

2015 No. 228

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session 1994
Amendment) (No. 3) (Courts Reform (Scotland) Act 2014) 2015**

Made - - - - *2nd June 2015*

Laid before the Scottish Parliament *4th June 2015*

Coming into force - - *22nd September 2015*

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council with such modifications as it thinks appropriate.

The Court of Session therefore makes this Act of Sederunt in exercise of the powers conferred by sections 39(7) and 103(1) of the Courts Reform (Scotland) Act 2014(b), and all other powers enabling it to do so.

Citation and commencement etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No. 3) (Courts Reform (Scotland) Act 2014) 2015.

(2) It comes into force on 22nd September 2015.

(3) A certified copy is to be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session 1994: determination of the value of an order

2.—(1) The Rules of the Court of Session 1994(c) are amended in accordance with this paragraph.

(2) After Chapter 14A (interim diligence)(d), insert—

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3).

(b) 2014 asp 18.

(c) The Rules of the Court of Session 1994 are in Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443, last amended by S.S.I. 2015/227).

(d) Chapter 14A was inserted by S.S.I. 2008/122 and amended by S.S.I. 2009/104.

“CHAPTER 14B
DETERMINATION OF THE VALUE OF AN ORDER

Application and interpretation

14B.1.—(1) This Chapter makes provision about determining, for the purposes of section 39 of the Act of 2014—

- (a) the value of an order sought in a cause; and
- (b) the aggregate total value of all the orders sought in a cause.

(2) In this Chapter “order” is to be construed in accordance with section 39(6) of the Act of 2014.

Value of an order for payment of money

14B.2.—(1) This rule applies where the order sought is an order for payment of money.

(2) The value of the order is the sum of money sought unless the court otherwise determines.

(3) Where the order sought is for—

- (a) payment in instalments; or
- (b) a periodical payment, that is a payment that recurs at specified intervals or on the occurrence of specified events,

the instalments or periodical payments are added together to determine the sum of money sought.

(4) Where an award of interest is sought from the court in addition to the payment of money, that interest is not to be taken into account for the purposes of this rule.

(5) Where the party seeking the order considers that its value exceeds the value of the sum of money sought, that party must make averments stating—

- (a) why it considers that to be the case;
- (b) its true value, and

its value is the sum stated in those averments, unless the court otherwise determines.

Value of an order determining rights in relation to property

14B.3.—(1) This rule applies where the order sought is an order determining rights in relation to property.

(2) The party seeking the order must make averments stating—

- (a) the value of that order;
- (b) why it considers that to be the value, and

its value is the sum stated in those averments, unless the court otherwise determines.

Provision where the value of an order is unascertainable

14B.4.—(1) This rule applies where a party seeking an order considers that its value is unascertainable at the time when the order is sought.

(2) That party must make averments stating why it considers the value to be unascertainable.

(3) The court is to put the cause out on the By Order Roll—

- (a) where the cause has been commenced by summons, on the first suitable court day after the expiry of the period for lodging defences under rule 18.1(2); or

(b) where the cause has been commenced by petition, on the first suitable court day after the expiry of the period of notice for lodging answers under rule 14.6(1).

(4) At the hearing under paragraph (3), the parties may make submissions in relation to the value of the order and whether it is unascertainable.

(5) Where the court determines that the value is unascertainable, its value is to be taken as exceeding £100,000.

Determining the aggregate total value of orders in a cause

14B.5.—(1) This rule applies where more than one order is sought in a cause, including where—

- (a) a party seeks orders against more than one other party in the same cause;
- (b) more than one party seeks an order in the same cause, whether against one or more other parties.

(2) The aggregate total value is determined by adding together the value of each order as determined in accordance with this Chapter.

(3) An order that is alternative to any other order sought by the same party is to be disregarded in determining the aggregate total value.

(4) An order sought in a counterclaim is to be disregarded in determining the aggregate total value.

Determination by the court

14B.6.—(1) This rule applies where the court requires to determine the value of an order or the aggregate total value of all the orders sought.

(2) The court is to have regard to the pleadings in the cause, including any defences or answers that have been lodged.

(3) The court may put the cause out on the By Order Roll in order that parties may make submissions where the court considers that doing so would assist it to determine the value of an order or the aggregate total value of all the orders sought.

(4) The court must put the cause out on the By Order Roll in order that parties may make submissions if it is considering making a determination that the aggregate total value of all the orders sought is less than £100,000.”.

Amendment of the Rules of the Court of Session 1994: judicial review

3.—(1) The Rules of the Court of Session 1994 are amended in accordance with this paragraph.

(2) In Chapter 38 (reclaiming)—

(a) in rule 38.3(3) after “other than” insert “an interlocutor deciding whether to grant permission for the application to proceed under section 27B(1) of the Act of 1988 or”;

(b) after rule 38.8(c), insert—

“(d) an appeal from a decision of the Lord Ordinary concerning permission to proceed in petitions for judicial review under section 27D of the Act of 1988 (appeal following oral hearings).”.

(3) For Chapter 58 (applications for judicial review)(a), substitute—

(a) Chapter 58 was last amended by S.S.I. 2012/275.

“CHAPTER 58 JUDICIAL REVIEW

Application of this Chapter

58.1.—(1) This Chapter applies to an application to the supervisory jurisdiction of the court.

- (2) Such an application must be made by petition for judicial review.
- (3) The following rules do not apply to a petition for judicial review—
 - (a) rule 14.4 (form of petitions);
 - (b) rule 14.5 (first order in petitions);
 - (c) rule 14.8 (procedure where answers lodged);
 - (d) rule 14.9 (unopposed petitions);
 - (e) rule 14.10 (disposals in petitions).

Interpretation

58.2. In this Chapter—

“the 2007 Act” means the Tribunals, Courts and Enforcement Act 2007;

“application to the supervisory jurisdiction of the court” includes an application made under section 45(b) (specific performance of a statutory duty) of the Act of 1988;

“oral hearing” means an oral hearing to determine whether to grant permission under sections 27B or 27C of the Act of 1988;

“permission” means permission for an application to the supervisory jurisdiction of the court to proceed, as required by section 27B(1) of the Act of 1988;

“procedural hearing” means a hearing fixed under rule 58.11(1)(b);

“substantive hearing” means a hearing fixed under rule 58.11(1)(a).

The petition

58.3.—(1) A petition may not be lodged in respect of an application if that application could be made by appeal or review under or by virtue of any enactment.

(2) For the purposes of calculating the time limit under section 27A of the Act of 1988, an application is made when a petition is lodged.

(3) A petition for judicial review is made in Form 58.3.

(4) A petition must—

- (a) have lodged with it all relevant documents in the petitioner’s possession or control;
- (b) have appended to it a schedule specifying—
 - (i) any documents which the petition founds on that are not in the petitioner’s possession or control; and
 - (ii) the person who has possession or control over those documents;
- (c) where the decision, act or omission in question and the basis of the challenge is not apparent from the documents lodged, have lodged with it an affidavit stating the terms of that decision, act or omission and the basis of the challenge.

The petition: intimation and service

58.4.—(1) When a petition is lodged, the Lord Ordinary must make an order specifying—

- (a) such intimation, service and advertisement as may be necessary;

- (b) the date by which any respondent or interested party who intends to participate in the decision whether permission should be granted must, if so advised, lodge answers and any relevant documents (see rule 58.6(1));
 - (c) the date by which any respondent or interested party who only intends to contest the petition if permission is granted must, if so advised, give notice of that intention (see rule 58.6(2)).
- (2) That order must, except where the Lord Ordinary orders otherwise, require—
- (a) intimation, service and advertisement to take place within 7 days from the date of the order;
 - (b) the lodging of answers and relevant documents to take place within 21 days from the date of service;
 - (c) notification of intention to contest to take place within 21 days from the date of service.
- (3) If a party seeks any of the things in paragraph (5), that party must apply by motion.
- (4) The Lord Ordinary must have regard to the need for the speedy determination of the petition when ordering any of the things in paragraph (5).
- (5) Those things are—
- (a) dispensing with intimation, service or advertisement;
 - (b) adjusting the period for intimation, service or advertisement;
 - (c) adjusting the period for intimation of intention to contest and the lodging of answers and any relevant documents;
 - (d) an extension to the time limit under section 27A of the Act of 1988;
 - (e) urgent consideration of the petition;
 - (f) a discretionary transfer to the Upper Tribunal under section 20(1)(b) of the 2007 Act;
 - (g) an interim order; or
 - (h) a sist for legal aid.
- (6) Where a party seeks urgent consideration of the petition, the motion must set out—
- (a) the need for urgency,
 - (b) the timescale sought for the court to consider permission, and
 - (c) the date by which the substantive hearing should take place.
- (7) A sist for legal aid must be for no longer than 28 days, but can be renewed.
- (8) The clerk of court must notify the Scottish Legal Aid Board of a sist for legal aid.

The petition: transfers to the Upper Tribunal

58.5.—(1) If the conditions in section 20(1)(a) of the 2007 Act are met, instead of determining permission under rule 58.7, the Lord Ordinary must make an order transferring the application to the Upper Tribunal.

(2) If paragraph (3) applies, the Lord Ordinary may make an order transferring the application to the Upper Tribunal—

- (a) instead of determining permission under rule 58.7;
- (b) after determining permission; or
- (c) at any subsequent hearing.

(3) This paragraph applies if—

- (a) the conditions in section 20(1)(b) of the 2007 Act are met, and
- (b) the Lord Ordinary is satisfied that it is in all the circumstances appropriate to transfer the application.

(4) The Lord Ordinary may make an order under paragraph (2) whether or not such an order was sought in the petition or was sought by motion by any party to the proceedings, but if no such order was sought, the parties must be heard before making an order.

(5) Where the Lord Ordinary makes an order transferring the application to the Upper Tribunal under paragraph (1) or (2), an order may be made in respect of any expenses incurred by the parties up to that point.

The petition: participation in the permission stage and intention to contest

58.6.—(1) A person served with the petition who intends to participate in the decision whether permission should be granted must lodge answers within the period ordered for the lodging of answers.

(2) A person served with the petition who—

- (a) does not intend to participate in the decision whether permission should be granted; but
- (b) does intend to contest the petition if permission is granted,

must notify the court and the petitioner of that intention, within the period ordered for notification. That person may not participate in the decision whether permission should be granted.

(3) A person served with the petition who—

- (a) does not lodge answers within the period ordered for the lodging of answers; and
- (b) does not notify the court of an intention to contest the petition if permission is granted, within the period ordered for notification,

may not participate in the decision whether permission should be granted or contest the petition, unless the Lord Ordinary or the Inner House (as the case may be) orders otherwise.

The permission stage

58.7.—(1) Within 14 days from the end of the period for lodging answers the Lord Ordinary must—

- (a) decide whether to grant permission (including permission subject to conditions or only on particular grounds); or
- (b) order an oral hearing (for the purpose of deciding whether to grant permission) to take place within 7 days.

(2) Where permission is refused (or permission is granted subject to conditions or only on particular grounds) without an oral hearing, the Lord Ordinary must give reasons for the decision.

The permission stage: requesting an oral hearing

58.8.—(1) A request to review a decision made without an oral hearing is made in Form 58.8.

(2) Where a request is granted, the oral hearing must take place within 7 days.

(3) The petitioner, respondent and any other person who has lodged answers to the petition must be given at least 2 days' notice of the oral hearing.

The permission stage: oral hearing

58.9.—(1) Except on cause shown, an oral hearing must not exceed 30 minutes.

(2) Where permission is refused (or permission is granted subject to conditions or only on particular grounds) at an oral hearing, the Lord Ordinary must give reasons for the decision.

The permission stage: appeal to the Inner House

58.10. An appeal under section 27D(2) of the Act of 1988 (appeals following oral hearings) is made by reclaiming motion (see rule 38.8(d)).

The permission stage: where permission is granted

58.11.—(1) When permission is granted, the Keeper of the Rolls must, in consultation with the Lord Ordinary, fix—

- (a) a date for the substantive hearing, which must be no later than 12 weeks from the date on which permission is granted, except where the Lord Ordinary is satisfied that a longer period is necessary; and
- (b) a date for the procedural hearing (unless the Lord Ordinary is satisfied that a procedural hearing is unnecessary), which must be no later than 6 weeks from the date on which permission is granted, except where the Lord Ordinary is satisfied that a longer period is necessary.

(2) When permission is granted, the Lord Ordinary must make such orders for further procedure as are appropriate for the speedy determination of the petition and in particular may order—

- (a) service of the petition, answers and relevant documents, on a person not specified in the order made under rule 58.4;
- (b) service of the decision granting permission and the date of the hearing on a person specified in the order made under rule 58.4 who lodged answers;
- (c) service of the decision granting permission and the date of the hearing on a person specified in the order made under rule 58.4 who did not lodge answers but who did notify the court of an intention to contest the petition;
- (d) answers and any relevant documents to be lodged by a party who notified the court of an intention to contest the petition, within such period as may be specified;
- (e) adjustment of the pleadings within such period as may be specified;
- (f) relevant documents to be marked up to indicate the parts the party intends to rely on;
- (g) authorities to be lodged by a certain date, and to be marked up to indicate the parts the party intends to rely on;
- (h) notes of argument to be lodged by a certain date;
- (i) statements of issues to be lodged by a certain date;
- (j) facts founded on by a party at the hearing to be supported by evidence on affidavit to be lodged within such period as may be specified;
- (k) parties to write to the court to confirm whether they are ready to proceed to the substantive hearing by a certain date.

(3) Except where the Lord Ordinary orders otherwise, any intimation, service and advertisement must be ordered to take place within 7 days of the date of the interlocutor.

The procedural hearing

58.12.—(1) At the procedural hearing the Lord Ordinary must ascertain whether—

- (a) the parties have complied with any order made under rule 58.11(2); and
- (b) the parties are ready to proceed to the substantive hearing.

(2) At the procedural hearing the Lord Ordinary may make such order for further procedure as is appropriate for the speedy determination of the petition and in particular may make any of the orders listed in rule 58.11(2).

The substantive hearing

58.13.—(1) At the substantive hearing the Lord Ordinary must hear the parties.

(2) In exercising the supervisory jurisdiction on a petition for judicial review, the Lord Ordinary may—

- (a) grant or refuse any part of the petition, with or without conditions;
- (b) make any order that could be made if sought in any action or petition including, in particular, an interim order or any order listed in paragraph (3) (whether or not such an order was sought in the petition).

(3) Those orders are—

- (a) reduction;
- (b) declarator;
- (c) suspension;
- (d) interdict;
- (e) implement;
- (f) restitution; and
- (g) payment (whether of damages or otherwise).

Additional parties

58.14.—(1) This rule applies to a person who—

- (a) was not specified in an order made under rules 58.4(1), 58.11(2) or 58.12(2) as a person who should be served with the petition; and
- (b) is directly affected by an issue raised in the petition.

(2) That person may apply by motion for leave to enter the process.

(3) If the motion is granted, the Lord Ordinary or Inner House (as the case may be) must make such orders as are considered appropriate to enable that person to participate in the proceedings.

Transfers to judicial review procedure

58.15.—(1) The Lord Ordinary may order that a cause raised as an action should proceed as a petition for judicial review, if satisfied that—

- (a) it should proceed in that way; and
- (b) the requirements of section 27B(2) or (3) (as the case may be) of the Act of 1988 are met.

(4) If the Lord Ordinary orders that an action should proceed as a petition for judicial review, it must proceed under rule 58.11 (as if permission had been granted) and the Lord Ordinary must also order—

- (a) the petitioner to prepare a minute stating—
 - (i) the act, decision or omission to be reviewed;
 - (ii) the remedies which the petitioner seeks; and
 - (iii) the legal grounds of challenge;and to intimate the minute and lodge it in process within 7 days;
- (b) the respondent to lodge and intimate answers to that minute within 14 days thereafter.

(5) That minute and answers, together with the earlier pleadings, thereafter comprise the pleadings in the proceedings, subject to such further adjustment or amendment as the Lord Ordinary may authorise.

Transfers from judicial review procedure

58.16.—(1) The Lord Ordinary may order that a cause raised as a petition for judicial review should proceed as an ordinary action, if satisfied that it should proceed in that way.

(2) If the Lord Ordinary orders that a petition for judicial review should proceed as an ordinary action, it is withdrawn from the procedure under this Chapter and the Lord Ordinary must order—

- (a) the pursuer to prepare a minute containing conclusions and pleas in law;
- (b) the defender to prepare a minute containing pleas in law;

and that those minutes must be lodged in process within 7 days.

(3) Those minutes, together with the earlier pleadings, thereafter comprise the pleadings in the proceedings, subject to such further adjustment or amendment as the Lord Ordinary may authorise.

Public interest intervention

58.17.—(1) This rule applies to a person who—

- (a) was not specified in an order made under rules 58.4(1), 58.11(2) or 58.12(2) as a person who should be served with the petition; and
- (b) is not directly affected by any issue raised in the petition.

(2) That person may apply by application for leave to intervene—

- (a) in the decision whether to grant permission;
- (b) in a petition which has been granted permission; or
- (c) in an appeal in connection with a petition for judicial review.

(3) In rules 58.18 to 58.20, “court” means the Lord Ordinary or the Inner House, as the case may be.

Public interest intervention: the minute of intervention

58.18.—(1) An application for leave to intervene is made by minute of intervention in Form 58.18.

(2) The minute of intervention must set out—

- (a) the name and description of the applicant;
- (b) a brief statement of the issue in the proceedings which the applicant wishes to address and the applicant’s reasons for believing that this issue raises a matter of public interest; and
- (c) a brief statement of the propositions to be advanced by the applicant and the applicant’s reasons for believing that they are relevant to the proceedings and that they will assist the court.

(3) The applicant must—

- (a) send a copy of the minute to all parties; and
- (b) lodge the minute, certifying on it that it has been sent to all parties.

Public interest intervention: the decision of the court

58.19.—(1) The court may, in an application for leave to intervene—

- (a) refuse leave without a hearing;
- (b) grant leave without a hearing (unless a hearing is requested); or
- (c) refuse or grant leave after a hearing.

(2) A hearing may be held if one of the parties lodges a request for a hearing—

- (a) in an application to intervene where the court has not yet granted permission, within 2 days from the date that the minute of intervention was lodged; or
- (b) in any other case, within 14 days from the date that the minute of intervention was lodged.

(3) At a hearing, the parties may address the court on whether the intervention will unduly delay or otherwise prejudice the rights of the parties, including their potential liability for expenses.

(4) The court may grant leave only if it is satisfied that—

- (a) the proceedings raise a matter of public interest;
- (b) the issue in the proceedings which the applicant wishes to address raises a matter of public interest;
- (c) the propositions to be advanced by the applicant are relevant to the proceedings and are likely to assist the court; and
- (d) the intervention will not unduly delay or otherwise prejudice the rights of the parties, including their potential liability for expenses.

(5) The court may, when granting leave, impose such terms and conditions as it considers desirable in the interests of justice, including making provision in respect of additional expenses incurred by the parties as a result of the intervention.

(6) The clerk of court must give written intimation of a grant or refusal of leave to the applicant and all parties.

Public interest intervention: form of intervention

58.20.—(1) An intervention is by written submission.

(2) The written submission (including appendices) must not exceed 5000 words.

(3) The applicant must lodge the written submission and send a copy of it to all parties by such time as the court may direct.

(4) The court may, in exceptional circumstances—

- (a) allow a longer written submission;
- (b) allow an oral submission.”.

(4) In Chapter 94 (interventions by the Commissions for Equality and Human Rights)—

- (a) in rule 94.2(2) after “including”, insert “deciding whether to grant permission for a petition to proceed under section 27B(1) of the Act of 1988 (judicial review: requirement for permission),”;
- (b) in rule 94.2(3)(a), for “rule 58.8 (application by comparing party to enter process of a judicial review)” substitute “rule 58.14 (additional parties)”.

(5) In the Appendix, for Forms 58.6 and 58.8A substitute the Forms in Schedule 1 to this Act of Sederunt.

Saving: judicial review

4. The Rules of the Court of Session 1994(a) as they applied immediately before 22nd September 2015 continue to apply to an application to the supervisory jurisdiction of the court made before 22nd September 2015.

Amendment of the Rules of the Court of Session 1994: appeals to the Supreme Court

5.—(1) The Rules of the Court of Session 1994 are amended in accordance with this paragraph.

(a) The Rules of the Court of Session 1994 are in Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443, last amended by S.S.I. 2015/227).

(2) After Chapter 41 (appeals under statute)(a), insert —

“CHAPTER 41A
APPEALS TO THE SUPREME COURT

Application of this Chapter

41A.1. This Chapter applies to an application for permission to appeal to the Supreme Court under section 40(1)(a) or (3) of the Act of 1988(b).

Applications for permission to appeal

41A.2.—(1) An application is made in Form 41A.2.

(2) The application must set out the proposed grounds of appeal and the basis on which permission to appeal is sought.

Determination of applications for permission to appeal

41A.3.—(1) An application must, without a motion being enrolled, be brought before the Inner House on the first available day after being made for an order for—

- (a) service of the application on the respondent and such other person as the Inner House thinks fit within 7 days of the date of the order or such other period as is thought fit;
- (b) any person on whom the application has been served to lodge answers, if so advised, within 14 days after the date of service or within such other period as is thought fit.

(2) Where an application is served under paragraph (1), evidence of service in accordance with Chapter 16 of these Rules is to be provided to the General Department within 14 days from the date of service.

(3) Within 14 days after 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) In the Appendix, after Form 41.59 (form of application for Marine Licence Applications etc.)(c), insert Form 41A.2 set out in Schedule 2 to this Act of Sederunt.

C J M Sutherland
Lord Justice Clerk
I.P.D.

Edinburgh
2nd June 2015

(a) Chapter 41 was substituted by S.S.I. 2011/303 and last amended by S.S.I. 2015/35.
(b) Section 40 was substituted by the Courts Reform (Scotland) Act 2014 asp 18, section 117.
(c) Form 41.59 was inserted by S.S.I. 2015/35.

SCHEDULE 1

Paragraph 3(5)

Rule 58.3(3)

Form of Petition for Judicial Review

UNTO THE RIGHT HONOURABLE
THE LORDS OF COUNCIL AND SESSION

PETITION

of

[A.B.] (*designation and address*)

for

Judicial review of (*state briefly matter sought to be reviewed*) by [C.D.]

HUMBLY SHEWETH:—

1. That the petitioner is as designed in the instance. The respondent[s] is [*or are*] as designed in Part 1 of the Schedule for Service. [The persons specified in Part 2 of the Schedule for Service may have an interest.] The petitioner has standing. (*State the standing of the petitioner.*)
2. That the date on which the grounds giving rise to the petition first arose was (*date*).
3. That on that date the respondent (*specify act, decision or omission to be reviewed*).
4. That the petitioner seeks (*state remedies sought*). The petitioner craves the court to pronounce such further orders (including an order for expenses) as may seem to the court to be just and reasonable in all the circumstances of the case.
5. That the petitioner challenges the decision [*or act or omission*] of the respondent on the following ground(s).
6. (*State briefly (in numbered paragraphs) facts in support of the ground(s) of challenge.*)
7. (*State briefly (in numbered paragraphs) the legal argument with reference to enactments or authority.*)

PERMISSION TO PROCEED

8. That the petitioner satisfies section 27B(2) (requirement for permission) of the Court of Session Act 1988. *(State briefly (in numbered paragraphs) how the petitioner can demonstrate a sufficient interest in the subject matter of the petition and why the petition has a real prospect of success).* [*or*

8. That the petitioner satisfies section 27B(3) (requirement for permission: second appeals test) of the Court of Session Act 1988. *(State briefly (in numbered paragraphs) how the petitioner can (a) demonstrate a sufficient interest in the subject matter of the petition, (b) why the petition has a real prospect of success, and (c) either why the petition raises an important point of principle or practice or why there is some other compelling reason for allowing the petition to proceed).*]

TRANSFERS TO THE UPPER TRIBUNAL

9. That the petition is not subject to a mandatory or discretionary transfer to the Upper Tribunal. [*or*

9. That the petition is subject to a discretionary transfer to the Upper Tribunal under section 20(1)(b) of the Tribunals, Courts and Enforcement Act 2007] [*or*

9. That the petition is subject to a mandatory transfer to the Upper Tribunal under section 20(1)(a) of the Tribunals, Courts and Enforcement Act 2007.]

PLEA(S)-IN-LAW

(Specify pleas-in-law relating to each ground of challenge and remedy sought)

According to Justice etc.

(Signed by counsel or other person having a right of audience)

SCHEDULE FOR SERVICE

PART 1: RESPONDENT(S)

(State the name and designation of the respondent(s) and whether service is sought in common form or by advertisement.)

PART 2: INTERESTED PERSON(S)

(State the name and designation of any interested person(s) and whether service is sought in common form or by advertisement.)

SCHEDULE OF DOCUMENTS

(Specify any documents founded on under rule 58.3(4)(b))

Form 58.8

Rule 58.8(1)

Form of Request for Review

IN THE COURT OF SESSION

PETITION

Of

[A.B.] (designation and address)

For

Judicial review of *(state briefly matter sought to be reviewed)* by [C.D.]

I request a review of the decision of the Lord Ordinary made on *(date)*.

(Signed by counsel or other person having a right of audience)

Form 58.18

Rule 58.18(1)

Form of Minute of Intervention

APPLICATION

for

LEAVE TO INTERVENE

in the

PUBLIC INTEREST

in the

PETITION

of

[A.B.] (*designation and address*)

for

Judicial review of (*state briefly matter sought to be reviewed*) by [C.D.]

(Here set out briefly:

- (a) *the name and description of the applicant;*
- (b) *any issue in the proceedings which the applicant wishes to address and the applicant's reasons for believing that any such issue raises a matter of public interest;*
- (c) *the propositions to be advanced by the applicant and the applicant's reasons for believing that they are relevant to the proceedings and that they will assist the Court.)*

SCHEDULE 2

Paragraph 5(3)

Rule 41A.2(1)

Form 41A.2

Form of application for permission to appeal to the Supreme Court

IN THE COURT OF SESSION

APPLICATION

for

PERMISSION TO APPEAL TO THE SUPREME COURT

under section 40 of the Court of Session Act 1988

by

[A.B.] (*designation and address*)

Applicant

against

A decision of the Inner House

1. On (*date*) the Inner House (*briefly describe decision in respect of which permission to appeal to Supreme Court is sought*).

GROUND(S) OF APPEAL

2. (*Set out the ground(s) in numbered paragraphs.*)

PERMISSION TO APPEAL

3. The appeal raises an arguable point of law of general public importance which ought to be considered by the Supreme Court at this time because (*state the reasons*).

IN RESPECT WHEREOF

(*signed by counsel or other person having a right of audience*)

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt amends the Rules of the Court of Session 1994 (“the Rules”) in consequence of the coming into force of certain parts of the Courts Reform (Scotland) Act 2014 (“the 2014 Act”).

This Act of Sederunt comes into force on 22nd September 2015.

Determination of the value of an order

Paragraph 2 of this Act of Sederunt inserts a new Chapter 14B into the Rules. Chapter 14B contains provision for the purpose of determining the value of an order sought in proceedings in the Court of Session, for the purposes of section 39 of the 2014 Act.

Section 39 of the 2014 Act applies to civil proceedings which a sheriff has competence to deal with, and in which one or more orders of value are sought, the aggregate total value of which does not exceed £100,000. Where section 39 applies, the proceedings may be brought only in the sheriff court.

Chapter 14B accordingly makes provision about determining the value of an order in Court of Session proceedings, as the value of the orders sought (and their aggregate total value) must be ascertained in order to decide whether section 39(2) applies.

Rule 14B.2 provides rules for determining the value of an order that is an order for the payment of money. The value is to be the sum of money sought unless the party seeking the order makes averments explaining why its true value exceeds that sum, or the court determines otherwise.

Rule 14B.3 provides rules for determining the value of an order determining rights in relation to property. The party seeking the order is to make averments stating its value, and the stated value is to be the value of the order unless the court determines otherwise.

Rule 14B.4 makes provision where the party seeking an order considers that its value is unascertainable. It is for the party to make averments explaining why that is the case, and the court is then to fix a hearing where parties may make submissions on that matter. Where the court determines that the value is unascertainable, rule 14B.4(5) provides that it is to be taken to exceed £100,000.

Rule 14B.5 provides rules for determining the aggregate total value of more than one order.

Rule 14B.6 makes provision where the court has to determine the value of an order or the aggregate total value of all orders sought. Rule 14B.6(2) provides that the court is to take the pleadings lodged into account in determining the value of an order or the aggregate total value of all the orders sought in a cause. Rule 14B.6(3) enables the court to fix a hearing where parties may make submissions if it considers that doing so would assist it. Rule 14B.6(4) requires a hearing to be fixed for that purpose if the court is considering making a determination that the aggregate total value is less than £100,000.

Judicial Review

Paragraph 3 of this Act of Sederunt replaces Chapter 58 (applications for judicial review) of the Rules with new procedural rules for judicial reviews. It also makes amendments to Chapters 38, 94 and the forms in the Appendix in consequence of the new rules.

Rules 58.3 to 58.6 concern the petition for judicial review. Rule 58.3 provides for the form of a petition and for what documents must be lodged with a petition or scheduled to it. Rule 58.4 provides for the orders which the Lord Ordinary must make when a petition is lodged and makes provision for parties to seek incidental orders connected to the petition by motion. Rule 58.5 provides for mandatory and discretionary transfers of judicial reviews to the Upper Tribunal. Rule 58.6 provides that parties who wish to participate in the permission stage must lodge answers, and that parties who do not wish to participate in the permission stage but do wish to contest the

petition if permission is granted must give notification of that intention. It provides that parties who do neither are not entitled to participate in the permission stage or contest the petition.

Rules 58.7 to 58.11 concern the permission stage. Rule 58.7 provides that the Lord Ordinary must either decide whether to grant permission or order an oral hearing within 14 days. It provides that if permission is refused, the Lord Ordinary must give reasons. Rule 58.8 provides that where a request to review a decision is made it must take place within 7 days. Rule 58.9 provides that oral hearings should not last longer than 30 minutes. It provides that if permission is refused, the Lord Ordinary must give reasons. Rule 58.10 indicates that appeals against refusals of permission at oral hearings will be by reclaiming motion (see the amendments made by paragraph 3(2) of this Act of Sederunt). Rule 58.11 provides for the fixing of hearings and the case management orders which the Lord Ordinary can make when permission is granted.

Rules 58.12 and 58.13 provide for the procedure at procedural and substantive hearings. Rule 58.14 provides for people who are directly affected by a petition but who have not been served with the petition to apply to enter the process. Rules 58.15 and 58.16 provide for transfers to and from judicial review procedure.

Rules 58.17 to 58.20 provide for public interest interventions by people not directly affected by a petition. Rule 58.17 establishes who may intervene and when. Rule 58.18 provides for application by minute of intervention. Rule 58.19 provides for the court to hear applicants and make their decision whether to allow the intervention. Rule 58.20 sets out the form which an intervention takes.

Paragraph 4 of this Act of Sederunt provides that judicial reviews commenced before 22nd September 2015 will continue to be subject to the procedural rules in force before that date.

Appeals to the Supreme Court

Paragraph 5 of this Act of Sederunt inserts a new Chapter 41A into the Rules in consequence of amendments to the Court of Session Act 1988 (“the 1988 Act”) made by the 2014 Act.

Previously, appeals from decisions of the Inner House of the Court of Session could be made to the Supreme Court under section 40 of the 1988 Act without any requirement to seek prior permission to appeal from the Inner House. Section 117 of the 2014 Act replaces the provisions of section 40 of the 1988 Act with a new section 40, so that permission to appeal must be granted by the Inner House or, if the Inner House refuses permission, by the Supreme Court.

New Chapter 41A sets out the procedure to be followed by an applicant who wishes to seek permission to appeal to the Supreme Court. A new Form 41A.2 (application for permission to appeal to the Supreme Court) is prescribed for this purpose.

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