

## 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 (application for new trial)(a) shall be made to a procedural judge, 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), (b) or (c) 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;
- (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 evidence at the trial and recorded in the notes of evidence under the direction of the judge presiding at the trial; or
- (c) in the case of an application under section 29(1)(c) (verdict contrary to evidence), it sets out in brief specific numbered propositions the reasons the verdict is said to be contrary to the evidence.

(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 38.6 (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) A procedural judge may, on an application made in accordance with paragraph (2), allow an application for a new trial under section 29(1) of the Act of 1988 to be received outwith the period specified in rule 39.1(1) and to proceed out of time on such conditions as to expenses or otherwise as the procedural judge thinks fit.

(2) An application under paragraph (1) shall be made by motion included in the motion made under rule 39.1(1).

#### Objections to the competency of application

**39.3.**—(1) Any party other than the applicant may object to the competency of an application for a new trial under section 29(1) of the Act of 1988 by—

- (a) lodging in process; and
- (b) serving on the applicant,

a note of objection in Form 39.3.

(2) A note of objection may be lodged only within the period of 7 days after the date on which the motion under rule 39.1(1) was enrolled.

(3) Where a note of objection is lodged, 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.

(4) Each party shall, within the period of 7 days after the date on which a note of objection is lodged—

- (a) lodge in process; and
- (b) serve on the other party,

a note of argument giving fair notice of the submissions which the party intends to make as to competency.

(5) At the hearing allocated under paragraph (3), the procedural judge may—

- (a) refuse the application for a new trial as incompetent;
- (b) direct that the application for a new trial 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 application to be competent; or
- (c) refer the question of competency to a bench of three or more judges;

and he may make such order as to expenses or otherwise as he thinks fit.

(6) Where a procedural judge refers a question of competency under paragraph (5)(c), the cause shall be put out for a hearing in the Single Bills before a Division of the Inner House comprising three or more judges.

(7) At the hearing in the Single Bills arranged under paragraph (6), 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; or
- (c) reserve the objection for hearing with the merits.

### **Timetable in application for a new trial**

**39.4.**—(1) The Keeper of the Rolls shall—

- (a) issue a timetable in Form 39.4, 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 application for a new trial, to follow on completion of the procedural steps listed in paragraph (2).

(2) The procedural steps are—

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

(3) The Keeper of the Rolls shall take the steps mentioned in paragraph (1)—

- (a) where no note of objection has been lodged within the period mentioned in rule 39.3(2), within 7 days of the expiry of that period;
- (b) where a procedural judge has made a direction under rule 39.3(5)(b), within 7 days after the date that direction was made; 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 application for a new trial under rule 39.3(7)(a) or following a Summar Roll hearing under rule 39.3(7)(b), or
  - (ii) an interlocutor has been pronounced under rule 39.3(7)(c), within 7 days after the date of that interlocutor.

#### **Sist or variation of timetable in application for a new trial**

**39.5.**—(1) An application for a new trial 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 he thinks fit to secure the expeditious disposal of the application.
- (4) Where the timetable is varied, the Keeper of the Rolls shall—
  - (a) discharge the procedural hearing fixed under rule 39.4(1)(b);
  - (b) fix a date for a procedural hearing; and
  - (c) issue a revised timetable in Form 39.4.
- (5) Upon recall of a sist, the Keeper of the Rolls shall—
  - (a) fix a date for a procedural hearing; and
  - (b) issue a revised timetable in Form 39.4.

#### **Failure to comply with timetable in application for a new trial**

**39.6.**—(1) Where a party fails to comply with the timetable, the Keeper may, whether on the motion of a party or otherwise, put the application for a new trial 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 applicant or a respondent fails to comply with the timetable, make such order as he thinks fit to secure the expeditious disposal of the application;
  - (b) in particular, where the applicant fails to comply with the timetable, refuse the application; or
  - (c) in particular, where a sole respondent fails or all respondents fail to comply with the timetable, allow the application.

#### **Procedural hearing in application for a new trial**

**39.7.**—(1) At the procedural hearing fixed under rules 39.4(1)(b), 39.5(4)(b) or (5)(a), the procedural judge shall ascertain, so far as reasonably practicable, the state of preparation of the parties.

- (2) The procedural judge may—
  - (a) appoint the application to the Summar Roll for a hearing and allocate a date and time for that hearing;

- (b) appoint the application to the Single Bills for a hearing and allocate a date and time for that hearing; or
- (c) make such other order as he thinks fit to secure the expeditious disposal of the application.

### **Lodging of appendix**

**39.8.** 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**

**39.9.—**(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 to a procedural judge.

(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 procedural judge 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 the case of complexity or difficulty, the procedural judge may appoint an application referred to in paragraph (1) to the Summar Roll for hearing.

### **Single Bills**

**39.10.** At any hearing of an application for a new trial in the Single Bills, the Inner House may determine the application or make such other order as it thinks fit.