

2017 No. 186

COURT OF SESSION

SHERIFF APPEAL COURT

SHERIFF COURT

Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Lay Representation) 2017

<i>Made</i> - - - -	<i>1st June 2017</i>
<i>Laid before the Scottish Parliament</i>	<i>2nd June 2017</i>
<i>Coming into force</i> - -	<i>3rd July 2017</i>

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(b) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Lay Representation) 2017.

(2) It comes into force on 3rd July 2017.

(3) A certified copy is to be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session

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

(2) In rule 12B.2 (lay representation for party litigants)(d)—

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).
(b) 2014 asp 18.
(c) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443), last amended by S.S.I. 2017/132.
(d) Rule 12B.2 was inserted by S.S.I. 2012/189.

- (a) in paragraph (1) for “making oral submissions on behalf of” substitute “representing”;
- (b) in paragraphs (2)(b) and (3) for “make oral submissions” substitute “represent the litigant”;
- (c) in paragraph (4) for “assist the court” substitute “be in the interests of justice”; and
- (d) after paragraph (7) insert—

“(7A) Where permission is granted under paragraph (1), the lay representative may do anything in the preparation or conduct of the hearing that the litigant may do.”.

(3) In the Appendix (forms), in Form 12B.2 (application by party litigant for lay representation)(a) for “make oral submissions on your behalf” substitute “represent you”.

Amendment of the Sheriff Appeal Court Rules

3.—(1) The Act of Sederunt (Sheriff Appeal Court Rules) 2015(b) is amended in accordance with this paragraph.

(2) In rule 4.3 (lay representation: applications) in paragraph (5) for “assist its consideration of the appeal” substitute “be in the interests of justice”.

(3) In rule 4.4 (lay representation: functions, conditions and duties)—

- (a) in paragraph (1) omit from “for” to the end;
- (b) in paragraph (2) for “make oral submissions” substitute “represent the party”; and
- (c) after paragraph (2) insert—

“(2A) Where permission is granted under rule 4.3, the lay representative may do anything in the preparation or conduct of the hearing that the party may do.”.

(4) In schedule 2 (forms), in Form 4.3 (statement of prospective lay representative for appellant or respondent) for “to make oral submissions on behalf of” substitute “permission to represent”.

Amendment of the Ordinary Cause Rules

4.—(1) The Ordinary Cause Rules 1993(c) are amended in accordance with this paragraph.

(2) In rule 1A.2 (lay representation for party litigants)(d)—

- (a) in paragraph (1) for “making oral submissions on behalf of” substitute “representing”;
- (b) in paragraph (2)(a) for “make oral submissions” substitute “represent the litigant”;
- (c) in paragraph (3) for “assist his or her consideration of the case” substitute “be in the interests of justice”; and
- (d) after paragraph (6) insert—

“(6A) Where permission is granted under paragraph (1), the lay representative may do anything in the preparation or conduct of the hearing that the litigant may do.”.

(3) In Appendix 1 (forms), in Form 1A.2 (statement by prospective lay representative for pursuer/defender)(e) for “to make oral submissions on behalf of” substitute “permission to represent”.

Amendment of the Summary Application Rules

5.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(f) are amended in accordance with this paragraph.

(a) Form 12B.2 was inserted by S.S.I. 2012/189.
 (b) S.S.I. 2015/356, last amended by S.S.I. 2016/315.
 (c) The Ordinary Cause Rules 1993 are in schedule 1 of the Sheriff Courts (Scotland) Act 1907 (c.51). Schedule 1 was substituted by S.I. 1993/1956 and last amended by S.S.I. 2017/132.
 (d) Rule 1A.2 was inserted by S.S.I. 2013/91.
 (e) Form 1A.2 was inserted by S.S.I. 2013/91.
 (f) S.I.1999/929, last amended by S.S.I. 2016/319.

- (2) In rule 1A.2 (lay representation for party litigants)(a)—
- (a) in paragraph (1) for “making oral submissions on behalf of” substitute “representing”;
 - (b) in paragraph (2)(a) for “make oral submissions” substitute “represent the litigant”;
 - (c) in paragraph (3) for “assist his or her consideration of the case” substitute “be in the interests of justice”; and
 - (d) after paragraph (6) insert—
“(6A) Where permission is granted under paragraph (1), the lay representative may do anything in the preparation or conduct of the hearing that the litigant may do.”.
- (3) In schedule 1 (forms), in Form A1 (statement by prospective lay representative for pursuer/defender)(b) for “to make oral submissions on behalf of” substitute “permission to represent”.

Amendment of the Summary Cause Rules

- 6.**—(1) The Summary Cause Rules 2002(c) are amended in accordance with this paragraph.
- (2) In rule 2A.2 (lay representation for party litigants)(d)—
- (a) in paragraph (1) for “making oral submissions on behalf of” substitute “representing”;
 - (b) in paragraph (2)(a) for “make oral submissions” substitute “represent the litigant”;
 - (c) in paragraph (3) for “assist his or her consideration of the case” substitute “be in the interests of justice”; and
 - (d) after paragraph (6) insert—
“(6A) Where permission is granted under paragraph (1), the lay representative may do anything in the preparation or conduct of the hearing that the litigant may do.”.
- (3) In Appendix 1 (forms), in Form A1 (statement by prospective lay representative for pursuer/defender)(e) for “to make oral submissions on behalf of” substitute “permission to represent”.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
1st June 2017

(a) Rule 1A.2 was inserted by S.S.I. 2013/91.
(b) Form A1 was inserted by S.S.I. 2013/91.
(c) The Summary Cause Rules 2002 are in schedule 1 of the Act of Sederunt (Summary Cause Rules) 2002 (S.S.I. 2002/132, last amended by S.S.I. 2016/315).
(d) Rule 2A.2 was inserted by S.S.I. 2013/91.
(e) Form A1 was inserted by S.S.I. 2013/91.

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt amends the Rules of the Court of Session, the Sheriff Court Appeal Rules, the Ordinary Cause Rules, the Summary Application Rules and the Summary Cause Rules to extend the role of lay representatives.

Paragraphs 2(2)(c), 3(2), 4(2)(c), 5(2)(c) and 6(2)(c) adjust the test the court applies in considering the grant of permission for a lay representative to act for a litigant so that the test is whether it is in the interests of justice to grant permission.

Paragraphs 2(2)(d), 3(3)(c), 4(2)(d), 5(2)(d) and 6(2)(d) amend the various court rules so that the lay representative may do anything in the preparation and conduct of the hearing that the litigant may do (e.g. conduct a proof).

The other amendments made by this Act of Sederunt are in consequence of the changes mentioned above.

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