
 SCOTTISH STATUTORY INSTRUMENTS

2022 No.

COURT OF SESSION

 Act of Sederunt (Rules of the Court of Session 1994
 Amendment) (Causes in the Inner House) 2022

<i>Made</i>	- - - -	2022
<i>Laid before the Scottish Parliament</i>		2022
<i>Coming into force</i>	- -	2022

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council [with such modifications as it thinks appropriate].

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 103(1) of the Courts Reform (Scotland) Act 2014(b) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Causes in the Inner House) 2022.

(2) It comes into force on [xx] 2022.

(3) A certified copy is to be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session 1994

2. Subject to paragraph 13, the Rules of the Court of Session 1994(c) are amended in accordance with paragraphs 3 to 11.

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

(a) for sub-paragraph (1)(d)(e), substitute—

“(d) grounds of appeal and other information required under rule 38.5(2);”;

(b) in sub-paragraph (1)(f) for “rule 40.7(2)(b)”, substitute “rule 40.8(2)(b)”;

(c) in sub-paragraph (1)(g)—

(i) for “rule 38.19”, substitute “rule 38.22”;

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).

(b) 2014 asp 18.

(c) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443), last amended by [xxx].

(d) Rule 4.7 was last amended by S.S.I. 2017/414.

(e) Rule 4.7(1)(d), (f) and (g) was amended by S.S.I. 2010/30.

- (ii) for “39.8 (lodging of appendix in application for new trial)”, substitute “the application of 39.2(f)”;
 - (d) in paragraph (1B)(a) for “rule 37A.2(3)”, substitute “rule 37A.2(2)”;
 - (e) in paragraph (3)(b) for “rule 37A.2(3)”, substitute “rule 37A.2(2)”.
- 4.** In rule 11.1(1A) (powers of vacation judge)(c)—
- (a) omit “or 40.7A”;
 - (b) for “or 40.12(6)”, substitute “or under the application of rule 40.3(e)”.
- 5.** In rule 25A.5A(d) for “rule 38.6”, substitute “rule 38.7”.
- 6.** For Chapter 37A (Procedural Business in the Inner House) to Chapter 40 (Appeals from Lower Courts)(e), substitute—

“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 is one judge (“procedural judge”).

- (2) The procedural business is such business as arises under—
- (a) a reclaiming motion, up to and including the procedural steps mentioned in rule 38.19(2);
 - (b) an application for a new trial under section 29 of the Act of 1988(f) 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 39.4 or under the application of rule 39.2(1)(e);
 - (c) an appeal from a lower court within the meaning of rule 40.1(c), up to and including the procedural steps 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 are procedural judges.

(a) Rule 4.7(1B) was inserted by S.S.I. 2016/102.
 (b) Rule 4.7(3) was inserted by S.S.I. 2016/102 and amended by S.S.I. 2017/414.
 (c) Rule 11.1(1A) was inserted by S.I. 1997/2692.
 (d) Rule 25A.5A was inserted by S.S.I.2007/360.
 (e) Chapters 37A to 40 were substituted by S.S.I. 2010/30. Chapter 37A was amended by S.S.I. 2011/303. Chapter 38 was last amended by S.S.I. 2018/348. Chapter 39 was last amended by S.S.I. 2015/227. Chapter 40 was last amended by S.S.I. 2016/315.
 (f) 1988 c.36.

(2) A Division of the Inner House may deal with a matter which would otherwise be dealt with by a procedural judge where that is considered to be appropriate.

CHAPTER 38

RECLAIMING

Introduction

38.1. 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 is to do so by reclaiming within the reclaiming days.

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 the whole subject matter of the cause;
- (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;
- (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(a);
- (d) allowing or refusing proof, proof before answer or jury trial;
- (e) limiting the mode of proof;
- (f) adjusting issues for jury trial;
- (g) granting, refusing, recalling, or refusing to recall, interim interdict or interim liberation;
- (h) in relation to an exclusion order under section 4 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981(b);
- (i) granting or recalling a sist of execution or procedure;
- (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;
- (k) granting authority to move an arrested vessel or cargo;
- (l) deciding (other than in a summary trial) that a reference to the European Court should be made.

(3) 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.

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

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

(4) An interlocutor (other than a decree in absence or an interlocutor mentioned in paragraph (2) or (3) of this rule) may be reclaimed, with leave of the Lord Ordinary, within 7 days.

Leave to reclaim in decisions on a note of objection to the report of the Auditor

38.3. The decision of the Lord Ordinary on a note of objection to the report of the Auditor may be reclaimed only with the leave of the Lord Ordinary within 7 days.

Applications for leave to reclaim

38.4.—(1) A motion 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.

(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.

(3) Any period during which a motion is continued is not taken into account in calculating the reclaiming days.

(4) A decision to grant or refuse leave to reclaim is final and not subject to review.

(5) Leave to reclaim 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 must enrol a motion for review in Form 38.5 before the expiry of the reclaiming days.

(2) On enrolling a motion for review, the claimer must lodge—

- (a) a copy of the pleadings and interlocutors;
- (b) where the reclaiming motion is directed at the refusal of the Lord Ordinary to allow the pleadings to be amended, the text of any minute and answers;
- (c) where available, the opinion of the Lord Ordinary;
- (d) three copies of the 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.

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

(4) In response to 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 claimer seeks allocation of a reclaiming motion to the fast track procedure, the claimer 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)(a) 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 reclaimed relates to an order under section 11(1) of the Children (Scotland) Act 1995(b).

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

Effect of reclaiming

38.7.—(1) Subject to paragraph (2), a reclaiming motion 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(3), not only at the instance of the party reclaiming but also at the instance of any other party, 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 in respect of a subsequent interlocutor dealing with expenses submits to review only that interlocutor.

(3) After a reclaiming motion has been enrolled, the claimer cannot withdraw it without the consent of the other parties; and if 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 the other party's instance.

(a) 1987 c.18. Section 103 was last amended by S.S.I. 2016/387.

(b) 1995 c.36. Section 11 was last amended by the Children (Scotland) Act 2020 (asp 16), section 15(2), and is prospectively amended by that Act, sections 1(3) and 10(2).

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

Effect of extracted interlocutor

38.8. A reclaiming motion is not 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

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

- (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);
- (b) an appeal against an interlocutor of the Lord Ordinary on permission to proceed in petitions for judicial review under section 27D of the Act of 1988 (appeal following oral hearings)(a).

Reclaiming decrees by default

38.10.—(1) Where decree by default has been granted in respect of a party's failure to lodge a step of process or other document, a motion for review by that party of the decree 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, be recalled on such conditions, if any, as to expenses or otherwise as the court thinks fit.

Reclaiming out of time

38.11.—(1) A procedural judge may, on 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) A motion under paragraph (1) must be included in the motion for review.

Objections to the competency of reclaiming

38.12.—(1) A party may object to the competency of a reclaiming motion by—

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

a note of objection in Form 38.12.

(2) A note of objection may be lodged only within 14 days of the date on which the reclaiming motion was marked.

(3) Where a note of objection is lodged, a diet for a hearing before a procedural judge will be allocated and intimated to the parties by the court.

(4) Each party must, within 14 days after the date on which a note of objection is lodged, lodge and intimate to the other parties, a note of argument on competence in accordance with rule 38.15.

(5) At the hearing, the procedural judge may—

- (a) refuse the reclaiming motion as incompetent;

(a) Section 27D was inserted by section 89 of the Courts Reform (Scotland) Act 2014 (asp 18).

- (b) direct that the reclaiming motion is to proceed under reservation of its competency or having found the motion to be competent; or
 - (c) refer the competency to a Division of the court.
- (6) Where a procedural judge refers a question of competency to a Division, the cause is to be put out for a hearing in the Single Bills.
- (7) At the hearing in the Single Bills, the court may—
- (a) determine the objection; or
 - (b) reserve the objection until the hearing on the merits.

Referral of reclaiming motion for allocation

38.13. 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 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 claimer 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

38.14.—(1) Where a reclaiming motion is appointed to standard procedure the court must—

- (a) issue a timetable in Form 38.14, 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 must comply with the procedural steps listed in paragraph (2) and the date and time of the hearing;
 - (b) allocate a diet for a procedural hearing, 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 the lodging of—
- (a) any grounds of cross-appeal;
 - (b) any appendices to the reclaiming motion or the giving of intimation that the claimer does not intend to lodge any appendices; and
 - (c) notes of argument.

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 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

- 38.17.**—(1) A reclaiming motion may be sisted or the timetable may be varied on the motion of any party.
- (2) Where the timetable is varied or a sist recalled, the court may—
 - (a) alter the date for a procedural hearing; and
 - (b) issue a revised timetable.

Failure to comply with timetable in reclaiming motion

- 38.18.**—(1) Where a party fails to comply with the timetable, the court may 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;
 - (b) where the claimer fails to comply with the timetable, refuse the reclaiming motion; or
 - (c) where a sole respondent fails or all respondents fail to comply with the timetable, allow the reclaiming motion.

Procedural hearing in reclaiming motion

38.19.—(1) At the procedural hearing, the procedural judge must ascertain the state of preparation of the parties.

(2) The procedural judge may—

- (a) appoint the reclaiming motion to the Summar Roll for a hearing on the date previously allocated or on another date;
- (b) 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 procedural judge sees fit; and
 - (iii) the list of authorities must not exceed 10 cases; or
- (c) make such other order as the procedural judge thinks fit to secure the expeditious disposal of the reclaiming motion.

Amendment of pleadings in reclaiming motions

38.20.—(1) Where, after a reclaiming motion has been marked, any party applies to have the pleadings amended, 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 court may recall the interlocutor of the Lord Ordinary and remit the cause to the Lord Ordinary for a further hearing.

Amendment of grounds of appeal in reclaiming motion

38.21.—(1) A party who has lodged grounds of appeal or grounds of cross-appeal may apply to amend the grounds, on cause shown.

(2) An application under paragraph (1) must include any necessary application under rule 38.17(1) (sist or variation of timetable).

Lodging of appendices in reclaiming motion

38.22.—(1) Where, in 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 claimer must lodge an appendix incorporating such documents within such period as is specified in the timetable.

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

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

(3) Where the claimer provides intimation under paragraph (2), a respondent may apply for an order requiring the claimer to lodge an appendix.

(4) An application under paragraph (3) must state the documents that the respondent seeks to have included.

(5) Where an application is made under paragraph (3), the procedural judge may make an order requiring the claimer to lodge 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.

(6) Paragraph (7) applies where—

- (a) a respondent wishes to refer to a transcription of the evidence or documents which the reclaimer does not intend to include in the appendix; and
- (b) a procedural judge has not made an order under paragraph (3) requiring the reclaimer to lodge an appendix which includes such transcription or documents.

(7) The respondent must incorporate such transcription or documents in an appendix which the respondent must lodge within such period as specified by the procedural judge.

Transcription of evidence not extended when agreed

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

Single Bills

38.24. At any hearing of a reclaiming motion in the Single Bills, the 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) A motion for a new trial under section 29(1) of the Act of 1988 is to be made to a procedural judge within 7 days after the date on which the verdict of the jury was written on the issue and signed.

(2) The motion must specify the grounds on which the motion is made.

(3) A motion may not be made unless—

- (a) in the case of 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) in the case of 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 under the direction of the judge presiding at the trial; or
- (c) in the case of 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 contrary to the evidence.

(4) The party enrolling the motion for a new trial must lodge—

- (a) a print of the pleadings and interlocutors incorporating the issues and counter-issues;
- (b) the verdict of the jury; and
- (c) any note of exception and the determination of it.

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

39.3. A procedural judge may, on cause shown, allow a motion for a new trial to be received outwith the period specified in rule 39.1(1) and to proceed out of time on such conditions as to expenses or otherwise as the procedural judge thinks fit.

Applications to enter jury verdict

39.4.—(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) is to be made by motion.

(2) The party enrolling the motion must lodge four copies of the closed record incorporating—

- (a) all interlocutors;
- (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 to every other party.

(3) Unless the procedural judge otherwise directs, it is not necessary for the purposes of such a motion to transcribe the evidence.

Timetable in application for a new trial

39.5.—(1) The court must—

- (a) issue a timetable in Form 39.5, 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 must comply with the procedural steps listed in paragraph (2) and the date and time of the hearing allocated; and
- (b) allocate a diet for a procedural hearing to follow on completion of the procedural steps listed in paragraph (2).

(2) The procedural steps are—

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

(3) The court must take the steps mentioned in paragraph (1)—

- (a) where no note of objection has been lodged within the period provided under the application of rule 39.2(b), within 7 days of the expiry of that period;
- (b) where a procedural judge has made a direction under the application of rule 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 Division and an interlocutor has been pronounced sustaining the competency of the motion for a new trial, within 7 days after the date of that interlocutor.

CHAPTER 40

APPEALS FROM LOWER COURTS

Interpretation

40.1. In this Chapter—

- (a) “appeal process” means—
 - (i) the process of the lower court; or
 - (ii) where the cause is recorded in an official book of a lower court, a copy of the record in that book certified by the clerk of the lower court;
- (b) “decision” includes interlocutor, judgment or other determination;
- (c) “lower court” means—
 - (i) the Lyon Court;
 - (ii) the Sheriff Appeal Court;
 - (iii) the sheriff principal;
 - (iv) the sheriff;
- (d) any reference to leave to appeal includes permission to appeal.

Applications for leave to appeal from lower court

40.2.—(1) Where leave to appeal is required, an application is to be made in the first instance to the lower court unless the enactment allowing an appeal requires it to be made to the court.

- (2) Where—
 - (a) the 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 lower court, an application is to be made in Form 40.2.
- (3) An application must be lodged—
 - (a) within the period described 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 is—
 - (a) that on which the decision of the 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 lower court—
 - (i) the date on which the decision of the lower court was issued; or

- (ii) where the lower court issued reasons for its decision later than the decision, the date of issue of the reasons.
- (5) An application for leave to appeal must include 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.
- (7) There must be lodged with an application to the court for leave to appeal—
 - (a) a process in accordance with rule 4.4 (steps of process);
 - (b) where applicable—
 - (i) a copy of the interlocutor of the lower court which refused leave;
 - (ii) a copy of the grounds of appeal intimated to the lower court; and
 - (iii) any note by the lower court setting out the reasons for its refusal;
 - (c) a copy of the decision of the lower court complained of and of any reasons for that decision; and
 - (d) where the 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 lower court

- 40.4.**—(1) An application for leave to appeal is, without a motion being enrolled—
- (a) during session, to be brought before a procedural judge on the first available day after 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 is to include a requirement to intimate the application to the lower court.
- (3) Where an application for leave to appeal is served, evidence of service must be provided to the 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

- 40.5.**—(1) An appeal from a lower court 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 was given;
 - (ii) where the lower court issued written reasons for its decision later than the decision, the date on which the written reasons were issued; or
 - (iii) where leave to appeal was granted by the lower court or application for leave to appeal was made to the court, the date on which leave was granted by the lower court or the court.
- (2) A party seeking to appeal from a lower court must mark an appeal by writing a note of appeal in Form 40.5—
- (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 lower court are recorded in an official book, on separate sheet lodged with the lower court.
- (3) A note of appeal must—
- (a) be signed by the appellant or 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 the appellant in the appeal.

Leave to appeal out of time

- 40.6.**—(1) An application to allow an appeal to be received outwith the time prescribed must be included in the note of appeal.
- (2) Within 14 days after the date of receipt by the court of the appeal process from the lower court, the appellant must apply by motion to allow the appeal to be received outwith the time prescribed.
- (3) The motion enrolled is to be determined by a procedural judge.
- (4) Where a motion is refused, the court is to—
- (a) give written intimation to the lower court that leave to appeal out of time has been refused; and
 - (b) transmit the appeal process and note of appeal to the lower court.

Transmission of appeal process

40.7.—(1) Within 4 days after an appeal has been marked, the lower court 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 the lower court has done so; and
- (b) transmit the appeal process and any separate note of appeal to the court.

(2) On receipt of an appeal process, the 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 lower court fails to comply with a provision of this rule, the appeal is not to 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

40.8.—(1) Within 14 days after the date of receipt by the court of the appeal process, each party seeking to appear in the appeal must—

- (a) give written intimation to the 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 40.10(2) (appeals deemed abandoned), within 28 days after the date of receipt by the court of the appeal process, or the date of the interlocutor granting a motion made under rule 40.6(2) (leave to appeal out of time), whichever is the later, the appellant must—

- (a) lodge a process, including each part of the appeal process;
- (b) lodge an appeal print in the form of a record which must contain—
 - (i) the whole pleadings and interlocutors in the cause;
 - (ii) where the appeal is directed at the refusal of the lower court to allow the pleadings to be amended, the text of the proposed amendment; and
 - (iii) where available, the judgment of the lower court (including in an appeal in a summary cause under the Act of Sederunt (Summary Cause Rules) 2002(a), 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).

Timetable in appeal from lower court

40.9.—(1) 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.

(3) The procedural steps provided under this rule, under the application of paragraph (1), are—

(a) S.S.I. 2002/132, last amended by S.S.I. 2021/226.

- (a) the lodging of a process;
- (b) the lodging and sending a copy of the appeal print;
- (c) the enrolling of any motion for a sist of process;
- (d) 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;
- (e) the lodging of notes of arguments; and
- (f) 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.

Appeals deemed abandoned

40.10.—(1) If an appellant fails—

- (a) to apply by motion in accordance with rule 40.6(2) (leave to appeal out of time); or
- (b) to comply with the requirements of rule 40.8(2) (lodging process etc.),

the appellant is deemed to have abandoned their appeal on the expiry of the period for marking an appeal or for complying with the requirements of rule 40.8(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 40.8(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 apply, with the necessary modifications, to an appeal by a respondent under this paragraph.

(3) Where a respondent insists on an appeal under paragraph (2), the appellant 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 40.11; and
- (b) a respondent does not insist in the appeal under paragraph (2) of this rule,

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

(5) Where an appeal process falls to be transmitted to the lower court under paragraph (4), the 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 40.10;
- (b) send the appeal process to the 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 a 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 lower court must, on such motion grant decree for payment to that respondent of those expenses as taxed by the Auditor of the Court of Session.

Reopening against deemed abandonment

40.11.—(1) An appellant may, within 7 days after the date on which the appeal has been deemed to be abandoned, apply by motion to a procedural judge to be reopened.

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

(3) When enrolling a motion under this rule, the appellant must lodge a process (or such necessary steps of process as have not already been lodged) and an appeal print.

Notes of evidence not extended when agreed in appeals

40.12. 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 is not necessary to reproduce the notes of evidence or documents relating to that issue.

Referral to family mediation in appeals from the Sheriff Appeal Court

40.13. 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 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

40.14.—(1) Where a lower court authorised the use of Gaelic by a party, if the party wishes to address the court in Gaelic at any procedural hearing referred to in rule 40.3(1)(g), the party may—

(a) at any time up to and including the procedural hearing, apply by motion to the procedural judge for authority to do so; or

(b) at any time after such procedural hearing and before final disposal of the appeal, apply by motion for authority to do so.

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

(3) Where the court has granted authority under this rule, an interpreter must be provided by the court.”

7. In rule 41B.1(2)(a)(a) (application and interpretation of chapter on qualified one way costs shifting) for “40.15(6)”, substitute “40.11(6)”.

8. In rule 41B.2(2)(c) (application for an award of expenses) for “40.15(1)”, substitute “40.11(1)”.

9. In rule 58.10 (judicial review – the permission stage: appeal to the Inner House)(b) for “(see rule 38.8(d))”, substitute “(see rule 38.9(b))”.

10. In the Appendix—

(a) for Form 38.13 (Form of timetable in reclaiming motion), substitute Form 38.14 (Form of timetable in reclaiming motion) set out in the Schedule of this Act of Sederunt;

(a) Chapter 41B was inserted by S.S.I.2021/226.

(b) Rule 58.10 was substituted by S.S.I. 2015/228.

- (b) Form 39.3 (Form of note of objection to competency of application for a new trial)(a) is re-numbered Form 39.2;
- (c) Form 39.4 (Form of timetable in application for a new trial)(b) is re-numbered Form 39.5;
- (d) in Form 39.5—
 - (i) in the preamble, for the second sentence, substitute—
 - “[Where applicable: This is a revised timetable issued under the application of rule 39.2(c) which replaces the timetable issued on (date).]”;
 - (ii) in paragraph (2)—
 - (aa) for “38.19(2)”, substitute “38.22(3)”;
 - (bb) omit “[or rule 39.1A(4)]”;
 - (iii) in paragraph 3—
 - (aa) for “he”, substitute “he or she”;
 - (bb) omit “[or rule 39.1A(4)]”;
 - (iv) in paragraphs 4 and 5 for “shall”, substitute “must”;
- (e) Form 40.4 (Form of marking appeal from inferior court) is re-numbered Form 40.5 and re-named “Form of marking appeal from lower court”;
- (f) Form 40.10 (Form of note of objection to competency of appeal from inferior court) is re-numbered Form 40.3 and re-named “Form of note of objection to competency of appeal from lower court”;
- (g) Form 40.11 (Form of timetable in appeal from inferior court) is re-numbered Form 40.9 and re-named “Form of timetable in appeal from lower court”;
- (h) Form 40.15 (Form of certification by Deputy Principal Clerk on retransmitting abandoned appeal) is re-numbered Form 40.10.

Revocation

11.—(1) Act of Sederunt (Rules of the Court of Session Amendment No. 2) (Causes in the Inner House) 2010(c) is revoked.

(2) Rules 2(2) to (11) and 3(a) to (c) of Act of Sederunt (Rules of the Court of Session Amendment No. 5) (Causes in the Inner House) 2011(d) are revoked.

Transitional and saving provision

12.—(1) Paragraphs 3 to 11 of this Act of Sederunt do not apply—

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

(2) The Rules of the Court of Session 1994, as they applied immediately before [cif date], continue to have effect in so far as paragraphs 3 to 11 of this Act of Sederunt do not apply by virtue of sub-paragraph (1).

(a) Form 39.3 was amended by S.S.I. 2015/227.
 (b) Form 39.4 was amended by S.S.I. 2015/227.
 (c) S.S.I. 2010/30.
 (d) S.S.I. 2011/303.

Edinburgh
Date

CJM SUTHERLAND
Lord President
I.P.D.

SCHEDULE

Form 38.14

Rule 11(a)

Form of timetable in reclaiming motion

(Cause Reference number)

IN THE COURT OF SESSION

TIMETABLE IN RECLAIMING MOTION

[A.B.]

Pursuer [*or* Petitioner]

against

[C.D.]

Defender [*or* Respondent]

This timetable has effect as if it were an interlocutor of the court signed by the procedural judge. [*Where applicable*: This is a revised timetable issued under rule 38.17(2)(b) which replaces the timetable issued on (*date*).]

1. The diet for a procedural hearing in relation to this reclaiming motion, which will follow on from the procedural steps listed in paragraphs 2 to 5 below, will take place on (*date and time*).
2. Any answers to grounds of appeal or cross-appeal lodged under rule 38.5(2)(d) and (3) must be lodged no later than (*date*).
3. Subject to the terms of any order made by a procedural judge under rule 33.22(3), any appendices to the reclaiming print must be lodged no later than (*date*).
4. Any written intimation by the reclaimer under rule 38.22(2) that he or she does not intend to lodge any appendices to the reclaiming print must be provided by (*date*).
5. No later than (*date*) parties must lodge notes of argument in the reclaiming motion.

(*Date*)

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session 1994 (“the RCS”).

These rules relate to procedural business in the Inner House, reclaiming, applications for new trial or to enter jury verdicts and appeals from lower courts. New Chapters 37A, 38, 39 and 40 are substituted into the RCS.

The main reforms made to the RCS by this Act of Sederunt are that—

- the prohibition on chairs being procedural judges is removed (rule 37A.2);
- the general time-limits for reclaiming are rationalised to provide that certain specified interlocutors may be reclaimed, without leave, within 21 days (these are the interlocutors specified in rule 38.2(2) which covers many more cases than under the pre-existing scheme in force immediately prior to the commencement of this Act of Sederunt), and that all other interlocutors have a 7 day requirement, and leave must be sought (rule 38.2(4));
- the method of reclaiming is altered whereby, at the stage of lodging the reclaiming print, grounds of appeal must be lodged (rule 38.5(2));
- when the reclaiming motion is marked, the reclaimer must specify not only how long the hearing might last but also whether it should proceed by way of the standard or fast-track procedure (rule 38.5(2)). This replaces the urgent disposal system;
- the scheme concerning objections to the competency of reclaiming motions is retained, but the procedure is simplified (rule 38.12);
- provision concerning notes of argument, which reflects the terms of the Practice Note pertaining to Causes in the Inner House, is introduced into the rules (rule 38.15);
- provision for authorities, which reflects that Practice Note, but with the addition of a requirement to seek permission if more than ten authorities are cited in the joint list to be lodged, is introduced into the rules (rule 38.16);
- the provision on appendices is amended which makes it clear that an appendix can only consist of material which was before the Lord Ordinary, unless on cause shown;
- equivalent amending provision is made to Chapters 39 and 40;
- provision, previously set out in Chapters 39 and 40, concerning various matters is removed from the RCS to be replaced with glossing references back to the equivalent provision in Chapter 38 and, in some cases, to provision in Chapter 39.

Many aspects of these Chapters of the RCS remain unchanged.