

2017 No. 332

LEGAL AID AND ADVICE

Act of Sederunt (Civil Legal Aid Rules Amendment) 2017

Made - - - - *11th October 2017*

Laid before the Scottish Parliament *13th October 2017*

Coming into force - - *13th November 2017*

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 section 38(1) of the Legal Aid (Scotland) Act 1986(b) and all other powers enabling it to do so.

Citation, commencement and transitional provision, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Civil Legal Aid Rules Amendment) 2017.

(2) It comes into force on 13th November 2017.

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

(4) The amendments made by paragraph 2 do not apply to applications for awards of expenses under section 19(1) of the Legal Aid (Scotland) Act 1986(c) where the application is made by motion enrolled or lodged before 11th December 2017.

Amendment of the Civil Legal Aid Rules

2.—(1) The Act of Sederunt (Civil Legal Aid Rules) 1987(d) is amended in accordance with this paragraph.

(2) In rule 1(2) (citation, commencement and interpretation), after the definition of “legal aid certificate” insert—

““motion”, in a simple procedure case, means an incidental orders application;”.

(3) In rule 2(1) (revocations and transitional provision), for “the Schedule” substitute “schedule 1”.

(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) 1986 c.47. Section 38 was last amended by the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), section 15(1).
(c) Section 19 was amended by the Legal Aid Act 1988 (c. 34), schedule 4, paragraph 8 and by the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), schedule 5, paragraph 2(3).
(d) S.I. 1987/492, last amended by S.I. 1996/3202.

(4) For rule 6 (expenses out of the Scottish Legal Aid Fund)(a), substitute—

“Expenses out of the Scottish Legal Aid Fund

6.—(1) An application to the court for an award of expenses under section 19(1) of the Act is to be made by motion in the proceedings.

(2) The applicant must—

(a) no later than 28 days before the motion is enrolled or lodged, send the Board(b)—

(i) a completed notice in the form set out in schedule 2; and

(ii) where the form of notice identifies a requirement for circumstances to be established or vouched, such documents as are required to establish or vouch those circumstances;

(b) intimate the motion to the Board; and

(c) lodge with the motion copies of the notice and documents sent to the Board.

(3) The Board may—

(a) oppose the motion; and

(b) appear and be represented at the hearing of the motion.

(4) For the purposes of intimating and opposing such a motion, the relevant rules of procedure are to apply as if the Board was a party to the proceedings.”.

(5) In rule 7 (applications in respect of additional fees or percentage increases)(c), after paragraph (3) insert—

“(3A) Such intimation must be made no less than 14 days before the date fixed for the hearing of the motion.”.

(6) Omit rule 8 (period of intimation)(d).

(7) The schedule is renumbered as schedule 1.

(8) After schedule 1, as renumbered, insert schedule 2 as set out in the schedule of this Act of Sederunt.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
11th October 2017

(a) Rule 6 was amended by S.I. 1996/2148.

(b) “The Board” is defined in section 1(1) of the Legal Aid (Scotland) Act 1986 (c.47).

(c) Rule 7 was inserted by S.I. 1996/2148.

(d) Rule 8 was inserted by S.I. 1996/2148.

SCHEDULE

Paragraph 2(8)

“SCHEDULE 2

Rule 6(2)(a)(i)

NOTICE TO THE SCOTTISH LEGAL AID BOARD

in relation to

an application for an award of expenses from the Scottish Legal Aid Fund under section 19(1) of the Legal Aid (Scotland) Act 1986 (“the Act”)

SECTION A – TO BE COMPLETED IN EVERY CASE

A.1 Applicant (the unassisted party)

Name

Address

Was the applicant in receipt of civil legal aid at any stage in the proceedings?

If YES, give details/reference

A.2 Applicant’s Solicitor

Name

Firm

Address

Email Solicitor’s reference

Telephone

A.3 Opponent

Name

Address

Opponent’s Civil Legal Aid Reference No:

If there is more than one reference, or it is unclear which reference applies please provide further reference numbers.

A.4 Opponent's Solicitor

Name

Firm

Address

Email Solicitor's reference

SECTION B – TO BE COMPLETED WHERE THE AWARD SOUGHT INCLUDES EXPENSES INCURRED IN PROCEEDINGS IN A COURT OF FIRST INSTANCE

Note:

This section should only be completed where the award of expenses sought from the Legal Aid Fund includes expenses incurred by the applicant in proceedings in a court of first instance. Please ensure that the answers given relate only to the first instance proceedings.

B.1 Details of first instance proceedings

(a) Court Sheriff Court at (specify) /Court of Session – Outer House

(b) Court Case Reference

(c) Were the first instance proceedings raised/initiated by the Opponent? YES/NO

If NO, under reference to section 19(3)(b) of the Act, why is an application considered to be competent?

- (d) What is/was the Applicant's interest in the proceedings?

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B.2 Expenses details

- (a) Has the Applicant been awarded expenses in respect of the first instance proceedings?

YES/NO

If YES, please attach a copy of the interlocutor dealing with expenses (if not included in any other interlocutor submitted with this notice).

- (b) Has the Opponent sought modification of expenses under section 18 of the Act?

YES/NO

- (c) Has the Opponent's liability under the award of expenses been modified in whole or in part?

YES/NO

If YES, please attach a copy of the interlocutor dealing with expenses (if not included in any other interlocutor submitted with this notice).

State the modified amount payable. £ _____

- (d) Please provide an estimate of the expenses incurred by the Applicant in the first instance proceedings. The estimate required is of the judicial expenses that would be payable to the Applicant if expenses were awarded in the Applicant's favour, and if those expenses were taxed or assessed. This should be sufficiently detailed to show how the estimate has been arrived at. (You may alternatively attach a draft judicial account)

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- (e) Is a draft/copy account of judicial expenses attached?

YES/NO

B.3 Financial hardship

Where the award sought is of expenses incurred in connection with proceedings in a court of first instance, the court must be satisfied that the Applicant will suffer financial hardship unless an award is made. The following information is required in connection with that issue.

- (a) What payments has the applicant made to date in respect of the cost of conducting the proceedings?

- (b) Please provide an estimate of any further costs for which the Applicant will be liable in respect of the conduct of the proceedings. Only include costs for which the applicant will be liable irrespective of the outcome of this application.

- (c) Will the Applicant be entitled to reimbursement of any costs in the event that this application is not granted?

YES/NO

- (d) If so, please provide details.

- (e) Was the Applicant acting in a fiduciary, representative or official capacity?

YES/NO

If NO, please complete (f) below.

If YES, please complete (g) and (h) below.

Where the Applicant's interest in the proceedings is personal rather than fiduciary etc.

- (f) Please set out why and in what way the Applicant would suffer financial hardship if no order is made.

Note:

It is the responsibility of the Applicant to satisfy the court that he or she will suffer financial hardship if the order sought is not granted. All the information and circumstances that the Applicant intends to rely on in establishing financial hardship must be disclosed in or with this form.

The information that the Applicant requires to provide will depend very much on the Applicant's own circumstances. However, Applicants should bear in mind that the court will have regard to the Applicant's whole financial position, including relevant details of others either supported by the Applicant or from whom the Applicant receives support. The information provided should therefore include a full disclosure and vouching of the Applicant's assets, liabilities, income and expenditure, and the resources of others where appropriate. If the Applicant considers that any assets should not be taken into account for any reason, e.g. because they cannot easily be realised, reasons should be given.

A failure to disclose relevant information may result in the application being refused by the court.

Where Applicant is acting in fiduciary, representative or official capacity

- (g) In what capacity was the Applicant concerned in the proceedings, e.g. executor, guardian?

- (h) In order to allow the court to consider whether the Applicant will suffer financial hardship, please provide details of the value of the property, estate or fund, if any, out of which the Applicant is entitled to be indemnified and the financial resources of the persons, if any, who are beneficially interested in the property, estate or fund (see regulation 37 of the Civil Legal Aid (Scotland) Regulations 2002).

SECTION C – TO BE COMPLETED WHERE THE AWARD SOUGHT INCLUDES EXPENSES INCURRED BY THE APPLICANT IN APPEAL PROCEEDINGS

Note:

This section should only be completed where the award of expenses sought from the Legal Aid Fund includes expenses incurred by the applicant in appeal proceedings. Please ensure that the answers given relate only to the appeal proceedings.

C.1 Details of appeal proceedings

- (a) Court
- (b) Court Case Reference
- (c) What is/was the Applicant’s interest in the appeal proceedings?

C.2 Expenses details

- (a) Has the Applicant been awarded expenses in respect of the appeal proceedings?

If YES, please attach a copy of the interlocutor dealing with expenses (if not included in any other interlocutor submitted with this notice).

- (b) Has the Opponent sought modification of expenses under section 18?

- (c) Has the Opponent’s liability under the award of expenses been modified in whole or in part?

If YES, please attach a copy of the interlocutor dealing with expenses (if not included in any other interlocutor submitted with this notice).

State the modified amount payable. £ _____

- (d) Please provide an estimate of the judicial expenses incurred by the Applicant in relation to the appeal proceedings. The estimate required is of the judicial expenses that would be payable to the Applicant if expenses were awarded in the Applicant's favour, and if those expenses were taxed. This should be sufficiently detailed to show how the estimate has been arrived at. (You may alternatively attach a draft judicial account)

- (e) Is a draft/copy account of judicial expenses attached?

YES/NO

SECTION D – TO BE COMPLETED IN EVERY CASE

D.1 Proceedings finally decided

Have the proceedings been finally decided in favour of the Applicant(a)?

YES/NO

If YES, please attach a copy of the interlocutor determining the proceedings.

D.2 Just and equitable

An award of expenses from the Fund can only be made if the court is satisfied that it is just and equitable in all the circumstances to make an award of expenses out of public funds.

(a) Refer to section 20(1) of the Act as to when proceedings are finally decided.

Please state below on what basis the Applicant considers it is just and equitable for an award to be made.

D.3 Declaration

Either the Applicant or the Applicant's Solicitor should sign the relevant declaration below (deleting the inapplicable option.)

I, the Applicant named at paragraph A.1 above, confirm that the foregoing information is accurate, complete and represents the basis on which I intend to seek an award of expenses from the Scottish Legal Aid Fund.

or

I, the solicitor named at paragraph A.2 above, the solicitor acting for the Applicant, having taken instructions, confirm (i) per those instructions, and (ii) to the best of my knowledge, that the foregoing information is accurate, complete and represents the basis on which my client intends to seek an award of expenses from the Scottish Legal Aid Fund.

Signature Date

NOTES and NEXT STEPS

1 Document Checklist

Please tick the relevant boxes to confirm which of the following accompany this form:

- Copy interlocutor(s) relating to:
- The proceedings being finally decided in favour of the Applicant
 - Findings of expenses in favour of the Applicant
 - Any modification of expenses ordered by the court under Section 18
- Copy/draft account(s) of judicial expenses
- Vouching of the Applicant's financial position, e.g. copies of bank/building society statements and other vouchers showing the applicant's income and expenditure, savings, investments and liabilities
- Other

Please list the documents being produced on a separate sheet.

2 Sending the Form

Please send this form and the accompanying documents to the Scottish Legal Aid Board addressed as follows:

Email

Where documents are attached to an email, the email should be addressed to: section19apps@slab.org.uk

Post

Documents sent by post should be addressed to:

Section 19 Applications
Legal Services Department
Scottish Legal Aid Board
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

Document Exchange

Members of the DX and Legal Post document exchanges can send documents addressed to:

Section 19 Applications
Legal Services Department
Scottish Legal Aid Board
DX 555250
Edinburgh 30

or

Section 19 Applications
Legal Services Department
Scottish Legal Aid Board
LP2
Edinburgh 7

3 Requests for further information

Once the Board has considered the form and the accompanying documents, the Applicant may be asked to provide further information relating to the application. Prompt, accurate and complete replies to such requests can help to prevent delays and avoid unnecessary expense. The Applicant should be aware that any failure to respond to a reasonable request for further information may be taken into account by the court.

Information about how the Scottish Legal Aid Board will respond to this Notice can be found at www.slab.org.uk/S19info.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Act of Sederunt (Civil Legal Aid Rules) 1987 by replacing rule 6 which concerns procedure in applications under section 19(1) of the Legal Aid (Scotland) Act 1986 (applications for expenses out of the Legal Aid Fund).

The new rule requires applicants to give the Scottish Legal Aid Board (“the Board”) advance notice of intention to apply for an award of expenses out of the Legal Aid Fund by completing a prescribed form and sending both it and supporting documents to the Board. The form and documents must be sent to the Board no less than 28 days before any motion applying for an award is enrolled or lodged.

Applications for awards of expenses out of the Legal Aid Fund continue to be made by motion, but such motions require to be intimated on the Board, and may be opposed by the Board as if it was a party to the proceedings.

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