

2012 No. 189

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment
No. 3) (Miscellaneous) 2012**

<i>Made</i> - - - -	<i>6th June 2012</i>
<i>Laid before the Scottish Parliament</i>	<i>8th June 2012</i>
<i>Coming into force</i> - -	<i>9th July 2012</i>

The Lords of Council and Session, under and by virtue of the powers conferred by sections 5 and 5A of the Court of Session Act 1988(a) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation, commencement etc.

- 1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 3) (Miscellaneous) 2012 and comes into force on 9th July 2012.
- (2) A certified copy of this Act of Sederunt is to be inserted in the Books of Sederunt.
- (3) In this Act of Sederunt, “the Rules” means the Rules of the Court of Session 1994(b).

Lay Representation

- 2.—(1) The Rules are amended in accordance with the following subparagraphs.
- (2) After Chapter 12A (lay support for party litigants) insert—

“CHAPTER 12B

LAY REPRESENTATION

Application and interpretation

12B.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 court to be represented by a lay representative.

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

(a) 1988 c.36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c.32), section 2(3); the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), Schedule 9; the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 45; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1); the Judiciary and Courts (Scotland) Act 2008, (asp 6) section 46(3) and the Legal Services (Scotland) Act 2010 (asp 16) (“the 2010 Act”), section 126. Section 5A was inserted by the 2010 Act, section 126.

(b) S.I. 1994/1443, last amended by S.S.I. 2012/126.

- (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

12B.2.—(1) In any cause depending before the court in respect of which no provision as mentioned in rule 12B.1(1) is in force, a party litigant may apply to the court for permission for 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) is to be made—

- (a) by motion and accompanied by a document, signed by the litigant and the named individual, in Form 12B.2; and
- (b) subject to paragraph (3), prior to the date of the hearing at which the litigant wishes the lay representative to make oral submissions.

(3) The court may grant an application made on the day of the hearing at which the litigant wishes the lay representative to make oral submissions if it is satisfied that there are exceptional reasons why the application could not have been made prior to that day.

(4) The court may grant an application under paragraph (1) only if it is of the opinion that it would assist the court to grant it.

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

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

(7) The court may, of its own accord or on the motion of a party to the proceedings, withdraw permission granted under paragraph (1).

(8) 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.

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

Confidentiality of documents in process

12B.3. Rules 67.3 and 97.4 (confidentiality of documents in process) apply to an individual permitted to act as lay representative under this Chapter as they apply to a curator *ad litem* and reporting officer.”.

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

Revocation: permission to appeal against decisions of the Upper Tribunal

3.—(1) Part XI of Chapter 41 of the Rules (appeals under the Tribunals, Courts and Enforcement Act 2007)(a) is revoked.

(2) Part XIV of Chapter 41 of the Rules (appeals under the Tribunals, Courts and Enforcement Act 2007) is revoked insofar as it applies by virtue of paragraph 4 of the Act of Sederunt (Rules of the Court of Session Amendment No. 5) (Causes in the Inner House) 2011(b).

A.C. HAMILTON
Lord President
I.P.D.

Edinburgh
6th June 2012

(a) Part XI of Chapter 41 was inserted by S.S.I. 2011/303.
(b) Part XIV of Chapter 41 was inserted by S.S.I. 2008/349. It was omitted by S.S.I. 2011/303, but has continued to apply in relation to specified appeals under a transitional and savings provision in paragraph 4 of S.S.I. 2011/303.

SCHEDULE

Paragraph 2(3)

Form 12B.2

Rule 12B.2(2)(a)

Application by party litigant for lay representation

PART 1: to be completed by the party litigant

Cause Ref:

Name and designation of pursuer (*or* petitioner *or* appellant):

Name and designation of defender(s) (*or* respondent(s)):

Name and address of proposed named individual who is to make oral submissions on your behalf:

State any relationship that the named individual has to you:

Does the named individual have any relevant experience? (e.g. acted as authorised lay representative in the Court of Session or sheriff court or in any other jurisdiction, or possesses a legal qualification)? If so, please briefly describe that experience:

Identify hearing(s) in respect of which permission for lay representation is sought:

(Signed)

[Name of applicant]

[Date]

PART 2: to be completed by the prospective lay representative

I confirm the information above.

I declare that:

- (a) *I have no financial interest in the outcome of the case *or* 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 declare that I have no previous convictions *or* I have the following convictions: (*list convictions*).
- (e) *I declare that I have not been declared a vexatious litigant under the Vexatious Actions (Scotland) Act 1898 *or* I was declared a vexatious litigant under the Vexatious Actions (Scotland) Act 1898 on (*insert date*).

*delete as appropriate

(*Signed*)

[Name]

[Date]

EXPLANATORY NOTE

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

This Act of Sederunt makes amendments to the Rules of the Court of Session 1994.

Paragraph 2 introduces a new Chapter 12B into the Rules. This regulates the provision of lay representation to party litigants in the conduct of proceedings.

Paragraph 3 revokes Chapters containing rules which set out criteria for the court in considering applications for permission to appeal against decisions of the Upper Tribunal. This follows an Opinion of the court in the application for leave to appeal by *KP and MRK v. The Secretary of State for the Home Department* 2012 CSIH 38 in which the court held that it did not have the power to make those rules.

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