

1987 No. 492 (S. 46)

LEGAL AID AND ADVICE, SCOTLAND

Act of Sederunt (Civil Legal Aid Rules) 1987

Made - - - - - *18th March 1987*

Coming into force *1st April 1987*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 38 of the Legal Aid (Scotland) Act 1986^(a) and of all other powers enabling them in that behalf, after consultation with the Rules Council of the Court of Session and the Sheriff Court Rules Council in accordance with section 38(3) of that Act, do hereby enact and declare:

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Civil Legal Aid Rules) 1987 and shall come into force on 1st April 1987.

(2) In this Act of Sederunt, unless the context otherwise requires—

“the Act” means the Legal Aid (Scotland) Act 1986;

“assisted person” means a person who is in receipt of civil legal aid in the cause in question;

“court” means a court or tribunal specified in paragraph 1 of Part I of Schedule 2 to the Act;

“legal aid certificate” means the document issued by the Board making civil legal aid available;

“proper officer” means the Deputy Principal Clerk of Session, the principal clerk to the Scottish Land Court, a sheriff-clerk or sheriff-clerk depute, the clerk to the Lands Tribunal for Scotland or the registrar of the Employment Appeal Tribunal, as the case may be;

“the Regulations” means the Civil Legal Aid (Scotland) Regulations 1987^(b).

Revocations and transitional provision

2.—(1) The Acts of Sederunt set out in the Schedule to these Rules are hereby revoked.

(2) Notwithstanding the revocation of the Act of Sederunt (Legal Aid Fees) 1971^(c), that Act of Sederunt shall continue to have effect in relation to fees for work done before 1st May 1984.

Marking of papers of assisted person and notices to be given by such persons

3.—(1) The words “Assisted Person” shall follow the name of the assisted person on every step of process in the proceedings to which he is a party.

(2) Where a litigant is an assisted person, he shall lodge—

(a) along with the summons, petition, initial writ or other principal writ by which the cause is commenced;

^(a) 1986 c.47.

^(b) S.I. 1987/381.

^(c) S.I. 1971/219, as amended by S.I. 1971/1796, 1973/1774 and 1976/373.

- (b) where he is not the party initiating the cause, on receipt by him of his legal aid certificate;
- (c) in the case of a cause in the Court of Session as an appellate court, before the appeal, reclaiming motion or motion for new trial is heard; or
- (d) in the case of an appeal from the sheriff to the sheriff principal, before the appeal is heard,

the legal aid certificate issued to him.

(3) Where an assisted person lodges a legal aid certificate under rule 3(2)(b), (c) or (d), he shall intimate the lodging of the certificate to all other parties to the cause.

(4) Where a person who is a party to a cause becomes, during the dependence of that cause, an assisted person, he shall forthwith lodge in process the legal aid certificate issued to him and intimate the lodging of it to all other parties to that cause.

(5) Where a person, who is a party to a cause, ceases to be an assisted person or the conditions upon which he has been granted civil legal aid have been varied, he shall forthwith serve notice of his ceasing to be an assisted person or the variation (but in the case of variation of a contribution, not the amount), as the case may be, by registered or recorded delivery letter on all other parties to the cause.

Provisions as to expenses in relation to assisted persons

4.—(1) Before making an award of expenses against an assisted person, a court may, for the purpose of determining in accordance with section 18(2) of the Act the amount of such award—

- (a) require the Board to lodge in process a copy of the application for civil legal aid made by that person, any information obtained by the Board and the determination of the Board so far as relating to the financial eligibility of that person for civil legal aid;
- (b) require a party to the cause in whose favour an award of expenses may be made to furnish for the consideration of the court such particulars with respect to his means as the court may direct; and
- (c) require from the parties to the cause such further particulars as to their respective means as the court may consider necessary.

(2) Where—

- (a) civil legal aid has been made available to a party in the cause in whose favour an award of expenses may be made as well as to a party against whom an award of expenses may be made; and

(b) the Board has an interest in the amount of expenses awarded to such other person, the Board may appear and be represented in order to make representations to the court as to the amount of the award of expenses to be made against the assisted person.

(3) An application made under section 20(4) of the Act for the re-assessment of the amount of an award of expenses made against an assisted person shall be made by minute lodged in the original process; and in such an application the court may apply the procedure prescribed in paragraph (1).

(4) The court may dispose of a matter under paragraph (1) or (3) in chambers or, in the event of a hearing being required, may direct that such hearing shall be in private.

(5) Where a general award of expenses is made in respect of a cause consisting of more than one distinct proceedings within the meaning of regulation 4 of the Regulations and the person in whose favour or against whom the award is made has received civil legal aid in connection with one or more of those proceedings, the auditor of the court by which the award was made shall, on the direction of that court, apportion between those proceedings the amount recovered or recoverable by virtue of the award.

(6) Where expenses have been incurred on behalf of an assisted person in connection with any cause, the court may remit it to the auditor for taxation.

Disqualification for continuance of civil legal aid

5.—(1) Where the court, before which there is depending a cause to which an assisted person is a party, after hearing that person, is satisfied that the assisted person—

- (a) has without reasonable cause failed to comply with a proper request made to him by the solicitor acting for him to supply any information relevant to the cause;
- (b) has delayed unreasonably in complying with a request as is mentioned in subparagraph (a);
- (c) has wilfully given false information in connection with the cause to the solicitor acting for him or wilfully concealed from him any information relevant to the cause;
- (d) has without reasonable cause failed to attend at a diet of the court at which he has been required to attend or at a meeting with the solicitor or counsel acting for him under the Act at which he has reasonably and properly been required to attend; or
- (e) has been guilty of a contempt of court or has otherwise conducted himself in connection with the cause in such a way as to make it appear unreasonable to the court that he should continue to receive civil legal aid,

the court may direct that civil legal aid shall cease to be made available to that person in relation to that cause.

(2) Where a court issues a direction under paragraph (1), the proper officer of the court shall send a copy of the direction to the Board.

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 shall be made by motion in the cause.

(2) On an application to the court being made under section 19(1) of the Act, the court may—

- (a) summarily dismiss the application; or
- (b) order the applicant to lodge a statement on oath of his grounds for claiming payment out of the Scottish Legal Aid Fund of the whole or any part of the expenses incurred by him together with an estimate of the probable amount of those expenses.

(3) Where the court pronounces an interlocutor under paragraph (2)(b), the court shall also order the applicant to intimate a copy of each of the statement of grounds and estimate referred to in paragraph (2)(b) to the Board.

(4) The Board may—

- (a) appear to be represented at any hearing to consider an application in which there has been intimation under paragraph (3); and
- (b) cite any party to the cause to attend any such hearing.

Edinburgh
18th March 1987

Emslie
Lord President, I.P.D.

**SCHEDULE
REVOCATIONS**

Rule 2

<i>Instruments revoked</i>	<i>References</i>
Act of Sederunt (Legal Aid Rules) 1958	S.I. 1958/1872
Act of Sederunt (Legal Aid Rules Amendment) 1960	S.I. 1960/2269
Act of Sederunt (Legal Aid Rules) (Amendment) 1961	S.I. 1961/1549
Act of Sederunt (Legal Aid Rules) 1964	S.I. 1964/1622
Act of Sederunt (Legal Aid Rules Amendment) 1971	S.I. 1971/174
Act of Sederunt (Legal Aid Fees) 1971	S.I. 1971/219
Act of Sederunt (Legal Aid Rules and Legal Aid Fees Amendment) 1971	S.I. 1971/1796
Act of Sederunt (Legal Aid Rules and Legal Aid Fees Amendment) 1973	S.I. 1973/1774
Act of Sederunt (Legal Aid Rules Amendment) 1976	S.I. 1976/60
Act of Sederunt (Legal Aid Rules and Legal Aid Fees Amendment) 1976	S.I. 1976/373

EXPLANATORY NOTE

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

This Act of Sederunt makes rules under the Legal Aid (Scotland) Act 1986 in relation to civil legal aid in civil causes. It revokes the Act of Sederunt (Legal Aid Rules) 1958 and the Act of Sederunt (Legal Aid Rules) 1964. It also revokes the Act of Sederunt (Legal Aid Fees) 1971 except in relation to work done before 1st May 1984 (fees for work done on or after that date are regulated by the Legal Aid (Scotland) (Fees in Civil Proceedings) Regulations 1984).

80p net

ISBN 0 11 076492 7