

SCHEDULE 2

THE RULES OF THE COURT OF SESSION 1994

Initiation and progress of proceedings

CHAPTER 39

APPLICATIONS FOR NEW TRIAL OR TO ENTER JURY VERDICTS

Applications for new trial

39.1.—(1) An application under section 29(1) of the Act of 1988(1) (application for new trial) shall be made by motion within 7 days after the date on which the verdict of the jury was written on the issue and signed.

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

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

(a) in the case of an application under section 29(1)(a) (misdirection of judge), the procedure in rule 37.7 (exceptions to judge’s charge) has been complied with; or

(b) in the case of an application under section 29(1)(b) (undue admission or rejection of evidence), objection was taken to the admission or rejection of the evidence at the trial and recorded in the notes of evidence under direction of the judge presiding at the trial.

(4) On enrolling a motion for a new trial under paragraph (1), the party enrolling it shall lodge—

(a) a print of the whole pleadings and interlocutors in the cause incorporating the issues and counter issues;

(b) the verdict of the jury; and

(c) any exception and the determination on it of the judge presiding at the trial.

(5) Rule 38.8 (effect of reclaiming) shall, with the necessary modifications, apply to an application for a new trial under section 29 of the Act of 1988 as it applies to a reclaiming motion.

Applications out of time

39.2.—(1) Where an application for a new trial under section 29(1) of the Act of 1988 is made outwith the period specified in rule 39.1(1) the motion made in accordance with that rule shall include an application to allow the motion to be received and for leave to proceed out of time.

(2) Where the court grants an application under paragraph (1), it shall—

(a) where the motion has been opposed as incompetent, make such order as may be made under rule 39.3(2); or

(b) where no such opposition has been marked, appoint the cause to the Summar Roll for hearing or dispose of the motion in the Single Bills.

Objections to competency of application

39.3.—(1) Where an application for a new trial under section 29(1) of the Act of 1988 is made by a party, any other party may oppose the motion on the ground that it is incompetent.

(2) At the hearing in the Single Bills of the motion referred to in paragraph (1), the court may—

(1) 1988 c. 36.

Status: This is the original version (as it was originally made).

- (a) dispose of the objection to competency; and, where it repels the objection, appoint the cause to the Summar Roll for hearing or determine the motion in the Single Bills;
- (b) appoint the cause to the Summar Roll for a hearing on the objection; or
- (c) reserve the objection for hearing with the merits and appoint the cause to the Summar Roll for hearing.

Procedure where no objections to competency

39.4. Where an application for a new trial under section 29(1) of the Act of 1988 is—

- (a) made timeously, and
- (b) not opposed on the ground of competency,

the court shall, without hearing parties, appoint the cause to the Summar Roll or direct that it be put out in the Single Bills for hearing.

Lodging of appendix

39.5. Rule 38.19 (lodging of appendices in reclaiming motions) shall, with the necessary modifications, apply to an application for a new trial under section 29(1) of the Act of 1988 as it applies to a reclaiming motion.

Applications to enter jury verdict

39.6.—(1) An application under section 31(1) of the Act of 1988 (verdict returned subject to opinion of Inner House on point reserved) shall be made by motion.

(2) On enrolling a motion under paragraph (1), the party enrolling it shall lodge in process four copies of the closed record incorporating—

- (a) all interlocutors pronounced in the cause and any amendments to the record allowed;
- (b) the issues and counter issues;
- (c) any exception taken during the trial and the determination on it of the judge presiding at the trial; and
- (d) the verdict of the jury;

and send one copy of it to every other party.

(3) Unless the court otherwise directs, it shall not be necessary for the purposes of such a motion to print the notes of evidence, but the notes of the judge presiding at the trial may be produced at any time if required.

(4) In a case of complexity or difficulty, the Inner House may appoint an application referred to in paragraph (1) to the Summar Roll for hearing.