



FIRST DIVISION, INNER HOUSE, COURT OF SESSION

[2026] CSIH 45
P1017/25

Lord President
Lord Tyre
Lady Wise

OPINION OF THE COURT

delivered by LORD TYRE

in the Petition of

CRAIG MURRAY

Petitioner and Reclaimer

for

Judicial Review of the Terrorism Act 2000
(Proscribed Organisations) (Amendment) Order 2025

Petitioner and Reclaimer: O'Neill KC, Boni, Convery; Halliday Campbell WS
Respondent (Advocate General for Scotland): Lindsay KC, Maciver, Stephen; Office of the
Advocate General for Scotland

13 October 2026

Introduction

[1] On 4 July 2025, the Secretary of State for the Home Department made the Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2025, proscribing three unconnected organisations as “organisations ... concerned in terrorism” by inserting their names into Schedule 2 to the Terrorism Act 2000. One of those organisations was Palestine Action. Under sections 11 and 12 of the 2000 Act, it is an offence to belong to, or to invite

support for, a proscribed organisation. The Order took effect from 5 July 2025, in all jurisdictions of the United Kingdom.

[2] The petitioner, who before 5 July 2025 had expressed support for, and participated in protest activities organised by, Palestine Action, brought proceedings for judicial review seeking *inter alia* (i) declarator that, to the extent that the Order inserts Palestine Action into Schedule 2 to the 2000 Act, it is *ultra vires*; (ii) reduction of the Order, insofar as it inserts Palestine Action into Schedule 2; and (iii) interim suspension of the Order, insofar as it inserts Palestine Action into Schedule 2. Proceedings for judicial review of the Order have also been raised in England and Wales by Ms Huda Ammori, one of the co-founders of Palestine Action, and in Northern Ireland.

[3] The present reclaiming motion (appeal) does not directly concern the Secretary of State's decision to proscribe Palestine Action. It is concerned with two procedural decisions made by the Lord Ordinary on 25 August 2026 (i) to sist the cause pending the outcome of the UK Supreme Court decision in *Ammori v Secretary of State for the Home Department* and (ii) to refuse a motion by the petitioner to report the whole cause to the Inner House in terms of Rule of Court 34.1(1). With the permission of the Lord Ordinary, the petitioner reclaims (appeals against) those decisions.

Progress to date of the petition

[4] The petition was lodged on 3 October 2025. On 12 January 2026, the Lord Ordinary (first instance judge) held an oral hearing to determine whether to grant permission for the application to proceed. At that time the proceedings before the High Court in London had been the subject of a three-day hearing in November and December 2025, one day having taken place under the closed material procedure. The judgment was awaited. The

respondents argued that the issues within the current petition were identical to those heard in the English court. The court should either (a) refuse permission to proceed; (b) reserve the issue of permission and sist the current cause until a decision was available in the English proceedings; or (c) grant permission followed by an immediate sist until the decision in the English proceedings was available and had been digested.

[5] The Lord Ordinary decided on 26 January 2026 to grant permission for the judicial review to proceed, notwithstanding the existence of English proceedings which were at a more advanced stage. He observed that as a matter of principle, a petitioner who had standing and whose petition set out arguments of sufficient merit to satisfy section 27B(2)(b) of the Court of Session Act 1988 should not be refused permission because of the existence of parallel proceedings in another UK jurisdiction. The possibility that any substantive hearing in this petition would require the adoption of closed material procedure was not regarded as a factor of any weight in relation to the issue of permission. The Lord Ordinary also refused, *in hoc statu*, the respondent's motion to sist the proceedings. He considered that the better course of action was for parties to proceed through the usual stages of a procedural hearing towards a full substantive hearing, which he provisionally fixed for 17-18 March 2026. It was left open to either party to seek a sist or some alternative procedure once there was clarity as to the position in England.

[6] In February 2026, the respondent made an application for a declaration under section 6 of the Justice and Security Act 2013 that the proceedings were proceedings in which a closed material application may be made to the Court. On 23 February 2026, the Lord Ordinary discharged the substantive hearing fixed for 17 and 18 March 2026 and assigned a substantive hearing to take place on 24 and 25 June 2026. He ordered the respondent to appoint a special advocate within seven days of the petitioner intimating a

suitable name to the Special Advocate Support Office and allocated an initial diet for the court's consideration of the section 6 application on 26 March 2026. Special advocates were duly appointed, and on 26 March 2026 the Lord Ordinary granted the declaration sought by the respondent that these proceedings were proceedings in which a closed material application might be made. He again refused a motion by the respondent to sist the cause, made various orders in connection with the respondent's closed material application, and fixed a closed hearing for 27 May 2026.

[7] In the meantime, on 13 February 2026, the High Court in England and Wales had issued its judgment (*R (Ammori) v Secretary of State for the Home Department* [2026] EWHC 292 (Admin); [2026] HRLR 9), quashing the Secretary of State's decision to proscribe Palestine Action on the grounds (i) that the Order was made in breach of her own policy on when she would exercise her discretion to seek an order proscribing an organisation, and (ii) that the Order amounted to an unjustified interference with rights protected by Articles 10 (freedom of expression) and 11 (freedom of association and peaceful assembly) of the European Convention on Human Rights. The Secretary of State appealed to the Court of Appeal.

[8] On 28 May 2026, the Lord Ordinary refused a motion by the petitioner for interim suspension of the Order in so far as it extended to Scotland. As well as making orders in relation to sensitive material lodged by the respondent, the Lord Ordinary sisted the cause for the earlier of (i) four months, or (ii) the Court of Appeal giving its judgment in *Ammori* and the question of onward appeal to the Supreme Court being resolved. In a note annexed to the court's interlocutor, the Lord Ordinary observed that a sist was commonly applied where there was a test case which would determine common issues found in other cases. Scottish cases were often sisted pending determination of parallel proceedings in England, and vice versa. Ultimately, the aim was to ensure that common issues were determined as

expeditiously as possible, and with the avoidance of unnecessary legal costs. At

paragraph 15 of the note, the Lord Ordinary stated his reasons for granting the motion to sist as follows:

“In the current proceedings, the legal costs which will be incurred from now until the substantive hearing towards the end of June will increase exponentially. We know that a decision of the Court of Appeal will have been issued prior to the substantive hearing. While that judgment may, or may not, be the final word on this issue, the judgments handed down by the Court of Appeal will be highly significant. It is almost inevitable that the final decision on the legality of the 2025 Order will be made either by the English Court of Appeal, or by the Supreme Court on a further appeal in *Ammori*. The petitioner’s challenge to the 2025 Order in these proceedings is likely to be resolved, one way or the other, by the final decision in *Ammori*. It is said that a sist brings the petitioner’s right to have his claim determined to a practical end. But *Ammori* will resolve the issue he wants determined and, if for any unanticipated reason it does not, his proceedings remain in place to be resumed. The most expeditious route for the petitioner and the respondent, and the one which minimises costs for all parties including the public purse, is to sist the present proceedings.”

The petitioner lodged a motion for review of the Lord Ordinary’s interlocutor. A hearing on the single bills was fixed for argument about whether the motion required leave, but on 16 June 2026 the motion was withdrawn.

[9] On 15 June 2026, the Court of Appeal issued its judgment (*R(Ammori) v Secretary of State for the Home Department* [2026] EWCA Civ 721; [2026] WLR(D) 326). The Secretary of State’s appeal was allowed. A court of five judges held that the Secretary of State had not failed to comply with her own proscription policy, and that the proscription of Palestine Action was a justified interference with Article 10 and 11 rights. The court also refused the claimant permission to cross appeal the Divisional Court’s decision on two grounds, one of which was that the Secretary of State had acted unlawfully by failing to give Palestine Action the opportunity to make representations before the Order was laid before Parliament. Permission was subsequently granted to the claimant to appeal to the Supreme Court.

A hearing has been fixed before the Supreme Court on an expedited basis to take place on 4 and 5 November 2026.

[10] On 14 July 2026, the Lord Ordinary refused a motion by the petitioner to recall the sist granted on 28 May and, in terms of RCS Rule 34.1(1), to report the whole cause to the Inner House. The Lord Ordinary considered the motion premature because at that time the question of whether Ms Ammori was to seek, and, if so obtain, permission to appeal to the Supreme Court was yet to be resolved.

[11] A By Order hearing to consider further procedure took place on 20 August 2026. At that hearing the petitioner again moved the court to recall the sist and to report the cause to the Inner House, which failing for the court to fix an expedited timetable for a substantive hearing to be heard before the Lord Ordinary as soon as possible, so that the matter might be taken to the Inner House within the month. By an interlocutor dated 25 August 2026, the Lord Ordinary refused the motions to recall the sist and to report the cause to the Inner House, and granted leave to reclaim his interlocutor. This is the decision that is the subject of the present reclaiming motion.

The Lord Ordinary's decision

[12] As regards the petitioner's invitation to report the cause to the Inner House, the Lord Ordinary stated (paragraph 8 of a note annexed to the interlocutor of 25 August 2026):

"The petitioner's request to have the whole cause reported to the Inner House was recognised by senior counsel to be innovative. I accept that the lack of a precedent should not exclude the benefits of such an approach being evaluated. Judicial review proceedings which do not generally involve significant disputed factual matters could, in theory, be more amenable to a leap-frog approach than other types of proceedings. However, the unique nature of this motion does cause me to hesitate. Unless and until there is guidance from the Inner House as to the situations in which the Inner House would be willing to hear causes in the absence of a decision of the Outer House, it is difficult for a Lord Ordinary to assume the role of gate-keeper for

the Inner House. As the respondent pointed out, there are many practical issues which the Inner House are best placed to consider. I have decided that the appropriate course is to refuse the petitioner's motion to report under rule 34.1 but to grant leave to reclaim so that the matter can be placed before the Inner House for its re-consideration, if the petitioner so wishes."

As to his decision to re-sist the cause, the Lord Ordinary stated (paragraph 9):

"I shall grant the respondent's motion to re-sist until the Supreme Court issues its judgment in *Ammori*. This remains, in my view, the most expeditious way to resolve several of the critical issues. Any issues which remain to be resolved after that decision has been issued, can be focussed for determination in the present petition. I consider this course will minimise legal expense and the burden on the courts' resources. Ultimately, this will secure the speediest final determination of the issues which the petitioner raises."

Grounds of appeal

[13] The petitioner advances three grounds of appeal:

1. The Lord Ordinary erred in: (i) refusing the petitioner's motion to recall the sist granted on 28 May 2026 (*sic*); and (ii) granting the respondent's motion to sist the cause pending the outcome of the Supreme Court's decision in *Ammori*. In particular, he erred in holding as a matter of law that it is competent to sist judicial review proceedings.
2. *Esto* it is competent to sist judicial review proceedings, in so doing the Lord Ordinary erred in the exercise of his discretion.
3. The Lord Ordinary erred in the exercise of his discretion in refusing the petitioner's motion to invite the Lord Ordinary to report the whole cause to the Inner House, which failing to urgently dispose of the petition in the Outer House.

The petitioner accepts that if he fails to succeed on one of the first two grounds, he cannot succeed on the third. Although the first ground refers to the sist granted on 28 May 2026, we proceed on the basis that the reference is intended to be to the Lord Ordinary's decision

to re-sist on 25 August 2026; this was the footing on which parties presented their arguments at the hearing on the summar roll. It will be recalled that a motion for review of the interlocutor of 28 May 2026 was made and subsequently abandoned; it would not now be competent to seek to reclaim it. We have however set out the Lord Ordinary's reasons for refusing to sist on 28 May, because these continued to underlie the decision now reclaimed.

Argument for the petitioner

[14] On behalf of the petitioner, it was submitted that there was no rule of court applicable to judicial review procedure under which a sist could properly be pronounced. Specific provision was made for the circumstances in which a sist could be ordered, and so the inherent power of the Court to regulate procedure was excluded (*expressio unius est exclusio alterius*). Chapter 58 of the Rules of Court made clear that the principle of "speedy determination" applied throughout judicial review procedure. That principle distinguished judicial review from other provisions of the Rules of Court. An order to sist was plainly inconsistent with speedy determination. The court's inherent power ought to be used sparingly in order to avoid the Rules of Court being reduced to procedural guidelines. Reference was made to *obiter* observations by Lord Carloway in *Hepburn v Royal Alexandria Hospital* [2010] CSIH 71; 2011 SC 20, paragraphs [53] and [54]. The dispensing power in Rule 2.1 was irrelevant to the present case, which did not concern the failure of a party to comply with the rules. For these reasons the Lord Ordinary erred in law by sisting the proceedings because it was not competent for him to do so.

[15] On the hypothesis that it was competent to sist the proceedings, in all the circumstances the Lord Ordinary was plainly wrong to do so, and the court was entitled to interfere with the exercise of his discretion. There was a public interest in challenges to

decisions of public bodies being resolved quickly. The circumstances of two previous sists of applications for judicial review differed materially from the present case. The court had been seised of the petition for almost 11 months without substantive consideration of its merit. The UK Government's strategy appeared to be to delay or prevent consideration of the challenge by a Scottish court. Having accepted that a petitioner should not be refused permission because of parallel proceedings in another UK jurisdiction, it was irrational for the Lord Ordinary later to conclude that it was appropriate to sist the proceedings. Courts of one jurisdiction were not under any obligation to follow decisions of courts of another jurisdiction. They should give what they consider to be the correct decision and grant leave to appeal to the Supreme Court so that the difference of views could be resolved without undue delay: *R (Jwanczuk) v Secretary of State for Work and Pensions* [2025] UKSC 42; [2026] AC 699, para 101. The Court of Appeal in *Ammori* founded upon events and court proceedings in Scotland: the UK Supreme Court would be well served by having the Court of Session's analysis of those matters. The Supreme Court will sit as a court of England and Wales with no decision binding on the Inner House. The petitioner founded upon considerations in relation to the proportionality assessment for ECHR purposes not relied upon in *Ammori*. The proceedings in *Ammori* did not feature the issue of failure to consult relevant Scottish actors. If the petition proceedings were not reawakened until after the Supreme Court disposes of *Ammori*, those issues would fall to be determined alone in Scotland, with little prospect of the claimer later securing the authoritative determination of the Supreme Court on those matters. The Lord Ordinary's purpose in sisting these proceedings was inconsistent with the proper role of a court exercising its supervisory jurisdiction. No reasonable Lord Ordinary could have reached the conclusion that it was appropriate to sist the petition in the circumstances.

[16] With regard to the refusal to report the cause to the Inner House, it was incumbent on the Lord Ordinary to discharge his function of speedy determination in a way that facilitated the possibility of the petition being considered by this court and, if permitted, by the Supreme Court. Reporting was a means of preserving that possibility. The respondent did not contend that such an approach was incompetent. The Lord Ordinary had misconstrued his role: in deciding whether to report he was fulfilling his own function under Rule 34.1, not usurping the function of the Inner House. The Lord Ordinary failed to address the petitioner's alternative submission that if he was not willing to report the cause to the Inner House, he should instead fix a timetable for urgent disposal in the Outer House, preserving the possibility of a reclaiming motion being dealt with and an application made for permission to appeal to the Supreme Court before *Ammori* was heard. Experience in *Cherry v Advocate General for Scotland* [2019] UKSC 41; [2020] AC 373 showed that this could be done. If the Supreme Court might be capable of resolving all of the issues arising in the petition, that was plainly more expeditious than having a substantive hearing of the petition after the court's decision in *Ammori* was handed down.

Argument for the respondent

[17] On behalf of the respondent, it was submitted that having regard to the fact that the Supreme Court will hear *Ammori* on 4 and 5 November, a sist was the most expeditious route in securing the speediest determination of the issues raised by the petitioner, as well as minimising legal expense and the burden on the court's resources. The Lord Ordinary's decision to sist was not inconsistent with the requirement for speedy determination because awaiting the outcome in *Ammori* will assist with the expeditious and economic determination of the petition. The proceedings in Northern Ireland have been stayed

pending the outcome in *Ammori*. The Lord Ordinary's decision was an exercise of discretion with which the court should not interfere. He did not misdirect himself in law or transgress the limits of his discretion.

[18] It was competent to grant the sist. Power to sist a petition for judicial review was part of the court's inherent common law power to regulate its own procedure in the interests of justice. Sists have previously been granted in judicial review proceedings. A sist is a well-established feature of litigation and is often applied where there is a test case which will determine common issues. The aim is to determine those issues expeditiously and without unnecessary legal costs, and to minimise the risk of conflicting judicial decisions. The Lord Ordinary was correct to find that the petitioner's challenge was likely to be resolved, one way or the other, by the Supreme Court's decision in *Ammori*. Even if not formally binding, the decision of the court will carry significant weight for these proceedings. There was no suggestion that the Secretary of State would not treat the decision in *Ammori* as being of UK-wide application. In any event these proceedings would remain in place to be resumed to the extent that any aspect of the petitioner's challenge was not resolved by the decision in *Ammori*. There was no prejudice to the petitioner who remained free to express support for the Palestinian cause through peaceful protest.

[19] The petitioner's attempt to use the power to report in Rule 34.1(1) was unwarranted and inappropriate. No report of a whole cause had been made in modern times; the last occasion was *Borland v Borland* 1947 SC 432, which raised a general question in relation to divorce on the ground of desertion. In the present case there were no matters that the Lord Ordinary could not competently address. The purpose of the rule was not to circumvent the absence of a leapfrog procedure in the rules of court. Were it not for the imminent *Ammori* hearing, there would be no suggestion of these proceedings being

reported. The Lord Ordinary was correct to recognise the unique nature of the motion and to refuse it. The availability of the decisions to date in England and Wales would not be an adequate substitute for consideration by the Outer House. Nor was there any pressing concern to warrant fixing a timetable for urgent disposal in the Outer House.

[20] The Lord Ordinary did not place insufficient weight on a distinctly Scottish dimension of the petition. The petitioner's attempt to rely upon failure to consult Scottish actors and upon an apparent difference in enforcement practice by the police and prosecution authorities was misconceived and would have no bearing on the decision to proscribe Palestine Action. *Ammori* will determine the Convention compatibility of the proscription decision and the underlying Order for the whole of the UK, rather than a jurisdiction-specific version of it. If the petitioner's case contained a distinctly Scottish dimension, he could have applied to intervene in *Ammori*, to put before the Supreme Court any Scottish aspects that would otherwise be missing from its consideration.

Decision

Competency of the sist

[21] It is well settled that the Scottish courts exercise an inherent jurisdiction which is not dependent upon the existence of a specific rule of court. In *Tonner v Reiach and Hall* [2007] CSIH 48; 2008 SC 1, the court (at paragraph [34]) cited with approval the following passage from an article by Sir Jack Jacob in *Halsbury's Laws of England* (4th ed, 1982) at paragraph 14 and 2001 Reissue at paragraph 12:

“[T]he inherent jurisdiction of the court may be defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them.”

To similar effect, Lord Justice-General Emslie observed in *Hall v Associated Newspapers Ltd* 1979 JC 1 at page 9 that in the absence of express legislative exclusion or limitation, the courts of this country have “the indispensable power which is inherent in every Court to do whatever is necessary to discharge the whole of its responsibilities”.

[22] The need for an inherent power was explained more fully by Lord Reed in *Hepburn v Royal Alexandra Hospital* [2010] CSIH 71; 2011 SC 20 at paragraph [47]:

“...[T]he court possesses an inherent power to do whatever is necessary in order for it to maintain its character as a court of justice. This power is described as ‘inherent’ because it is essential to the court’s performance of its constitutional function. It is distinct from the court’s power to make rules of court having the force of law. Its juridical basis is the authority of the court to uphold, protect and fulfil the judicial function of administering justice according to law. This power is exemplified by punishment for contempt of court, and by the prevention of abuses of process, but is not restricted to those examples...”

We emphasise the point that the existence of the inherent jurisdiction is distinct from the court’s power to make rules of court.

[23] *Tonner v Reiach and Hall* and *Hepburn v Royal Alexandra Hospital* were both concerned with the use of the inherent power to dismiss an action for want of prosecution. That is not, of course, the only situation in which the court’s inherent jurisdiction may fall to be exercised. Many of the circumstances in which the power is exercised will be of a routine nature, and much less drastic than the termination of an action. The court in *Tonner* cited (at paragraph [69]) with apparent approval the following observations regarding the inherent jurisdiction of the sheriff court by Sheriff Principal Macphail in *Newman Shopfitters Ltd v MJ Gleeson Group plc* 2003 SLT (Sh Ct) 83 at paragraphs 25 and 27:

“[25] ...[T]he powers of the sheriff are not limited to those confided to him by statute. His statutory powers only limit the exercise of the inherent jurisdiction to the extent that it cannot be exercised in a way which is inconsistent with statute law or statutory rules of court. A book on sheriff court practice would be unintelligible if it consisted only of the specific powers conferred by the relevant primary and

secondary legislation. Many powers in daily use are not generally so conferred, such as the power to award expenses, the power to dismiss an action or to exclude averments from probation by sustaining a preliminary plea, the power to impose or recall a sist, the power to deal with contempt of court and the power to sit behind closed doors when the interests of justice so require...

[27] ...I find... that there is no authority which obliges me to hold that the sheriff has no power to dispose of an action without proof by pronouncing decree of absolvitor by virtue of the inherent jurisdiction on the court."

There can equally be no doubt that the inherent jurisdiction of the Court of Session includes the power to impose or recall a sist: a power far less severe than a power to dismiss an action altogether for want of prosecution.

[24] The contention of the petitioner is that any inherent power that the court possesses to sist an action is excluded from judicial review proceedings by the obligation imposed on the Lord Ordinary by Rule 58.4(4) to have regard to the need for the speedy determination of the petition when ordering any of the things in paragraph (5), and/or by application of the *expressio unius* maxim to a rule of court which refers to sisting in one situation only, namely for legal aid. We reject both branches of this contention. As we have sought to emphasise, the inherent jurisdiction, including the power to impose or recall a sist, exists independently of the power to make rules of court with statutory effect. Exclusion would require express provision in the rules. We do not regard either the reference to speedy determination or the reference to sisting for legal aid as constituting express exclusion. Nor do these references amount to implied exclusion of the inherent power to grant or recall a sist. Although at first sight sisting a cause might not appear to promote speedy determination, there may be circumstances in which it does just that. By way of example, in *Greenpeace Ltd v Advocate General for Scotland* [2025] CSOH 10; 2025 SLT 303, in circumstances not dissimilar to those of the present case, two petitions for judicial review of grants of consent for offshore oil and gas projects were sisted after first orders, on the motion of the petitioners, to await

clarification of the law by an imminent decision of the Supreme Court. The Lord Ordinary observed at paragraph [122] that the petitioners could not be criticised for the sist as it would not have been appropriate to have heard and disposed of the judicial reviews prior to the Supreme Court judgment. Speedy determination would not have been achieved by expediting progress in the judicial reviews when the guidance of the Supreme Court was awaited.

[25] We note also that Rule 58.4(4) merely requires the Lord Ordinary to “have regard to” the need for speedy determination, and that only in relation to the matters listed in paragraph (5). That is not a directive to the Lord Ordinary to forge ahead without any regard for other relevant considerations, such as avoidance of unnecessary costs and the efficient and proportionate use of the resources of the court. The references in Rules 58.4(5) and (7) to sisting for legal aid are no more than a recognition that that is a common incident of judicial review petitions, with an exhortation to keep any sist as brief as possible. There is nothing in the wording of the rule to suggest that the court, when enacting the Act of Sederunt containing this rule, intended to restrict its own inherent power to sist for a reason other than to facilitate an application for legal aid.

[26] For these reasons we reject the petitioner’s challenge to the competency of the sist imposed by the Lord Ordinary.

Exercise of the discretion to sist and re-sist

[27] As the petitioner recognises, the decision of the Lord Ordinary to sist the cause was discretionary. It is also acknowledged that the court will not lightly interfere with the exercise of a discretion. Nonetheless, the petitioner submits that in this case the Lord Ordinary was “plainly wrong” and that no reasonable Lord Ordinary could have

reached the decision that it was appropriate to sist, so that the matter is at large for the court. As already noted, this is a reclaiming motion against the decision to re-sist on 25 August 2026. The reasons given by the Lord Ordinary adopt to some extent the reasons that he had previously given for imposing the sist on 28 May. It is however the exercise of discretion on 25 August that must be examined.

[28] It is regrettable that a year has passed since the petition was lodged, and some eight months since permission to proceed was granted, without a substantive hearing having taken place. There appear to have been two principal causes for the time taken (we find nothing to support the petitioner's allegation that the UK Government has deliberately sought to obstruct an independent Scottish challenge). One of the causes was the procedure necessitated by the closed material application. The other was the interaction of the Scottish proceedings with decisions of the courts in *Ammori*. By the time the closed material procedure had run its course, the decision of the Court of Appeal was awaited. When the motion to sist with which this reclaiming motion is concerned was granted, the date of the expedited Supreme Court hearing was already known. All of these circumstances have had an effect on the timescale for determination of the petition.

[29] The Lord Ordinary's reason for re-sisting the cause to await the judgment of the Supreme Court in *Ammori* was that he considered this to be the most expeditious way to resolve several of the critical issues, with any issues that remained to be resolved after that judgment to be focused for determination in this petition. In reaching that view, the Lord Ordinary had regard to the minimisation of legal expense and the efficient use of the court's resources. He concluded that this would secure the speediest final determination of the issues that the petitioner raises.

[30] We are not persuaded that this decision was “plainly wrong” or that it was one that no reasonable Lord Ordinary could have reached. The Lord Ordinary has clearly had regard to the relevant factors: the securing of the speediest final determination against a background of minimisation of expense and appropriate use of court resources. The decision of the Supreme Court, although not binding on the courts in Scotland, will be highly persuasive, concerning as it will the validity of an Order which applies equally to all UK jurisdictions. The petitioner’s argument proceeds upon an assumption that there will be matters remaining after the Supreme Court’s judgment that will in due course also require determination by the Supreme Court. We regard that assumption as premature. As set out in statement 14 of the petition, the petitioner challenges the lawfulness of the Order on three grounds, namely (i) that it was passed in circumstances which were procedurally unfair due to the absence of prior consultation with, *inter alia*, Palestine Action itself; (ii) that it gives rise to a disproportionate interference with the petitioner’s Convention rights under Article 10; and (iii) that it gives rise to a disproportionate interference with the petitioner’s Convention rights under Article 11. The proportionality of the interference of proscription with Convention rights under Articles 10 and 11 will be central to the proceedings before the Supreme Court. If the petitioner considers that there are Scottish aspects to these arguments that ought to be presented to the Supreme Court, then we can see some force in the suggestion that the appropriate course (and the speediest) would be for the petitioner to apply to the Supreme Court for leave to intervene in the existing proceedings, rather than seeking to argue them in separate proceedings which could take a considerable time to reach the court, assuming that the necessary permission to appeal is granted. In any event there was nothing irrational about the Lord Ordinary’s conclusion that sisting was the most expeditious way to resolve several of the critical issues, leaving any remaining issues to be

determined in this petition. Whether any of these will require a decision of the Supreme Court remains to be seen.

[31] For these reasons we reject the challenge to the Lord Ordinary's exercise of discretion in sisting the cause to await the outcome of *Ammori* in the Supreme Court. That being so, it is accepted by the petitioner that his appeal against the Lord Ordinary's refusal to report the cause to the Inner House cannot succeed. We shall, however, briefly explain why we would also have rejected this ground of appeal.

Report to the Inner House

[32] Rule 34.1(1) states:

"The Lord Ordinary may, at any stage of a cause on intimation to the parties, report the cause or any incidental matter which arises in the course of it, to the Inner House for a ruling."

Rule 34.3(1) then provides:

"On considering the report of the Lord Ordinary and hearing parties, the Inner House may –

- (a) dispose of the cause or matter reported to it, or
- (b) remit to the Lord Ordinary with such directions as it thinks fit."

[33] The rule has a long pedigree, with ancestors dating back to the Court of Session Act 1825. It appears to assume that the initiative for reporting will come from the Lord Ordinary, although it is clearly open to parties to invite the Lord Ordinary to make a report. The rule is broadly expressed, providing for reporting the cause itself or any incidental matter arising. An annotation to Rule 34.1 in the Annotated Rules of Court suggests that "report of a whole cause (see eg *Borland v Borland* 1947 SC 432) to the Inner House has fallen into desuetude". Although there appears to have been no instance of a report of a whole cause since 1947, the current version of the rule continues to refer to

reporting and to disposing of “the cause”, and we do not exclude the possibility that it would remain competent, in an appropriate case, to report a whole cause, although we consider that such cases are likely to be rare.

[34] The power to report is regularly used in a wide variety of circumstances which may reasonably be characterised as incidental matters, albeit of considerable importance to the cause in question. These have included evidential issues (eg *Gould v Gould* 1966 SC 88 – financial vouching in undefended divorce actions; *Tonner v FT Everard & Sons Ltd* 1994 SC 593 – evidence on commission; the *vires* of a rule of court (*Taylor v Marshalls Food Group* 1998 SC 841); conflict of authority in the Outer House (*Wisely v John Fulton (Plumbers) Ltd* 2000 SC (HL) 95); compatibility of jury trial with Article 6 (*Heasman v JM Taylor & Partners* 2002 SC 326); and the right of audience of a company director (*Secretary of State for Business, Enterprise and Regulatory Reform v UK Bankruptcy Ltd* [2010] CSIH 80; 2011 SC 115). In each of these cases, the report appears to have been made at the instance of the Lord Ordinary, taking the view that the issue in question required an authoritative decision by the Inner House. In another case, *Struk v Secretary of State for the Home Department* 2004 SLT 468, concerning an alleged conflict between decisions in Scotland and England, the report was made on the parties’ joint motion. In *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2013] CSOH 166, a petition for judicial review, the Lord Ordinary refused an invitation by the petitioners to report a discrete competency issue to the Inner House, on the ground that the principle of expedition was best met by allowing the first hearing to proceed.

[35] It would be unwise to attempt to define the circumstances in which a report by the Lord Ordinary to the Inner House might be appropriate. There is however a common underlying purpose to the examples above of seeking clarity in a matter of uncertainty

where a decision of the Outer House would not achieve such clarity. In the present case the petitioner has invited the Lord Ordinary to report the cause to the Inner House as a means of removing the Outer House from the hierarchy of courts tasked with hearing the application, with a view to enhancing the practicability of an expedited appeal to the Supreme Court. It would not be a “leapfrog” in the sense in which that expression is used in, for example, England and Wales to refer to an appeal being made to the Court of Appeal instead of the High Court, or to the Supreme Court instead of the Court of Appeal. There has as yet been no decision in the present case to appeal against; the Lord Ordinary was simply invited to pass the case to the Inner House to decide it instead of himself.

[36] Rule 34.1 has not hitherto been used for such a purpose and we do not consider that it would be a competent use of the power. The petitioner has not identified any issue of uncertainty or conflict that renders the cause unsuitable for decision in the Outer House. We note that the leapfrog procedures in England and Wales are the subject of specific rules of court such as Rule 52.23 of the Civil Procedure Rules for appeals directly to the Court of Appeal, which specify the conditions under which such appeals may be allowed. If it were considered appropriate in Scotland to provide for dispensing with a step in the court hierarchy in applications for judicial review, or more generally, this would in our view require similar specific provision. In the meantime, the Lord Ordinary was correct to decline the petitioner’s invitation to report the cause to the Inner House in terms of Rule 34.1. Having decided to sist the cause to await the outcome of *Ammori*, no question arose of fixing an urgent timetable for disposal in the Outer House. Further procedure will be addressed once the Supreme Court’s decision is known.

Disposal

[37] The reclaiming motion is refused. Expenses are reserved.