

## COURT OF SESSION

### PRACTICE NOTE

No. 3 of 2011

#### **Causes in the Inner House**

1. This Practice Note has effect from 27th September 2011.
2. The following notes are primarily designed to explain how the new rules relating to causes in the Inner House will operate in practice. The new rules were introduced in two stages. The first set of rules, relating to reclaiming motions under Chapter 38, applications for a new trial or to enter jury verdicts under Chapter 39 and appeals from inferior courts under Chapter 40, came into force on 5th April 2010. The second set of rules, relating to appeals under statute, come into force on 27th September 2011. For the most part, the following notes are arranged by reference to selected rules in the Act of Sederunt.
3. For information on the background to many of the procedural changes and why they were made, practitioners may find it helpful to refer to the Report of Lord Penrose which was issued in 2009 and is available on the Scottish Courts Website [www.scotcourts.gov.uk/innerhousereform/index.asp](http://www.scotcourts.gov.uk/innerhousereform/index.asp).

#### *Procedural Business in the Inner House: Chapter 37A*

##### *Rule 37A.1: Quorum of Inner House for certain business*

4. One of the central aspects of Lord Penrose's proposals was that a single judge of the Inner House should be able to deal with specified procedural business in the Inner House. Rule 37A.1 is intended to reflect this by making provision regarding the quorum of a Division of the Inner House when dealing with specified procedural business. In relation to such procedural business as is defined in rule 37A.1, the quorum of a Division of the Inner House is one judge.
5. Procedural business is defined as such business as arises under—
  - (a) a reclaiming motion,
  - (b) an application for a new trial under section 29(1) of the Court of Session Act 1988 or an application to enter a jury verdict under section 31 of the 1988 Act,
  - (c) an appeal from an inferior court, or
  - (d) an appeal under statute,in each case up to and including the point at which a procedural judge, at a procedural hearing, appoints a cause to the Summar Roll or the Single Bills

for a hearing or makes such other order as he or she thinks fit to secure the expeditious disposal of the reclaiming motion, application or appeal.

*Rule 37A.2: Procedural judges in the Inner House*

6. This rule provides that all judges of the Inner House, except the Lord President and the Lord Justice Clerk, are procedural judges, before whom proceedings in the Inner House are brought in accordance with Chapters 38 to 41 of the Rules. When acting in that capacity, each procedural judge sits as a single judge.
7. Although specific provision is made in certain rules for business to be dealt with and disposed of by a procedural judge, rule 37A.2(3) preserves the competency of a Division comprising three or more judges to dispose of procedural business instead of a single procedural judge, should such a Division consider it appropriate. Provision is also made in a number of rules for a procedural judge to refer certain matters to a bench of three or more judges. Such a remit might be appropriate where procedural business raises issues of particular importance or novelty.

***Chapter 38: Reclaiming***

*Rule 38.2: Reclaiming days*

8. It should be noted that, with one exception, the period within which an interlocutor may be reclaimed against under rule 38.2 will be either be 14 days or 21 days after the date on which the interlocutor was pronounced. Whether the 14 day period or the 21 day period will apply, and whether or not leave is required, will depend on the type of interlocutor. The exception is rule 38.2(2), which applies to a reclaiming motion against an interlocutor which disposes of the whole merits of the cause but reserves or does not dispose of the question of expenses. In that case, any party to the cause who seeks an order for expenses before disposal of the reclaiming motion must apply by motion to the Lord Ordinary for such an order within 14 days of the date of enrolment of that reclaiming motion. A reclaiming motion can proceed out of time under rule 38.10.

*Rule 38.5: Method of reclaiming*

9. Practitioners are reminded that, when enrolling a reclaiming motion in a case in respect of which no opinion has been issued, they should advise the depute clerk—
  - (a) that the reclaiming motion has been enrolled, and
  - (b) that an opinion is required.
10. When enrolling a reclaiming motion where a matter likely to be at issue at the hearing of the reclaiming motion is not covered by an opinion already in process

(e.g. the disposal of expenses following upon the appearance of judgment) practitioners will continue to require—

- (a) to indicate in the motion sheet the particular matter which is not so covered, and
- (b) to advise the depute clerk that an opinion is required thereon.

*Rule 38.6: Effect of reclaiming*

- 11. It should be noted that particular provision is made in this rule in relation to reclaiming against interlocutors dealing with expenses where a previous interlocutor has disposed of the whole merits of the cause. Where a motion to refuse a reclaiming motion is unopposed, the motion is to be treated as if all parties consented to it.

*Rule 38.8: Appeals treated as reclaiming motions*

- 12. This rule provides for Chapter 38 to apply to certain appeals that are referred to in statutory and Convention provisions.

*Rule 38.10: Reclaiming out of time*

- 13. It should be noted that a procedural judge may allow a reclaiming motion to be received outwith the reclaiming days and to proceed out of time only in the case of mistake or inadvertence. Conditions as to expenses are specifically referred to in this rule, but it should be noted that the procedural judge may impose other conditions, not relating to expenses, if allowing reclaiming out of time under this rule.

*Rule 38.11: Urgent disposal of reclaiming motion*

- 14. Where a motion for urgent disposal under this rule is appropriate, the rule is available for the purpose of obtaining (a) an order for an urgent date for the hearing of the reclaiming motion on the Summar Roll or (b) determination of the reclaiming motion in the Single Bills. The appropriate words, as specified in paragraph (1) of this rule, should be included in the motion.
- 15. The reclaimer or respondent should also include in the motion an indication of the nature of the urgency. A motion for urgent disposal will be starred and will require the appearance of counsel or other person having a right of audience. The procedural judge will wish to know parties' estimate of the duration of the hearing to determine the reclaiming motion.
- 16. In granting a motion for urgent disposal, a procedural judge may appoint the reclaiming motion to the Summar Roll for a hearing even if all parties are of the view that it should be heard in the Single Bills. Similarly, a procedural judge may

direct that the reclaiming motion be heard in the Single Bills even if all parties take the view that it should be dealt with on the Summar Roll.

17. Where a procedural judge grants the motion for urgent disposal, this will be reflected in the timetable that is issued and the timescales referred to in Table A in the Appendix to this Note will be adjusted accordingly.
18. It should be noted that where a procedural judge has granted a motion for urgent disposal, rules 38.12 (objections to competency), 38.13 (timetable), 38.14 (sist or variation of timetable), 38.15 (failure to comply with timetable) and 38.16 (procedural hearing) will apply to the reclaiming motion only to the extent that the procedural judge so directs.
19. Unlike the rules in force immediately prior to 5th April 2010, the current rules do not identify specified types of case in respect of which parties are required to seek urgent or early disposal. The inclusion of such provision is unnecessary, as procedural judges will be able to exercise case management powers through use of the timetable in every case. This is made clear by rule 38.11(6).
20. Parties should be aware that, when urgent disposal of a reclaiming motion is ordered, the Keeper of the Rolls may intimate a diet at very short notice. Parties will be expected to be in a position to proceed with the diet that is fixed. Early warning should be given to the Keeper of the Rolls of any circumstances which may result in the reclaiming motion not proceeding, so that the Keeper can, if necessary, defer allocation of an urgent diet until it is clear that such a diet is required.

*Rule 38.12: Objections to the competency of reclaiming*

21. A note of objection may be lodged by a party, and the Deputy Principal Clerk of Session may refer a question of competency, only within 14 days after the date on which the reclaiming motion was marked. The purpose of including such a requirement in this rule, and not as part of the timetable, is to ensure that parties focus on the competency of the reclaiming motion at as early a procedural stage as possible, so that the procedural judge can then consider any competency issues before the timetable is issued and the procedural hearing is fixed under rule 38.13. A form (Form 38.12) is provided for specifying the basis of an objection to competency. Parties should note that a hearing will be fixed under this rule, rather than objections to competency being dealt with on paper. It should also be noted that notes of argument will require to be lodged in relation to the competency issue. Where a hearing is being fixed under this rule, parties should also provide the Keeper of the Rolls with an estimate of the duration of the hearing.

*Rule 38.13: Timetable in reclaiming motion*

22. This rule provides for the issue of a timetable and the fixing of a procedural hearing in a reclaiming motion. These measures form the core aspects of the reforms to Inner House procedure arising from Lord Penrose's Report. In relation to the carrying out of certain procedural steps leading up to the issuing of the timetable, some specific periods are set out in the rules. However, to a significant extent, the periods to be followed, so far as possible and subject to any motions for urgent disposal under rule 38.11, will from time to time be prescribed by the Lord President. Table A in the Appendix to this Note incorporates the periods which, as at the date of issuing this Practice Note, are prescribed.
23. Any questions of competency should have been dealt with by the time the Keeper issues the timetable and fixes the procedural hearing under this rule. This is reflected by the requirement for the Keeper to take those steps within 7 days of—
- (a) the expiry of the period within which an objection to competency or a reference by the Deputy Principal Clerk on competency could have been, but was not, made under rule 38.12, or
  - (b) where such an objection or reference was made, the reclaiming motion having been found to be competent or the question of competency having been reserved, as referred to in rule 38.12.
24. A party who is concerned that a step of procedure has not been complied with timeously, or that a party is not complying with the spirit of the procedures, and that failure is threatening to cause delay to or prejudice the expeditious disposal of the cause, should:
- if the matter relates to a stage in the timetable, approach the Keeper of the Rolls with a view to having the case put out for a hearing before a procedural judge, or enrol a motion as mentioned in rule 38.15(1), or
  - if the matter is outwith the control of the timetable, enrol a motion to bring it before a procedural judge.

*Rule 38.14: Sist or variation of timetable in reclaiming motion*

25. A motion to vary the timetable should give full details of the grounds on which the motion is based and, where relevant, be accompanied by appropriate evidence. Any such motion should be made as soon as possible after the timetable has been issued. Variation of the timetable may be by either extension or acceleration.
26. A motion may be for sist alone, for variation of the timetable alone or for both sist and variation of the timetable. It is a matter for the procedural judge to determine the length of any sist of the reclaiming motion, but parties are reminded that procedural judges will seek to avoid any unnecessary delay in carrying out the procedural steps set out in the timetable. It should be noted that

motions for sist or for variation of the timetable will not be granted, even if made of consent, unless sufficient information to justify them is placed before the procedural judge. Any party opposing such an application will be required to demonstrate that their opposition is well founded.

27. It should be noted that a motion to sist and/or vary the timetable in a reclaiming motion may only be granted on special cause shown. It is a matter for the procedural judge to determine, in the particular circumstances of a case, whether or not special cause has been shown. Special cause might arise for example, where there is a need for a party to obtain transcripts of evidence or to obtain legal aid, or where it is necessary to obtain an opinion of the Lord Ordinary. Motions to sist and/or vary the timetable will be starred if there is objection to them, if the Scottish Legal Aid Board take issue with what is stated to be the current position in relation to an application for legal aid, or if the material placed before the procedural judge does not satisfy the requirement that special cause be shown. It is expected that any motions for sist pending the outcome of an application for legal aid, if granted, will only be granted for fixed periods not exceeding six weeks.
28. The Court will expect parties to consider at the earliest possible stage whether they may require to make an application to the Scottish Legal Aid Board in respect of the reclaiming motion. Delay in making an application for legal aid or in applying for a sist may lead to a motion under this rule being refused. Generally, the Court will expect parties to adhere to guidance issued by the Scottish Legal Aid Board. Parties are reminded that the Board may make legal aid available for specially urgent work undertaken before a legal aid application is determined. Making an application to the Board under the special urgency procedure may obviate the need for the timetable to be varied or for the reclaiming motion to be sisted under this rule. Further information can be obtained in the Chapter entitled "Special Urgency" in the Civil Legal Aid Handbook:  
<http://www.slab.org.uk/profession/handbook/Civil%20handbook/wwhelp/wwhelp.js/html/wwhelp.htm>
29. In every case in which an application is made to sist a reclaiming motion pending the outcome of an application for legal aid, the party making the motion should intimate it electronically to the Scottish Legal Aid Board within the same period as that party is required to intimate it to other parties under rule 23.3. The party making the motion should lodge and intimate with the motion a note of the current position in relation to the application for legal aid.

*Rule 38.15: Failure to comply with timetable in reclaiming motion*

30. The purpose of this rule is to provide for discipline to ensure effective supervision of the management of cases under the timetable.

*Rule 38.16: Procedural hearing in reclaiming motion*

31. The procedural hearing is an important aspect of the procedure under the Chapter and will follow on completion of the other procedural steps mentioned in the timetable. It is intended to be the final procedural matter to be dealt with by the procedural judge. The primary purpose of the procedural hearing is to make sure that no case is sent for a hearing on its merits unless the procedural judge is satisfied that a hearing is necessary and that the parties are prepared for it.
32. At the procedural hearing, parties will be expected to be in a position to discuss the issues involved in the reclaiming motion and the method of disposing of them. Parties should address the procedural judge on their state of preparation, and estimate the length of any hearing on the Summar Roll or in the Single Bills which may be required to dispose of the reclaiming motion. The procedural judge will decide the length of any such hearing, and when it is to take place.
33. Parties will be expected to arrange that counsel, or other persons having rights of audience responsible for the conduct of the case, and authorised to take any necessary decision on questions of both substance and procedure, are available and appear at any hearing in the Inner House, including a procedural hearing and any other hearings before a procedural judge. Ensuring continuity of representation in relation to both procedural and substantive hearings will be an important factor in seeking to avoid late settlements and the discharge of hearings under the new procedures. Counsel should also have (or have access to) their diaries at the procedural hearing, so that the court can fix the date of any further procedural or substantive hearing (including any Summar Roll hearing) which may be required.
34. It is important that continued procedural hearings are avoided unless they are genuinely necessary. Where it emerges at a procedural hearing that further steps require to be taken, the parties will be provided with an interlocutor specifying those steps and the time within which they must be taken. In the event that any difficulty then arises, the parties should communicate with the court by email (or otherwise), confirming whether the steps have been carried out (and if not, why not), whether further time is required (and if so, why), and whether a further hearing is genuinely required (rather than, for example, the court's making any necessary order on the basis of an unstarred motion).

*Rule 38.17: Amendment of pleadings in reclaiming motion*

35. The Court will expect parties to give consideration at the earliest possible stage after the reclaiming motion has been marked as to whether or not it is necessary for a motion to be made to have the pleadings amended in terms of a minute of amendment and answers. Wherever possible, such a motion should be made before the procedural hearing so that a procedural judge can consider the matter.

*Rule 38.18: Grounds of appeal in reclaiming motion*

36. This rule sets out requirements relating to grounds of appeal. Wherever possible, parties should make any motions to amend grounds of appeal or answers, on cause shown, before the procedural hearing so that a procedural judge can consider the matter. Where a motion is made for an amendment to the grounds or answers, the same motion should include any necessary motion for sist and/or variation of the timetable under rule 38.14(1).

*Rule 38.19: Lodging of appendices in reclaiming motion*

37. The timing of the lodging of appendices is a matter which will be controlled by the timetable and, therefore, by the procedural judge. The claimer shall lodge an appendix to the reclaiming print unless intimation is given by the claimer that he or she does not consider it necessary to do so. If such intimation is given by the claimer, a respondent can make a motion to the procedural judge for an order requiring the claimer to lodge an appendix. Where such a motion is refused, a respondent can seek to lodge an appendix containing documents which the claimer has confirmed he or she does not intend to include in an appendix.

***Chapter 39: Applications for new trial or to enter jury verdicts***

*Rule 39.1: Applications for new trial*

38. The terms of rule 39.1 broadly remain the same as the equivalent rule that was in force prior to 5th April 2010. It should be noted that the period within which an application for a new trial under section 29(1) of the Court of Session Act 1988 remains the period of 7 days after the date on which the verdict of the jury was written on the issue and signed. This is a shorter timescale than that which applies to the marking of a reclaiming motion.

*Rule 39.3: Objections to the competency of application*

39. The procedure set out in this rule for objecting to the competency of an application for a new trial is similar to the procedure set out for objecting to a reclaiming motion under rule 38.12. However, there are two main differences. The first is that a note of objection may only be lodged within the period of 7 days after the application for a new trial was made. This reflects the shorter period within which such an application may be made under rule 39.1, when compared to the time allowed for making a reclaiming motion under Chapter 38. In addition, the rule does not contain an equivalent to rule 38.12(2), under which provision is made for the Deputy Principal Clerk of Session to refer questions of competency to a procedural judge.

*Rule 39.4: Timetable in application for a new trial*

40. This rule provides for the issue of a timetable and the fixing of a procedural hearing in an application for a new trial. Chapter 39 sets out time limits prior to



the issuing of the timetable, including the period for lodging objections to the competency of the application. However, other timescales which will apply under the timetable are from time to time to be prescribed by the Lord President. Table B in the Appendix to this Note incorporates the periods which, as at the date of issuing this Practice Note, are prescribed.

41. It should be noted that the three procedural steps mentioned in rule 39.4(2) prior to the procedural hearing are the lodging of appendices or the giving of notice that the applicant does not intend to lodge an appendix, the lodging of notes of argument and the lodging of estimates of the length of any hearing required to dispose of the application for a new trial. In relation to the lodging of appendices, the effect of rule 39.8 should be noted. Paragraph 37 of this Note applies, with appropriate modification, to the lodging of appendices in applications for a new trial as it applies to the lodging of appendices in reclaiming motions.

*Rule 39.5: Sist or variation of timetable in application for a new trial*

42. The points made at paragraphs 25 to 29 of this Note, in the context of a sist or variation of the timetable in a reclaiming motion, should be similarly considered in the context of the application of this rule.

*Rule 39.6: Failure to comply with timetable in application for a new trial*

43. The purpose of this rule is to provide for discipline to ensure effective supervision of the management of cases under the timetable.

*Rule 39.7: Procedural hearing in application for a new trial*

44. The points made at paragraphs 31 to 34 of this Note apply, with appropriate modification, to procedural hearings in applications for a new trial.

*Rule 39.9: Applications to enter jury verdict*

45. The terms of this rule are similar to the equivalent rule relating to applications to enter a jury verdict that was in force immediately prior to 5th April 2010. However, it should be noted that the rule provides that such applications are now to be made, in the first instance, to a procedural judge.

#### ***Chapter 40: Appeals from Inferior Courts***

*Rule 40.2: Applications for leave to appeal from inferior court*

46. The terms of this rule are the same as the equivalent rule on applications for leave to appeal from an inferior court that was in force immediately prior to 5th April 2010.

*Rule 40.4: Time and method of appeal*

47. The default timescale and the method for making an appeal under this rule are the same as those provided for under the equivalent rule that was in force immediately before 5th April 2010. Similarly, the rules relating to the procedure for transmitting an appeal process and the procedure thereafter (see rules 40.6 and 40.7) remain substantially unchanged from the equivalent rules that were in force immediately prior to 5th April 2010. An application to allow an appeal to be received out of time is to be included in the note of appeal. Rule 40.5(3) provides for such an application to be disposed of by a procedural judge.

*Rule 40.8: Sist of process of appeal*

48. A sist of process under this rule stops the period of days mentioned in rule 40.7(2) from running. The practical effect is to postpone the requirement for the appellant to lodge a process and an appeal print and to intimate the appeal print. The appellant therefore does not have to incur the cost of lodging and intimating during such time as there is a sist of process.
49. This rule therefore prescribes a procedure that is specifically related to the circumstances in which an appellant requires to lodge an appeal process from an inferior court. For that reason, the rule appears only in Chapter 40 and it is placed immediately after rule 40.7. As rule 40.7 makes provision only for the appellant to lodge and intimate a process and appeal print etc., rule 40.8 provides only for the appellant to apply for a sist of process. Rule 40.8(4) makes it clear that the provisions in rule 40.8 are without prejudice to the power of the court to sist an appeal, as mentioned in rule 40.12.

*Rule 40.9: Urgent disposal of appeal*

50. Paragraphs 14 to 16 of this note apply equally to motions for urgent disposal of an appeal under Chapter 40 as they apply to motions for urgent disposal of a reclaiming motion.
51. Where a procedural judge grants the motion for urgent disposal, this will be reflected in the timetable that is issued and the timescales referred to in Table C in the Appendix to this Note will be adjusted accordingly.
52. Where a procedural judge has granted a motion for urgent disposal, rules 40.10 (objections to competency), 40.11 (timetable), 40.12 (sist or variation of timetable), 40.13 (failure to comply with timetable), and 40.14 (procedural hearing) will apply to the appeal only to the extent that the procedural judge so directs.

*Rule 40.10: Objections to competency of appeal*

53. This rule is similar in effect to rule 38.12 (objections to the competency of reclaiming). Again, the purpose of including provision for the lodging of a note

of objection within a specified period of time is to ensure, as far as possible, that the parties focus on the competency of the appeal at as early a procedural stage as possible and before the timetable is issued.

*Rule 40.11: Timetable in appeal from inferior court*

54. This rule provides for the issue of a timetable and the fixing of a procedural hearing in an appeal from an inferior court. The rule is similar in effect to rule 38.13 (timetable in reclaiming motion). Table C in the Appendix to this Note incorporates the relevant periods which, as at the date of issuing this Practice Note, are prescribed by the Lord President. Paragraphs 22 to 24 of this Note apply equally to appeals under Chapter 40, subject to the modification that, in that case, the reference in paragraph 22 to rule 38.11 and Table A should be read as references respectively to rule 40.9 and Table C, the references in paragraph 23 to rule 38.12 should be read as references to rule 40.10 and the reference in paragraph 24 to rule 38.15(1) should be read as a reference to rule 40.13(1).

*Rule 40.12: Sist or variation of timetable in appeal from inferior court*

55. This rule is similar to rule 38.13 (sist or variation of timetable in reclaiming motion). The points made at paragraphs 25 to 29 of this Note can be applied, with appropriate modification, to the operation of rule 40.12. In the context of this rule, special cause might arise, for example, in cases where there is a need for a party to obtain transcripts of evidence or to obtain legal aid, or where it is necessary to obtain a note from the inferior court.

*Rule 40.13: Failure to comply with timetable in appeal from inferior court*

56. The purpose of this rule is to provide for discipline to ensure effective supervision of the management of cases under the timetable.

*Rule 40.14: Procedural hearing in appeal from inferior court*

57. The points made at paragraphs 31 to 34 of this Note apply, with appropriate modification, to procedural hearings in appeals dealt with under Chapter 40.

*Rule 40.15: Appeals deemed abandoned*

58. The rules on appeals deemed to be abandoned (rule 40.15) and on reponing against deemed abandonment (rule 40.16) are essentially unchanged from the equivalent rules which were in force immediately prior to 5th April 2010.

*Rule 40.17: Amendment of pleadings in appeals*

59. The Court will expect parties to give consideration at the earliest possible stage after the appeal has been marked as to whether or not it is necessary for a motion to be made to have the pleadings amended in terms of a minute of amendment

and answers. Wherever possible, such a motion should be made before the procedural hearing so that a procedural judge can consider the matter.

*Rule 40.18: Grounds of appeal*

60. Wherever possible, parties should make any motions to amend grounds of appeal or answers, on cause shown, before the procedural hearing so that a procedural judge can consider the matter. Where a motion is made for an amendment to the grounds or answers, the same motion should include any necessary motion for stay and/or variation of the timetable under rule 40.12(1).

*Rule 40.19: Lodging of appendices in appeals*

61. The timing of the lodging of appendices is a matter which will be controlled by the timetable and, therefore, by the procedural judge. The appellant shall lodge an appendix to the reclaiming print unless intimation is given by the appellant that he or she does not consider it necessary to do so. If such intimation is given by the appellant, a respondent can make a motion to the procedural judge for an order requiring the appellant to lodge an appendix. Where such a motion is refused, a respondent can seek to lodge an appendix containing documents which the appellant has confirmed he or she does not intend to include in an appendix.

***Chapter 41: Appeals under statute***

62. The structure of the rules under substituted Chapter 41 remains largely unchanged from the structure of the Chapter which was in force immediately prior to 27th September 2011. General provisions affecting all statutory appeals are outlined in Part I (with new or extended rules on urgent disposal and competency). Stated case procedure is outlined at Part II. A separate procedure is outlined at Part III and rules relating to appeals under particular statutes are outlined in subsequent Parts of the Chapter.

*Rule 41.3: Determination of applications for leave to appeal*

63. The application will be brought before a procedural judge or the vacation judge for an order for intimation and service and for any answers without any motion being enrolled.

*Rule 41.4: Urgent disposal of appeal*

64. Paragraphs 14 to 16 of this note apply equally to motions for urgent disposal of an appeal under Chapter 41 as they apply to motions for urgent disposal of a reclaiming motion.

65. Where a procedural judge grants the motion for urgent disposal, this will be reflected in the timetable that is issued and the timescales referred to in Table D in the Appendix to this Note will be adjusted accordingly.
66. Where a procedural judge has granted a motion for urgent disposal, the procedural stages referred to in rules 41.18 to 41.21 (under stated case procedure) and in rules 41.29 to 41.32 (under the procedure at Part III of Chapter 41) will apply to the appeal only to the extent that the procedural judge so directs.

*Rule 41.5: Competency of appeals*

67. This rule is similar in effect to rule 38.12 and rule 40.10. The purpose of including provision for the lodging of a note of objection within a specified period of time is to ensure, as far as possible, that the parties focus on the competency of the appeal at as early a procedural stage as possible and before the timetable is issued. The Deputy Principal Clerk may also refer a competency issue to a procedural judge within a specified period of time.

*Rule 41.18: Timetable in appeal under Part II of Chapter 41*

68. A timetable will be issued by the Keeper where a stated case appeal is lodged in court. This rule provides for the issue of a timetable and the fixing of a procedural hearing in a stated case appeal. The rule is similar in effect to rule 38.13 (timetable in reclaiming motion) and rule 40.11 (timetable in appeal from inferior court). Table D in the Appendix to this Note incorporates the relevant periods which, as at the date of issuing this Practice Note, are prescribed by the Lord President. Paragraphs 22 to 24 of this Note apply equally to appeals under Chapter 41, subject to the modification that, in that case, the references in paragraph 22 to rule 38.11 and Table A should be read as references respectively to rule 41.4 and Table D, the references in paragraph 23 to rule 38.12 should be read as references to rule 41.5 and the reference in paragraph 24 to rule 38.15(1) should be read as a reference to rule 41.20(1).

*Rule 41.19: Sist or variation of timetable in appeal under Part II of Chapter 41*

69. The points made at paragraphs 25 to 29 of this Note, in the context of a sist or variation of the timetable in a reclaiming motion, should be similarly considered in the context of the application of this rule.

*Rule 41.20: Failure to comply with timetable in appeal under Part II of Chapter 41*

70. The purpose of this rule is to provide for discipline to ensure effective supervision of the management of cases under the timetable.

*Rule 41.21: Procedural hearing in appeal under Part II of Chapter 41*

71. The points made at paragraphs 31 to 34 of this Note apply, with appropriate modification, to procedural hearings in appeals dealt with under Part II of Chapter 41.

*Rule 41.29: Timetable in appeal under Part III of Chapter 41*

72. Where there is a contradictor to an appeal dealt with under Part III of Chapter 41, answers to the appeal should be lodged. Where answers have been lodged, a timetable will be issued by the Keeper. This rule provides for the issue of a timetable and the fixing of a procedural hearing in an appeal under statute. The rule is similar in effect to rule 38.13 (timetable in reclaiming motion) and rule 40.11. Table E in the Appendix to this Note incorporates the relevant periods which, as at the date of issuing this Practice Note, are prescribed by the Lord President. Paragraphs 22 to 24 of this Note apply equally to appeals under Chapter 41, subject to the modification that, in that case, the reference in paragraph 22 to rule 38.11 and Table A should be read as references respectively to rule 41.4 and Table E, the references in paragraph 23 to rule 38.12 should be read as references to rule 41.5 and the reference in paragraph 24 to rule 38.15(1) should be read as a reference to rule 41.31(1).

*Rule 41.30: Sist or variation of timetable in appeal under Part III of Chapter 41*

73. The points made at paragraphs 25 to 29 of this Note, in the context of a sist or variation of the timetable in a reclaiming motion, should be similarly considered in the context of the application of this rule.

*Rule 41.31: Failure to comply with timetable in appeal under Part III of Chapter 41*

74. The purpose of this rule is to provide for discipline to ensure effective supervision of the management of cases under the timetable.

*Rule 41.32: Procedural hearing in appeal under Part III of Chapter 41*

75. The points made at paragraphs 31 to 34 of this Note apply, with appropriate modification, to procedural hearings in appeals dealt with under Chapter 41.

**General**

*Counsel and solicitors*

76. It is of particular importance that counsel or solicitors having rights of audience who are responsible for the conduct of the case, and authorised to take any necessary decision on questions of both substance and procedure, are available and appear at any procedural hearing in the Inner House, in accordance with paragraph 33 above. Inner House proceedings and hearings take priority over proceedings and hearings in lower courts or tribunals or in the Outer House. In the event of a conflict between a procedural hearing and a hearing in the Outer

House, the Lord Ordinary may be willing to consider delaying the start of the Outer House business, depending on the circumstances. If an unavoidable conflict between a procedural hearing and another commitment will cause a serious problem, the court should be informed of the difficulty in good time so that it can consider whether to alter the date of the procedural hearing.

#### *Communication with the court*

77. It is important to avoid unnecessary hearings. Hearings in court should not take place unless the matter in issue cannot otherwise be resolved. Hearings can often be avoided by means of email or other communication between solicitors and clerks of court, with the involvement of the procedural judge when necessary. For example, applications for a variation of the timetable, or for a *sist*, can often be dealt with by means of an unstarred motion if the court is provided with sufficient information, as explained in paragraphs 26 to 29 above. Continued procedural hearings can often be avoided if parties follow the guidance given in paragraph 34 above. The procedural judge can be requested, via the clerks of court, to provide guidance in relation to other matters, such as the form and contents of appendices, notes of argument and bundles of authorities, as explained in paragraphs 79 to 81, 83 to 89 and 90 to 95 below. These are only examples. The court may make no award of expenses in respect of hearings which could have been avoided if parties had communicated with the court in advance, or may award expenses against the party responsible on an agent and client basis.

#### *Answers to grounds of appeal*

78. The timetable in reclaiming motions and in appeals from inferior courts includes a date for lodging answers to grounds of appeal. Answers should be lodged in every reclaiming motion and in every appeal or cross-appeal under Chapter 40 so that the court and each of the parties to the proceedings are aware of a respondent's case in response to each set of grounds of appeal. The answers need not be elaborate, but they should mirror the format of grounds of appeal. Answers, like the grounds of appeal, serve an important function in framing lines of argument and are considered by the court to be compulsory under the procedures outlined in Chapters 38 and 40. The scope of subsequent notes of argument should be determined by the content of the answers.

#### *Appendices*

79. The appendix should include any information the court may require in addition to pleadings, productions or notes of evidence, such as a chronology of relevant events, a list of persons who feature in the case or glossaries of technical terms. It should only contain such material as is necessary for understanding the legal issues and the argument to be presented to the court. Any questions as to the contents or form of the appendix may be raised with the procedural judge.

80. The appendix should be paginated, each page being numbered individually and consecutively, with page numbers being inserted in a form which can be clearly distinguished from any other pagination on the document. Where any marking or writing in colour on a document is important, the document should be copied in colour or marked up correctly in colour. Documents which are not easily legible should be transcribed and the transcription placed adjacent to the document transcribed.
81. Appendices which do not conform to this Practice Note may be rejected by the court, which may also find that no expenses are payable in respect of the relative expense. The court may also find that no expenses are payable, or may modify any award of expenses, where documents are included in an appendix unnecessarily.

#### *Core bundles*

82. In cases where the appendix or appendices comprise more than 500 pages, exclusive of notes of evidence, the claimer, applicant or appellant (as the case may be) should, after consultation with the respondent, also lodge a core bundle. The core bundle should be lodged at least 7 days prior to the procedural hearing. It should contain the documents which are central to the reclaiming motion, and should not ordinarily exceed 150 pages. Any questions as to the contents or form of the core bundle may be raised with the procedural judge.

#### *Notes of argument*

83. One of the purposes of the timetable procedure in Inner House cases is that it should enable the procedural judge to ensure that parties produce notes of argument at an early stage in the proceedings. Any questions as to the contents or form of notes of argument may be raised with the procedural judge.
84. At the hearing of the reclaiming motion, application or appeal the court may decline to hear argument not contained in a note of argument lodged in accordance with the Rules of Court and this Practice Note. The case should have been fully prepared by the stage of the procedural hearing, and the decisions taken by the other parties and the court at and after that hearing proceed on that basis. It is therefore ordinarily inappropriate for any argument to be advanced of which notice has not been given in the note of argument. In the event that a party wishes, for some justifiable reason, to be permitted to advance an argument not contained in a note of argument (e.g. by reason of a supervening decision in another case), the other parties and the court should be informed at the earliest opportunity. The court may then put the case out for a hearing By Order, so that the request and its implications can be considered.
85. Where a note of argument has already been lodged and a party subsequently becomes aware that an argument included in the note will no longer be insisted



upon, that party should inform the other parties and the court of that fact at the earliest opportunity.

86. A note of argument should comply with the following general principles:
1. A note of argument should be a concise summary of the submissions to be developed.
  2. It should contain a numbered list of the points which the party wishes to make.
  3. Each point should be followed by a reference to any transcript of evidence or other document on which the party wishes to rely. The note of argument should identify the relevant passage in the document in question.
  4. A note of argument should state, in respect of each authority cited –
    - (a) the proposition of law that the authority demonstrates; and
    - (b) the parts of the authority (identified by page or paragraph references) that support the proposition.
  5. More than one authority should not be cited in support of a given proposition unless the additional citation is necessary for a proper presentation of the argument.
87. Notes of argument which do not conform to this Practice Note may be rejected by the court.
88. The court may find that no expenses are payable, or may modify any award of expenses, in respect of a note of argument which–
  - (a) does not comply with the requirements set out in this Practice Note, or
  - (b) was not lodged within the timetable issued by the Keeper (or any further time granted by the court).
89. A single date will be specified in the timetable for the lodging of notes of argument. As a matter of good practice, parties should exchange draft versions of their notes of argument in advance of the date referred to in the timetable. Whenever possible, the drafts should be exchanged in sufficient time to enable each party to answer, in its note of argument, the arguments advanced by the other parties.

#### *Authorities*

90. When a reclaiming motion, application or appeal has been appointed to the Summar Roll or the Single Bills for a hearing, the reclaimer, applicant or appellant (as the case may be) should, after consultation with the respondent, lodge a bundle containing photocopies of the authorities upon which each party

will rely at the hearing. Any questions as to the contents or form of bundles of authorities may be raised with the procedural judge.

91. The bundle of authorities should, in general–
  - (a) not include authorities for propositions not in dispute; and
  - (b) not include more than 10 authorities, unless the scale of the reclaiming motion, application or appeal warrants more extensive citation.
92. Authorities which have been reported in Session Cases, or in the Law Reports published by the Incorporated Council of Law Reporting for England and Wales, should be cited from those sources. Where a case is not reported in Session Cases or the Law Reports, references to other recognised reports may be given. In Revenue appeals, Tax Cases or Simon’s Tax Cases may be cited but, wherever possible, references to the case in Session Cases or the Law Reports should also be given. Unreported judgments should only be cited when they contain an authoritative statement of a relevant principle of law not to be found in a reported case or when they are necessary for the understanding of some other authority.
93. The bundle of authorities should be lodged –
  - (a) at least 7 days before the hearing; or
  - (b) where the period of notice of the hearing is less than 7 days, immediately.
94. The bundle of authorities should bear a certification by the counsel or solicitor responsible for arguing the reclaiming motion, application or appeal that the requirements of this Practice Note have been complied with in respect of each authority included.
95. Bundles of authorities which do not conform to this Practice Note may be rejected by the court, which may also find that no expenses are payable in respect of the relative expense. The court may also find that no expenses are payable, or may modify any award of expenses, where authorities are included unnecessarily.

*Documents generally*

96. Appendices, core bundles and bundles of authorities must be presented in a form which is robust, manageable and not excessively heavy. All documents must be easily legible.
97. At least three copies of the appendices, core bundles and bundles of authorities will be required at the hearing of the reclaiming motion, application or appeal. The precise number will depend upon the composition of the court. Advice on that matter can be sought from the clerks of court.

*Estimates of the length of hearings*

98. The estimate of the length of the hearing should be that of the counsel or solicitor who will argue the reclaiming motion, application or appeal. Any estimate exceeding two days should be fully explained in writing. Counsel and solicitors are expected to confine their submissions so as to enable the hearing to be completed within the time indicated in their estimates, or otherwise allowed by the court.

*Communication where causes are not to proceed*

99. Parties are reminded that those involved in litigation have an obligation to take reasonable care to avoid situations where court time would be wasted. In cases where it becomes clear to a party or their legal advisers that there is doubt as to whether a reclaiming motion, application or appeal would proceed in the Inner House, that fact should immediately be communicated to the Keeper of the Rolls.
100. Practice Note No. 1 of 2010 (causes in the Inner House) is hereby revoked.

*A.C. HAMILTON*  
Lord President

Edinburgh  
9th August 2011

APPENDIX

TABLE A – RECLAIMING MOTIONS

<b>Stage in proceedings</b>	<b>Date</b>
Timetable issued and diet for procedural hearing allocated (rule 38.13(1)(a) and (b))	
Grounds of appeal to be lodged (rule 38.13(2)(a))	Within 28 days after issue of timetable
Answers to grounds of appeal to be lodged (rule 38.13(2)(a))	Within 28 days after expiry of period for lodging grounds of appeal
Any appendices to be lodged (or intimation that no appendices are to be lodged) (rule 38.13(2)(b))	At least 7 days prior to procedural hearing
Notes of argument to be lodged (rule 38.13(2)(c))	At least 7 days prior to procedural hearing
Lodging of estimate of length of any hearing on the Summar Roll or in the Single Bills (rule 38.13(2)(d))	At least 7 days prior to procedural hearing

TABLE B – APPLICATIONS FOR A NEW TRIAL

<b>Stage in proceedings</b>	<b>Date</b>
Timetable issued and diet for procedural hearing allocated (rule 39.4(1)(a) and (b))	
Any appendices to be lodged (or intimation that no appendices are to be lodged) (rule 39.4(2)(a))	At least 7 days prior to procedural hearing
Any notes of argument to be lodged (rule 39.4(2)(b))	At least 7 days prior to the procedural hearing
Lodging of estimate of the length of any hearing required to dispose of the application (rule 39.4(2)(c))	At least 7 days prior to the procedural hearing

TABLE C – APPEALS FROM INFERIOR COURTS

<b>Stage in proceedings</b>	<b>Date</b>
Timetable issued and diet for procedural hearing allocated (rule 40.11(1)(a) and (b))	
Grounds of appeal to be lodged (rule 40.11(2)(d))	Within 28 days after issue of timetable
Answers to grounds of appeal to be lodged (rule 40.11(2)(d))	Within 28 days after expiry of period for lodging grounds of appeal
Any appendices to be lodged (or intimation that no appendices are to be lodged) (rule 40.11(2)(e))	At least 7 days prior to procedural hearing

Notes of argument to be lodged (rule 40.11(2)(f))	At least 7 days prior to procedural hearing
Lodging of estimate of the length of any hearing on the Summar Roll or in the Single Bills (rule 40.11(2)(g))	At least 7 days prior to procedural hearing

TABLE D – APPEALS UNDER STATUTE (PART II OF CHAPTER 41)

Stage in proceedings	Date
Case lodged, timetable issued and diet for procedural hearing allocated (rule 41.18(1)(a) and (b))	
Any productions or appendices to be lodged (rule 41.18(2)(a))	At least 7 days prior to procedural hearing
Notes of argument to be lodged (rule 41.18(2)(b))	At least 7 days prior to procedural hearing
Lodging of estimate of the length of any hearing on the Summar Roll or in the Single Bills (rule 41.18(2)(c))	At least 7 days prior to procedural hearing

TABLE E – APPEALS UNDER STATUTE (PART III OF CHAPTER 41)

Stage in proceedings	Date
Answers to grounds of appeal lodged, timetable issued and diet for procedural hearing allocated (rule 41.29(1)(a) and (b))	
Any productions or appendices to be lodged (rule 41.29(2)(a))	At least 7 days prior to procedural hearing
Notes of argument to be lodged (rule 41.29(2)(b))	At least 7 days prior to procedural hearing
Lodging of estimate of the length of any hearing on the Summar Roll or in the Single Bills (rule 41.29(2)(c))	At least 7 days prior to procedural hearing