

COURTS REFORM (SCOTLAND) ACT 2014

EXPLANATORY NOTES

THE ACT

Part 4 – Procedure and Fees

Procedure

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 **Section 103** replaces sections 5 and 5A of the Court of Session Act 1988 which are repealed in schedule 5, paragraph 30(3).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).