
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

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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.