

2015 No. 35

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment
No. 2) (Regulatory Reform (Scotland) Act 2014) 2015**

Made - - - - - *29th January 2015*

Laid before the Scottish Parliament *30th January 2015*

Coming into force - - - *26th February 2015*

The Lords of Council and Session, under and by virtue of the powers conferred by section 5 of the Court of Session Act 1988(a) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Scottish Civil Justice Council in accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(b), do hereby enact and declare:

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 2) (Regulatory Reform (Scotland) Act 2014) 2015.

(2) It comes into force on 26th February 2015.

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

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session in Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994(c) are amended in accordance with the following subparagraphs.

(2) After rule 41.57 (permission to appeal against decisions of the Upper Tribunal)(d), insert—

(a) 1988 c. 36. Section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(3); the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 45; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1); the Judiciary and Courts (Scotland) Act 2008 (asp 6), section 46(3); and the Legal Services (Scotland) Act 2010 (asp 16), section 126(a).

(b) 2013 asp 3.

(c) S.I. 1994/1443, last amended by S.S.I. 2015/26.

(d) Rule 41.57 was inserted by S.S.I. 2013/238 and last amended by S.S.I. 2013/294.

“Part XII – Marine Licence Applications etc.

Application of this Part and modification of this Chapter for the purposes of this Part

41.58.—(1) This Part applies to applications under—

- (a) Section 63A of the Marine (Scotland) Act 2010(a);
- (b) Section 73A of the Marine and Coastal Access Act 2009(b);
- (c) Section 36D of the Electricity Act 1989(c); and;
- (d) Paragraph 5B of Schedule 8 to the Electricity Act 1989(d).

(2) The following provisions of Part I (general provisions) shall not apply to an application mentioned in paragraph (1)—

- (a) rule 41.2 (applications for leave to appeal);
- (b) rule 41.3 (determination of applications for leave to appeal);
- (c) rule 41.5 (competency of appeals).

(3) Part III (appeals in Form 41.25) shall apply to an application mentioned in paragraph (1), subject to the following provisions of this Part.

(4) The following provision of Part III (appeals in Form 41.25) shall not apply to an application mentioned in paragraph (1)—

- (a) rule 41.25 (form of appeal);
- (b) rule 41.26 (lodging of application in court);
- (c) rule 41.27 (orders for service and answers);
- (d) rule 41.28(1) (motion for further procedure).

Form application and lodging of application in court

41.59.—(1) An application shall be made in Form 41.59.

(2) That application shall—

- (a) specify the provision of the enactment under which the application is made;
- (b) specify—
 - (i) the decision complained of;
 - (ii) the date on which the decision was made;
 - (iii) the date on which it was intimated to the applicant; and
 - (iv) any other relevant information;
- (c) where the application concerns only part of the decision, specify or distinguish that part;
- (d) have appended to it a copy of the decision;
- (e) state, in brief numbered propositions—
 - (i) the grounds on which the validity of the decision is questioned; and
 - (ii) why the court should grant permission; and

(a) 2010 asp 5. Section 63A is prospectively inserted by section 54(3) of the Regulatory Reform (Scotland) Act 2014 (asp 3).
(b) 2009 c. 23. Section 73A is prospectively inserted by article 9(3) of the Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2015 (S.I.2015/xxxx) (“the 2015 Order”).
(c) 1989 c. 29. Section 36D is prospectively inserted by article 3(2) of the 2015 Order.
(d) Paragraph 5B is prospectively inserted by article 3(3) of the 2015 Order.

- (f) set out in a schedule the names and addresses of the respondents in the application and the name and address, so far as known to the applicant, of any other person who may have an interest in the application.
- (3) The application shall be lodged in the General Department.
- (4) There shall be lodged within the application—
 - (a) a process in accordance with rule 4.4 (steps of process);
 - (b) all documents founded upon by the applicant so far as in the applicant’s possession or within the applicant’s control.

Determination of application for permission to proceed

- 41.60.**—(1) An application for permission shall, without a motion being enrolled—
- (a) during session, be brought before a procedural judge on the first available day after being made for an order for—
 - (i) service of the application on the respondent and such other person as the procedural judge thinks fit within 7 days of the date of the order or such other period as the procedural judge thinks fit; and
 - (ii) any person on whom the application has been served, to lodge answers restricted to the question of whether permission should be granted, if so advised, within 14 days after the date of service or within such other period as the procedural judge thinks fit; and
 - (b) during vacation, be brought before the vacation judge for such an order.

(2) Where an application for permission is served under paragraph (1), evidence of service in accordance with Chapter 16 of these Rules shall 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 procedural judge for the application for permission to be granted.

Further procedure where the court grants permission to proceed

- 41.61.** Where the court has granted permission for an application to proceed—
- (a) the court shall make an order for any person on whom the application has been served to lodge answers to the application, if so advised, within such period as the court thinks fit;
 - (b) the applicant or a respondent may seek urgent disposal of the application under rule 41.4 (urgent disposal of appeal)(a);
 - (c) in rule 41.4(2)(b) (urgent disposal of appeal), rule 41.28(2) (motion for further procedure) and rule 41.29(1) (timetable in appeal under Part III), “answers” means answers lodged following an order under rule 41.61(a).”.

(3) In the Appendix, after Form 41.55 (form of reference on a preliminary point under an ACAS scheme)(b), insert Form 41.59 as set out in the Schedule to this Act of Sederunt.

BRIAN GILL
Lord President
I.P.D.

Edinburgh
29th January 2015

(a) Rule 41.4 was substituted by S.S.I. 2011/303.
(b) Form 41.55 was inserted by S.S.I. 2011/303.

SCHEDULE

Paragraph 2(3)

Form 41.59

Form of application for Marine Licence Applications etc.

Application

to

THE COURT OF SESSION

under

(state provision in enactment under which application is made)

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

Applicant

against

A decision of the Scottish Ministers dated *(date)* communicated to the applicant on *(date)*

The decision dated *(date)* is appended to this application.

The application against the foregoing decision is on the following grounds.

GROUNDS

(State the grounds for the application in numbered paragraphs)

1. The grounds on which the validity of the decision is questioned are *(state the grounds)*
2. The court should grant permission for the application to proceed because *(state the reasons)*.

(signed)

Applicant

[*or* Solicitor [*or* Agent] for Applicant]

EXPLANATORY NOTE

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

This Act of Sederunt amends Chapter 41 (appeals under statute) of the Rules of the Court of Session, by inserting Part XII (marine licence applications etc.) and new Form 41.59. This Part provides for the procedure when an aggrieved person applies to the court to question the validity of a decision of the Scottish Ministers under the Acts mentioned in rule 41.58(1). Rule 41.59 makes provision about the form of an application and about how it is to be lodged within the court. Rule 41.60 provides the procedure to be followed when the court determines whether permission should be granted for an application to proceed. Rule 41.61 provides the procedure to be followed when the court grants permission for an application to proceed.

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£4.25

S201501291000 02/2015 19585

<http://www.legislation.gov.uk/id/ssi/2015/35>

ISBN 978-0-11-102610-6



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