expenses or otherwise as ~~he~~the procedural judge thinks fit.

(3) On enrolling a motion under ~~paragraph (1) this rule~~, the appellant ~~shall~~must 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**

**40.2012.** 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~~ is not be necessary to reproduce the notes of evidence or documents relating to that issue.

#### **Referral to family mediation in appeals from the Sheriff Appeal Court**

**40.2413.** In an appeal from the Sheriff Appeal Court in which an order in relation to parental responsibilities or parental rights under section 11 of the Children (Scotland) Act 1995 is in issue, a procedural judge may, where ~~he~~ the procedural judge considers it appropriate to do so, refer that issue to a mediator accredited to a specified family mediation organisation.

#### **Use of Gaelic**

**40.2214.**—(1) ~~This rule applies w~~here an ~~inferior~~ lower court ~~has~~ authorised the use of Gaelic by a party.

(2) If the party wishes to address the Inner Housecourt in Gaelic at any procedural hearing fixed under referred to in rule 40.~~14(2)~~~~3(1)(g)~~, ~~he~~the party may —

- (a) at any time up to and including the procedural hearing fixed under rules 40.~~14~~~~9~~(1)(b),~~40.12(4)(b) or (5)(a) or under the application of rule 40.3(e)~~, apply by motion to the procedural judge for authority to do so; or
- (b) at any time after ~~thesuch~~ 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.

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

(33) Where the court has granted authority under ~~paragraphs (2) or (3) this rule~~, an interpreter ~~shall~~must 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.~~