

2011 No. 404

SHERIFF COURT

**Act of Sederunt (Sanction for the Employment of Counsel in the
Sheriff Court) 2011**

Made - - - - - *16th November 2011*

Laid before the Scottish Parliament *18th November 2011*

Coming into force - - - *1st January 2012*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 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 and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sanction for the Employment of Counsel in the Sheriff Court) 2011 and comes into force on 1st January 2012.

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

Sanction for the purpose of general regulation 12

2.—(1) This rule applies in relation to any civil proceedings in the sheriff court.

(2) For the purposes of this rule, proceedings at first instance are to be regarded as separate from proceedings on appeal.

(3) The sheriff, or as the case may be, the sheriff principal, may, on the motion or incidental application of a party or of his or her own accord, grant sanction for the purpose of general regulation 12 (employment of counsel) of Schedule 1 to the Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993(b) in relation to—

(a) appearance at any hearing in the proceedings; or

(b) preparation of any document to be lodged in relation to the proceedings.

(4) Sanction may be granted under paragraph (3)—

(a) 1971 c.58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73) (the “1985 Act”), 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) 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.

(b) S.I. 1993/3080, last amended by S.S.I. 2011/403.

(a) before, at, or after the hearing or, before or after the preparation of the document concerned; and

(b) at the time of, or at any time prior to, the disposal of the proceedings.

(5) Refusal to grant sanction before the hearing has taken place or before the document has been prepared does not prevent such sanction being granted at or after the hearing, or after the preparation of the document.

(6) In granting sanction under paragraph (3), the sheriff or, as the case may be, the sheriff principal may—

(a) sanction the employment of one or more pleader;

(b) grant sanction in relation to one or more hearings in the proceedings or in relation to the preparation of one or more documents to be lodged in the proceedings; and

(c) impose such restrictions in respect of the extent of such sanction as he or she thinks fit.

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

Edinburgh
16th November 2011

EXPLANATORY NOTE

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

General regulation 12 in the Schedule to the Act of Sederunt that makes provision about the fees of solicitors in the sheriff court (S.I. 1993/3080), provides that the fees of counsel or a solicitor advocate are allowable only where the court has granted sanction for the employment of counsel. This Act of Sederunt contains rules relating to the procedure for obtaining such sanction.

In particular, it provides that the sheriff or, as the case may be, the sheriff principal, may sanction the employment of counsel to appear at any hearing in proceedings before them, or to prepare any document to be lodged in relation to those proceedings. It also provides that such sanction may be provided at the time of, or at any time prior to, the disposal of the proceedings.

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