

2024 No. 196

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session 1994
Amendment) (Protective Expenses Orders) 2024**

Made - - - - - *27th June 2024*

Laid before the Scottish Parliament *28th June 2024*

Coming into force - - - *1st October 2024*

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.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 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) (Protective Expenses Orders) 2024.

(2) It comes into force on 1st October 2024.

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

Amendment of the Rules of the Court of Session 1994

2.—(1) Chapter 58A (protective expenses orders in environmental appeals and judicial reviews)(c) of the Rules of the Court of Session 1994(d) is amended in accordance with this paragraph.

(2) In rule 58A.5 (applications for protective expenses orders), after paragraph (4) insert—

“(5) The motion may request that the court grant an order treating any of the information listed in paragraph (3) as confidential and open only to the court and the parties to the proceedings.”.

(3) In rule 58A.6 (determination of applications), after paragraph (2) insert—

“(3) Where a motion includes a request for the court to grant an order under rule 58A.5(5), if the motion is starred, the hearing must take place in chambers.”.

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014, (asp 18), schedule 5, paragraph 31(3), and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).

(b) 2014 asp 18.

(c) Chapter 58A was inserted by S.S.I. 2013/81 and substituted by 2018/348.

(d) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443), last amended by S.S.I. 2024/195.

- (4) In rule 58A.8 (expenses protection in reclaiming motions)—
- (a) in paragraph (1)(b), omit from “at the instance of” to the end;
 - (b) in paragraph (3), for “any other reclaiming motion” substitute “a reclaiming motion”.
- (5) After rule 58A.9 (expenses of application), insert—

“Expenses of interveners

58A.10.—(1) Expenses are not to be awarded in favour of or against a relevant party, except on cause shown.

(2) If the court decides expenses are to be awarded under paragraph (1), it may impose conditions on the payment of expenses.

(3) In paragraph (1), “a relevant party” means a party who has—

- (a) been granted leave to intervene under rule 58.19(1)(b) or;
- (b) been refused or granted leave after a hearing under rule 58.19(1)(c).”.

Saving

- 3.** Paragraph 2 does not apply in respect of proceedings commenced before 1st October 2024.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
27th June 2024

EXPLANATORY NOTE

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

This Act of Sederunt amends Chapter 58A (protective expenses orders in environmental appeals and judicial reviews) of the Rules of the Court of Session 1994.

Paragraph 2(2) amends rule 58A.5 to allow an applicant, when applying for a protective expenses order, to request the court to grant an order to provide that any information lodged with the court under rule 58A.5(3) in respect of a protective expenses order is to be kept confidential. Any breach of a court order will be dealt with as contempt of court.

Paragraph 2(3) amends rule 58A.6 to provide that if a motion includes a request for information to be treated as confidential, and the motion is starred, the hearing must take place in chambers.

Paragraph 2(4) amends rule 58A.8 to provide that where a protective expenses order has been made in the Outer House, any limit imposed on the liability of any party will include any liability which may be incurred in a reclaiming motion, irrespective of which party is reclaiming.

Paragraph 2(5) inserts new rule 58A.10 to provide that, except on cause shown, expenses incurred in respect of a protective expenses order will not be awarded for or against an applicant who was granted leave to intervene in accordance with Chapter 58.

Paragraph 3 is a saving provision, the effect of which is that the amendments made by this Act of Sederunt do not apply to proceedings commenced before 1st October 2024.

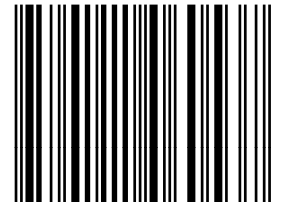
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