

CHAPTER 58

APPLICATIONS FOR JUDICIAL REVIEW

Application and interpretation of this Chapter

58.1.-(1) This Chapter applies to an application to the supervisory jurisdiction of the court.

(2) In this Chapter-

"the first hearing" means a hearing under rule 58.9;

"the second hearing" means a hearing under rule 58.10.

Disapplication of certain rules to this Chapter

58.2. The following rules shall not apply to a petition to which this Chapter applies:-

- rule 14.4 (form of petitions),
- rule 14.5 (first order in petitions),
- rule 14.9 (unopposed petitions).

Applications for judicial review

58.3.-(1) Subject to paragraph (2), an application to the supervisory jurisdiction of the court, including an application under section 45(b) of the Act of 1988 (specific performance of statutory duty), shall be made by petition for judicial review.

(2) An application may not be made under paragraph (1) if that application is made, or could be made, by appeal or review under or by virtue of any enactment.

Powers of court in judicial review

58.4. The court, in exercising its supervisory jurisdiction on a petition for judicial review, may-

- (a) grant or refuse any part of the petition, with or without conditions;
- (b) make such order in relation to the decision in question as it thinks fit, whether or not such order was sought in the petition, being an order that could be made if sought in any action or petition, including an order for reduction, declarator, suspension, interdict, implement, restitution, payment (whether of damages or otherwise) and any interim order;
- (c) subject to the provisions of this Chapter, make such order in relation to procedure as it thinks fit.

Nominated judge

58.5. A petition for judicial review shall be heard by a judge nominated by the Lord President for the purposes of this Chapter or, where such a judge is not available, any other judge of the court (including the vacation judge).

Form of petition

58.6.-(1) A petition for judicial review shall be in Form 58.6.

(2) The petitioner shall lodge with the petition all relevant documents in his possession and within his control.

(3) Where the petitioner finds in the petition on a document not in his possession or within his control, he shall append to the petition a schedule specifying the document and the person who possesses or has control over the document.

(4) Where the decision, act or omission in question and the basis on which it is complained of is not apparent from the documents lodged with the petition, an affidavit shall be lodged stating the terms of the decision, act or omission and the basis on which it is complained of.

First order

58.7.-(1) On being lodged, the petition shall, without appearing on the Motion Roll, be presented forthwith to the Lord Ordinary in court or in chambers for –

- (a) an order specifying –
 - (i) such intimation, service and advertisement as may be necessary;
 - (ii) any documents to be served with the petition;
 - (iii) any date for the first hearing, being a date not earlier than 7 days after the expiry of the period specified for intimation and service; or
- (b) any interim order.

(2) The Lord Ordinary may grant, but may not refuse to grant, any order specified in paragraph (1) without having heard counsel or other person having a right of audience instructed by the petitioner.

Mandatory transfer of applications to the Upper Tribunal

58.7A. Where an application to the supervisory jurisdiction of the court is presented to the Lord Ordinary under rule 58.7 and the conditions referred to in section 20(1)(a) of the Tribunals, Courts and Enforcement Act 2007 are met, the Lord Ordinary shall, instead of granting an order specifying a date for a first hearing, make an order transferring the application to the Upper Tribunal.

Compearing parties

58.8.-(1) A person to whom intimation of the first hearing has been made and who intends to appear-

- (a) shall intimate his intention to do so to-
 - (i) the agent for the petitioner, and
 - (ii) the Keeper of the Rolls, not less than 48 hours before the date of the hearing; and
- (b) may lodge answers and any relevant documents.

(2) Any person not specified in the first order made under rule 58.7 as a person on whom service requires to be made, and who is directly affected by any issue raised, may apply by motion for leave to enter the process; and if the motion is granted, the provisions of this Chapter shall apply to that person as they apply to a person specified in the first order.

(3) For the purposes of paragraph (2) above, the Commission for Equality and Human Rights shall be regarded as directly affected by an issue raised where it has, in relation to that issue, title and interest by virtue of section 30(2) of the Equality Act 2006 (a).

Applications for public interest intervention

58.8A.-(1) A person to whom rule 58.8(2) does not apply may make an application to the court for leave to intervene-

- (a) in a petition for judicial review;
- (b) in an appeal in connection with such a petition.

(1A) This rule does not apply to the Scottish Commission for Human Rights (which may instead intervene in accordance with Chapter 95).

(2) An application for leave to intervene shall be by way of a minute of intervention in form 58.8A, and the applicant shall-

- (a) send a copy of it to all the parties; and
- (b) lodge it in process, certifying that sub-paragraph (a) above has been complied with.

(3) a minute of intervention shall set out briefly-

- (a) the name and description of the applicant;
- (b) any issue in the cause which the applicant wishes to address and the applicant's reasons for believing that any such issue raises a matter of public interest; and

(c) the propositions to be advanced by the applicant and the applicant's reasons for believing that they are relevant to the cause and that they will assist the court.

(4) The court may-

- (a) refuse leave without a hearing;
- (b) grant leave without a hearing unless a hearing is requested under paragraph (5) below; or
- (c) refuse or grant leave after such a hearing.

(5) A hearing, at which the applicant and the parties may address the court on the matters referred to in paragraph (6)(c) below, may be held if, within 14 days of the minute of intervention being lodged, any of the parties lodges a request for a hearing.

(6) The court may grant leave only if it is satisfied that-

- (a) the cause raise, and an issue in the cause which the applicant wishes to address raises, a matter of public interest;
- (b) the propositions to be advanced by the applicant are relevant to the cause and are likely to assist the court; and
- (c) the intervention will not unduly delay or otherwise prejudice the rights of the parties, including their potential liability for expenses.

(7) In granting leave, the court may impose such terms and conditions as it considers desirable in the interests of justice, including making provision in respect of any additional expenses incurred by the parties as a result of the intervention.

(8) Where leave is granted-

- (a) an intervention shall be by way of a written submission which (including any appendices) does not exceed 5000 words; and
- (b) the applicant shall lodge the submission and send a copy of it to all the parties by such time as the court may direct.

(9) The court may in exceptional circumstances-

- (a) allow a longer written submission to be made;
- (b) direct that an oral submission is to be made.

(10) The Clerk of court shall give written intimation of a grant or refusal of leave to the applicant and all the parties.

(11) Any diet in pursuance of paragraph (5) or (9)(b) above shall be fixed by the Keeper of the Rolls who shall give written intimation of the diet to the applicant and all the parties.

(12) Nothing in this rule shall affect the power of the court to make such other direction as it considers appropriate in the interests of justice.

(13) Any decision of the court in causes under this rule shall be final and not subject to review.

First hearing

58.9.-(1) At the first hearing, the Lord Ordinary shall-

- (a) satisfy himself that the petitioner has duly complied with the first order made under rule 58.7; and
- (b) hear the parties.

(2) After hearing the parties, the Lord Ordinary may-

- (a) determine the petition; or
- (b) make such order for further procedure as he thinks fit, and in particular may-
 - (i) adjourn or continue the first hearing to another date;
 - (ii) order service on a person not specified in the first order made under rule 58.7;
 - (iii) make any interim order;
 - (iv) order answers to be lodged within such period as he shall specify;
 - (v) order further specification in the petition or answers in relation to such matters as he shall specify;
 - (vi) order any fact founded on by a party at the hearing to be supported by evidence on affidavit to be lodged within such period as he shall specify;
 - (vii) order any party who appears to lodge such documents relating to the petition within such period as the Lord Ordinary shall specify;
 - (viii) appoint a reporter to report to him on such matters of fact as the Lord Ordinary shall specify; or
 - (ix) order a second hearing on such issues as he shall specify.

Second hearing

58.10.- (1) Where the Lord Ordinary orders a second hearing under rule 58.9(2)(b)(ix), the Keeper of the Rolls shall, in consultation with the Lord Ordinary and the parties, fix a date for the second hearing as soon as reasonably practicable.

(2) Subject to the terms of any order for further procedure made under rule 58.9(2)(b), the parties shall, not less than 7 days before the date of the second hearing, lodge all documents and affidavits to be founded on by them at the second hearing with copies for use by the court.

(3) At any time before the date of the second hearing, the Lord Ordinary may cause the petition to be put out for hearing on the By Order Roll for the purpose of obtaining such information from the parties as he considers necessary for the proper disposal of the petition at the hearing.

(4) At a hearing on the By Order Roll under paragraph (3), the Lord Ordinary may make such order as he thinks fit, having regard to all the circumstances, including an order appointing a commissioner to recover a document or take the evidence of a witness.

(5) At the second hearing, the Lord Ordinary may-

- (a) adjourn the hearing;
- (b) continue the hearing for such further procedure as he thinks fit; or
- (c) determine the petition.

Discretionary transfer of applications to the Upper Tribunal

58.11.-(1) Where –

- (a) an application is made to the supervisory jurisdiction of the court; and
- (b) Conditions 1, 3 and 4 are met, but Condition 2 is not met, as specified in section 20(1)(b) of the Tribunals, Courts and Enforcement Act 2007,

the Lord Ordinary may, if satisfied that it is in all the circumstances appropriate to do so, make an order transferring the application to the Upper Tribunal.

(2) The Lord Ordinary may, having heard parties, make an order under paragraph (1), whether or not such an order was sought in the petition or was sought by motion by any party to the proceedings.

(3) The Lord Ordinary may make an order under paragraph (1) –

- (a) when the petition is presented to the Lord Ordinary for a first order under rule 58.7;
- (b) at the first hearing; or
- (c) at any subsequent hearing.

(4) Where the Lord Ordinary makes an order transferring the application to the Upper Tribunal under paragraph (1) or rule 58.7A, the Lord Ordinary may make an order in respect of any expenses incurred by the parties up to the time at which the order transferring the application is granted.