

COURTS REFORM (SCOTLAND) ACT 2014

EXPLANATORY NOTES

THE ACT

Part 4 – Procedure and Fees

Procedure

Section 104 – Power to regulate procedure etc. in the sheriff court and the Sheriff Appeal Court

183. *Section 104* is a replacement for the power to make rules of court in relation to the sheriff court in section 32 of the Sheriff Courts (Scotland) Act 1971 and extends the power to rules in relation to the Sheriff Appeal Court. It gives the Court of Session a broad power to make acts of sederunt concerning the procedure and practice to be followed in civil proceedings in the sheriff court and Sheriff Appeal Court. Subsection (1) contains a broad general power to make provision regarding procedure and practice. Subsection (2) contains some specific illustrative examples of the sort of matters which are procedure and practice for the purposes of this power, including the conduct and management of proceedings in the sheriff court and Sheriff Appeal Court, the forms of documents used, appeals against decisions, awards of expenses and the representation of parties by those otherwise not qualified so to do.
184. Whilst of a similar nature to section 32 of the 1971 Act, the wider general illustrative examples set out in subsection (2) demonstrate a substantial widening of what can be described as practice and procedure.
185. Subsection (3) provides that the rule-making power is subject to the provisions in sections 72 to 82 concerning simple procedure. Subsection (4) allows these acts of sederunt to make various types of ancillary provision. Subsections (5) and (6) require the Court of Session to consult with the Scottish Civil Justice Council when making acts of sederunt which were not prepared in draft by the Council. Subsection (7) clarifies that these new powers do not affect any existing power to make court rules or otherwise regulate procedure or practice. See also sections 75 and 76 which make special provision about simple procedure rules.