

Recent reforms to court rules – 22 September implementation

Judicial Review

On 22 September, new sections 27A to 27D were inserted into the Court of Session Act 1988. The sections require applications for judicial review to be made within 3 months of the date on which the grounds giving rise to the application first arise. They also require all applications to be given permission to proceed by the court. Permission can be given by the court on the papers or at an oral hearing, and decisions on permission following an oral hearing can be reclaimed to the Inner House.

Important provision relating to the 3-month time limit is found in the Scottish Government Commencement Order. Article 4 of that Order makes transitional provision dealing with judicial reviews where the application, though lodged after that date, relates to grounds that first arose before 22 September. The effect of this provision is that these applications are treated as if the grounds arose on 22 September, meaning that these judicial reviews will have to be lodged by 22 December 2015, if they are to be made within the time limit.

Appeals to the Supreme Court

On 22 September, section 40 of the Court of Session Act 1988 was substituted by section 117 of the 2014 Act, which requires parties to apply for leave to appeal to the UK Supreme Court in civil cases. Section 117 of the 2014 Act provides for the permission of the Inner House or the Supreme Court for leave to appeal. The previous practice (that a note of appeal was signed by two Scottish Counsel certifying that the appeal is reasonable) was replaced.

Article 5 of the Scottish Government Commencement Order makes transitional provision relating to applications for permission to appeal. It provides that section 40 continues to apply to appeals against judgments pronounced before 22 September. The need for certification by two counsel will therefore still apply to these decisions.

Exclusive Competence

From 22 September, the sheriff court has exclusive jurisdiction where the value of the orders sought is less than £100,000. Section 39 of the 2014 Act provides that the sheriff court has the exclusive competence to deal with cases in which an order of value is sought up to the sum of £100 000. This includes where the aggregate total value of all orders sought (exclusive of interest and expenses) is £100.000.

New rules as to how the value is determined can be found in Chapter 14B of the Rules of the Court of Session and represent a codification of existing common law principles.

The Personal Injury Court

On 22 September, the new specialist Personal Injury Court with the ability to hear civil jury trials and consider e-motions began. This Court has all-Scotland jurisdiction in 3 situations:

- The first is for actions of damages for, or arising from, personal injuries for claims exceeding £5000.
- The second is for proceedings concerning an accident at work where the claim is for over £1000.
- The third situation is where the claim concerns an accident at work for under £1000 but the local sheriff has certified that the importance or difficulty of the proceedings make it appropriate to transfer the proceedings to the Personal Injury Court. Cases that fall into this category should therefore first be raised in the summary cause procedures in the local sheriff courts.

Section 73 (1) of the 2014 Act, provides that all proceedings raised in the Personal Injury Court are subject to ordinary cause procedure. A new Chapter 36A has also been inserted into the Ordinary Cause rules. This procedure is equivalent to that in Chapter 42A of the Court of Session Rules and allows for active case management in complex cases. It applies in the new Personal Injury Court **and** in local sheriff courts.