
STATUTORY INSTRUMENTS

1991 No. 821 (S.76)

SHERIFF COURT, SCOTLAND

**Act of Sederunt (Amendment of Summary
Cause and Small Claim Rules) 1991**

Made - - - - *21st March 1991*

Coming into force - - *15th April 1991*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971(1), and of all other powers enabling them in that behalf, having approved with modifications draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of that Act, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Amendment of Summary Cause and Small Claim Rules) 1991 and shall come into force on 15th April 1991.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Amendment of Summary Cause Rules

2.—(1) The Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976(2) shall be amended in accordance with the following provisions of this paragraph.

(2) In paragraph 2(1) (Interpretation) of the Act of Sederunt, after the word “1971;” insert the words “‘the Act of 1975’ means the Litigants in Person (Costs and Expenses) Act 1975(3); ‘authorised lay representative’ means a person to whom section 32(1) of the Solicitors (Scotland) Act 1980 (offence to prepare writs)(4) does not apply by virtue of section 32(2)(a) of that Act; and”.

(3) For rule 17 (representation)(5), substitute the following rule:—

“17.—(1) A party may be represented by an advocate, solicitor or, subject to the following provisions of this rule, an authorised lay representative.

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- (1) 1971 c. 58; see section 36(1) which extends the powers conferred by section 32; section 32 was extended by the Debtors (Scotland) Act 1987 (c. 18), section 97.
- (2) S.I.1976/476; relevant amending instruments are S.I. 1980/455 and 1988/1978.
- (3) 1975 c. 47.
- (4) 1980 c. 46 section 32(1) was amended by paragraph 7 of Schedule 1 to the Solicitors (Scotland) Act 1988 (c. 42); section 32(2)(a) was amended by paragraph 29(6)(a) of Schedule 8 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).
- (5) Rule 17 was amended by S.I. 1988/1978.

(2) Subject to the following provisions of this rule, an authorised lay representative may, in representing a party, do all such things for the preparation and conduct of a cause as may be done by an individual conducting his own case.

(3) An authorised lay representative shall not appear in court on behalf of a party except at the first calling of a summary cause and, unless the sheriff otherwise directs, at any subsequent calling where the cause is not defended on the merits or on the amount of the sum due.

(4) An authorised lay representative shall cease to represent a party if the sheriff finds either that the authorised lay representative is not a suitable person to represent the party or that he is not authorised to do so.

(5) A party may be represented by a person other than an advocate or solicitor at any stage of any proceedings under the Debtors (Scotland) Act 1987, other than appeals to the sheriff principal, if the sheriff is satisfied that that person is a suitable person to represent the party at that stage and is authorised to do so.”

(4) For paragraph (2) of rule 18 (first calling), substitute the following paragraph:—

“(2) Where the first calling or any continuation of it is before the sheriff clerk, he—

(a) shall—

- (i) on the motion of any party;
- (ii) where there has been an application for a time to pay direction which has been objected to; or
- (iii) where a motion is made for an order under section 48(2) of the Housing (Scotland) Act 1987⁽⁶⁾; or

(b) may, of his own accord,

order that it be called before the sheriff on that or a subsequent day; and, for the purposes of paragraph (3), such calling before the sheriff shall not be treated as a continuation.”

(5) In rule 24A(3) (borrowing of productions)⁽⁷⁾, after the word “litigant”, insert the words “or authorised lay representative”.

(6) For paragraph (2) of rule 88 (expenses)⁽⁸⁾, substitute the following paragraphs:—

“(2) A party litigant, who is not represented and who would have been entitled to expenses if he had been represented by a solicitor or an advocate, may be awarded ally outlays or expenses to which he might be found entitled by virtue of the Act of 1975 or any enactment under that Act.

(2A) A party who—

- (a) is or has been represented by an authorised lay representative;
- (b) but for that representation, would have been regarded as a party litigant; and
- (c) would have been found entitled to expenses if he had been represented by a solicitor or an advocate,

may be awarded any outlays or expenses to which a party litigant might be found entitled by virtue of the Act of 1975 or any enactment made under that Act.

(2B) A party who is not an individual, and—

- (i) is or has been represented by an authorised lay representative;
- (ii) if unrepresented, could not represent itself; and

⁽⁶⁾ 1987 c. 26.

⁽⁷⁾ Rule 24A was inserted by S.I. 1980/455.

⁽⁸⁾ Rule 88 was amended by S.I. 1980/455.

- (iii) would have been found entitled to expenses if it had been represented by a solicitor or an advocate,
may be awarded any outlays to which a party litigant might be found entitled under the Act of 1975 or any enactment made under that Act.”.
- (7) The forms set out at the end of the Summary Cause Rules shall be amended as follows:—
- (a) in form M, after the words “his solicitor” insert the words “or authorised lay representative (if any)”; and
 - (b) in form V, after the words “Pursuer/Solicitor”, insert the words “/Authorised lay representative”.

Amendment of Small Claim Rules

3.—(1) The Act of Sederunt (Small Claim Rules) 1988⁽⁹⁾ shall be amended in accordance with the following provisions of this paragraph.

(2) After rule 1, insert the following:—

“**1A.** In these rules, unless the context otherwise requires, “authorised lay representative” means a person to whom section 32(1) of the Solicitors (Scotland) Act 1980 (offence to prepare writs) does not apply by virtue of section 32(2)(a) of that Act.”.

(3) In rule 17(2), insert after the word “litigant” the words “or an authorised lay representative”.

(4) For rule 26 (expenses), substitute the following rule:—

“**26.** Subject to section 36B of the Sheriff Courts (Scotland) Act 1971⁽¹⁰⁾ and to paragraph 4 of the Small Claims (Scotland) Order 1988⁽¹¹⁾, rule 88 (expenses) of the Summary Cause Rules shall apply to the determination of an award of expenses in a small claim as it applies to the determination of such an award in a summary cause.”.

(5) For rule 30 (representation), substitute the following rule:—

“**30.—**(1) A party may be represented by an advocate, solicitor or, subject to the following provisions of this rule, an authorised lay representative.

(2) Subject to the following provisions of this rule, an authorised lay representative may in representing a party do all such things for the preparation and conduct of a small claim as may be done by an individual conducting his own claim.

(3) An authorised lay representative shall cease to represent a party if the sheriff finds either that the authorised lay representative is not a suitable person to represent the party or that he is not authorised to do so.”.

(6) In Appendix 1 (forms) in forms 12 and 14, after the words “Solicitor for Pursuer” wherever they occur, insert the words “or authorised lay representative (if any)”.

Edinburgh
21st March 1991

J.A.D. Hope
Lord President, IPD

⁽⁹⁾ S.I. 1988/1976.

⁽¹⁰⁾ 1971 c. 58; section 36B was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 18(2).

⁽¹¹⁾ S.I. 1988/1999.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

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

This Act of Sederunt amends the rules of procedure for summary causes and small claims.

It permits certain persons other than advocates or solicitors to represent a party in relation to all aspects of those proceedings that the party (or any party who is an individual) could deal with himself other than, in summary causes, appearances in court after first calling where the case is defended.

Provision is also made to regulate the expenses which may be warded to parties so represented.

Summary Cause rule 18 is amended to make provision for the hearing of motions for orders under section 48(2) of the Housing (Scotland) Act 1987.