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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 303**

**COURT OF SESSION**

**Act of Sederunt (Rules of the Court of Session  
Amendment No. 5) (Causes in the Inner House) 2011**

*Made* - - - - - *9th August 2011*  
*Laid before the Scottish*  
*Parliament* - - - - - *11th August 2011*  
*Coming into force* - - - - - *27th September 2011*

The Lords of Council and Session, under and by virtue of the powers conferred by section 5 of the Court of Session Act 1988(1) and all other powers enabling them in that behalf, do hereby enact and declare:

**Citation, commencement etc.**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 5) (Causes in the Inner House) 2011 and comes into force on 27th September 2011.

(2) A certified copy of this Act of Sederunt is to be inserted in the Books of Sederunt.

**Causes in the Inner House**

2.—(1) The Rules of the Court of Session 1994(2) are amended in accordance with the following subparagraphs.

(2) In rule 37A.1 (quorum of Inner House for certain business)(3), in paragraph (2), after subparagraph (c), insert

- “(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).”

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(1) 1988 c.36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c.32), section 2(3); the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), Schedule 9; the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 45; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1); and the Judiciary and Courts (Scotland) Act 2008 (asp 6), section 46(3).  
(2) S.I. 1994/1443, last amended by S.S.I. 2011/288.  
(3) Rule 37A.1 was inserted by S.S.I. 2010/30.

- (3) In rule 37A.2 (procedural judges in the Inner House)(4) for paragraphs (1) and (2) substitute—
- “(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).”.
- (4) Subject to paragraph (5), in rule 38.6(5) (effect of reclaiming)(5), for the words “custody, access” where they twice appear substitute “residence, contact”.
- (5) Rule 38.6(5) as it applied immediately before 27th September 2011 shall continue to have effect in relation to any reclaiming motion which is marked against an interlocutor containing an award of custody or access.
- (6) In rule 38.14 (sist or variation of timetable in reclaiming motion), in paragraphs (4) and (5), for “shall” substitute “may”.
- (7) In rule 39.5 (sist or variation of timetable in application for a new trial), in paragraphs (4) and (5), for “shall” substitute “may”.
- (8) For rule 40.3 (determination of applications for leave to appeal from inferior court) substitute—
- “**40.3.**—(1) An application for leave to appeal under rule 40.2 shall, without a motion being enrolled—
- (a) during session, 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, be brought before the vacation judge for such an order.
- (2) An order for service under paragraph (1) shall include a requirement to intimate the application to the clerk of the inferior 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 be provided to the General Department 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.”.
- (9) In rule 40.10 (objections to the competency of appeals)(6)—
- (a) in paragraph (2), after “procedural judge” insert “at any time within the period of 14 days after receipt by the Deputy Principal Clerk of the appeal process”; and
- (b) in paragraph (4), omit “, and the Deputy Principal Clerk may refer a question of competency.”.
- (10) In rule 40.11 (timetable in appeal from inferior court)(7), in paragraph (1), for “Upon expiry of the period specified in rule 40.7(1), the” substitute “The”.

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(4) Rule 37A.2 was inserted by [S.S.I. 2010/30](#).

(5) Rule 38.6 was inserted by [S.S.I. 2010/30](#).

(6) Rule 40.10 was inserted by [S.S.I. 2010/30](#).

(7) Rule 40.11 was inserted by [S.S.I. 2010/30](#).

(11) In rule 40.12 (sist or variation of timetable in appeal from inferior court), in paragraphs (4) and (5), for “shall” substitute “may”.

(12) For Chapter 41 (appeals under statute) substitute the following Chapter—

“CHAPTER 41

APPEALS UNDER STATUTE

PART I

GENERAL PROVISIONS

**Application and interpretation of this Chapter**

**41.1.**—(1) This Chapter applies to an appeal to the court from any decision of a tribunal other than a decision in the Outer House or a court to which Chapter 40 (appeals from inferior courts) applies.

(2) In this Chapter, unless the context otherwise requires—

“appeal” includes stated case, case, special case (other than a special case under section 27 of the Act of 1988)(8), reference or submission, or an application under an enactment by virtue of which a person may question the validity of a decision;

“case” means stated case, special case (other than a special case under section 27 of the Act of 1988), reference or submission;

“decision” includes assessment, determination, order or scheme;

“party” means the person appearing before the tribunal against the decision of which appeal is taken or any other person who has exercised a statutory right of appeal;

“tribunal” means court, Secretary of State, Minister (including the Scottish Ministers), Department, statutory tribunal, referee, authority or arbiter, as the case may be, against whose decision the appeal is taken.

**Applications for leave to appeal**

**41.2.**—(1) Where leave to appeal is required, an application for such leave shall be made, in the first instance, to the tribunal which made the decision sought to be appealed against unless—

- (a) the enactment allowing the appeal requires the application to be made to the court; or
- (b) there are special circumstances which make it impracticable or impossible to apply to the tribunal.

(2) An application may be made to the court for leave to appeal under paragraph (3) where—

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

(3) Any application to the court for leave to appeal shall be made in Form 40.2.

(4) An application to the court under paragraph (3) 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—

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(8) 1988 c.36. Section 27 was amended by the Constitutional Reform Act 2005 (c.4), Schedule 9(1), paragraph 49(3).

- (i) within 42 days after the date on which the decision appealed against was intimated to the appellant;
  - (ii) where the tribunal issued a statement of reasons for its decision later than the decision, within 42 days after the date of intimation of that statement of reasons to the appellant.
- (5) An application to the court for leave to appeal shall include a statement setting out the proposed grounds of appeal and the grounds on which leave to appeal is sought.
- (6) There shall be lodged with an application to the court under paragraph (3)—
- (a) a process in accordance with rule 4.4 (steps of process);
  - (b) where applicable—
    - (i) evidence that leave to appeal has been refused by the tribunal;
    - (ii) a copy of the grounds of appeal submitted to the tribunal; and
    - (iii) any note by the tribunal setting out the reasons for its refusal;
  - (c) a copy of the document issued by the tribunal setting out the decision complained of and any reasons for that decision; and
  - (d) where the tribunal itself exercised an appellate function, a copy of the decision of the tribunal from which that appeal was taken and any reasons given for that decision.

#### **Determination of applications for leave to appeal**

- 41.3.**—(1) An application for leave to appeal under rule 41.2 shall, without a motion being enrolled—
- (a) during session, 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, be brought before the vacation judge for such an order.
- (2) An order for service under paragraph (1) shall include a requirement to intimate the application to the clerk of the tribunal.
- (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 be provided to the General Department within 14 days from the date of service.
- (4) Paragraph (5) applies where an enactment—
- (a) provides that leave to appeal is required;
  - (b) does not prescribe a period for lodging an application for leave to appeal; and
  - (c) prescribes a period for lodging an appeal which is shorter than the period mentioned in rule 41.2(4)(b).
- (5) A procedural judge or, as the case may be, the vacation judge may order that answers may be lodged to the application for leave to appeal within such period as he or she considers appropriate, having regard to the need for the application for leave to appeal to be dealt with before the period prescribed for lodging an appeal.

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

(7) Where an application for leave to appeal has been granted—

- (a) the Deputy Principal Clerk shall send a certified copy of the interlocutor granting the application to the tribunal; and
- (b) in an appeal by stated case, within 14 days after the date on which the certified copy of the interlocutor was sent to it, the tribunal shall state a case in accordance with rule 41.12 (preparation and issue of the case).

(8) Where an application for leave to appeal has been refused, the Deputy Principal Clerk shall send to the tribunal a copy of the interlocutor refusing the application.

### **Urgent disposal of appeal**

**41.4.**—(1) Where the appellant or a respondent seeks urgent disposal of an appeal, he or she shall apply by motion for urgent disposal of the appeal, specifying in the motion whether the appellant or respondent seeks urgent disposal on the Summar Roll or urgent disposal in the Single Bills.

(2) An application under paragraph (1) may be made—

- (a) in an appeal under Part II of this Chapter, at any time before the expiry of the period of 14 days from the date intimation is given of the lodging of the case under rule 41.14(1)(b) (intimation of the lodging of the case in court);
- (b) in an appeal under Part III of this Chapter, not later than three days after the expiry of the period allowed for lodging answers to the appeal.

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

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

(5) The procedural judge may—

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

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

(7) The following rules apply to an appeal in respect of which the procedural judge has granted a motion for urgent disposal only to the extent that he or she so directs—

- (a) rule 41.5 (competency of appeals);
- (b) in an appeal under Part II of this Chapter, rules 41.18 to 41.21.
- (c) in an appeal under Part III of this Chapter, rules 41.29 to 41.32.

### **Competency of appeals**

**41.5.**—(1) Any party other than the appellant may object to the competency of an appeal made in accordance with this Chapter by lodging in process and serving on the appellant a note of objection in Form 41.5.

(2) A note of objection referred to in paragraph (1) may be lodged—

- (a) in an appeal dealt with under Part II of this Chapter, at any time before the expiry of the period of 14 days from the date intimation is given of the lodging of the case under rule 41.14(1)(b) (intimation of the lodging of the case in court); or

- (b) in an appeal dealt with under Part III of this Chapter, at any time before the expiry of the period of 14 days from the date of service of the appeal under rule 41.27.
- (3) Where the Deputy Principal Clerk considers that an appeal made under this Chapter may be incompetent he may refer the question of competency to a procedural judge—
  - (a) in an appeal dealt with under Part II of this Chapter, at any time within the period of 14 days from the date the case is lodged under rule 41.14; or
  - (b) in an appeal dealt with under Part III of this Chapter, at any time within the period of 14 days from the date the appeal is lodged under rule 41.26.
- (4) 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.
- (5) Where a note of objection is lodged, or the Deputy Principal Clerk refers 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, lodge in process and 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 the procedural judge may make such order as to expenses or otherwise as he or she 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 composed of 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.

#### **Intimation of final interlocutor**

**41.6.—**(1) The Deputy Principal Clerk shall send to the tribunal a copy of the final interlocutor in an appeal under this Chapter.

## PART II

### APPEALS BY STATED CASE ETC.

#### **Application and interpretation of this Part**

**41.7.**—(1) Subject to the provisions of the enactment providing for appeal and to Parts III to XIII, this Part shall regulate the procedure in—

- (a) an appeal by stated case, special case, case, reference or submission against the decision of a tribunal;
- (b) a case stated by an arbiter;
- (c) all statutory proceedings for obtaining the opinion of the court on a question before the issue of a decision by a tribunal or by appeal against such a decision; and
- (d) a case required to be stated by a tribunal referred to in subsection (1), as modified by subsection (7), of section 11 of the Tribunals and Inquiries Act 1992<sup>(9)</sup>.

#### **Applications for case**

**41.8.**—(1) An application for a case for the opinion of the court on any question shall be made by minute setting out the question on which the case is applied for.

- (2) A minute under paragraph (1) shall be sent to the clerk of the tribunal—
  - (a) where the application must be made before the issue of the decision of the tribunal, at any time before the issue of the decision;
  - (b) where the application may be made after the issue of the decision of the tribunal, within the period mentioned in paragraph (3); or
  - (c) where, in a cause in which a statement of the reasons for the decision was given later than the issue of the decision, the application may be made after the issue of that statement, within the period mentioned in paragraph (3).
- (3) The period referred to in paragraph (2)(b) and (c) is—
  - (a) the period prescribed by the enactment under which the appeal is made; or
  - (b) where no such period is prescribed, within 14 days after the issue of the decision or statement of reasons, as the case may be.

#### **Additional questions by other parties**

**41.9.**—(1) On receipt of an application under rule 41.8 (applications for case), the clerk of the tribunal shall send a copy of the minute to every other party.

(2) Within 14 days after the date on which the clerk of the tribunal complied with paragraph (1), any other party may lodge with the clerk a minute setting out any additional question he or she proposes for the case; and on so doing he or she shall send a copy of it to every other party.

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(9) 1992 c.53. Section 11 was amended by the Sea Fish (Conservation) Act 1992 (c.60), section 9(2); the Employment Rights Act 1996 (c.18), Schedule 1, paragraph 57; the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), section 22; the Special Educational Needs and Disability Act 2001 (c.10), Schedule 8(2), paragraph 20(a); the Constitutional Reform Act 2005 (c.4), Schedule 9(1), paragraph 59 and Schedule 11(1), paragraph 1(2); the Consumer Credit Act 2006 (c.14), Schedule 4, paragraph 1; and by S.I. 2001/3649, 2008/2833 and 2009/1307.

### **Consideration of application by tribunal**

**41.10.**—(1) Within 21 days after the expiry of the period allowed for lodging a minute under rule 41.9(2) (additional questions by other parties), the tribunal shall—

- (a) decide to state a case on the basis of the questions set out in the application for a case under rule 41.8(1) and any minute under rule 41.9(2);
- (b) refuse to state a case on a proposed question where it is of the opinion that that question—
  - (i) does not arise;
  - (ii) does not require to be decided for the purposes of the appeal; or
  - (iii) is frivolous; or
- (c) where the application under rule 41.8(1) is made before the facts have been ascertained and the tribunal is of the opinion that it is necessary or expedient that the facts should be ascertained before the application is disposed of, defer further consideration of the application until the facts have been ascertained by it.

(2) Where the tribunal has deferred a decision under paragraph (1)(c), it shall, within 14 days after it has ascertained the facts, decide whether to state or refuse to state a case.

(3) Where the tribunal makes a decision under paragraph (1) or (2), the clerk of the tribunal shall intimate that decision to each party.

(4) Where the tribunal has refused to state a case on any question, there shall be sent to the applicant with the intimation under paragraph (3)—

- (a) a certificate specifying—
  - (i) the date of the decision of the tribunal; and
  - (ii) the reasons for refusal; and
- (b) where the refusal has been made after the facts have been ascertained, a note of the proposed findings-in-fact on which the tribunal proposes to base its decision; or
- (c) where the refusal has been made before the facts have been ascertained, a note of, or sufficient reference to, the averments of the parties in the appeal on which the refusal is based.

### **Procedure for ordaining tribunal to state a case**

**41.11.**—(1) Where the tribunal has refused to state a case on any question, the party whose application has been refused may, within 14 days after the date on which intimation of such refusal was made under rule 41.10(3), lodge in the General Department—

- (a) an application by note to a procedural judge for an order to require the other party to show cause why a case should not be stated;
- (b) the certificate and any note issued under rule 41.10(4); and
- (c) a process in accordance with rule 4.4 (steps of process).

(2) A note under paragraph (1)(a) shall—

- (a) state briefly the grounds on which the application is made; and
- (b) specify the order and any incidental order sought.

(3) An application under paragraph (1) shall be placed before a procedural judge on the first available day after the date on which the note under paragraph (1)(a) was lodged for an order for service of the note on—

- (a) the tribunal; and
- (b) every other party.

(4) After the period for lodging answers has expired, the procedural judge shall, on a motion by the noter, without hearing parties—

- (a) appoint the note to the Summar Roll for hearing; or
  - (b) direct that the note be heard in the Single Bills.
- (5) The noter shall intimate the decision of the procedural judge on the note to the tribunal.

#### **Preparation and issue of the case**

**41.12.**—(1) Where the tribunal has decided, or is ordered under rule 41.11, to state a case, the tribunal shall, within 14 days after the date of intimation of its decision to the parties, cause the case to be prepared in Form 41.12 and copies of it to be submitted in draft to each party.

(2) The case shall—

- (a) specify the relevant provision of the enactment under which it is prepared;
- (b) state in numbered paragraphs the facts and the circumstances out of which the case arises, as agreed or found, or as the case may be, the decision of the tribunal and the reasons for the decision; and
- (c) set out the question for answer by the court.

(3) Within 21 days after the date on which the draft case is submitted under paragraph (1), each party shall—

- (a) return a copy of it to the clerk of the tribunal with a note of any amendments which he or she seeks to have made; and
- (b) intimate such amendments to every other party.

(4) Within 28 days after the expiry of the period for return of the case under paragraph (3), the tribunal—

- (a) shall adjust and settle the case; and
- (b) may, when so doing, add such further or additional findings-in-fact and such additional questions as it thinks necessary for the disposal of the subject-matter of the case.

(5) Where the tribunal does not accept any amendment sought by a party, it shall append to the case a note of—

- (a) the terms of the amendment proposed by the party and any statement by that party in support of the proposal; and
- (b) its reasons for rejecting the proposed amendment.

(6) When the case has been settled by the tribunal, the case shall be authenticated by the clerk of the tribunal who shall send it to the party, or first party, who applied for it.

#### **Intimation of intention to proceed**

**41.13.**—(1) The party to whom the case has been sent under rule 41.12(6) or paragraph (3) of this rule shall, within 14 days after the date of receipt of it—

- (a) intimate to every other party a notice stating whether or not he or she intends to proceed with the case; and
- (b) send a copy of the case to every other party.

(2) Where the party to whom the case has been sent under rule 41.12(6) does not intend to proceed with it, he or she shall, on intimating that fact to every other party under paragraph (1), send the case back to the clerk of the tribunal.

(3) On receipt of the case sent back under paragraph (2), the clerk of the tribunal shall send it to any other party who had applied for a case.

### **Lodging of case in court**

**41.14.**—(1) The party who applied for the case shall, within the period mentioned in paragraph (2)

- (a) lodge in the General Department—
    - (i) the case; and
    - (ii) a process in accordance with rule 4.4 (steps of process) including any productions to be referred to in the appeal;
  - (b) on giving written intimation to every other party of the lodging of the case, send four copies of the case to every other party; and
  - (c) endorse and sign a certificate on the case that the requirements of rule 4.6 (intimation of steps of process) have been complied with.
- (2) The period referred to in paragraph (1) is—
- (a) the period prescribed by the enactment under or by virtue of which the appeal is brought; or
  - (b) where no such period is prescribed, within 28 days after the date on which the case was received by the party from the clerk of the tribunal by virtue of rule 41.12(6) or 41.13(3), as the case may be.

### **Abandonment of appeal**

**41.15.**—(1) A party shall be deemed to have abandoned his or her appeal if he or she—

- (a) fails to comply with a requirement of rule 41.14(1) (lodging of case in court); and
- (b) does not apply to be reponed under rule 41.16 (reponing against deemed abandonment).

(2) Where a party is deemed to have abandoned his or her appeal under paragraph (1) and another party has also applied for a case and has had no opportunity of proceeding with his or her appeal, the party deemed to have abandoned his or her appeal shall—

- (a) intimate to that other party that his or her appeal is abandoned; and
- (b) send the case to that other party.

(3) Where paragraph (2) applies, that other party shall be entitled to proceed in accordance with rule 41.14.

(4) In the application of rule 41.14 to a party entitled to proceed by virtue of paragraph (3) of this rule, for the words “on which the case” to “rule 41.12(6) or 41.13(3), as the case may be” in paragraph (2)(b) of that rule, substitute the words “of intimation of abandonment under rule 41.15(2)”.

### **Reponing against deemed abandonment**

**41.16.** A party may apply by motion to a procedural judge within 7 days after the expiry of the period specified in rule 41.14(2) (period for lodging of case in court), to be reponed against a failure to comply with a requirement of rule 41.14(1).

### **Procedure on abandonment**

**41.17.**—(1) On abandonment of the appeal by all parties entitled to proceed, the case shall be sent to the Deputy Principal Clerk.

- (2) On receiving a case sent under paragraph (1), the Deputy Principal Clerk shall—
  - (a) endorse the case with a certificate in Form 41.17; and
  - (b) transmit the case to the clerk of the tribunal.
- (3) Where a case has been transmitted under paragraph (2), the tribunal shall, on a motion being made to it to that effect—
  - (a) dispose of the cause; and
  - (b) where one party only has applied for a stated case, find that party liable for payment to the other party in the appeal of the expenses of the abandoned appeal as taxed by the Auditor of the Court of Session.

#### **Timetable in appeal under Part II of this Chapter**

- 41.18.**—(1) Where a case has been lodged in accordance with rule 41.14, the Keeper of the Rolls shall—
- (a) issue a timetable in Form 41.29, 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 parties shall comply with the procedural steps listed in paragraph (2) and the date and time of the hearing allocated in terms of subparagraph (b) of this paragraph; and
  - (b) allocate a diet for a procedural hearing in relation to the appeal, to follow on completion of the procedural steps listed in paragraph (2).
- (2) The procedural steps are—
- (a) the lodging of any productions relating to, or appendices to, the appeal;
  - (b) the lodging of notes of argument; and
  - (c) 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 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 7 days after expiry of the 14 day period mentioned in rule 41.5(2)(a);
  - (b) where a procedural judge has made a direction under rule 41.5(7)(b), within 7 days after the date that direction was made;
  - (c) where a question of competency has been referred to a bench of three or more judges, within 7 days after the date of the interlocutor mentioned in paragraph (4).
- (4) An interlocutor referred to in paragraph (3)(c) is—
- (a) an interlocutor that has been pronounced sustaining the competency of the appeal under rule 41.5(9)(a) or following a Summar Roll hearing under rule 41.5(9)(b);
  - (b) an interlocutor that has been pronounced under rule 41.5(9)(c) or (d).

#### **Sist or variation of the timetable in appeal under Part II of this Chapter**

- 41.19.**—(1) An appeal under Part II of this Chapter may be sisted or the timetable may be varied on the application by motion of any party.
- (2) An application under paragraph (1) shall be—
- (a) placed before a procedural judge; and
  - (b) granted only on special cause shown.

- (3) The procedural judge before whom an application under paragraph (1) is placed may—
  - (a) determine the application;
  - (b) refer the application to a bench of three or more judges; or
  - (c) make such other order as the procedural judge 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 41.18(1)(b);
  - (b) fix a date for a procedural hearing; and
  - (c) issue a revised timetable in Form 41.29.
- (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 41.29.

#### **Failure to comply with timetable in appeal under Part II of this Chapter**

**41.20.**—(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 the procedural judge 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 under Part II of this Chapter**

**41.21.**—(1) At the procedural hearing fixed under rule 41.18(1)(b), or rule 41.19(4)(b) or (5) (a), the procedural judge shall ascertain, so far as reasonably practicable, the state of preparation of the parties.

- (2) At the procedural hearing mentioned in paragraph (1), 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 the procedural judge thinks fit to secure the expeditious disposal of the appeal.

#### **Amendment or re-statement of case**

**41.22.** The Inner House may, at any time before the final determination of the case—

- (a) allow the case to be amended with the consent of the parties; or
- (b) remit the case for re-statement, or further statement, in whole or in part by the tribunal.

### **Remit to reporter etc.**

**41.23.**—(1) Where, in order to determine the case, any inquiry into matters of fact may be made, the Inner House may remit to a reporter, the Lord Ordinary or, in the case of a bench of three or more judges, one of the Inner House’s own number to take evidence and to report to the court.

(2) On completion of a report made under paragraph (1), the reporter shall send his or her report and three copies of it, and a copy of it for each party, to the Deputy Principal Clerk.

(3) On receipt of such a report, the Deputy Principal Clerk shall—

- (a) cause the report to be lodged in process; and
- (b) give written intimation to each party that this has been done and that each party may uplift a copy of the report from process.

(4) After the lodging of such a report, any party may apply by motion for an order in respect of the report or for further procedure.

## **PART III**

### **APPEALS IN FORM 41.25**

#### **Application of this Part**

**41.24.** Subject to the provisions of the enactment providing for appeal, this Part applies to an appeal against a decision of a tribunal other than an appeal to which Part II (appeals by stated case, etc.) applies.

#### **Form of appeal**

**41.25.**—(1) An appeal to which this Part applies shall be made in Form 41.25.

(2) An appeal referred to in paragraph (1) shall—

- (a) specify the relevant provision of the enactment under the authority of which the appeal is brought;
- (b) specify the decision complained of, the date on which the decision was made and on which it was intimated to the appellant, and any other necessary particulars;
- (c) where the appeal is against only a part of such a decision, specify or distinguish that part;
- (d) set out the decision appealed against or refer to the decision (a copy of which shall be appended to the appeal);
- (e) state, in brief numbered propositions, the grounds of appeal; and
- (f) set out in a schedule the names and addresses of the respondents in the appeal and the name and address, so far as known to the appellant, of any other person who may have an interest in the appeal.

#### **Lodging of appeal in court**

**41.26.**—(1) Subject to paragraphs (2) and (3), the appeal shall be lodged in the General Department—

- (a) within the period prescribed by the enactment under which it is brought; or
- (b) where no such period is prescribed—
  - (i) within 42 days after the date on which the decision appealed against was intimated to the appellant; or

(ii) where the tribunal issued a statement of reasons for its decision later than the decision, within 42 days after the date of intimation of that statement of reasons to the appellant.

(2) Where leave to appeal to the court has been granted by the tribunal under any of the following enactments, the appeal shall be lodged in the General Department within 42 days after the date on which the decision to grant leave was intimated to the appellant—

- (a) section 37 of the Employment Tribunals Act 1996 (appeal on a question of law from a decision or order of the Employment Appeal Tribunal with leave of the Tribunal)(**10**);
- (b) section 15 of the Social Security Act 1998 (appeal from a decision of a commissioner on a question of law with leave of a commissioner)(**11**);
- (c) section 13 of the Tribunals, Courts and Enforcement Act 2007 (appeal from decision of Upper Tribunal with leave from the Upper Tribunal)(**12**).

(3) Where an application for leave to appeal was made to the court within the period specified in paragraph (1)(b) but that period has expired before leave has been granted, the appeal may be lodged within 7 days after the date on which that leave was granted.

(4) There shall be lodged with the appeal under paragraph (1)—

- (a) a process in accordance with rule 4.4 (steps of process), unless an application has already been made to the court for leave to appeal;
- (b) where appropriate, evidence that leave to appeal has been granted by the tribunal;
- (c) the documents mentioned in rule 41.2(6)(c) and (d) (copies of decisions of tribunal) unless already lodged; and
- (d) such other documents founded upon by the appellant so far as in his or her possession or within his or her control.

### **Orders for service and answers**

**41.27.**—(1) The appeal shall, without a motion being enrolled—

- (a) during session, be brought before a procedural judge on the first available day after being lodged for an order for—
  - (i) service of the appeal 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 appeal has been served, to lodge answers, if so advised, within the period of notice; and
- (b) during vacation, be brought before the vacation judge for such an order.

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

(3) In the application of paragraph (1) to an appeal under section 9(5) of the Transport Act 1985(**13**) (appeal from a decision of the Secretary of State), the order for service under that paragraph shall include a requirement to serve the appeal on—

- (a) the Secretary of State; and

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(10) 1996 c.17.

(11) 1998 c.14. Section 15 applies to Scotland for certain purposes specified in S.I. 2008/2833, article 3(3).

(12) 2007 c.15.

(13) 1985 c.67. Section 9 was amended by the Local Transport Act 2008 (c.26) (“the 2008 Act”), Schedule 7(3), paragraph (1) and modified by the 2008 Act, section 51.

(b) every person who had, or if aggrieved would have had, a right of appeal to the Secretary of State, whether or not that person has exercised that right.

(4) In the application of paragraph (1) to an appeal under section 15 of the Social Security Act 1998 (appeal from a Social Security Commissioner)(**14**) or, in respect of the exercise of functions transferred from a Child Support Commissioner or a Social Security Commissioner to the Upper Tribunal, section 13 of the Tribunals, Courts and Enforcement Act 2007 (appeal from Upper Tribunal)(**15**), the order for service under that paragraph shall include a requirement to serve the appeal on—

(a) the Secretary of State for Work and Pensions; and

(b) if it appears to the court that a person has been appointed by the Secretary of State to pursue a claim for benefit to which the appeal relates, that person.

(5) In the application of paragraph (1) to an appeal from a tribunal referred to in subsection (1), as modified by subsection (7), of section 11 of the Tribunals and Inquiries Act 1992(**16**), the order for service pronounced under that paragraph shall include a requirement to serve an appeal on every other party to the proceedings before the tribunal and on the clerk of the tribunal.

#### **Motion for further procedure**

**41.28.**—(1) This rule applies—

(a) where no note of objection to competency has been lodged within the period mentioned in rule 41.5(2)(b) and no question of competency has been referred by the Deputy Principal Clerk within the period mentioned in rule 41.5(3)(b);

(b) where a procedural judge has made a direction under rule 41.5(7)(b); or

(c) where a question of competency has been referred to a bench of three or more judges and—

(i) an interlocutor has been pronounced sustaining the competency of the appeal under rule 41.5(9)(a) or following a Summar Roll hearing under rule 41.5(9)(b), or

(ii) an interlocutor has been pronounced under rule 41.5(9)(c) or (d).

(2) Where no answers to the appeal have been lodged, within 14 days after expiry of the period allowed for lodging answers, the appellant shall apply by motion to a procedural judge for—

(a) such order for further procedure as is sought; or

(b) an order for a hearing.

(3) The procedural judge shall, on a motion under paragraph (2)—

(a) in relation to a motion under paragraph (2)(a), make such order as he or she thinks fit; or

(b) in relation to a motion under paragraph (2)(b), without hearing parties—

(i) appoint the cause to the Summar Roll for hearing; or

(ii) direct that the cause be heard in the Single Bills.

#### **Timetable in appeal under Part III of this Chapter**

**41.29.**—(1) Where answers to the appeal have been lodged, the Keeper of the Rolls shall—

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(14) 1998 c.14. Section 15 was amended by S.I. 2008/2833.

(15) 2007 c.15.

(16) 1992 c.53. Section 11 was amended by the Sea Fish (Conservation) Act 1992 c.60, section 9(2); the Employment Rights Act 1996 c.18, Schedule 1, paragraph 57; the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), section 22; the Special Educational Needs and Disability Act 2001 c.10, Schedule 8(2), paragraph 20(a); the Constitutional Reform Act 2005 c.4, Schedule 9(1), paragraph 59 and Schedule 11(1), paragraph 1(2); the Consumer Credit Act 2006 c.14, Schedule 4, paragraph 1; and by S.I. 2001/3649 and 2008/2833.

- (a) issue a timetable in Form 41.29, calculated by reference to such periods as are specified in this Chapter and such other periods as may be specified from time to time by the Lord President, stating the date by which the parties shall comply with the procedural steps listed in paragraph (2) and the date and time of the hearing allocated in terms of subparagraph (b) of this paragraph; and
  - (b) allocate a diet for a procedural hearing in relation to the appeal, to follow on completion of the procedural steps listed in paragraph (2).
- (2) The procedural steps are—
- (a) the lodging of any productions relating to, or appendices to, the appeal;
  - (b) the lodging of notes of argument; and
  - (c) 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 shall take the steps mentioned in paragraph (1) after answers have been lodged to the appeal and, in particular—
- (a) where no note of objection has been lodged and no question of competency has been referred by the Deputy Principal Clerk, within 7 days of the lodging of answers to the appeal;
  - (b) where, after answers have been lodged to the appeal, a procedural judge has made a direction under rule 41.5(7)(b), within 7 days after the date that direction was made;
  - (c) where, after answers have been lodged to the appeal, a question of competency has been referred to a bench of three or more judges, within 7 days after the date of an interlocutor mentioned in paragraph (4).
- (4) An interlocutor referred to in paragraph (3)(c) is—
- (a) an interlocutor that has been pronounced sustaining the competency of the appeal under rule 41.5(9)(a) or following a Summar Roll hearing under rule 41.5(9)(b);
  - (b) an interlocutor that has been pronounced under rule 41.5(9)(c) or (d).

#### **Sist or variation of the timetable in appeal under Part III of this Chapter**

- 41.30.**—(1) An appeal under Part III of this Chapter may be sisted or the timetable may be varied on the application by motion of any party.
- (2) An application under paragraph (1) shall be—
- (a) placed before a procedural judge; and
  - (b) granted only on special cause shown.
- (3) The procedural judge before whom an application under paragraph (1) is placed may—
- (a) determine the application;
  - (b) refer the application to a bench of three or more judges; or
  - (c) make such other order as the procedural judge 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 41.29(1)(b);
  - (b) fix a date for a procedural hearing; and
  - (c) issue a revised timetable in Form 41.29.
- (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 41.29.

#### **Failure to comply with timetable in appeal under Part III of this Chapter**

**41.31.**—(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 mentioned in 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 the procedural judge 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 under Part III of this Chapter**

**41.32.**—(1) At the procedural hearing fixed under rule 41.29(1)(b), or rule 41.30(4)(b) or (5) (a), the procedural judge shall ascertain, so far as reasonably practicable, the state of preparation of the parties.

- (2) At the procedural hearing mentioned in paragraph (1), 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 the procedural judge thinks fit to secure the expeditious disposal of the appeal.

## **PART IV**

### **EXCHEQUER APPEALS**

#### **Revenue appeals by stated case**

**41.33.**—(1) This rule applies to an appeal to the court as the Court of Exchequer in Scotland under—

- (a) section 13(5) of the Stamp Act 1891 (appeal from Commissioners for Her Majesty's Revenue and Customs)**(17)**; or
- (b) regulation 20(1) of the General Commissioners (Jurisdiction and Procedure) Regulations 1994**(18)**.

(2) In relation to appeals in respect of instruments executed before 1st October 1999, paragraph (1)(a) has effect as if the reference to section 13(5) of the Stamp Act 1891 were a reference to section 13(1) of that Act as it has effect in relation to such instruments.

(3) Subject to paragraph (4), Part II (appeals by stated case etc.) shall apply to an appeal to which paragraph (1) applies.

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**(17)** 1891 c.39. Section 13 was substituted by the Finance Act 1999 (c.16), Schedule 12, paragraph 2 and was amended by S.I. 2009/56.

**(18)** S.I. 1994/1812. Regulation 20 was revoked by S.I. 2009/56 but still has effect under transitional and savings provisions.

- (4) The following provisions of Part II shall not apply to an appeal to which this rule applies—
- rule 41.8 (applications for case),
  - rule 41.9 (additional questions by other parties),
  - rule 41.10 (consideration of application by tribunal),
  - rule 41.11 (procedure for ordaining tribunal to state a case),
  - rule 41.12 (preparation and issue of the case),
  - rule 41.13 (intimation of intention to proceed).

### **Appeals relating to certain determinations of the Commissioners for Her Majesty's Revenue and Customs**

**41.34.**—(1) This rule applies to an appeal against a determination of the Commissioners for Her Majesty's Revenue and Customs specified in a notice to the appellant under section 221 of the Inheritance Tax Act 1984<sup>(19)</sup> or regulation 6 of the Stamp Duty Reserve Tax Regulations 1986<sup>(20)</sup>.

(2) Where the court grants leave to appeal under rule 41.3(6) in an application notified to it under section 222(3) of the said Act<sup>(21)</sup> or regulation 8(3) of the said Regulations<sup>(22)</sup>, as the case may be, or it is agreed between the appellant and the Commissioners of Inland Revenue that the appeal is to be notified to the court, the appellant shall, within 30 days after the date on which leave to appeal is granted or, as the case may be, after the date on which the Board intimates its agreement to the appellant—

- (a) lodge a statement of facts and grounds of appeal in Form 41.25, and a process unless a process has already been lodged under rule 41.2(6) (lodging process in applications for leave to appeal), in which case the statement of facts and grounds of appeal shall be lodged in that process; and
  - (b) on so doing, apply by motion for an order for service in accordance with rule 41.27 (orders for service and answers).
- (3) The appellant shall apply by motion to a procedural judge for an order for a hearing—
- (a) following the lodging of answers or on the expiry of any period of adjustment allowed, or
  - (b) where no answers have been lodged, on the expiry of the period allowed for lodging answers.

(4) A motion under paragraph (3) shall be intimated to the solicitor in Scotland to the Commissioners of Her Majesty's Revenue and Customs whether or not answers have been lodged by the Commissioners.

(5) Rule 41.28(3)(b) shall apply to a motion under paragraph (3) of this rule as it applies to a motion under paragraph (2)(b) of that rule.

(6) If an appellant fails to comply with any time-limit imposed by this rule, the appellant shall be deemed to have abandoned the appeal.

(7) Where it appears to the court in an appeal under this rule that any question as to the value of land in the United Kingdom requires to be determined, the court shall remit the cause—

- (a) where the land is in Scotland, to the Lands Tribunal for Scotland,
- (b) where the land is in England and Wales, to the Upper Tribunal (Lands Chamber),
- (c) where the land is in Northern Ireland, to the Lands Tribunal for Northern Ireland,

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<sup>(19)</sup> 1984 c.51. Section 221 was amended by the Finance Act 1985 (c.54), Schedule 26, paragraph 5 and the Finance Act 1986 (c.41), section 100(1).

<sup>(20)</sup> S.I. 1986/1711. Regulation 6 was amended by S.I. 1997/2430 and 1999/3264.

<sup>(21)</sup> Section 222 was amended by S.I. 2009/56 and 2009/1307.

<sup>(22)</sup> Regulation 8 was amended by S.I. 1993/3110, 1997/2430, 2009/56 and 2009/1307.

to determine that question and remit back to a procedural judge for further procedure.

## PART V

### APPEALS UNDER SECTION 51 OF THE CHILDREN (SCOTLAND) ACT 1995

#### **Application of Part II to this Part**

**41.35.** Part II (appeals by stated case etc.) shall apply to an appeal to the court by stated case under section 51(11)(b) of the Act of 1995<sup>(23)</sup> subject to the following provisions of this Part.

#### **Interpretation of this Part**

**41.36.** In this Part—

“the Act of 1995” means the Children (Scotland) Act 1995; and

“the Principal Reporter” means the Principal Reporter appointed under section 127 of the Local Government etc. (Scotland) Act 1994<sup>(24)</sup> or any officer of the Scottish Children’s Reporter Administration to whom there is delegated, under section 131(1) of that Act, any function of the Principal Reporter under the Act of 1995.

#### **Lodging of reports and statements with sheriff**

**41.37.**—(1) Paragraph (2) applies where, on an application being made under subsection (13) of section 51 of the Act of 1995 to state a case for the purposes of an appeal under subsection (11) (b) of that section—

(a) it appears to the sheriff (or as the case may be to the sheriff principal) that any report or statement lodged under subsection (2), or report lodged under subsection (3), of that section in the appeal to him or her is relevant to any issue which is likely to arise in the stated case; and

(b) the report or statement has been returned to the Principal Reporter.

(2) The sheriff (or sheriff principal) may require the Principal Reporter to lodge the report or statement with the sheriff clerk; but on the stated case being sent to the person who applied for it, the sheriff clerk shall return the report or statement to the Principal Reporter.

#### **Lodging etc. of reports and statements in court**

**41.38.**—(1) Within seven days after the date on which the case is lodged under rule 41.14(1), the Principal Reporter shall send to the Deputy Principal Clerk the principal and three copies of every report or statement which he was required, under rule 41.37, to lodge.

(2) Neither the principal nor any copy of any such report or statement shall be made available to any of the other parties unless the court otherwise orders.

(3) Subject to any such order, every such report or statement shall remain in the custody of the Deputy Principal Clerk until the appeal has been determined or abandoned and then shall be returned by the Deputy Principal Clerk to the Principal Reporter.

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<sup>(23)</sup> 1995 c.36. Section 51 was amended by the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), Schedule 4, paragraph 4(2).  
<sup>(24)</sup> 1994 c.39. Section 127 was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), Schedule 4, paragraph 95(2).

### **Hearing in private**

**41.39.** The court may direct that all or part of the appeal shall be heard in private.

### **Expenses**

**41.40.**—(1) No expenses shall be awarded to or against any party in respect of the appeal.

(2) Rule 41.17(3)(b) (award of expenses in abandoned appeal) shall not apply to an appeal to which this Part applies.

## **PART VI**

### **APPEALS UNDER THE REPRESENTATION OF THE PEOPLE ACT 1983**

#### **Application of this Part**

**41.41.** This Part applies to an appeal under section 56, as applied by section 57, of the Representation of the People Act 1983 (registration appeals)(25).

#### **Form of appeal under this Part**

**41.42.** An appeal to which this Part applies shall be made by stated case to which Part II (appeals by stated case etc.) shall apply subject to the following provisions of this Part.

#### **Registration Appeal Court**

**41.43.** In the application of Part II by virtue of this Part, references to a procedural judge shall be read as references to the Registration Appeal Court constituted under section 57(2) of the Representation of the People Act 1983.

#### **Consolidated appeals**

**41.44.**—(1) Where several persons have applied for a stated case and it appears to the sheriff that such applications, or any two or more of them, raise the same question of law, the sheriff may consolidate the appeals into one stated case and, where he or she does so, he or she shall—

- (a) state in the case the reasons why he or she has consolidated the appeals; and
- (b) name one of the appellants as the appellant.

(2) Where appeals have been consolidated under paragraph (1), the appellant named under paragraph (1)(b), on receiving the stated case from the sheriff clerk, shall send a copy of it to every other appellant on request.

#### **Hearing before the Registration Appeal Court**

**41.45.**—(1) On the stated case being lodged in accordance with rule 41.14, the appeal shall be put out for hearing before the Registration Appeal Court on the earliest available day.

(2) Rule 41.18 (timetable in appeal under Part III of this Chapter) shall not apply to an appeal to which this Part applies.

### **Decision of Registration Appeal Court**

**41.46.**—(1) The Registration Appeal Court shall, in its decision, specify any alteration or correction to be made on the register in pursuance of such decision.

(2) The Deputy Principal Clerk shall send a copy of the decision of the Registration Appeal Court to the registration officer within four days after the date of the decision.

## **PART VII**

### **STATED CASES UNDER SECTION 11(3) OF THE TRIBUNALS AND INQUIRIES ACT 1992**

#### **Case stated by tribunal at its own instance**

**41.47.**—(1) A tribunal referred to in subsection (1), as modified by subsection (7), of section 11 of the Tribunals and Inquiries Act 1992(26) may, at its own instance, state a case for the opinion of the court on any question arising in the course of proceedings before it.

(2) Part II (appeals by stated case etc.) shall apply to a case stated under paragraph (1) subject to the following provisions of this Part.

#### **Modifications of Part II to appeals under this Part**

**41.48.**—(1) The following rules shall apply to a case to which this Part applies subject to the following provisions of this rule—

rule 41.12 (preparation and issue of the case),

rule 41.14 (lodging of case in court).

(2) For paragraph (1) of rule 41.12 substitute—

“(1) Where the tribunal decides to state a case at its own instance, it shall intimate that decision to each party.”.

(3) For paragraph (6) of rule 41.12 substitute—

“(6) When the case has been settled by the tribunal, the case shall be authenticated by the clerk of the tribunal who shall—

(a) send a copy of the case to each party; and

(b) transmit to the Deputy Principal Clerk the case with a certificate endorsed on it and signed by him or her certifying that subparagraph (a) has been complied with.

(7) The Deputy Principal Clerk shall endorse the case with the date on which he received it from the clerk of the tribunal and return it to the clerk.”.

(4) For rule 41.14 substitute—

“**41.14.** Not earlier than seven days and not later than 14 days after the date on which the case was received by the Deputy Principal Clerk, the clerk of the tribunal shall—

(a) lodge in the General Department—

(i) the case; and

(ii) a process in accordance with rule 4.4 (steps of process) including any productions to be referred to in the appeal;

- (b) on giving written intimation to every other party of the lodging of the case, send five copies of the case to every such party;
- (c) endorse and sign a certificate on the case that the requirements of rule 4.6 (intimation of steps of process) have been complied with.”.

## PART VIII

### APPEALS UNDER SOCIAL SECURITY ACTS

#### Form of appeal under certain Social Security Acts

**41.49.** A reference or appeal under any of the following provisions shall be by stated case to which Part II (appeals by stated case etc.) shall apply—

- (a) a reference by the Pensions Ombudsman under section 150(7) of the Pension Schemes Act 1993<sup>(27)</sup>;
- (b) an appeal under section 151(4) of the Pension Schemes Act 1993<sup>(28)</sup>;
- (c) a reference by the Ombudsman for the Board of the Pension Protection Fund under section 215 of the Pensions Act 2004<sup>(29)</sup>; and
- (d) an appeal under section 217 of the Pensions Act 2004.

#### Modifications of Part II to appeals under this Part

**41.50.**—(1) The following rules shall apply to a case to which this Part applies subject to the following provisions of this rule—

- rule 41.12 (preparation and issue of the case),
- rule 41.14 (lodging of case in court).

(2) For paragraph (1) of rule 41.12 substitute—

“(1) Where the tribunal decides to state a case at its own instance, it shall intimate that decision to each party.”.

(3) For paragraph (6) of rule 41.12 substitute—

“(6) When the case has been settled by the tribunal, the case shall be authenticated by the clerk of the tribunal who shall—

- (a) send a copy of the case to each party; and
- (b) transmit to the Deputy Principal Clerk the case with a certificate endorsed on it and signed by him or her certifying that subparagraph (a) has been complied with.

(7) The Deputy Principal Clerk shall endorse the case with the date on which he received it from the clerk of the tribunal and return it to the clerk.”.

(4) For rule 41.14 substitute—

“**41.14.** Not earlier than seven days and not later than 14 days after the date on which the case was received by the Deputy Principal Clerk, the clerk of the tribunal shall—

- (a) lodge in the General Department—
  - (i) the case; and

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<sup>(27)</sup> 1993 c.48. Section 150 was amended by the Pensions Act 1995 (c.26), section 157(8).

<sup>(28)</sup> Section 151 was last amended by the Pensions Act 2004 (c.35), section 276(2).

<sup>(29)</sup> 2004 c.35.

- (ii) a process in accordance with rule 4.4 (steps of process) including any productions to be referred to in the appeal;
- (b) on giving written intimation to every other party of the lodging of the case, send five copies of the case to every such party.
- (c) endorse and sign a certificate on the case that the requirements of rule 4.6 (intimation of steps of process) have been complied with.”.

## PART IX

### APPEALS TO LORD ORDINARY

#### Application of Parts II and III to this Part

**41.51.** Unless otherwise provided in these Rules, in an appeal to the court which is directed by these Rules or any other enactment to be made to a single judge of the court, the Outer House or the Lord Ordinary, Part II (appeals by stated case etc.) or Part III (appeals in Form 41.25), as the case may be, shall apply to that appeal subject to the following modifications—

- (a) for references to the Inner House, a procedural judge or a bench of three or more judges substitute references to the Lord Ordinary;
- (b) for references to the Single Bills substitute references to the Motion Roll; and
- (c) for references to the Summar Roll substitute references to a hearing.

#### Appeals to be heard in the Outer House

**41.52.**—(1) Subject to paragraph (4), an appeal to the court to which this Chapter applies may be remitted by the Inner House to the Outer House to be heard by the Lord Ordinary in the first instance.

(2) An appeal may be remitted by the Inner House under paragraph (1)—

- (a) at its own instance after hearing parties, or
- (b) on the motion of a party.

(3) An appeal may be remitted under paragraph (1) on a motion being enrolled at any time after answers have been lodged.

(4) Paragraphs (1) to (3) do not apply to the following appeals—

- (a) an appeal under an enactment which specifies that the appeal is to the Inner House;
- (b) an appeal to which Part IV of this Chapter applies (Exchequer appeals);
- (c) an appeal to which Part VI of this Chapter applies (appeals under section 51 of the Children (Scotland) Act 1995);
- (d) an appeal to which Part VII of this Chapter applies (appeals under the Representation of the People Act 1983);
- (e) an appeal from the Land Court;
- (f) an appeal from the Lands Tribunal for Scotland;
- (g) an appeal under section 10 of the Restrictive Practices Court Act 1976 (appeal from the Restrictive Practices Court)**(30)**;
- (h) an appeal under paragraph 14 of Schedule 4 to the Transport Act 1985 (appeal from the Transport Tribunal);

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**(30)** 1976 c.33.

- (i) an appeal under section 13 of the Tribunals, Courts and Enforcement Act 2007 (appeal from Upper Tribunal);
- (j) an appeal under section 15 of the Social Security Act 1998 (appeal from a Social Security Commissioner);
- (k) an appeal under section 49 of the Competition Act 1998 (appeal from the Competition Commission)(31).

### **Reclaiming against decision of the Lord Ordinary**

**41.53.** The decision of the Lord Ordinary on an appeal heard in the Outer House by virtue of rule 41.52 (appeals to be heard in Outer House) may be reclaimed against.

## **PART X**

### **REFERENCES AND APPEALS UNDER AN ACAS ARBITRATION SCHEME**

#### **Interpretation**

**41.54.** In this Part, “an ACAS Scheme” means an arbitration scheme set out in an order under section 212A(7) of the Trade Union and Labour Relations (Consolidation) Act 1992(32).

#### **References under an ACAS Scheme**

**41.55.—**(1) A reference on a preliminary point under an ACAS Scheme shall be made to a procedural judge in Form 41.55 and shall—

- (a) state in numbered paragraphs the facts and circumstances out of which the reference arises; and
- (b) set out the question for answer by the court.

(2) On a reference under paragraph (1) being lodged, the court shall, without a motion being enrolled for that purpose, pronounce an interlocutor for—

- (a) service of the reference on such persons as appears necessary; and
- (b) any person on whom the reference has been served, to lodge answers, if so advised, within such period as is specified by the court.

(3) Within 14 days after the expiry of the period allowed for the lodging of answers, the person making the reference shall apply by motion for such further procedure as that person seeks, and the court shall make such order for further procedure as it thinks fit.

#### **Appeals**

**41.56.—**(1) Subject to paragraph (2), Part III (appeals in Form 41.25) shall apply to appeals under an ACAS Scheme.

(2) An appeal under an ACAS Scheme shall be made within the time limits specified in that scheme.

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(31) 1998 c.41. Section 49 was amended by the Enterprise Act 2002 (c.40), Schedule 5, paragraph 4.

(32) 1992 c.52. Section 212A was inserted by the Employment Rights (Dispute Resolution) Act 1998 (c.8), section 7 and was last amended by the Apprenticeships, Skills, Children and Learning Act 2009 (c.22), Schedule 1, paragraph 13.

## PART XI

### APPEALS UNDER THE TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

#### Permission to appeal against decisions of the Upper Tribunal

**41.57.**—(1) This rule applies where an application is made to the court under section 13(4) of the Tribunals, Courts and Enforcement Act 2007(33) for permission to appeal a decision of the Upper Tribunal which falls within section 13(7) of that Act and for which the relevant appellate court is the Court of Session.

(2) Permission shall not be granted on the application unless the court considers that—

- (a) the proposed appeal would raise some important point of principle or practice; or
- (b) there is some other compelling reason for the court to hear the appeal.”.

**3.** In the Appendix—

- (a) in Form 38.13 (form of timetable in reclaiming motion) in numbered paragraph 3—
  - (i) after “grounds of appeal” insert “or cross-appeal”;
  - (ii) omit “by a party other than the claimer”;
- (b) in Form 39.4 (form of timetable in application for a new trial), in numbered paragraph 2, for “rule 38.5(5)(b)” substitute “rule 39.5(5)(b)”;
- (c) in Form 40.11 (form of timetable in appeal from inferior court), in numbered paragraph 6, after “grounds of appeal” insert “or cross-appeal”; and
- (d) for Form 41.14, Form 41.19, Form 41.48, Form 41.52 and Form 41.56 substitute the Forms set out in the Schedule to this Act of Sederunt.

#### Transitional and savings provision

**4.**—(1) Paragraph 2 of this Act of Sederunt shall not apply in relation to an appeal under Chapter 41 where the appeal was lodged before 27th September 2011.

(2) The Rules of the Court of Session 1994, as they applied immediately before 27th September 2011 continue to have effect in so far as paragraph 2 of this Act of Sederunt does not apply by virtue of subparagraph (1).

Edinburgh  
9th August 2011

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

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SCHEDULE

Paragraph 3(d)

Form 41.5

Rule 41.5(1)

**Form of note of objection to competency of appeal under statute**

(Cause Reference number)

IN THE COURT OF SESSION

NOTE OF OBJECTION TO COMPETENCY OF APPEAL

[A.B.]

Appellant

against

[C.D.]

Respondent

To the Deputy Principal Clerk of Session

*(Name of appellant)*, appellant has marked an appeal under *(insert statutory provision under which the appeal is brought)* in the above cause. *(Name of objecting party)*, respondent, objects to the competency of the appeal on the following grounds:

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

Date *(insert date)*

*(Signed)*

Solicitor for Respondent

*(Address)*

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## Form 41.12

Rule 41.12(1)

### Form of case in appeal under statute to the Court of Session

CASE

for

OPINION OF THE COURT OF SESSION

under

*(state provision in enactment under which appeal is made)*

[A.B.] *(designation and address)*

Appellant

against

[C.D.] *(designation and address)*

Respondent

I [*or We*] found the following facts admitted or proved:—

*(Set out in numbered paragraphs the facts admitted or proved)*

NOTE

*(Set out the basis on which the tribunal found the facts admitted or proved and the reasoning of the decision appealed against)*

The question(s) of law for the opinion of the court is [*or are*]:—

*(Set out the questions in numbered paragraphs)*

This case stated by [*me*]

*(Signed)*

*(Name)*

APPENDIX

*(Here append any documents referred to in the case necessary for the understanding of the case)*

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## Form 41.17

Rule 41.17(2)

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

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

*(Signed)*

Deputy Principal Clerk of Session

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## Form 41.25

Rule 41.25(1)

### Form of appeal in appeal under statute to the Court of Session

APPEAL

to

THE COURT OF SESSION

under

*(state provision in enactment under which appeal is made)*

[A.B.] *(designation and address)*

Appellant

against

A decision [*or as the case may be*] of *(name of tribunal)* dated *(date)* communicated to the appellant on *(date)*

The decision [*or as the case may be*] of *(name of tribunal)* dated *(date)* is in the following terms [*or where a lengthy or reasoned decision is appealed against, is appended to this appeal*].

The appellant appeals against the forgoing decision [*or as the case may be*] on the following grounds.

### GROUND(S) OF APPEAL

*(State the grounds of appeal in numbered paragraphs)*

The question(s) of law for the opinion of the court is [or are]:—

*(Set out the questions in numbered paragraphs)*

*(Signed)*

Appellant

[*or Solicitor [or Agent] for appellant*]

### APPENDIX

*(Here set out lengthy or reasoned decision appealed against)*

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## Form 41.29

Rule 41.18(1)(a)  
Rule 41.29(1)(a)

### Form of timetable in appeal under statute

(Cause Reference number)

IN THE COURT OF SESSION

TIMETABLE IN APPEAL

[A.B.]

Appellant

against

[C.D.]

Respondent

This timetable has effect as if it were an interlocutor of the court signed by the procedural judge. [Where applicable: This is a revised timetable issued under rule 41.30(4)(c) [or rule 41.30(5)(b) or rule 41.19(4)(c) or rule 41.19(5)(b)] which replaces the timetable issued on (date).]

1. The diet for a procedural hearing in relation to this appeal, which will follow on from the procedural steps listed in paragraphs 2 to 4 below, will take place on (date and time).
2. Any productions or appendices to the appeal shall be lodged not later than (date).
3. Not later than (date) parties shall lodge notes of argument in the appeal.
4. Not later than (date) parties shall lodge estimates of the length of any hearing on the Summar Roll or in the Single Bills which is required to dispose of the appeal.

(Date)

## Form 41.55

### Rule 41.55

#### **Form of reference on a preliminary point under an ACAS Scheme**

UNTO THE RIGHT HONOURABLE  
THE LORDS OF COUNCIL AND SESSION  
REFERENCE ON A PRELIMINARY POINT

Under

*(specify the ACAS Scheme under which the reference is being made)*

by

[A.B.] *(address)*

Arbitrator in the case of

[C.D.] *(address)* against [E.F.] *(address)*

[or by

[C.D.] *(address)* and [E.F.] *(address)* parties in a case in which [A.B.] *(address)* is the arbitrator]

*(Here state in numbered paragraphs the facts and circumstances out of which the reference arises and set out the question for answer by the court)*

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### **EXPLANATORY NOTE**

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

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

It introduces new rules of procedure for causes in the Inner House. These rules relate to appeals under statute. A new Chapter 41 is substituted into the Rules. Some amendments are also made to the rules relating to the quorum of the Inner House for dealing with procedural business, and the

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procedural rules for dealing with reclaiming motions, applications for new trials or to enter jury verdicts and appeals from inferior courts.

Appeals under statute which are lodged before 27th September 2011 will be governed by the rules of procedure in force prior to that date.