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Dear Sir/Madam,

**Consultation: On changes to the Inner House Rules**

I refer to the above consultation to which I respond on behalf of the Scottish Courts and Tribunals Service (SCTS). The response is submitted by the SCTS acting in its role to provide efficient and effective administration to the courts and tribunals and does not include the views of the Judiciary.

Whilst the he SCTS is supportive of the policy objectives of the rules review, we have concerns that some of the proposed rule changes as currently drafted will have a significant operational impact on the Inner House.

In particular, the SCTS is unclear as to the need for a fast track procedure to be introduced. The policy paper suggests that this is to modernise the terminology used within the rules, however we anticipate that the impact will go beyond this. Draft Rule 38.6(5) would appear to require the majority of motions seeking allocation to the fast track procedure to be granted. We have concerns that the fast track procedure will become the new norm for all cases. This will create difficulties for the SCTS in terms of court programming and in ensuring that the judiciary are able to have appropriate oversight of documents lodged in advance of hearings. We are unaware of any delays in the progress of Inner House cases that stem from the procedures set out in the current rules. In our view, reclaiming motions, including the writing of judgements meet or exceed the expectations of stakeholders, with no concerns being raised. The Inner House already takes a case management approach which means that cases already progress efficiently and make best use of available judicial and court time. A summar roll is not fixed until the court is satisfied that parties are truly ready to proceed to a summar roll following a procedural hearing. Within the current rules, there is already an effective means of enabling urgent disposal of cases. This has been demonstrated recently through the programming of the judicial reviews relating to the prorogation of Parliament and the census.

In addition to the above, we have noted a number of additional comments, focusing primarily on ensuring the effective and efficient operation of the court. These are set out in [Annex A](#).

The SCTS would be grateful if we could be kept informed of the progress of the consultation. We would welcome the opportunity to consider further draft rules in light of responses received as part of the consultation.

Yours faithfully

Legislation Implementation Team

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## **Annex A - SCTS Comments on Draft Inner House Rules**

### Rule 38.1

It is unclear to the SCTS why paragraph (a) is restricted to a commercial judge and not any other judge – e.g. intellectual property judge.

### Rule 38.5(2)

The SCTS assumes that the changes proposed here are to modernise the language within the rules. However we anticipate that there may be confusion over what is required to be lodged. For example are all of the documents mentioned to be lodged individually? There is already a copy of the pleadings etc. in process and unless the term “reclaiming print” or a modern equivalent is included we anticipate confusion over what is to be lodged. We note that later in the rules, the term “reclaiming print” continues to be used, therefore we are unclear if this is an error.

Additionally, in relation to rule 38.5(2)(c), whilst the SCTS accepts that Practice Note 3 of 2011 requires a party lodging a reclaiming motion to request that the Lord Ordinary opinion, where they have not already done so, it may be beneficial for this requirement to be contained within the rules.

Further, rule 38.5(2)(d) will require three copies of the grounds of appeal to be lodged. The policy paper suggests that the grounds of appeal are requested at this stage to reduce overall timelines for progressing appeals. The policy paper suggests that the grounds of appeal are required at this stage is to avoid delay from waiting to receive those grounds on the date otherwise specified in the timetable issued by the keeper. If the matter is reclaimed before the Lord Ordinary has provided written opinion and the grounds of appeal are required to be lodged at this stage, the SCTS is concerned that it will impact on the efficient progress of proceedings. For example, we anticipate an increase in motions to amend the grounds of appeal once parties have sight of the written opinion given it may contain additional information which may be of relevance to the grounds. Further it is unclear to us why 3 copies of the grounds of appeal are required, but only one copy of each other document listed.

### Rule 38.5(6)

The SCTS anticipates that this rule will be problematic for the Keeper and the Court programme due to the way in which cases are loaded and include pre-programmed reading and writing time. It is also unclear why it is thought that this rule is required.

### Rule 38.6(1)

Proposed rule 38.5(2)(f) requires the claimer to lodge a statement as to whether they require the motion to proceed under the standard or fast track procedure, therefore it is unclear why this is also required in the motion.

### Rule 38.6(2)

Rule 38.5(4) also appears to require the party to state whether the reclaiming motion should proceed under the standard or fast track procedure, therefore it is unclear why it is also included in this rule.

### Rule 38.6(6)

The SCTS notes that there may be reclaiming motions which relate to a child, but are not in relation to section 11 orders. We wonder if these too should proceed under the fast track procedure and therefore whether this rule should contain a broader definition.

### Rule 38.9(1)

Whilst we accept that rules of court do not generally make provision for matters that are included within primary legislation we are aware that there can be confusion over the time periods for reclaiming/appealing. Section 27D(2) of the Court of Session Act 1988 for example provides for the relevant time periods for appeal following a decision relating to permission for an application. This period runs from the day that the court makes its decision, which differs from other provisions and can cause confusion. To avoid this, we think it would be helpful for the period to be stated in the rules.

### Rule 38.13

We wonder if this rule should indicate what the procedural judge can thereafter do?

### Rule 38.14(1)(c)

The SCTS has concerns that if the Summar Roll hearing is appointed at this stage there is a risk that more motions will be lodged seeking variation of the hearing date as the scope of the reclaiming motion progresses. At present the Summar Roll hearing is only fixed once all of the documents are in final form – thus ensuring that the Summar Roll hearing can proceed. Further the SCTS wonders what the effect of allocating the hearing will actually be, is this simply reserving a date until it is fixed by the issuing of a court interlocutor? If this is the case then it will impact on court programming.

### Rule 38.14(2)(a)

The Practice Note also requires the core bundle i.e. the central documents in the case, taken from the appendix, it may be beneficial to have this requirement included in the rules.

### Rule 38.15(3)

From a case management perspective we think that the rules should require parties to do so and that it should be a requirement to do so 7 days in advance. Being optional risks this not being done, which could delay progress of the case. “Shall” may therefore be better than “may”.

### Rule 38.16(3)

To ensure efficient case management and progress of the case, 7 days may be too close to enable sufficient preparation time in advance of the hearing. We wonder if it would be better for this period to be set by the court rather than have it specified in the rules. Whilst we note the rule is drafted “at least 7 days before” we anticipate that most would be lodged 7 days before if this rule remains as currently drafted.

Additionally, we wonder if this should be incorporated within the timetable issued under proposed rule 38.14.

### Rule 38.19(2)

We wonder if paragraph (2)(a) is necessary given it will have already been appointed under proposed Rule 28.14(c). Whilst we note the inclusion of “or on another date” – we think there will be operational difficulties in assigning different dates, given diary availability etc. In any event, it would always be open to parties to lodge a motion to assign a different date if the one originally allocated was no longer suitable.

### Rule 38.30 and 38.21

Proposed rules 38.20 and 38.21 remove reference to motions. We are unclear how the party is therefore to apply. Depending on the answer to this question, there may be fee implications for the SCTS.

### Rule 38.22(1)(a) and 38.22(2)

The term reclaiming print was removed from earlier parts of the draft rules, it is unclear why it then reappears in this rule.

### Rule 40.2(5)

We are unclear of the purpose of requiring three copies of the grounds of appeal. The application for leave contains the grounds, it is not a separate document.

### Rule 40.3

We wonder if this should appear before rule 40.2 ?

### Rule 40.8(2)(b)

We are unclear why appeal print remains in the proposed rules, but reclaiming print is removed in some of the proposed rules