

DRAFT RULES FOR CONSULTATION

SCOTTISH STATUTORY INSTRUMENTS

XXXX No.

COURT OF

SESSION SHERIFF

COURT

**Act of Sederunt (Rules of the Court of Session 1994 and Sheriff
Court Rules Amendment) (Attendance at Hearings) xxxx**

Made - - - - - xxx

Laid before the Scottish Parliament xxx

Coming into force - - - xxx

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 Sheriff Court Rules Amendment) (Attendance at Hearings) xxxx.

(2) It comes into force on [xxx].

(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) After Chapter 35A (Vulnerable Witnesses (Scotland) Act 2004)(d), insert—

“CHAPTER 35B
ATTENDANCE AT HEARINGS

Application and interpretation

35B.1.—(1) This Chapter is without prejudice to any enactment under which provision has been made regarding the attendance of persons at hearings.

(2) Nothing in this Chapter shall affect any power of the court to make such other direction as it considers appropriate in the interests of justice.

(3) In this Chapter—

“electronic means” is by an online electronic video conferencing facility

Hearings by electronic means

35B.2.—(1) Where this rule applies hearings shall take place by electronic means.

(2) This rule applies to the following hearings—

- (a) preliminary hearings;
- (b) procedural hearings;
- (c) case management hearings;
- (d) pre-proof hearings;
- (e) hearings on the by order or by order (adjustment) roll;
- (f) any other hearing of a procedural nature where the court directs that this rule shall apply;
- (g) hearings of unopposed petitions fixed under rule 14.9 (unopposed petition);
- (h) hearings of unopposed motions;
- (i) hearings of opposed motions—
 - (i) to allow a minute of amendment to be received and/or answered;
 - (ii) to allow amendment;
 - (iii) for commission and diligence for recovery of documents or for orders under section 1 of the Act of 1972;
- (j) diets of taxation fixed under rule 42.2(1);
- (k) hearings fixed under rule 42.4(3) (objections to taxed account);
- (l) those to which the court directs that this rule shall apply in accordance with paragraphs (3) or (6);

(3) The court may on the application of a party and on cause shown, direct that this rule shall apply or shall not apply to:

- (a) any particular hearing
- (b) any part of a hearing;
- (c) the proceedings; or
- (d) any part or parts of the proceedings.

(4) An application under paragraph (3) is to be made by motion, together with Form 35B.2A (application for a hearing in person) or Form 35B.2B (application for hearing

by electronic means) as appropriate.

- (5) The court may only make a direction under paragraph (3) when satisfied that doing so would not—
 - (a) prejudice the fairness of the proceedings;
 - (b) otherwise be contrary to the interests of justice.
 - (6) The court may direct that this rule applies to any hearing of an application under paragraph (3).
 - (7) Notwithstanding any previous direction or application under paragraph (3), a further direction or application may be made under paragraph (3) where there has been a change of circumstances.”
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- (8) In rule 36.9 (attendance, and lists, of witnesses)—
- (a) in paragraph (1), for “It shall be the duty” substitute “Subject to paragraph (1A), it is the duty”;
 - (b) after paragraph (1), insert—
“(1A) Where a witness is to attend a proof by electronic means in accordance with Chapter 35B (attendance at hearings), it is the duty of each party to ensure that the witness, if any, is available when called on to give evidence.”;
 - (c) after paragraph (4), insert—
“(5) In paragraph (3), at a proof in which a witness is to attend by electronic means the references to being present in, and leaving, “the courtroom” are to be read as being present in, and leaving the “court by electronic means”.”.
- (9) In the appendix (forms) after Form 35A.7 (Vulnerable Witnesses (Scotland) Act 2004, Form of Certificate of Intimation), insert—
- (a) Form 35B.2-A (form of application for an in person hearing);
 - (b) Form 35B.2-B (form of application for a hearing by electronic means).

Amendment of the Ordinary Cause Rules 1993

- 3.—(1) The Ordinary Cause Rules 1993 are amended in accordance with this paragraph.
(2) After Chapter 28 (Recovery of Evidence), insert—
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“CHAPTER 28ZA ATTENDANCE AT HEARINGS

Application

- 28ZA.1.**—(1) This Chapter is without prejudice to any enactment under which provision has been made regarding the attendance of persons at hearings.
(2) Nothing in this Chapter shall affect any power of the court to make such other direction as it considers appropriate in the interests of justice.
(3) In this Chapter, “electronic means” is by an online electronic video conferencing facility

Hearings by electronic means

- 28ZA.3.**—(1) Where this rule applies hearings shall take place by electronic means.
(2) This rule applies to the following hearings—
- (a) hearings under rule 9.12 (Options Hearing);
 - (b) procedural hearings under Chapter 10 (additional procedure);
 - (c) pre-proof hearings fixed by the sheriff under rule 28A.1 (pre-proof hearing);
 - (d) case management hearings fixed by the sheriff under rule 33AA.2 (fixing date for case management hearing in certain causes);
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- (e) hearings fixed under rule 33.65A(6) (applications for leave in relation to applications for orders under Section II of the Children (Scotland) Act 1995);
 - (f) hearings fixed under rule 33A.57A(6) (applications for leave in relation to applications for orders under Section II of the Children (Scotland) Act 1995 in civil partnership actions);
 - (g) hearings fixed under rule 13A.3(4) or 13A.4(3)(b) (interventions by the Commission for Equality and Human Rights);
 - (h) diets fixed under rule 13B.4(3)(b) (interventions by the Scottish Commission for Human Rights);
 - (i) hearings fixed under rule 14.8(2)(a) (applications by minute);
 - (j) hearings fixed in respect of unopposed motions under rule 15.5(4) (hearing of motions);
 - (k) hearings fixed under rule 18.3(2) (applications to amend);
 - (l) hearings fixed under rule 26.3(b) (remit of cause from Court of Session);
 - (m) hearings of any motion under rule 28.2 (Application for commission and diligence for recovery of documents or for orders under section 1 of the Act of 1972);
 - (n) proof management hearings fixed under rule 29.17A(1) (proof management hearing);
 - (o) hearings fixed under rule 31A.4(2)(d) (qualified one-way costs shifting: procedure);
 - (p) diets of taxation fixed under rule 32.3(2) or (3) (diet of taxation);
 - (q) hearings fixed under rule 32.4(6) (objections to taxed account);
 - (r) first hearings, and any subsequent hearings of a procedural nature where the court directs that this rule shall apply, fixed under Chapter 35 (actions of multiplepinding);
 - (s) incidental hearings to which rule 36.L1 (incidental hearings) makes provision;
 - (t) procedural hearings fixed under rule 36A.7(2) (closing record in certain personal injuries actions) or 36A.9(6) (procedural hearing);
 - (u) case management conferences fixed under rule 40.10 (fixing date for case management conference in commercial actions);
 - (v) procedural hearings fixed under rule 40.14 (hearing for further procedure);
 - (w) hearings fixed under Chapter 44 (the Equality Act 2010);
 - (x) hearings fixed under Chapter 45 (Vulnerable Witness (Scotland) Act 2004), to include the taking of evidence by commission;
 - (y) hearings fixed under rule 48.3(5) (reporting restrictions, representations on interim orders) or 48.5(3) (applications for variation or revocation);
 - (z) those to which the court directs that this rule shall apply in accordance with paragraph (3) or (5);
- (3) The court may on the motion of a party and on cause shown, direct that this rule shall apply or shall not apply to:
- (a) any particular hearing or part thereof;
 - (b) any part of a hearing;

- (c) the proceedings; or
- (d) any part or parts of the proceedings.

(4) The court may only make a direction under paragraph (3) when satisfied that doing so would not—

- (a) prejudice the fairness of the proceedings;
- (b) otherwise be contrary to the interests of justice.

(5) The court may direct that this rule applies to any hearing of a motion under paragraph (3).

(6) Notwithstanding any previous direction or application under paragraph (3), a further direction or application may be made under paragraph (3) where there has been a change of circumstances.”

(3) Omit rule 33.36 (attendance of parties at options hearings in defended family actions).

(4) Omit rule 33A.36 (attendance of parties at options hearings in defended civil partnership actions)(a).

(a) Chapter 33A was inserted by S.S.I. 2005/638.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
Date

SCHEDULE

Paragraph 2(4)

Form 35B.4-A

Rule 35B.4(3)

Form of application by a party seeking authorisation for a hearing in person

(Cause Reference No)

IN THE COURT OF SESSION

in the cause [*or* in the petition of]

[A.B.] (designation and address)

Pursuer[s] [*or* Petitioner[s]] [*or* Appellant[s]]

against

[C.D.] (designation and address)

Defender[s] [*or* Respondent[s]]

1. [*Name of applicant*], [Pursuer] [*or* Petitioner] [*or* Appellant] [*or* Defender] [*or* Respondent], applies to the court for authorisation for [*state here whether the application is for either one hearing, or for more than one hearing in the proceedings to be conducted in person, and the nature of the hearing[s] in question*] in the proceedings to be conducted in a manner where persons physically attend the court.
2. The nature of the hearing is [*state here the nature of the hearing within the criteria of rule 35B.2(2)*]. Accordingly, under the operation of rule 35B.2 the hearing[s] in the proceedings [is/are] to be by electronic means.
3. The applicant applies for the hearing[s] to be conducted in person at court on the following grounds:-

(Set out the grounds in brief numbered paragraphs. The grounds could, for example, include access to justice grounds, as follows:-

whether a party is a party litigant;

whether a party or witness is a vulnerable witness, within the meaning given in section 11 or 11A of the Vulnerable Witnesses (Scotland) Act 2004;

whether a party, witness or other person in the proceedings is a person with health conditions or impairments;

whether parties and all other persons in the proceedings have access to and are able to use telephone, information technology and/or internet services (to include access to a reliable telephone signal and adequate broadband);

whether any specialist support services (for example, interpretation services or witness support) are required and, if so, whether any issues are considered likely to arise in the provision of such services should a hearing be conducted by electronic means;

the arrangements which are in place to ensure that parties are able to converse with their representatives who, in turn, are able to take instructions, all in an appropriate manner.)

(Signed)

Solicitor [or Agent]

For [A.B.] [or [C.D.], Applicant

[or Party litigant]

(Date)

Form 35B.4-B

Rule 35B.4(3)

Form of application by a party seeking authorisation for a hearing by electronic means

(Cause Reference No)

IN THE COURT OF SESSION

in the cause [*or* in the petition of]

[A.B.] (designation and address)

Pursuer[s] [*or* Petitioner[s]] [*or* Appellant[s]]

against

[C.D.] (designation and address)

Defender[s] [*or* Respondent[s]]

1. [*Name of applicant*], [Pursuer] [*or* Petitioner] [*or* Appellant] [*or* Defender] [*or* Respondent], applies to the court for authorisation for [*state here whether the application is for either one hearing, or for more than one hearing, to be conducted by electronic means in whole or in part— and the nature of the hearing[s] in question*] in the proceedings to be conducted by electronic means.
2. The nature of the proceedings is [*state here the subject matter of the proceedings*]. [*or* The nature of the hearing is [*state here the nature of the hearing (for example, a civil jury trial)*]. Accordingly, persons are to physically attend the court for the hearing[s].
3. The applicant applies for the hearing[s] to be conducted by electronic means on the following grounds:-

(Set out the grounds in brief numbered paragraphs. The grounds could, for example, include access to justice grounds, as follows:-

whether a party is a party litigant;

whether a party or witness is a vulnerable witness, within the meaning given in section 11 or 11A of the Vulnerable Witnesses (Scotland) Act 2004;

whether a party, witness or other person in the proceedings is a person with health conditions or impairments;

whether parties and all other persons in the proceedings have access to and are able to use telephone, information technology and/or internet services (to include access to a reliable telephone signal and adequate broadband);

whether any specialist support services (for example, interpretation services or witness support) are required and, if so, whether any issues are considered likely to arise in the provision of such services should a hearing be conducted by electronic means;

the arrangements which are in place to ensure that parties are able to converse with their representatives who, in turn, are able to take instructions, all in an appropriate manner.

whether there are any geographical or financial impediments in place meaning that attendance by electronic means is more equitable to the person(s) in question.)

(Signed)

Solicitor [or Agent]

For [A.B.] [or [C.D.], Applicant

[or Party litigant]

(Date)

EXPLANATORY NOTE

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

This Act of Sederunt makes provision about the attendance of persons at hearings. The instrument amends the Rules of the Court of Session (“the RCS”), by the insertion of new Chapter 35B, and the Ordinary Cause Rules (“the OCR’s”), by the insertion of new Chapter 28ZA. It comes into force on [xxx].

The new Chapters p lists hearings in which persons must attend by electronic means.

The new Chapters provide that a party to an action may apply, by motion, to the Court of Session or, as the case may be, the sheriff for a hearing to be conducted in a manner other than as prescribed. New Forms for these applications are provided for the RCS.

Provision is made in the new Chapters to allow the Court of Session or, as the case may be, the sheriff to make a direction regarding the mode of attendance by persons at hearings.

The test for such applications and directions is the same, namely that the granting of an application or the making of a direction would not prejudice the fairness of the proceedings, or otherwise be contrary to the interests of justice.

The instrument also makes consequential amendments to the RCS and the OCR’s.