

CHAPTER 40

APPEALS FROM INFERIOR COURTS

Application and interpretation of this Chapter

40.1.—(1) This Chapter applies to an appeal to the court from any decision pronounced by an inferior court which may be appealed to the court.

(2) In this Chapter—

(a) “appeal process” means—

(i) the process of the inferior court; or

(ii) where the cause is recorded in an official book of an inferior court, a copy of the record in that book certified by the clerk of the inferior court;

(b) “decision” includes interlocutor, judgment or other determination;

(c) “inferior court” means—

(i) the Lyon Court;

(ii) the sheriff with respect to judgments or interlocutors to which section 28 of the Sheriff Courts (Scotland) Act 1907, or s. 38(b) of the Sheriff Courts (Scotland) Act 1971, applies.

Applications for leave to appeal from inferior court

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

(2) Where—

(a) the inferior court has refused leave to appeal and such refusal is not final, or

(b) leave to appeal is required from the court and not the inferior court,

any application to the court for leave to appeal shall be made in Form 40.2 to the Inner House.

(3) An application to the court under paragraph (2) for leave to appeal shall be lodged in the General Department—

(a) within the period prescribed by the enactment by virtue of which it is made; or

(b) where no such period is prescribed, within 14 days after the date specified in paragraph (4).

(4) The date referred to in paragraph (3)(b) is—

(a) the date on which the decision of the inferior court refusing leave to appeal was intimated to the appellant; or

(b) where the application for leave to appeal is required to be made to the court and not the inferior court—

(i) the date on which the decision of the inferior court complained of was issued; or
(ii) where the inferior court issued reasons for its decision later than the decision, the date of issue of the reasons.

(5) An application to the court for leave to appeal shall 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 inferior court;

(ii) a copy of the grounds of appeal intimated to the inferior court; and

(iii) any note by the inferior court setting out the reasons for its refusal;

(c) a copy of the decision of the inferior court complained of and any reasons for that decision; and

(d) where the inferior 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.

Determination of applications for leave to appeal from inferior court

40.3.—(1) On lodging an application for leave to appeal under rule 40.2, the applicant shall apply by motion to the Inner House for an order for intimation and service.

(2) On expiry of the period within which answers may be lodged, the applicant may apply by motion to the Inner House for the application to be granted.

Time and method of appeal

40.4.—(1) An appeal from an inferior court shall be made–

(a) within the period prescribed by the enactment by virtue of which the appeal is made; or

(b) where no such period is prescribed, within 21 days after–

(i) the date on which the decision appealed against was given;

(ii) where the inferior 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 inferior court or application for leave to appeal was made to the court under rule 40.2(2), the date on which leave was granted by the inferior court or the court, as the case may be.

(2) A party seeking to appeal from an inferior court shall mark an appeal by writing a note of appeal in Form 40.4–

(a) on the interlocutor sheet, minute of court or other written record containing the decision appealed against; or

(b) where such a decision is not available or the proceedings of the inferior court are recorded in an official book, on a separate sheet lodged with the clerk of the inferior court.

(3) A note of appeal shall—

(a) be signed by the appellant or his agent;

(b) bear the date on which it is signed; and

(c) where the appellant is represented, specify the name and address of the agent who will be acting for him in the appeal.

Leave to appeal out of time

40.5.—(1) An application to allow an appeal to be received outwith the time prescribed for marking an appeal and to proceed out of time shall be included in the note of appeal.

(2) Within 14 days after the date of receipt by the Deputy Principal Clerk of the appeal process from the clerk of the inferior court under rule 40.6(1), the appellant shall apply by motion to allow the appeal to be received outwith the time prescribed for marking an appeal and for leave to proceed out of time.

(3) The decision of the Inner House on a motion under paragraph (2) shall be final and not subject to review.

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

(a) give written intimation to the clerk of the inferior court that leave to appeal out of time has been refused; and

(b) transmit the appeal process and note of appeal to him.

Transmission of appeal process

40.6.—(1) Within 4 days after an appeal has been marked, the clerk of the inferior court shall—

(a) give written intimation of the appeal to every other party and certify on the interlocutor sheet, other record or separate note of appeal, as the case may be, that he has done so; and

(b) transmit—

(i) the appeal process, and

(ii) any separate note of appeal,

to the Deputy Principal Clerk.

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

(a) mark the date of receipt on the interlocutor sheet, other record or separate note of appeal, as the case may be; and

(b) give written intimation of that date to the appellant.

(3) Where the clerk of the inferior court or the Deputy Principal Clerk fails to comply with a provision of this rule, the appeal shall not be invalidated; but the court may give such remedy for any disadvantage or inconvenience occasioned thereby as it thinks fit.

Procedure following transmission of appeal process

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

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

(2) Subject to rule 40.9(2) (appeals deemed abandoned), within 28 days after the date of receipt by the Deputy Principal Clerk of the appeal process, or the date of the interlocutor granting a motion made under rule 40.5(2) (leave to appeal out of time), whichever is the later, the appellant shall—

(a) lodge—

(i) a process, including each part of the appeal process, in accordance with rule 4.4

(steps of process); and

(ii) an appeal print; and

(b) send a copy of the appeal print in accordance with rule 4.6(1) (intimation of steps of process).

(3) Subject to rule 40.11 (early disposal of appeal), on lodging in process the documents required under paragraph (2), the appellant shall apply by motion to the Inner House for an order for grounds of appeal to be lodged.

Required application for early disposal of appeal against interlocutor other than final judgment

40.7A. On lodging an appeal print under rule 40.7(2)(a)(ii) in respect of an appeal marked against-

(a) an interlocutor of an inferior court in a case where the interlocutor is not a final judgment; or

(b) an interlocutor of an inferior court containing an order made under the Adoption Act 1978 or under section 11 of the Children (Scotland) Act 1995,

the appellant shall make application under rule 40.11(1)(a) for early disposal of the appeal.

Sist of process of appeal

40.8.—(1) Within 14 days after the date of receipt by the Deputy Principal Clerk of the appeal process, the appellant may apply by motion to the Inner House for a sist of process.

(2) On enrolling a motion under rule 40.5(2) (leave to appeal out of time) or under paragraph (1) of this rule, the appellant shall lodge a motion sheet and an interlocutor sheet, if not already lodged.

(3) Where the court grants a motion under paragraph (1), the period of 28 days mentioned in rule 40.7(2) shall not run during any period in which the appeal is sisted.

Appeals deemed abandoned

40.9.—(1) If an appellant fails—

(a) to apply by motion in accordance with rule 40.5(2) (leave to appeal out of time), or
(b) to comply with the requirements of rule 40.7(2) (lodging process etc.), which, in a case where rule 40.7A is applicable, shall mean the requirements of rule 40.7(2) as read with rules 40.7A and 40.11(1)(a),

he shall be deemed to have abandoned his appeal on the expiry of the period for marking an appeal or for complying with the requirements of rule 40.7(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 40.7(2) (lodging process etc.) and thereafter insist in the appeal as if it had been marked by him; and the following provisions of this Chapter applying to an appellant shall, with the necessary modifications, apply to an appeal by a respondent under this paragraph.

(3) Where a respondent insists in an appeal under paragraph (2), the appellant shall be entitled to insist in the appeal notwithstanding that his appeal has been deemed to be abandoned.

(4) If, on the expiry 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 40.10, and

(b) the respondent does not insist in the appeal under paragraph (2) of this rule,

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

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

- (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 40.9;
- (b) send the appeal process to the clerk of the inferior 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—

- (a) is deemed to be abandoned under paragraph (1) and has been transmitted to an inferior court under paragraph (5), the respondent in the appeal may apply by motion to that court for an award of the expenses of the abandoned appeal; and
- (b) the inferior court shall on such motion grant decree for payment to that respondent of those expenses as taxed by the Auditor of the Court of Session.

Reponing against deemed abandonment

40.10.—(1) An appellant may, within 7 days after the date on which the appeal has been deemed to be abandoned under rule 40.9(1), apply by motion to be reponed.

(2) The court may grant a motion under paragraph (1) on such conditions as to expenses or otherwise as it thinks fit.

(3) On enrolling a motion under paragraph (1), the appellant shall lodge a process (or such necessary steps of process as have not already been lodged) and an appeal print.

Early disposal of appeal

40.11.—(1) A party who seeks early disposal of an appeal (in the case of the appellant, whether or not by virtue of rule 40.7A) shall—

(a) where he is the appellant, instead of enrolling for an order for grounds of appeal under rule 40.7(3), apply by motion to the Inner House for early disposal of the appeal, specifying in the motion whether he seeks disposal on the Summar Roll or in the Single Bills; or

(b) where he is the respondent—

(i) within the period allowed for opposing the motion, endorse, on the motion of the appellant made under rule 40.7(3), the words “The respondent (name) seeks early disposal.”;

(ii) who is insisting in an appeal deemed abandoned by virtue of rule 40.9(1), instead of enrolling for an order for grounds of appeal under rule 40.7(3) (by virtue of rule 40.9(2)), apply by motion to the Inner House for early disposal of the appeal; or
(iii) add, to his opposition under rule 40.12(1) (objections to competency of appeals), the words “and for early disposal”.

(2) The entry in the rolls in respect of the motion for early disposal shall be starred; and the parties shall, at the hearing of that motion, provide the Inner House with an assessment of the likely duration of the hearing to determine the appeal.

(3) At the hearing of the motion for early disposal, the Inner House may—

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

(b) direct that the cause be heard in the Single Bills,

and may make such order as to the lodging of grounds of appeal as it thinks fit.

(4) At any hearing of the appeal in the Single Bills, the Inner House may determine the appeal or, make such order as it thinks fit.

Objections to competency of appeals

40.12.—(1) Where a motion for grounds of appeal under rule 40.7(3) has been enrolled by an appellant, any other party may oppose the motion on the ground that the appeal is incompetent.

(2) Where a motion has been opposed under paragraph (1), the cause shall be put out for hearing in the Single Bills before a Division of the Inner House.

(3) At the hearing in the Single Bills arranged under paragraph (2), the court may—

(a) dispose of the objection to competency and, where it repels the objection, order grounds of appeal to be lodged;

(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 and order grounds of appeal to be lodged.

(4) Where the Deputy Principal Clerk considers that an appeal may be incompetent, he may, at any time before the cause is brought before the Inner House, refer it to a single judge in accordance with paragraph (5).

(5) Any referral by the Deputy Principal Clerk under paragraph (4) shall be made to a judge nominated for that purpose by the Lord President.

(6) Where a referral is made under paragraph (4), the judge may—

- (a) order any party to make representations to him in respect of the competency of the appeal;
- (b) refuse the appeal on the ground that it is incompetent;
- (c) direct that the appeal is to proceed as if the referral had not been made;
- (d) make such order as to expenses or otherwise as he thinks fit.

(7) Any decision of a judge in respect of an appeal referred to him under paragraph (4) shall be final and not subject to review.

Procedure where no objection to competency of appeal

40.13.—(1) Subject to paragraph (2), where an appeal is not opposed on the ground of competency, the Inner House shall, without hearing parties, order grounds of appeal to be lodged.

(2) This rule shall not apply where an application is made under rule 40.11(1) (early disposal of appeal).

Grounds of appeal

40.14.—(1) An order for grounds of appeal shall require—

- (a) the appellant, and
 - (b) any respondent seeking to appeal against any interlocutor or challenge the grounds on which the inferior court has made its decision,
- to lodge grounds of appeal within 28 days after the date of the interlocutor making the order.

(2) Grounds of appeal shall consist of brief specific numbered propositions stating the grounds on which it is proposed to submit that the appeal should be allowed or as the case may be.

(3) On lodging grounds of appeal, the party lodging them shall send a copy of them to every other party to the appeal.

(4) A party who has lodged grounds of appeal may at any time apply for leave to amend his grounds of appeal on cause shown.

(5) Where an appellant fails to lodge grounds of appeal in accordance with paragraph (2) within the period prescribed under paragraph (1), the Inner House may, at its own instance or on the motion of a respondent, refuse the appeal with or without hearing parties as the court thinks fit.

Orders for hearing of appeal

40.15.—(1) Within 7 days after the expiry of the period prescribed for lodging grounds of appeal—

- (a) the appellant who has lodged grounds of appeal, or
 - (b) where the appellant no longer insists in his appeal, a respondent who has lodged grounds of appeal,
- shall apply by motion to the Inner House for an order for hearing.

(2) On a motion under paragraph (1), the court may—

- (a) appoint the cause to the Summar Roll for hearing; or
- (b) direct that the cause be heard in the Single Bills.

(3) In a cause in which an objection to competency has been reserved under rule 40.12(3)(c), the motion under paragraph (1), of this rule shall require the attendance of counsel or other person having a right of audience, and, at the hearing of that motion in the Single Bills, the court may—

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

Appeal prints

40.16. An appeal print shall be in the form of a record and shall contain—

- (a) the whole pleadings and interlocutors in the cause;
- (b) where the appeal is directed at the refusal of the inferior court to allow the pleadings to be amended, the text of the proposed amendment; and
- (c) where available, the judgment of the inferior court (including in an appeal in a summary cause under the Summary Cause Rules of the Sheriff Court, the stated case of the sheriff).

Lodging of appendices in appeals

40.17.—(1) Where, in an appeal—

- (a) the judgment of the inferior court has not been included in the appeal, or
- (b) it is sought to submit notes of evidence or other documents for consideration by the court,

the appellant shall lodge an appendix incorporating such documents within three months after the cause had been appointed to the Summar Roll.

(2) Where the appellant considers that an appendix is not necessary, the appellant shall, by the date specified in paragraph (1)–

(a) give written intimation of that fact to the Deputy Principal Clerk; and

(b) send a copy of that intimation to the respondent.

(3) Where a respondent in an appeal seeks to submit notes of evidence or other documents for consideration by the court which the appellant has given written intimation to the respondent he does not intend to include in his appendix, the respondent shall incorporate such notes or documents in an appendix which he shall lodge within one month after the date on which intimation under paragraph (2) or this paragraph, as the case may be, was given.

(4) Where an appellant fails to lodge an appendix in accordance with paragraph (1), a respondent may apply by motion to the Inner House to have the appeal refused.

(5) In a case where early disposal is sought by virtue of rule 40.7A, the Inner House may, on the application by motion of the appellant, determine that paragraphs (1) to (4) shall not apply or shall apply subject to such modifications as it considers appropriate.

Notes of evidence not extended when agreed in appeals

40.18. Where, in an appeal, the parties are agreed that on any particular issue the decision appealed against is not to be submitted to review, it shall not be necessary to reproduce the notes of evidence or documents relating to that issue.

Amendment of pleadings in appeals

40.19.—(1) Where, after an appeal has been marked, a party applies by motion to have the pleadings amended in terms of a minute of amendment and answers, he shall apply for a direction as to further procedure.

(2) Where it appears to the Inner House that the proposed amendment makes a material change to the pleadings, it may set aside the decision, or recall the interlocutor, as the case may be, of the inferior court appealed against and remit the cause back to the inferior court for a further hearing.

Referral to family mediation in appeals from sheriff court

40.20. In an appeal from the sheriff 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, the court may, where it considers it appropriate to do so, refer that issue to a mediator accredited to a specified family mediation organisation

Use of Gaelic

40.21. (1) This rule applies where an inferior court has authorised the use of Gaelic by a party.

(2) If-

(a) the party wishes to address the Inner House in the appeal; or

(b) where proof has been ordered by the Inner House, the party wishes to give oral evidence or to address the judge to whom the Inner House has remitted the cause, in Gaelic,

he may apply by motion for authority to do so.

(3) Where the court has granted authority under paragraph (2), an interpreter shall be provided by the court.