

## 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 a 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)(a) 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 Court of Session Act 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;

"tribunal" means court, Secretary of State, Minister, 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) 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, 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 the period mentioned in paragraph (1)(b) of rule 41.20 (lodging of appeal in court).

(4) 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.

(5) 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) On lodging an application for leave to appeal under rule 41.2, the applicant shall apply by motion to the Inner House for an order for intimation and service.

(1A) An order for intimation and service under paragraph (1) shall include a requirement to intimate the application to the clerk of the tribunal.

(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.

(3) 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 41.9 (preparation and issue of case).

(4) 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.

### **Competency of appeals**

**41.3A.**-(1) 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 (2).

(2) Any referral by the Deputy Principal Clerk under paragraph (1) shall be made to a judge nominated for that purpose by the Lord President.

(3) Where a referral is made under paragraph (1), 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 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.

(4) Any decision of a judge in respect of an appeal referred to him under paragraph (1) shall be final and not subject to review.

### **Intimation of final interlocutor**

**41.3B** The Deputy Principal Clerk shall send to the tribunal a copy of the final interlocutor in an appeal.

## PART II

### APPEALS BY STATED CASE ETC.

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

**41.4.** 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 (a).

#### **Applications for case**

**41.5.-(1)** An application for a case for the opinion of the court on any questions 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; or
  - (b) where the application may be made-
    - (i) after the issue of the decision of the tribunal, or
    - (ii) in a cause in which a statement of the reasons for the decision was given later than the issue of the decision, after the issue of that statement, within the period mentioned in paragraph (3).
- (3) The period referred to in paragraph (2)(b) 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**

**41.6.-(1)** On receipt of an application under rule 41.5 (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 proposes for the case; and on so doing he shall send a copy of it to every other party.

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

**41.7.-(1)** Within 21 days after the expiry of the period allowed for lodging a minute under rule 41.6(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 41.5(1) and any minute under rule 41.6(2);
- (b) where it is of the opinion that the proposed question-
  - (i) does not arise,
  - (ii) does not require to be decided for the purposes of the appeal, or
  - (iii) is frivolous, refuse to state a case on that question; or

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(a) 1992 c.53; section 11 was amended by the Sea Fish (Convention) Act 1992 (c.60), section 9.

(c) where the application under rule 41.5(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**

**41.8.**-(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 41.7(3), lodge in the General Department-

- (a) an application by note to the Inner House 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 41.7(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 put out in the Single Bills before the Inner House 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 Inner House 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 Inner House on the note to the tribunal.

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

**41.9.**-(1) Where the tribunal has decided, or is ordered under rule 41.8, 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 41.9 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 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 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**

**41.10.**-(1) The party to whom the case has been sent under rule 41.9(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 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 41.9(6) does not intend to proceed with it, he 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 (1), the clerk of the tribunal shall send it to any other party who had applied for a case.

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

**41.11.**-(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) shall be-
- (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 him from the clerk of the tribunal by virtue of rule 41.9(6) or 41.10(3), as the case may be.

### **Abandonment of appeal**

**41.12.**-(1) If a party-

- (a) fails to comply with a requirement of rule 41.11(1) (lodging of case in court), and
- (b) does not apply to be reponed under rule 41.13 (reponing against deemed abandonment), he shall be deemed to have abandoned his appeal.

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

- (a) intimate to that other party that his appeal is abandoned, and
- (b) send the case to that other party; and that other party shall be entitled to proceed in accordance with rule 41.11.

(3) In the application of rule 41.11 to a party entitled to proceed by virtue of paragraph (2) of this rule, for the words "on which the case" to "rule 41.9(6) or 41.10(3), as the case may be" in paragraph (2)(b) of that rule, there shall be substituted the words "of intimation of abandonment under rule 41.12 (2)".

### **Reponing against deemed abandonment**

**41.13.** A party may apply by motion to the Inner House within 7 days after the expiry of the period specified in rule 41.11(2) (period for lodging of case in court), to be reponed against a failure to comply with a requirement of rule 41.11(1).

### **Procedure on abandonment**

**41.14.**-(1) On the 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 to him under paragraph (1), the Deputy Principal Clerk shall-

- (a) endorse the case with a certificate in Form 41.14; 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 him 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.

### **Motions for hearing of appeals**

**41.15.**-(1) On lodging a case under rule 41.11 (lodging of case in court), the party lodging it shall apply by motion to the Inner House for an order for a hearing.

(2) The Inner House shall, on a motion under paragraph (1), without hearing parties-

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

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

**Amendment or re-statement of case**

**41.16.** 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 restatement, or further statement, in whole or in part by the tribunal.

**Remit to reporter**

**41.17.**-(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 one of its 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 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 he 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 41.19

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

**41.18.** 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**

**41.19.**-(1) An appeal to which this Part applies shall be made in Form 41.19 presented to the Inner House.

(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**

**41.20.**-(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, within 42 days after-
  - (i) 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, 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);
- (b) section 15 of the Social Security Act 1998 (appeal from decision of a commissioner on a question of law with leave of a commissioner);
- (d) section 13 of the Tribunals, Courts and Enforcement Act 2007 (appeal from decision of Upper Tribunal with leave from the Upper Tribunal) in respect of the exercise of functions transferred from a Child Support Commissioner or a Social Security Commissioner to the Upper Tribunal.

(2A) Paragraph (2B) applies where an appeal lies to the court under any decision made by a Child Support Commissioner or a Social Security Commissioner which falls to be dealt with as if the decision were a decision made on or after 3rd November 2008 by the Upper Tribunal.

(2B) In such a case, paragraph (2) shall apply, subject to a requirement that the appeal shall be lodged in the General Department within 42 days after the date on which the decision of a Child Support Commissioner or a Social Security Commissioner to grant leave was intimated to the appellant.

(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(5)(c) and (d) (copies of decisions of tribunal) unless already lodged; and
- (d) such other documents founded on by the appellant so far as in his possession or within his control.

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

**41.21.**-(1) The appeal shall, without a motion being enrolled-

- (a) during session, appear in the Single Bills 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 court 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) In the application of paragraph (1) to an appeal under section 9(5) of the Transport Act 1985(a) (appeal from 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
- (b) every person who had, or if aggrieved would have had, a right to appeal to the Secretary of State, whether or not he has exercised that right.

(3) In the application of paragraph (1) to an appeal under section 15 of the Social Security Act 1998 (appeal from a Social Security Commissioner) 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), 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.

(4) 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(b) the order for service pronounced under that paragraph shall include a requirement to serve the appeal on every other party to the proceedings before the tribunal and on the clerk of the tribunal.

(5) In the application of paragraph (1) to an appeal to which subsection (6), as modified by subsection (7), of section 11 of the Tribunal and Inquiries Act 1992 (which relates to an appeal from a decision under section 41 of the Consumer Credit Act 1974(c) applies-

- (a) the order for service under that paragraph shall include a requirement to serve the appeal on-
  - (i) the Secretary of State; and
  - (ii) where the appeal is by a licensee under a group licence against compulsory variation, suspension or revocation of that licence, the original applicant, if any; and

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(a) 1985 c.67.

(b) 1992 c.53, section 11 was amended by the Sea Fish (Convention) Act 1992 (c.60), section 9.

(c) 1974 c.39.

- (b) the court may remit to the Secretary of State for him to provide the court with such further information as the court may require.

**Motion for further procedure**

**41.22-**(1) Within 14 days after the expiry of the period allowed for lodging answers to an appeal, whether or not answers have been lodged, the appellant shall apply by motion to the Inner House for-

- (a) such order for further procedure as is sought; or
- (b) an order for a hearing.

(2) The Inner House shall, on a motion under paragraph (1)-

- (a) in relation to a motion under paragraph (1)(a), make such order as it thinks fit; or
- (b) in relation to a motion under paragraph (1)(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.

PART IV  
EXCHEQUER APPEALS

**Revenue appeals by stated case**

**41.23.**-(1) This rule applies to an appeal to the court as the Court of Exchequer in Scotland under any of the following provisions:-

- (a) section 13(5) of the Stamp Act 1891<sup>(a)</sup> (appeal from Commissioners for Her Majesty's Revenue and Customs);
- (c) regulation 20(1) of the General Commissioners (Jurisdiction and Procedure) Regulations 1994<sup>(b)</sup>.

(1A) In relation to appeals in respect of instruments executed before 1st October 1999, paragraph (1)(a) above 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.

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

- (3) The following provisions of Part II shall not apply to an appeal to which this rule applies:-
- rule 41.5 (applications for case),
  - rule 41.6 (additional questions by other parties),
  - rule 41.7 (consideration of application by tribunal),
  - rule 41.8 (procedure for ordaining tribunal to state a case),
  - rule 41.9 (preparation and issue of the case),
  - rule 41.10 (intimation of intention to proceed).

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

**41.26.**-(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>(c)</sup> or regulation 6 of the Stamp Duty Reserve Tax Regulations 1986<sup>(d)</sup>.

(2) Where the Inner House grants leave to appeal under rule 41.3(2) in an application notified to it under section 222(3) of the said Act or regulation 8(3) of the said Regulations, as the case may be, or it is agreed between the appellant and the Commissioners for Her Majesty's Revenue and Customs 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 41.19, 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 41.21 (orders for service and answers).

(3) The appellant shall-

- (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, apply by motion to the Inner House for an order for a hearing.

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(a) 1891 c.39.

(b) S.I. 1994/1812.

(c) 1984 c.51; citation of the Act amended by the Finance Act 1986 (c.41), section 100(1)(a).

(d) S.I. 1986/1711.

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

(5) Rule 41.22(2)(b) shall apply to a motion under paragraph (3) of this rule as it applies to a motion under paragraph (1)(b) of that rule.

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

(7) Where it appears to the Inner House 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 Lands Tribunal,
- (c) where the land is in Northern Ireland, to the Lands Tribunal for Northern Ireland, to determine that question and remit back to the Inner House for further procedure.

PART V

APPEALS UNDER THE PENSIONS APPEAL TRIBUNAL ACT 1943

**Form of appeal under the Act of 1943**

**41.27** An appeal from a Pensions Appeal Tribunal under section 6(2) of the Pensions Appeal Tribunal Act 1943(a) shall be by a case, stated by the chairman of the tribunal, to which Part II (appeals by stated case etc.) shall apply.

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(a) 1943 c.39

## PART VI

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

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

**41.28** 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 subject to the following provisions of this Part.

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

**41.29.** In this Part-

"the Act of 1995" means the Children (Scotland) Act 1995(a); and  
"the Principal Reporter" means the Principal Reporter appointed under section 127 of the Local Government etc. (Scotland) Act 1994(b) 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 clerk**

**41.30.** 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 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,

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**

**41.31.**-(1) Within seven days after the date on which the case is lodged under rule 41.11(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 41.30, 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 him to the Principal Reporter.

#### **Hearing in private**

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

#### **Expenses**

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

(2) Rule 41.14(3)(b) (award of expenses in abandoned appeal) shall not apply to an appeal to which this Part applies.

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(a) 1995 c.36.

(b) 1994 c.39.

## PART VII

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

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

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

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

**41.35.** 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.

#### **Consolidated appeals**

**41.36.**-(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, he may consolidate the appeals into one stated case and, where he does so, he shall-

- (a) state in the case the reasons why he 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 Registration Appeal Court**

**41.37.**-(1) On the stated case being lodged in accordance with rule 41.11, the appeal shall be put out for hearing before the Registration Appeal Court on the earliest available day.

(2) Rule 41.15 (motions for hearing of appeals) shall not apply to an appeal to which this Part applies.

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

**41.38.**-(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.

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(a) 1983 c.2, section 56 was amended by the Representation of the People Act 1985 (c.50), Schedule 2, paragraph 1, Schedule 4, paragraph 16 and Schedule 5.

## PART VIII

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

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

**41.39.**-(1) A tribunal referred to in subsection (1), as modified by subsection (7), of section 11 of the Tribunals and Inquiries Act 1992(a) 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

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

- rule 41.9 (preparation and issue of the case),
- rule 41.11 (lodging of case in court),
- rule 41.15 (motions for hearing of appeals).

(2) For paragraph (1) of rule 41.9 there shall be substituted the following paragraph:-

"(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 41.9 there shall be substituted the following paragraphs:-

"(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 certifying that sub-paragraph (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 41.11 there shall be substituted the following rule:-

"41.11. 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; 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."

(5) Rule 41.15 shall apply to the clerk of the tribunal in a cause to which this Part applies as it applies to the party lodging a case under rule 41.11.

## PART IX

### APPEALS UNDER SOCIAL SECURITY ACTS

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

**41.41.** 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:-

- (c) a reference by the Pensions Ombudsman under section 150(7), of the Pension Schemes Act 1993**(b)**;
- (d) an appeal under section 151(4), or section 173(3), of the Pension Schemes Act 1993;
- (e) a reference by the Occupational Pensions Regulatory Authority under section 97(1) of the Pensions Act 1995; and
- (f) an appeal under section 97(3) of the Pensions Act 1995.

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

**41.42.**-(1) The following rules shall apply to a cause to which this Part applies subject to the following provisions of this rule:-

- rule 41.9 (preparation and issue of the case),
- rule 41.11 (lodging of case in court),
- rule 41.15 (motions for hearing of appeals).

(2) For paragraph (1) of rule 41.9 there shall be substituted the following paragraph:-

"(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 41.9 there shall be substituted the following paragraphs:-

"(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 certifying that sub-paragraph (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 to the tribunal and return it to the clerk."

(4) For rule 41.11 there shall be substituted the following rule:-

"41.11. 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; 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."

(5) Rule 41.15 shall apply to the clerk of the tribunal in a cause to which this Part applies as it applies to the party lodging a case under rule 41.11.

## PART X

### APPEALS TO LORD ORDINARY

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

**41.43.** 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 41.19), as the case may be, shall apply to that appeal subject to the following modifications:-

- (a) for references to the Inner House there shall be substituted references to the Lord Ordinary;
- (b) for references to the Single Bills there shall be substituted references to the Motion Roll; and
- (c) for references to the Summar Roll there shall be substituted references to a hearing.

#### Appeals to be heard in Outer House

**41.44.**-(1) Subject to paragraph (2), 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-

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

on a motion being enrolled under rule 41.15 (motions for hearing appeals by stated case) or rule 41.22 (motion for further procedure in appeals in Form 41.19), as the case may be.

(2) Paragraph (1) shall 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 50 of the Social Work (Scotland) Act 1968<sup>(a)</sup>);
- (d) an appeal to which Part VII of this Chapter applies (appeals under the Representation of the People Act 1983<sup>(b)</sup>);
- (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<sup>(c)</sup> (appeal from the Restrictive Practices Court);
- (h) an appeal under paragraph 14 of Schedule 4 to the Transport Act 1985<sup>(d)</sup> (appeal from the Transport Tribunal);
- (i) an appeal under section 13 of the Tribunals, Courts and Enforcement Act 2007 (appeal from the Upper Tribunal) in respect of the exercise of functions transferred from a Child Support Commissioner or a Social Security Commissioner to the Upper Tribunal;
- (j) an appeal under section 15 of the Social Security Act 1998 (appeal from a Social Security Commissioner);
- (l) an appeal under section 37(1) of the Industrial Tribunals Act 1996<sup>(e)</sup>.
- (m) an appeal under section 49 of the Companies Act 1998 (appeal from the Competition Commission).”.

#### Reclaiming against decision of Lord Ordinary

**41.45.** The decision of the Lord Ordinary on an appeal heard in the Outer House by virtue of rule 41.44 (appeals to be heard in Outer House) may be reclaimed against.

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<sup>(a)</sup> 1968 c.49; section 50 was amended by the Local Government etc. (Scotland) Act 1994, Schedule 13.

<sup>(b)</sup> 1983 c.2.

<sup>(c)</sup> 1976 c.33.

<sup>(d)</sup> 1985 c.67.

<sup>(e)</sup> 1996 c.17.

PART XII

APPEALS UNDER THE PROCEEDS OF CRIME ACT 2002

**Form of appeal under section 299 of the Proceeds of Crime Act 2002**

**41.53.**-(1) In this rule “the Act of 2002” means the Proceeds of Crime Act 2002.

(2) This rule applies to an appeal under section 299 of the Act of 2002.

(3) An appeal under paragraph (2) shall be to the Lord Ordinary.

**Reclaiming against decision of the Lord Ordinary**

**41.54.** The decision of the Lord Ordinary on an appeal under rule 41.53 shall be final and shall not be subject to review.

## PART XIII

### REFERENCES AND APPEALS UNDER AN ACAS ARBITRATION SCHEME

#### Definitions

**41.55.** 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(a).

#### References under an ACAS Scheme

**41.56.**-(1) A reference on a preliminary point under an ACAS Scheme shall be made to the Outer House in Form 41.56 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 he seeks, and the court shall make such order for further procedure as it thinks fit.

#### Reclaiming against decision of the Lord Ordinary

**41.57.** The decision of a Lord Ordinary on a reference on a preliminary point under rule 41.56 may be reclaimed against.

#### Appeals

**41.58.**-(1) Subject to paragraph (2), Part III (appeals in Form 41.19) 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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(a) 1992 c.52.

PART XIV

APPEALS UNDER THE TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

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

**41.59.**—(1) This rule applies where an application is made to the court under section 13(4) of the Tribunals, Courts and Enforcement Act 2007<sup>(a)</sup> 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.

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<sup>(a)</sup> 2007 c.15.