

2013 No. 91

SHERIFF COURT

**Act of Sederunt (Sheriff Court Rules) (Lay Representation)
2013**

<i>Made</i> - - - -	<i>5th March 2013</i>
<i>Laid before the Scottish Parliament</i>	<i>7th March 2013</i>
<i>Coming into force</i> - -	<i>4th April 2013</i>

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

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules) (Lay Representation) 2013 and comes into force on 4th April 2013.

(2) A certified copy of this Act of Sederunt is to be inserted in the Books of Sederunt.

(3) In this Act of Sederunt—

“Ordinary Cause Rules” means the Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(b);

“Small Claim Rules” means the Small Claim Rules in Schedule 1 to the Act of Sederunt (Small Claim Rules) 2002(c);

“Summary Application Rules” means the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(d);

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- (a) 1971 c.58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12; the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4); the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2); the Adults with Incapacity (Scotland) Act 2000 (asp 4) (the “2000 asp”), schedule 5, paragraph 13; the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2); the Consumer Credit Act 2006 (c.14), section 16(4); the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (the “2007 asp”) section 33; and the Legal Services (Scotland) Act 2010 (asp 16) (the “2010 asp”), section 127(a). Section 32 is amended prospectively by the 2007 asp, schedule 5, paragraph 10; and the Children’s Hearings (Scotland) Act 2011 (asp 1), section 185. Section 32 was extended by the Debtors (Scotland) Act 1987 (c.18), section 97; the Child Support Act 1991 (c.48), sections 39(2) and 49; and section 2(4) of the 2000 asp. Section 32A was inserted by the 2010 asp, section 127(b).
- (b) 1907 c.51. Schedule 1 was substituted by S.I. 1993/1956 and amended by S.I. 1996/2167 and 2445; S.S.I. 2000/239 and 408; 2001/8 and 144; 2002/7, 128 and 560; 2003/25, 26 and 601; 2004/197 and 350; 2005/20, 189, 638 and 648; 2006/198, 207, 293, 410 and 509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 284, 285, 294 and 402; 2010/120, 279, 324, 340 and 416; 2011/193, 289 and 386; and 2012/188, 221 and 271.
- (c) S.S.I. 2002/133, amended by S.S.I. 2003/26; 2004/197; 2005/648; 2006/509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 294 and 402; 2010/279, 340 and 416; 2011/193; and 2012/271.
- (d) S.I. 1999/929, amended by S.S.I. 2000/148 and 387; 2001/142; 2002/7, 129, 130, 146 and 563; 2003/26, 27, 98, 261, 319, 346 and 556; 2004/197, 222, 334 and 455; 2005/61, 445, 473, 504 and 648; 2006/198, 410, 437 and 509; 2007/6, 233, 339, 440 and 463; 2008/9, 41, 111, 223, 335, 365 and 375; 2009/107, 109, 164, 294, 320 and 402; 2010/324, 340 and 416; 2011/193 and 386; and 2012/188 and 271.

“Summary Cause Rules” means the Summary Cause Rules in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002(a).

Ordinary Cause Rules: lay representation

2.—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraphs.

(2) After rule 1.4 (forms) insert—

**“CHAPTER 1A
LAY REPRESENTATION**

Application and interpretation

1A.1.—(1) This Chapter is without prejudice to any enactment (including any other provision in these Rules) under which provision is, or may be, made for a party to a particular type of case before the sheriff to be represented by a lay representative.

(2) In this Chapter, a “lay representative” means a person who is not—

- (a) a solicitor;
- (b) an advocate, or
- (c) someone having a right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(b).

Lay representation for party litigants

1A.2.—(1) In any proceedings in respect of which no provision as mentioned in rule 1A.1(1) is in force, the sheriff may, on the request of a party litigant, permit a named individual (a “lay representative”) to appear, along with the litigant, at a specified hearing for the purpose of making oral submissions on behalf of the litigant at that hearing.

(2) An application under paragraph (1)—

- (a) is to be made orally on the date of the first hearing at which the litigant wishes a named individual to make oral submissions; and
- (b) is to be accompanied by a document, signed by the named individual, in Form 1A.2.

(3) The sheriff may grant an application under paragraph (1) only if the sheriff is of the opinion that it would assist his or her consideration of the case to grant it.

(4) It is a condition of permission granted by the sheriff that the lay representative does not receive directly or indirectly from the litigant any remuneration or other reward for his or her assistance.

(5) The sheriff may grant permission under paragraph (1) in respect of one or more specified hearings in the case; but such permission is not effective during any period when the litigant is legally represented.

(6) The sheriff may, of his or her own accord or on the motion of a party to the proceedings, withdraw permission granted under paragraph (1).

(7) Where permission has been granted under paragraph (1), the litigant may—

(a) S.S.I. 2002/132, amended by S.S.I. 2002/516; 2003/26 and 601; 2004/197; 2005/648; 2006/509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 294 and 402; 2010/279, 340 and 416; 2011/193 and 289; and 2012/144, 188 and 271.

(b) 1990 c. 40.

- (a) show the lay representative any document (including a court document); or
- (b) impart to the lay representative any information,

which is in his or her possession in connection with the proceedings without being taken to contravene any prohibition or restriction on the disclosure of the document or the information; but the lay representative is then to be taken to be subject to any such prohibition or restriction as if he or she were the litigant.

(8) Any expenses incurred by the litigant in connection with lay representation under this rule are not recoverable expenses in the proceedings.”.

- (3) At the start of Appendix 1 insert the form set out in Schedule 1 to this Act of Sederunt.

Summary Application Rules: lay representation

3.—(1) The Summary Application Rules are amended in accordance with the following subparagraphs.

- (2) In rule 1.4 (application) before “Chapter 2” insert “Chapter 1A and”.
- (3) After rule 1.4 insert—

“CHAPTER 1A LAY REPRESENTATION

Application and interpretation

1A.1.—(1) This Chapter is without prejudice to any enactment (including any other provision in these Rules) under which provision is, or may be, made for a party to a particular type of case before the sheriff to be represented by a lay representative.

- (2) In this Chapter, a “lay representative” means a person who is not—
 - (a) a solicitor;
 - (b) an advocate, or
 - (c) someone having a right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

Lay representation for party litigants

1A.2.—(1) In any proceedings in respect of which no provision as mentioned in rule 1A.1(1) is in force, the sheriff may, on the request of a party litigant, permit a named individual (a “lay representative”) to appear, along with the litigant, at a specified hearing for the purpose of making oral submissions on behalf of the litigant at that hearing.

- (2) An application under paragraph (1)—
 - (a) is to be made orally on the date of the first hearing at which the litigant wishes a named individual to make oral submissions; and
 - (b) is to be accompanied by a document, signed by the named individual, in Form A1.

(3) The sheriff may grant an application under paragraph (1) only if the sheriff is of the opinion that it would assist his or her consideration of the case to grant it.

(4) It is a condition of permission granted by the sheriff that the lay representative does not receive directly or indirectly from the litigant any remuneration or other reward for his or her assistance.

(5) The sheriff may grant permission under paragraph (1) in respect of one or more specified hearings in the case; but such permission is not effective during any period when the litigant is legally represented.

(6) The sheriff may, of his or her own accord or on the motion of a party to the proceedings, withdraw permission granted under paragraph (1).

(7) Where permission has been granted under paragraph (1), the litigant may—

- (a) show the lay representative any document (including a court document); or
- (b) impart to the lay representative any information,

which is in his or her possession in connection with the proceedings without being taken to contravene any prohibition or restriction on the disclosure of the document or the information; but the lay representative is then to be taken to be subject to any such prohibition or restriction as if he or she were the litigant.

(8) Any expenses incurred by the litigant in connection with lay representation under this rule are not recoverable expenses in the proceedings.”.

(4) At the start of Schedule 1 insert the form set out in Schedule 2 to this Act of Sederunt.

Summary Cause Rules: lay representation

4.—(1) The Summary Cause Rules are amended in accordance with the following subparagraphs.

(2) After rule 2.2 (lay support)(a) insert—

“CHAPTER 2A LAY REPRESENTATION

Application and interpretation

2A.1.—(1) This Chapter is without prejudice to any enactment (including any other provision in these Rules) under which provision is, or may be, made for a party to a particular type of case before the sheriff to be represented by a lay representative.

(2) In this Chapter, a “lay representative” means a person who is not—

- (a) a solicitor;
- (b) an advocate, or
- (c) someone having a right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

Lay representation for party litigants

2A.2.—(1) In any proceedings in respect of which no provision as mentioned in rule 2A.1(1) is in force, the sheriff may, on the request of a party litigant, permit a named individual (a “lay representative”) to appear, along with the litigant, at a specified hearing for the purpose of making oral submissions on behalf of the litigant at that hearing.

(2) An application under paragraph (1)—

- (a) is to be made orally on the date of the first hearing at which the litigant wishes a named individual to make oral submissions; and
- (b) is to be accompanied by a document, signed by the named individual, in Form A1.

(3) The sheriff may grant an application under paragraph (1) only if the sheriff is of the opinion that it would assist his or her consideration of the case to grant it.

(a) Rule 2.2 was inserted by S.S.I. 2010/416.

(4) It is a condition of permission granted by the sheriff that the lay representative does not receive directly or indirectly from the litigant any remuneration or other reward for his or her assistance.

(5) The sheriff may grant permission under paragraph (1) in respect of one or more specified hearings in the case; but such permission is not effective during any period when the litigant is legally represented.

(6) The sheriff may, of his or her own accord or on the motion of a party to the proceedings, withdraw permission granted under paragraph (1).

(7) Where permission has been granted under paragraph (1), the litigant may—

- (a) show the lay representative any document (including a court document); or
- (b) impart to the lay representative any information,

which is in his or her possession in connection with the proceedings without being taken to contravene any prohibition or restriction on the disclosure of the document or the information; but the lay representative is then to be taken to be subject to any such prohibition or restriction as if he or she were the litigant.

(8) Any expenses incurred by the litigant in connection with lay representation under this rule are not recoverable expenses in the proceedings.”

(3) At the start of Appendix 1 insert the form set out in Schedule 3 to this Act of Sederunt.

Small Claim Rules: lay representation

5.—(1) The Small Claim Rules are amended in accordance with the following subparagraphs.

(2) After Chapter 2 (representation) insert—

“CHAPTER 2A

LAY REPRESENTATION

Application and interpretation

2A.1.—(1) This Chapter is without prejudice to any enactment (including any other provision in these Rules) under which provision is, or may be, made for a party to a particular type of case before the sheriff to be represented by a lay representative.

(2) In this Chapter, a “lay representative” means a person who is not—

- (a) a solicitor;
- (b) an advocate, or
- (c) someone having a right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

Lay representation for party litigants

2A.2.—(1) In any proceedings in respect of which no provision as mentioned in rule 2A.1(1) is in force, the sheriff may, on the request of a party litigant, permit a named individual (a “lay representative”) to appear, along with the litigant, at a specified hearing for the purpose of making oral submissions on behalf of the litigant at that hearing.

(2) An application under paragraph (1)—

- (a) is to be made orally on the date of the first hearing at which the litigant wishes a named individual to make oral submissions; and
- (b) is to be accompanied by a document, signed by the named individual, in Form A1.

(3) The sheriff may grant an application under paragraph (1) only if the sheriff is of the opinion that it would assist his or her consideration of the case to grant it.

(4) It is a condition of permission granted by the sheriff that the lay representative does not receive directly or indirectly from the litigant any remuneration or other reward for his or her assistance.

(5) The sheriff may grant permission under paragraph (1) in respect of one or more specified hearings in the case; but such permission is not effective during any period when the litigant is legally represented.

(6) The sheriff may, of his or her own accord or on the motion of a party to the proceedings, withdraw permission granted under paragraph (1).

(7) Where permission has been granted under paragraph (1), the litigant may—

- (a) show the lay representative any document (including a court document); or
- (b) impart to the lay representative any information,

which is in his or her possession in connection with the proceedings without being taken to contravene any prohibition or restriction on the disclosure of the document or the information; but the lay representative is then to be taken to be subject to any such prohibition or restriction as if he or she were the litigant.

(8) Any expenses incurred by the litigant in connection with lay representation under this rule are not recoverable expenses in the proceedings.”.

(3) At the start of Appendix 1 insert the form set out in Schedule 4 to this Act of Sederunt.

BRIAN GILL
Lord President
I.P.D.

Edinburgh
5th March 2013

SCHEDULE 1

Paragraph 2(3)

Form 1A.2

Rule 1A.2(2)(b)

Statement by prospective lay representative for Pursuer/Defender*

Case Ref. No.:

in the cause

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

[A.B.], *(insert designation and address)*, Pursuer

against

[C.D.], *(insert designation and address)*, Defender

Court ref. no:

Name and address of prospective lay representative who requests to make oral submissions on behalf of party litigant:	
Identify hearing(s) in respect of which permission for lay representation is sought:	
The prospective lay representative declares that:	
(a)	I have no financial interest in the outcome of the case <i>or</i> I have the following financial interest in it:*
(b)	I am not receiving remuneration or other reward directly or indirectly from the litigant for my assistance and will not receive directly or indirectly such remuneration or other reward from the litigant.
(c)	I accept that documents and information are provided to me by the litigant on a confidential basis and I undertake to keep them confidential.
(d)	I have no previous convictions <i>or</i> I have the following convictions: (list convictions)*
(e)	I have not been declared a vexatious litigant under the Vexatious Actions (Scotland) Act 1898 <i>or</i> I was declared a vexatious litigant under the Vexatious Actions (Scotland) Act 1898 on [insert date].*

(Signed)
[Name of prospective lay representative]
[Date]

(Insert Place/Date)

The Sheriff grants/refuses* the application.

[Signed]
Sheriff Clerk
[Date]

*(*delete as appropriate)*

SCHEDULE 2

Paragraph 3(4)

Form A1

Rule 1A.2(2)(b)

Statement by prospective lay representative for Pursuer/Defender*

Case Ref. No.:

in the cause

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

[A.B.], *(insert designation and address)*, Pursuer

against

[C.D.], *(insert designation and address)*, Defender

Court ref. no:

Name and address of prospective lay representative who requests to make oral submissions on behalf of party litigant:	
Identify hearing(s) in respect of which permission for lay representation is sought:	
The prospective lay representative declares that:	
(a)	I have no financial interest in the outcome of the case <i>or</i> I have the following financial interest in it:*
(b)	I am not receiving remuneration or other reward directly or indirectly from the litigant for my assistance and will not receive directly or indirectly such remuneration or other reward from the litigant.
(c)	I accept that documents and information are provided to me by the litigant on a confidential basis and I undertake to keep them confidential.
(d)	I have no previous convictions <i>or</i> I have the following convictions: (list convictions)*
(e)	I have not been declared a vexatious litigant under the Vexatious Actions (Scotland) Act 1898 <i>or</i> I was declared a vexatious litigant under the Vexatious Actions (Scotland) Act 1898 on [insert date].*

(Signed)
[Name of prospective lay representative]
[Date]

(Insert Place/Date)

The Sheriff grants/refuses* the application.

[Signed]
Sheriff Clerk
[Date]

*(*delete as appropriate)*

SCHEDULE 3

Paragraph 4(3)

Form A1

Rule 2A.2(2)(b)

Statement by prospective lay representative for Pursuer/Defender*

Case Ref. No.:

in the cause

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

[A.B.], *(insert designation and address)*, Pursuer

against

[C.D.], *(insert designation and address)*, Defender

Court ref. no:

Name and address of prospective lay representative who requests to make oral submissions on behalf of party litigant:	
Identify hearing(s) in respect of which permission for lay representation is sought:	
The prospective lay representative declares that:	
(a)	I have no financial interest in the outcome of the case <i>or</i> I have the following financial interest in it:*
(b)	I am not receiving remuneration or other reward directly or indirectly from the litigant for my assistance and will not receive directly or indirectly such remuneration or other reward from the litigant.
(c)	I accept that documents and information are provided to me by the litigant on a confidential basis and I undertake to keep them confidential.
(d)	I have no previous convictions <i>or</i> I have the following convictions: (list convictions)*
(e)	I have not been declared a vexatious litigant under the Vexatious Actions (Scotland) Act 1898 <i>or</i> I was declared a vexatious litigant under the Vexatious Actions (Scotland) Act 1898 on [insert date].*

(Signed)
[Name of prospective lay representative]
[Date]

(Insert Place/Date)

The Sheriff grants/refuses* the application.

[Signed]
Sheriff Clerk
[Date]

*(*delete as appropriate)*

SCHEDULE 4

Paragraph 5(3)

Form A1

Rule 2A.2(2)(b)

Statement by prospective lay representative for Pursuer/Defender*

Case Ref. No.:

in the cause

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

[A.B.], *(insert designation and address)*, Pursuer

against

[C.D.], *(insert designation and address)*, Defender

Court ref. no:

Name and address of prospective lay representative who requests to make oral submissions on behalf of party litigant:	
Identify hearing(s) in respect of which permission for lay representation is sought:	
The prospective lay representative declares that:	
(a)	I have no financial interest in the outcome of the case <i>or</i> I have the following financial interest in it:*
(b)	I am not receiving remuneration or other reward directly or indirectly from the litigant for my assistance and will not receive directly or indirectly such remuneration or other reward from the litigant.
(c)	I accept that documents and information are provided to me by the litigant on a confidential basis and I undertake to keep them confidential.
(d)	I have no previous convictions <i>or</i> I have the following convictions: (list convictions)*
(e)	I have not been declared a vexatious litigant under the Vexatious Actions (Scotland) Act 1898 <i>or</i> I was declared a vexatious litigant under the Vexatious Actions (Scotland) Act 1898 on [insert date].*

(Signed)
[Name of prospective lay representative]
[Date]

(Insert Place/Date)

The Sheriff grants/refuses* the application.

[Signed]
Sheriff Clerk
[Date]

*(*delete as appropriate)*

EXPLANATORY NOTE

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

This Act of Sederunt makes amendments to the Ordinary Cause Rules, the Summary Application Rules, the Summary Cause Rules and the Small Claim Rules.

A new Chapter is inserted in each set of the Rules in consequence of section 127 of the Legal Services (Scotland) Act 2010 to regulate the use of lay representatives for parties in the conduct of civil proceedings. In accordance with the rules, lay representatives are permitted when appearing at a hearing to make oral submissions to the sheriff on the party's behalf.

Existing rules in relation to representation and lay support are preserved and sit in parallel with the new rules.