

2017 No. 200

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session 1994
Amendment) (Withdrawal of Agents and Judicial Review) 2017**

<i>Made</i> - - - -	<i>13th June 2017</i>
<i>Laid before the Scottish Parliament</i>	<i>15th June 2017</i>
<i>Coming into force</i> - -	<i>17th 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 section 103(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 1994 Amendment) (Withdrawal of Agents and Judicial Review) 2017.

(2) It comes into force on 17th July 2017.

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

Amendment of the Rules of the Court of Session 1994

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

(2) For rule 30.1 (intimation of withdrawal of agent to court) substitute—

“Intimation of withdrawal of agent

30.1.—(1) This rule applies where an agent withdraws from acting on behalf of a party.

(2) The agent must intimate withdrawal by letter to the Deputy Principal Clerk and every other party.

(3) That letter must specify the last known address of the party.

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and 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. Prospectively amended by S.S.I. 2017/186.

- (4) Where any previously fixed hearing is to take place within 14 days from the date of the withdrawal, the agent must confirm in the letter that they have taken all reasonable steps to—
- (a) notify the party of the hearing date;
 - (b) advise the party that they must attend the hearing or arrange representation at the hearing to state whether or not they intend to proceed; and
 - (c) advise the party that a failure to attend or be represented at the hearing may result in the court granting decree or making another finding or order.
- (5) The Deputy Principal Clerk must lodge the letter in process.”.
- (3) In rule 30.2 (intimation to party whose agent has withdrawn)—
- (a) in paragraph (1), after “other party” insert “or, where there is no other party, at its own instance”;
 - (b) in paragraph (2), after “paragraph (1)” insert “, or the court where there is no other party,”.
- (4) After rule 58.3(4)(c) (the petition), insert—
- “(d) identify which documents are necessary to determine—
- (i) whether to grant permission;
 - (ii) whether to extend the time limit under section 27A of the Act of 1988.”.

(5) After rule 58.3(4), insert—

“(5) Where the petitioner seeks an extension to the time limit under section 27A of the Act of 1988, this must be stated in the petition.”.

(6) In rule 58.4 (the petition: intimation and service)—

 - (a) in paragraph (1)(b) and (c), for “date by” substitute “period in”;
 - (b) omit paragraph (5)(d).

(7) In rule 58.7 (the permission stage)—

 - (a) for paragraph (1)(a) and (b), substitute—

“(a) decide whether to—

 - (i) grant permission (including permission subject to conditions or only on particular grounds);
 - (ii) grant an extension to the time limit under section 27A of the 1988 Act; or

(b) order an oral hearing (for the purpose of making those decisions) to take place within 14 days.”.

(b) after paragraph (1), insert—

“(1A) The petitioner, respondent and any other person who has lodged answers to the petition must be given at least 2 days’ notice of the oral hearing.”;

(c) after paragraph (2), insert—

“(3) Where an extension to the time limit under section 27A of the Act of 1988 is refused without an oral hearing, the Lord Ordinary must give reasons for the decision.”.

(8) In rule 58.8(1) (the permission stage: requesting an oral hearing) after “hearing”, insert “, under section 27C(2) of the Act of 1988,”.

(9) In rule 58.11 (the permission stage: where permission is granted) after paragraph (1), insert—

“(1A) Where all parties email the Keeper of the Rolls to confirm that they are ready to proceed to the substantive hearing at least 3 days before the procedural hearing, the Lord Ordinary may order the procedural hearing to be cancelled.”.

(10) In the Appendix in Form 58.3, after paragraph 8, insert—

“ (where an extension to the time limit under section 27A of the Act of 1988 is sought)

[8A. That the Court should allow this petition despite it being made after the period of 3 months beginning with the date set out in paragraph 2 because *(state why the Court should consider it equitable, having regard to all the circumstances, to allow this petition).*]

8B. That the following documents are necessary for the determination of permission [and extension to the time limit]:

(set out, in a numbered list, the documents required to be identified by rule 58.3(4)(d)). ”

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
13th June 2017

EXPLANATORY NOTE

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

This Act of Sederunt amends chapter 30 (withdrawal of agents) of the Rules of the Court of Session (“Rules”) to place additional requirements on agents who withdraw from acting and to allow the Court, on its own initiative, to ordain the party whose agent has withdrawn from acting to intimate whether they intend to proceed.

It also amends chapter 58 (judicial review) of the Rules to make various adjustments to the judicial review procedure following an assessment by the Scottish Civil Justice Council of the operation of the new rules for judicial review petitions.

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