



# Courts Reform (Scotland) Act 2014

## 2014 asp 18

### PART 4

#### PROCEDURE AND FEES

##### *Procedure*

#### **103 Power to regulate procedure etc. in the Court of Session**

- (1) The Court of Session may by act of sederunt make provision for or about—
  - (a) the procedure and practice to be followed in proceedings in the Court,
  - (b) any matter incidental or ancillary to such proceedings.
- (2) Without limiting that generality, the power in subsection (1) includes power to make provision for or about—
  - (a) execution or diligence following on such proceedings,
  - (b) avoiding the need for, or mitigating the length and complexity of, such proceedings, including—
    - (i) encouraging settlement of disputes and the use of alternative dispute resolution procedures,
    - (ii) action to be taken before such proceedings are brought by persons who will be party to the proceedings,
  - (c) other aspects of the conduct and management of such proceedings, including the use of technology,
  - (d) simplifying the language used in connection with such proceedings or matters incidental or ancillary to them,
  - (e) the form of any document to be used in connection with such proceedings, matters incidental or ancillary to them or matters specified in this subsection,
  - (f) appeals against a decision of the Court,
  - (g) applications that may be made to the Court,
  - (h) time limits in relation to proceedings mentioned in subsection (1), matters incidental or ancillary to them or matters specified in this subsection,
  - (i) the steps that the Court may take where there has been an abuse of process by a party to such proceedings,

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- (j) expenses that may be awarded to parties to such proceedings,
  - (k) other payments such parties may be required to make in respect of their conduct relating to such proceedings,
  - (l) the payment, investment or application of any sum of money awarded in such proceedings to or in respect of a person under a legal disability,
  - (m) the representation of parties to such proceedings, and others, including representation by persons who—
    - (i) are neither solicitors nor advocates, or
    - (ii) do not have the right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,
  - (n) the functions and rights of persons appointed by the Court in connection with such proceedings,
  - (o) witnesses and evidence, including modifying the rules of evidence as they apply to such proceedings,
  - (p) the quorum for a Division of the Inner House considering purely procedural matters and, in the case of an extra Division, as to which judge is to preside and to sign any judgment or interlocutor pronounced by the extra Division,
  - (q) such other matters as the Court thinks necessary or appropriate for the purposes of carrying out or giving effect to the provisions of any enactment (including this Act) relating to such proceedings or matters incidental or ancillary to them.
- (3) An act of sederunt under subsection (1) may make—
- (a) incidental, supplemental, consequential, transitional, transitory or saving provision,
  - (b) provision amending, repealing or revoking any enactment (including any provision of this Act) relating to matters with respect to which an act of sederunt may be made,
  - (c) different provision for different purposes.
- (4) This section is without prejudice to—
- (a) any enactment that enables the Court to make rules (by act of sederunt or otherwise) regulating the practice and procedure to be followed in proceedings to which this section applies, or
  - (b) the inherent powers of the Court.

#### **104 Power to regulate procedure etc. in the sheriff court and the Sheriff Appeal Court**

- (1) The Court of Session may by act of sederunt make provision for or about—
- (a) the procedure and practice to be followed in civil proceedings in the sheriff court or in the Sheriff Appeal Court,
  - (b) any matter incidental or ancillary to such proceedings.
- (2) Without limiting that generality, the power in subsection (1) includes power to make provision for or about—
- (a) execution or diligence following on such proceedings,
  - (b) avoiding the need for, or mitigating the length and complexity of, such proceedings, including—

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- (i) encouraging settlement of disputes and the use of alternative dispute resolution procedures,
    - (ii) action to be taken before such proceedings are brought by persons who will be party to the proceedings,
  - (c) other aspects of the conduct and management of such proceedings, including the use of technology,
  - (d) simplifying the language used in connection with such proceedings or matters incidental or ancillary to them,
  - (e) the form of any document to be used in connection with such proceedings, matters incidental or ancillary to them or matters specified in this subsection,
  - (f) appeals against a decision of a sheriff or the Sheriff Appeal Court,
  - (g) applications that may be made to a sheriff or the Sheriff Appeal Court,
  - (h) time limits in relation to proceedings mentioned in subsection (1), matters incidental or ancillary to them or matters specified in this subsection,
  - (i) the steps that a sheriff or the Sheriff Appeal Court may take where there has been an abuse of process by a party to such proceedings,
  - (j) expenses that may be awarded to parties to such proceedings,
  - (k) other payments such parties may be required to make in respect of their conduct relating to such proceedings,
  - (l) the payment, investment or application of any sum of money awarded in such proceedings to or in respect of a person under a legal disability,
  - (m) the representation of parties to such proceedings, and others, including representation by persons who—
    - (i) are neither solicitors nor advocates, or
    - (ii) do not have the right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,
  - (n) the functions and rights of persons appointed by a sheriff or the Sheriff Appeal Court in connection with such proceedings,
  - (o) witnesses and evidence, including modifying the rules of evidence as they apply to such proceedings,
  - (p) the quorum for sittings of the Sheriff Appeal Court,
  - (q) determining which Appeal Sheriff is to preside at such sittings where the Court is constituted by more than one Appeal Sheriff,
  - (r) such other matters as the Court of Session thinks necessary or appropriate for the purposes of carrying out or giving effect to the provisions of any enactment (including this Act) relating to such proceedings or matters incidental or ancillary to them.
- (3) Nothing in an act of sederunt under subsection (1) is to derogate from the provisions of sections 72 to 82 (simple procedure).
- (4) An act of sederunt under subsection (1) may make—
  - (a) incidental, supplemental, consequential, transitional, transitory or saving provision,
  - (b) provision amending, repealing or revoking any enactment (including any provision of this Act) relating to matters with respect to which an act of sederunt under subsection (1) may be made,
  - (c) different provision for different purposes.

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- (5) Before making an act of sederunt under subsection (1) with respect to any matter, the Court of Session must—
  - (a) consult the Scottish Civil Justice Council, and
  - (b) take into consideration any views expressed by the Council with respect to that matter.
- (6) Subsection (5) does not apply in relation to an act of sederunt that embodies, with or without modifications, draft rules submitted by the Scottish Civil Justice Council to the Court of Session.
- (7) This section is without prejudice to—
  - (a) any enactment that enables the Court of Session to make rules (by act of sederunt or otherwise) regulating the practice and procedure to be followed in proceedings to which this section applies, or
  - (b) the inherent powers of a sheriff or the Sheriff Appeal Court.

*Fees of solicitors etc.*

**105 Power to regulate fees in the Court of Session**

- (1) The Court of Session may, in relation to any proceedings in the Court (including any execution or diligence following such proceedings), by act of sederunt make provision for or about the fees of—
  - (a) solicitors,
  - (b) messengers-at-arms,
  - (c) persons acting under the Execution of Diligence (Scotland) Act 1926,
  - (d) witnesses,
  - (e) shorthand writers,
  - (f) such other persons, or persons of such descriptions, as the Scottish Ministers may by order specify.
- (2) An act of sederunt under subsection (1) may not make any provision for or about the fees that the Scottish Ministers may regulate under or by virtue of section 33 of the Legal Aid (Scotland) Act 1986 (fees and outlays of solicitors and counsel).
- (3) An act of sederunt under subsection (1) and an order under subsection (1)(f) may make—
  - (a) incidental, supplemental, consequential, transitional, transitory or saving provision,
  - (b) different provision for different purposes.
- (4) Before making an order under subsection (1)(f), the Scottish Ministers must consult the Lord President of the Court of Session.
- (5) An act of sederunt under subsection (1) is subject to the negative procedure.

**106 Power to regulate fees in the sheriff court and the Sheriff Appeal Court**

- (1) The Court of Session may, in relation to civil proceedings in the sheriff court or the Sheriff Appeal Court (including any execution or diligence following such proceedings), by act of sederunt make provision for or about the fees of—

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- (a) solicitors,
  - (b) sheriff officers,
  - (c) persons acting under the Execution of Diligence (Scotland) Act 1926,
  - (d) witnesses,
  - (e) shorthand writers,
  - (f) such other persons, or persons of such descriptions, as the Scottish Ministers may by order specify.
- (2) An act of sederunt under subsection (1) may not make any provision for or about the fees that the Scottish Ministers may regulate under or by virtue of section 33 of the Legal Aid (Scotland) Act 1986 (fees and outlays of solicitors and counsel).
- (3) An act of sederunt under subsection (1) may make—
- (a) incidental, supplemental, consequential, transitional, transitory or saving provision,
  - (b) different provision for different purposes.
- (4) Before making an order under subsection (1)(f), the Scottish Ministers must consult the Lord President of the Court of Session.
- (5) An act of sederunt under subsection (1) is subject to the negative procedure.

### *Court fees*

#### **107 Power to provide for fees for SCTS, court clerks and other officers**

- (1) The Scottish Ministers may by order make provision for the charging of fees in respect of the carrying out of the functions of the Scottish Courts and Tribunals Service (“the SCTS”) or a relevant officer in connection with—
- (a) proceedings in the Scottish Courts, or
  - (b) any other matter dealt with by a relevant officer.
- (2) An order under subsection (1) may—
- (a) in particular include provision—
    - (i) specifying, or for determining, the amount of fees,
    - (ii) specifying, or for determining, the persons or types of person who are to pay the fees,
    - (iii) specifying the times when, places where and persons to whom the fees are to be paid,
    - (iv) for exemptions from the requirement to pay fees,
    - (v) for the remission of fees,
    - (vi) for modification of fees,
  - (b) make different provision for different purposes or circumstances including, in particular, different provision for—
    - (i) different Scottish Courts,
    - (ii) different relevant officers,
    - (iii) different proceedings or types of proceedings.
- (3) In this section—
- “relevant officer” means—

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- (a) a clerk, deputy clerk or assistant clerk of any of the Scottish Courts,
  - (b) the Accountant of Court,
  - (c) the Auditor of the Court of Session,
  - (d) the auditor of a sheriff court,
  - (e) any other officer who is a member of the staff of the SCTS,
- “Scottish Courts” means—
- (a) the Court of Session,
  - (b) the High Court of Justiciary,
  - (c) the court for hearing appeals under section 57(1)(b) of the Representation of the People Act 1983,
  - (d) the election court in Scotland constituted under section 123 of that Act,
  - (e) the Scottish Land Court,
  - (f) the Lands Valuation Appeal Court,
  - (g) the Sheriff Appeal Court,
  - (h) sheriff courts,
  - (i) justice of the peace courts.

- (4) The Scottish Ministers may by order modify (either or both of) the definitions of “relevant officer” and “Scottish Courts” in subsection (3).

*Sanction for counsel*

**108 Sanction for counsel in the sheriff court and Sheriff Appeal Court**

- (1) This section applies in civil proceedings in the sheriff court or the Sheriff Appeal Court where the court is deciding, for the purposes of any relevant expenses rule, whether to sanction the employment of counsel by a party for the purposes of the proceedings.
- (2) The court must sanction the employment of counsel if the court considers, in all the circumstances of the case, that it is reasonable to do so.
- (3) In considering that matter, the court must have regard to—
- (a) whether the proceedings are such as to merit the employment of counsel, having particular regard to—
    - (i) the difficulty or complexity, or likely difficulty or complexity, of the proceedings,
    - (ii) the importance or value of any claim in the proceedings, and
  - (b) the desirability of ensuring that no party gains an unfair advantage by virtue of the employment of counsel.
- (4) The court may have regard to such other matters as it considers appropriate.
- (5) References in this section to proceedings include references to any part or aspect of the proceedings.
- (6) In this section—
- “counsel” means—
- (a) an advocate,
  - (b) a solicitor having a right of audience in the Court of Session under section 25A of the Solicitors (Scotland) Act 1980,

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“court”, in relation to proceedings in the sheriff court, means the sheriff,  
“relevant expenses rule” means, in relation to any proceedings mentioned in  
subsection (1), any provision of an act of sederunt requiring, or having the effect  
of requiring, that the employment of counsel by a party for the purposes of the  
proceedings be sanctioned by the court before the fees of counsel are allowable  
as expenses that may be awarded to the party.

(7) This section is subject to an act of sederunt under section 104(1) or 106(1).