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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 408**

**Act of Sederunt (Rules of the Court of Session 1994  
Amendment) (No. 4) (Protective Expenses Orders) 2015**

**Amendment of the Rules of the Court of Session 1994**

2.—(1) The Rules of the Court of Session 1994<sup>(1)</sup> are amended in accordance with this paragraph.

(2) For rule 58A.1 (protective expenses orders in environmental appeals and judicial reviews – application and interpretation) and rule 58A.2 (availability of protective expenses orders)<sup>(2)</sup> substitute—

**“Application and interpretation of this Chapter**

**58A.1.**—(1) This Chapter applies to applications for protective expenses orders in—

- (a) an appeal under section 56 of the Freedom of Information (Scotland) Act 2002<sup>(3)</sup> as modified by regulation 17 of the Environmental Information (Scotland) Regulations 2004<sup>(4)</sup>;
- (b) relevant proceedings which include a challenge to a decision, act or omission which is subject to, or said to be subject to, the provisions of Article 6 of the Aarhus Convention;
- (c) relevant proceedings which include a challenge to an act or omission on the grounds that it contravenes the law relating to the environment.

(2) In this Chapter—

“the Aarhus Convention” means the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark on 25th June 1998;

“protective expenses order” means an order which regulates the liability for expenses in the proceedings, including as to the future, of all or any of the parties to them;

“the public” and “the public concerned” have the meanings assigned by Article 2 of the Aarhus Convention;

“relevant proceedings” means—

- (a) applications to the supervisory jurisdiction of the court, including applications under section 45(b) (specific performance of a statutory duty) of the Act of 1988;
- (b) appeals under statute;

proceedings are prohibitively expensive for an applicant for a protective expenses order if the applicant could not reasonably proceed with them in the absence of such an order.

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(1) The Rules of the Court of Session 1994 are in Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443, last amended by S.S.I. 2015/312).

(2) Rules 58A.1 and 58A.2 were inserted by S.S.I. 2013/81. Rule 58A.1 was amended by S.S.I. 2013/120.

(3) 2002 asp 13.

(4) S.S.I. 2004/520.

### **Appeals relating to requests for environmental information**

**58A.2.**—(1) This rule applies to an application for a protective expenses order in proceedings mentioned in rule 58A.1(1)(a).

(2) Where the person who requested the environmental information is a party to the appeal, that person may make an application for a protective expenses order.

(3) Such an application must be made, except on cause shown—

(a) where the applicant is the appellant, no later than is reasonably practicable after the applicant becomes aware that the appeal is defended;

(b) where the applicant is the respondent, no later than the expiry of the period allowed for the lodging of answers.

(4) Where the court is satisfied that the proceedings are prohibitively expensive for the applicant, it must make a protective expenses order.

(5) The court may refuse to make a protective expenses order if it considers that the applicant has no real prospect of success.

### **Public participation in decisions on specific environmental activities**

**58A.2A.**—(1) This rule applies to an application for a protective expenses order in proceedings mentioned in rule 58A.1(1)(b).

(2) The petitioner or the appellant may make an application for a protective expenses order.

(3) Such an application must be made, except on cause shown, no later than is reasonably practicable after the applicant becomes aware that the petition or appeal is defended.

(4) The court must make a protective expenses order where it is satisfied that—

(a) the applicant is a member of the public concerned;

(b) the applicant has a sufficient interest in the subject matter of the proceedings; and

(c) the proceedings are prohibitively expensive for the applicant.

(5) The court may refuse to make a protective expenses order if it considers that the applicant has no real prospect of success.

### **Contravention of the law relating to the environment**

**58A.2B.**—(1) This rule applies to an application for a protective expenses order in proceedings mentioned in rule 58A.1(1)(c).

(2) The petitioner or the appellant may make an application for a protective expenses order.

(3) Such an application must be made, except on cause shown, no later than is reasonably practicable after the applicant becomes aware that the petition or appeal is defended.

(4) The court must make a protective expenses order where it is satisfied that—

(a) the applicant is a member of the public; and

(b) the proceedings are prohibitively expensive for the applicant.

(5) The court may refuse to make a protective expenses order if it considers that the applicant has no real prospect of success.”.

(3) In rule 58A.3 (applications for protective expenses orders)(5), omit paragraph (2).

(4) In rule 58A.4 (terms of protective expenses orders)(6), after paragraph (5) insert—

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(5) Rule 58A.3 was inserted by [S.S.I. 2013/81](#).

(6) Rule 58A.4 was inserted by [S.S.I. 2013/81](#).

- “(6) Where the applicant is the respondent in proceedings referred to in rule 58A.1(1)
- (a)—
- (a) paragraph (1) applies as if the reference to the applicant’s liability in expenses to the respondent was a reference to the applicant’s liability in expenses to the appellant; and
  - (b) paragraph (3) applies as if the reference to the respondent’s liability in expenses to the applicant was a reference to the appellant’s liability in expenses to the applicant.
- (7) In paragraphs (1) and (3), “the respondent” means—
- (a) all parties that lodge answers in an application to the supervisory jurisdiction of the court; and
  - (b) all respondents in an appeal under statute.”.