

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; or
 - (ii) the sheriff with respect to judgments or interlocutors to which section 28 of the Sheriff Courts (Scotland) Act 1907(a), or section 38(b) of the Sheriff Courts (Scotland) Act 1971(b), 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 a procedural judge.

(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) 1907 c.51. Section 28 was substituted by section 2 of the Sheriff Courts (Scotland) Act 1913 (c.28) and was amended by section 4 of, and Part II of Schedule 2 to the Sheriff Courts (Scotland) Act 1971 (c.58).

(b) 1971 c.58. Section 38(b) was amended by section 18 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73).

- (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) 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.

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 its 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 motion enrolled in terms of paragraph (2) shall be disposed of by a procedural judge.

- (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 40.15(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 a process, including each part of the appeal process, in accordance with rule 4.4 (steps of process);
- (b) lodge an appeal print in the form of a record which shall contain—
 - (i) the whole pleadings and interlocutors in the cause;
 - (ii) 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
 - (iii) where available, the judgment of the inferior court (including in an appeal in a summary cause under the Act of Sederunt (Summary Cause Rules) 2002(a) or a small claim under the Act of Sederunt (Small Claim Rules) 2002(b), the stated case of the sheriff); and
- (c) send a copy of the appeal print, in accordance with rule 4.6(1) (intimation of steps of process).

(a) S.S.I. 2002/132, last amended S.S.I. 2009/402.

(b) S.S.I. 2002/133, last amended by S.S.I. 2009/402.

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 a procedural judge 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 procedural judge grants a motion under paragraph (1), the period of 28 days mentioned in rule 40.7(2) (lodging process etc.) shall not run during any period in which the appeal is sisted.

(4) The provisions of this rule are without prejudice to the power of the court to sist an appeal, as referred to in rule 40.12.

Urgent disposal of appeal

40.9.—(1) Where the appellant seeks urgent disposal of an appeal, he shall, on lodging an appeal print under rule 40.7(2)(b), apply by motion to a procedural judge for urgent disposal of the appeal, specifying in the motion whether he seeks urgent disposal on the Summar Roll or urgent disposal in the Single Bills.

(2) Where a respondent seeks urgent disposal of an appeal, he shall—

- (a) within the period allowed for opposing the motion, endorse on the motion of the appellant under paragraph (1), or send by post or facsimile transmission a notice of opposition in Form 23.4 including the words “The respondent (*name*) seeks urgent disposal in the Summar Roll” or the words “The respondent (*name*) seeks urgent disposal in the Single Bills”, as the case may be; or
- (b) enrol a motion for urgent disposal on the Summar Roll or for urgent disposal in the Single Bills, within 7 days of the respondent intimating his name and address and that of his agent (if any) in terms of rule 40.7(1).

(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 may make such order as to the future timetabling of, and procedure in, the appeal as he thinks fit.

(7) Rules 40.10 to 40.14 shall apply to an appeal in respect of which the procedural judge has granted a motion for urgent disposal only to the extent that he so directs.

Objections to the competency of appeals

40.10.—(1) Any party other than the appellant may object to the competency of an appeal made under this Chapter by—

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

a note of objection in Form 40.10.

(2) Where the Deputy Principal Clerk considers that an appeal made under this Chapter may be incompetent he may (whether or not any party has lodged and served a note of objection under paragraph (1)) refer the question of competency to a procedural judge at any time within the period of 14 days after receipt by the Deputy Principal Clerk of the appeal process..

(3) 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.

(4) A note of objection may be lodged, , only within 14 days after the expiry of the period specified in rule 40.7(2) (lodging process etc.).

(5) Where a note of objection is lodged, or the Deputy Principal Clerk has referred 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—

- (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.

(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 he may make such order as to expenses or otherwise as he 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 comprising 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.

Timetable in appeal from inferior court

40.11.—(1) The Keeper of the Rolls shall—

- (a) issue a timetable in Form 40.11, 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 a process in accordance with rule 40.7(2)(a);
 - (b) the lodging and sending a copy of the appeal print in accordance with rule 40.7(2)(b);
 - (c) the enrolling of any motion for a sist of process in terms of rule 40.8;
 - (d) the lodging of grounds of appeal and answers;
 - (e) the lodging of appendices to the appeal print or, as the case may be, the giving of intimation that the appellant does not intend to lodge any appendices;
 - (f) the lodging of notes of argument; and
 - (g) 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 of the Rolls 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 the period mentioned in rule 40.10(4), within 7 days of the expiry of that period;
 - (b) where a procedural judge has made a direction under rule 40.10(7)(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 appeal under rule 40.10(9)(a) or following a Summar Roll hearing under rule 40.10(9)(b), or
 - (ii) an interlocutor has been pronounced under rule 40.10(9)(c) or (d), within 7 days after the date of that interlocutor.

Sist or variation of timetable in appeal from inferior court

40.12.—(1) An appeal under 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 he 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 40.11(1)(b);
 - (b) fix a date for a procedural hearing; and
 - (c) issue a revised timetable in Form 40.11.
- (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 40.11.

Failure to comply with timetable in appeal from inferior court

40.13.—(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 he 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 from inferior court

40.14.—(1) At the procedural hearing fixed under rules 40.11(1)(b), 40.12(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 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 he thinks fit to secure the expeditious disposal of the appeal.

Appeals deemed abandoned

40.15.—(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.), 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 on 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 the period 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 40.16, and
- (b) a 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 40.15;
- (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 is deemed to be abandoned under paragraph (1) and has been transmitted to an inferior court under paragraph (5)—

- (a) a 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

40.16.—(1) An appellant may, within 7 days after the date on which the appeal has been deemed to be abandoned under rule 40.15(1), apply by motion to a procedural judge to be reponed.

(2) A procedural judge may grant a motion under paragraph (1) on such conditions as to expenses or otherwise as he 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.

Amendment of pleadings in appeals

40.17.—(1) Where, after an appeal has been marked, any 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 that the amendment makes a material change to the pleadings, the Inner House may set aside the decision, or recall the interlocutor of the inferior court appealed against and remit the cause back to the inferior court for a further hearing.

Grounds of appeal

40.18.—(1) 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.

(2) On lodging grounds of appeal, the party lodging them shall—

- (a) lodge three copies of them in process; and
- (b) send a copy of them to every other party.

(3) A party who has lodged grounds of appeal or answers to the grounds of appeal may apply by motion to amend the grounds or answers, on cause shown.

(4) An application under paragraph (3) shall include any necessary application under rule 40.12(1).

Lodging of appendices in appeals

40.19.—(1) Where, in an appeal under this Chapter, the appellant considers that it is not necessary to lodge an appendix to the appeal print, the appellant shall, by the relevant date specified in the timetable—

- (a) give written intimation of that fact to the Deputy Principal Clerk; and
- (b) send a copy of that intimation to each respondent.

(2) Where the appellant provides intimation under paragraph (1), a respondent may apply to a procedural judge, by motion, for an order requiring the appellant to lodge an appendix.

(3) An application under paragraph (2) shall include specification of the documents that the respondent seeks to have included in the appendix.

(4) Where an application is made under paragraph (2), a procedural judge may make an order requiring the appellant to lodge any appendix that the procedural judge considers necessary, within such time as the procedural judge may specify.

(5) An order under paragraph (4) may only be granted by a procedural judge after having heard parties.

(6) Paragraph (7) applies where—

- (a) a respondent seeks to submit for consideration by the court notes of evidence or documents in respect of which the appellant has given written intimation to the respondent that the appellant does not intend to include in his appendix; and
- (b) a procedural judge has not made an order under paragraph (2) requiring the appellant to lodge an appendix which includes such notes of evidence or documents.

(7) The respondent shall incorporate such notes or documents in an appendix which he shall lodge within such period as is specified by the procedural judge in disposing of the application under paragraph (4).

(8) Where, in any appeal other than one in which intimation is given under paragraph (1)—

- (a) the judgment of the inferior court has not been included in the appeal print, or
- (b) it is sought to submit notes of evidence or documents for consideration by the court, the appellant shall lodge an appendix incorporating such documents within such period as shall be specified in the timetable.

Notes of evidence not extended when agreed in appeals

40.20. 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.

Referral to family mediation in appeals from the sheriff court

40.21. 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(a) is in issue, a procedural judge may, where he considers it appropriate to do so, refer that issue to a mediator accredited to a specified family mediation organisation.

Use of Gaelic

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

(2) If the party wishes to address the Inner House in Gaelic at any hearing fixed under rule 40.14(2), he may—

- (a) at any time up to and including the procedural hearing fixed under rules 40.11(1)(b), 40.12(4)(b) or (5)(a), apply by motion to the procedural judge for authority to do so; or
- (b) at any time after the procedural hearing fixed under rules 40.11(1)(b), 40.12(4)(b) or (5)(a) and before final disposal of the appeal, apply by motion for authority to do so.

(3) Where proof has been ordered by the Inner House, if the party wishes to give oral evidence in Gaelic, he may apply by motion for authority to do so.

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

Single Bills

40.23. At any hearing of an appeal from a decision pronounced by an inferior court in the Single Bills, the Inner House may determine the motion or make such other order as it thinks fit.

(a) 1995 c.36. Section 11 was amended by the Family Law (Scotland) Act 2006 (asp 2), section 24.