
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 228

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

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)(1), substitute—

**“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.