

COURTS REFORM (SCOTLAND) ACT 2014

EXPLANATORY NOTES

THE ACT

Part 4 – Procedure and Fees

Procedure

178. Sections 103 and 104 provide powers for the Court of Session to make rules of court by act of sederunt to regulate procedure in the Court of Session (section 103) and in the sheriff court and the Sheriff Appeal Court (section 104). The powers to make rules of court are intended to be broadly similar, but with specific variations required to take account of the different jurisdictions of the courts.
179. Given the critical role which rules of court will therefore have in implementing the Scottish Civil Courts Review, the powers granted in sections 103 and 104 provide the powers for rules of court made in respect of the matters enumerated in those sections.

Section 103 – Power to regulate procedure etc. in the Court of Session

180. Section 103 replaces sections 5 and 5A of the Court of Session Act 1988 which are repealed in schedule 5, paragraph 30(3). Section 103 gives the Court of Session a power to make provision in acts of sederunt concerning the procedure and practice of the Court of Session. 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 Court of Session, the forms of documents used, appeals against decisions, awards of expenses and the representation of parties by those otherwise not qualified to do so. Given the width of subsection (1), subsection (2) is not designed to be exhaustive, rather it demonstrates a widening of what can be described as practice and procedure.
181. The approach to the description of the powers of the Court contrasts with the specific and narrower powers contained in the original version of section 5 of the Court of Session Act 1988 and is designed to effect a substantial widening of the powers of the Court of Session to regulate its practice and procedure. By virtue of Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 the Scottish Civil Justice Council will continue to draft civil procedure rules.
182. Subsection (3) allows these acts of sederunt to make various types of ancillary provision, and subsection (4) clarifies that these new powers do not affect any existing power to make court rules or otherwise regulate procedure or practice (see the discussion of the Scottish courts' inherent powers with reference to section 47).

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

*These notes relate to the Courts Reform (Scotland) Act 2014
(asp 18) which received Royal Assent on 10 November 2014*

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.