

2023 No. 168

COURT OF SESSION

SHERIFF COURT

**Act of Sederunt (Rules of the Court of Session 1994 and
Ordinary Cause Rules 1993 Amendment) (Attendance at
Hearings) 2023**

<i>Made</i> - - - -	<i>31st May 2023</i>
<i>Laid before the Scottish Parliament</i>	<i>2nd June 2023</i>
<i>Coming into force</i> - -	<i>3rd July 2023</i>

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(b) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Attendance at Hearings) 2023.

(2) It comes into force on 3rd July 2023.

(3) A certified copy is to be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session 1994

2.—(1) The Rules of the Court of Session 1994(c) are amended in accordance with this paragraph.

(2) In rule 1.3(1) (interpretation etc.)(d), after the definition of “agent” insert—

““attend” and “attendance” are construed in accordance with Chapter 12C (mode of attendance at hearings);”.

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).

(b) 2014 asp 18.

(c) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443), last amended by S.S.I. 2023/165.

(d) Rule 1.3(1) was last amended by S.S.I. 2016/315.

(3) After Chapter 12B (lay representation)(a), insert—

“CHAPTER 12C MODE OF ATTENDANCE AT HEARINGS

Application

12C.1. This Chapter is without prejudice to any enactment under which provision has been made regarding the mode of attendance of persons at hearings.

Mode of attendance at hearings – procedural business

12C.2.—(1) Hearings at which only procedural business is to be considered are to be attended by electronic means.

(2) Paragraph (1) does not apply to hearings at which a party is unrepresented or utilising an interpreter.

Alternative mode of attendance at hearings

12C.3.—(1) The court may, at its own instance or on the motion of a party on cause shown—

(a) in relation to hearings to which rule 12C.2(1) applies, order physical attendance at a hearing;

(b) in relation to any other hearings, order attendance at a hearing by electronic means.

(2) The court may revoke an order granted under paragraph (1) or this paragraph and, where it does so, it may make such further order as it thinks fit.

(3) Before the court makes an order under paragraph (1) or (2), it is to give parties the opportunity to make representations about the mode of attendance.

Hybrid hearings

12C.4. An order under rule 12C.3(1) or (2) may include provision for a person to attend a hearing—

(a) both physically and by electronic means;

(b) by one mode and another person to attend by the other mode,

and at different times or dates.”.

(4) Chapter 93 (live links)(b) is revoked.

Amendment of the Ordinary Cause Rules 1993

3.—(1) The Ordinary Cause Rules 1993(c) are amended in accordance with this paragraph.

(2) In rule 1.2(1) (interpretation)(d), before the definition of “document” insert—

““attend”, “attendance” and “attend personally” are construed in accordance with Chapter 4A (mode of attendance at hearings);”.

(a) Chapter 12B was inserted by S.S.I. 2012/189 and amended by S.S.I. 2017/186.

(b) Chapter 93 was inserted by S.S.I. 2007/7.

(c) The Ordinary Cause Rules are in schedule 1 of the Sheriff Court (Scotland) Act 1907 (c. 51). Schedule 1 was substituted by S.I. 1993/1956 and last amended by S.S.I. 2022/329.

(d) Rule 1.2(1) was last amended by S.S.I. 2007/463.

(3) Before Chapter 5 (citation, service and intimation)(a), insert—

“CHAPTER 4A MODE OF ATTENDANCE AT HEARINGS

Application

4A.1. This Chapter is without prejudice to any enactment under which provision has been made regarding the mode of attendance of persons at hearings.

Mode of attendance at hearings – procedural business

4A.2.—(1) Hearings at which only procedural business is to be considered are to be attended by electronic means.

(2) Paragraph (1) does not apply to hearings at which a party is unrepresented or utilising an interpreter.

Alternative mode of attendance at hearings

4A.3.—(1) The sheriff may, at the sheriff’s own instance or on the motion of a party on cause shown—

- (a) in relation to hearings to which rule 4A.2(1) applies, order physical attendance at a hearing;
- (b) in relation to any other hearings, order attendance at a hearing by electronic means.

(2) The sheriff may revoke an order granted under paragraph (1) or this paragraph and, where the sheriff does so, the sheriff may make such further order as the sheriff thinks fit.

(3) Before the sheriff makes an order under paragraph (1) or (2), the sheriff is to give parties the opportunity to make representations about the mode of attendance.

Hybrid hearings

4A.4. An order under rule 4A.3(1) or (2) may include provision for a person to attend a hearing—

- (a) both physically and by electronic means;
- (b) by one mode and another person to attend by the other mode,

and at different times or dates.”.

(4) Chapter 32A (live links)(b) is revoked.

Revocations and saving

4.—(1) The following are revoked—

(a) Chapter 5 was substituted by S.I. 1993/1956. Chapter 4 was omitted by S.S.I. 2006/198.
(b) Chapter 32A was inserted by S.S.I. 2007/6 and amended by S.S.I. 2007/463.

- (a) paragraph 2(13) (live links) of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2007(a);
- (b) paragraph 2(19) (live links) of Act of Sederunt (Rules of the Court of Session Amendment) (Miscellaneous) 2007(b).

(2) The revocation of Chapter 93 of the Rules of the Court of Session 1994 and Chapter 32A of the Ordinary Cause Rules 1993 by paragraphs 2(4) and 3(4) is of no effect in relation to any motion enrolled under those Chapters before the coming into force of this Act of Sederunt which has not been determined at the date it comes into force.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
31st May 2023

(a) S.S.I. 2007/6.
(b) S.S.I. 2007/7.

EXPLANATORY NOTE

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

This Act of Sederunt inserts new Chapters into the Rules of the Court of Session 1994 and the Ordinary Cause Rules 1993 to provide that hearings at which certain types of procedural business are to be heard are to be attended by electronic means.

Provision is made so that the court, or sheriff, may at its own instance or on the motion of a party on cause shown order that attendance at such hearings by any person is to be by means of physical attendance instead.

Provision is also made so that the court, or sheriff, may at its own instance or on the motion of a party on cause shown order that attendance at other kinds of hearings by any person, which are otherwise attended physically, may instead be attended by electronic means.

Provision for hybrid modes of attendance is also included so that a person may attend a hearing partly by physical means and partly by electronic means, or so that one person may attend by one means while another attends by the other means. This is not an exclusive provision and is intended to provide maximum flexibility for the court or sheriff and those participating in hearings.

Consequential amendments are made to revoke court rules in relation to live links as those rules are superseded by the amendments made by this Act of Sederunt. Saving provision is made in respect of live link motions which are enrolled before the coming into force of this Act of Sederunt but which have not been determined at that point.

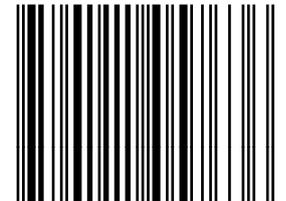
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