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SCOTTISH STATUTORY INSTRUMENTS

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**2019 No. 74**

**Act of Sederunt (Rules of the Court of Session,  
Sheriff Appeal Court Rules and Ordinary Cause Rules  
Amendment) (Taxation of Judicial Expenses) 2019**

**Amendment of the Ordinary Cause Rules 1993**

- 3.—**(1) The Ordinary Cause Rules 1993<sup>(1)</sup> are amended in accordance with this paragraph.
- (2) In rule 7.4 (decree for expenses)—
- (a) the existing rule becomes paragraph (1);
  - (b) after paragraph (1), insert—
    - “(2) Where the pursuer elects, in the minute for decree, to claim expenses comprising—
      - (a) the inclusive charges set out in Part 1 of Table 1 in schedule 4 of the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019; and
      - (b) outlays comprising only—
        - (i) the court fee for warranting the initial writ;
        - (ii) postal charges incurred in effecting, or attempting to effect, service of the initial writ by post; and
        - (iii) where applicable, a sheriff officer’s fee for service of the initial writ,
- the sheriff may grant decree for payment of such expenses without the necessity of taxation.”.
- (3) In rule 27A.1 (pursuers’ offers – interpretation)<sup>(2)</sup>, for the definition of “fees” substitute—  
““charges” means charges for work carried out by the pursuer’s solicitor, and includes any additional charge;”.
- (4) In rule 27A.9 (extent of defender’s liability), for “fees” in both places where it appears substitute “charges”.
- (5) In rule 32.1 (taxation before decree for expenses)—
- (a) the existing rule becomes paragraph (1);
  - (b) after paragraph (1) insert—
    - “(2) Paragraph (1) applies subject to rule 7.4(2).”.
- (6) For rule 32.1A (order to lodge account of expenses)<sup>(3)</sup>, substitute—

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(1) The Ordinary Cause Rules 1993 are in schedule 1 of the Sheriff Courts (Scotland) Act 1907 (c. 51). Schedule 1 was substituted by S.I. 1993/1956 and last amended by S.S.I. 2017/186.  
(2) Rule 27A was inserted by S.S.I. 2017/52.  
(3) Rule 32.1A was inserted by S.S.I. 2004/197.

**“Time for lodging account of expenses**

**32.1A.**—(1) A party found entitled to expenses must lodge an account of expenses in process—

- (a) not later than four months after the final judgment; or
- (b) at any time with permission of the sheriff, but subject to such conditions, if any, as the sheriff thinks fit to impose.

(2) Where an account of expenses is lodged by the Scottish Legal Aid Board in reliance on regulation 39(2)(a) of the Civil Legal Aid (Scotland) Regulations 2002(4), paragraph (1) (a) applies as if the period specified there is 8 months.

(3) In this rule, “final judgment” has the meaning assigned by section 136(1) of the Courts Reform (Scotland) Act 2014(5).”.

(7) For rule 32.3 (procedure for taxation) and rule 32.4 (objections to auditor’s report), substitute—

**“Diet of taxation**

**32.3.**—(1) Where an account of expenses awarded in a cause is lodged for taxation, the sheriff clerk must transmit the account and the process to the auditor of court.

(2) Subject to paragraph (3), the auditor of court must fix a diet of taxation on receipt of—

- (a) the account of expenses;
- (b) the process;
- (c) vouchers in respect of all outlays claimed in the account, including counsel’s fees; and
- (d) a letter addressed to the auditor of court—
  - (i) confirming that the items referred to in sub-paragraph (c) have been intimated to the party found liable in expenses; and
  - (ii) providing such information as is required to enable the auditor of court to give intimation to the party found liable in expenses in accordance with paragraph (4)(b).

(3) The auditor of court must fix a diet of taxation where paragraph (2)(c) or (d), or both, have not been complied with.

(4) The auditor of court shall intimate the diet of taxation to—

- (a) the party found entitled to expenses; and
- (b) the party found liable in expenses.

(5) The party found liable in expenses may, not later than 4.00 pm on the fourth business day before the diet of taxation, intimate to the auditor of court and to the party found entitled to expenses particular points of objection, specifying each item objected to and stating concisely the nature and ground of objection.

(6) Subject to paragraph (7), if the party found liable in expenses fails to intimate points of objection under paragraph (5) within the time limit set out there, the auditor of court must not take account of them at the diet of taxation.

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(4) S.S.I. 2002/494.  
(5) 2014 asp 18.

(7) Where a failure to comply with the requirement contained in paragraph (5) was due to mistake, oversight or other excusable cause, the auditor of court may relieve a party of the consequences of such failure on such conditions, if any, as the auditor thinks fit.

(8) At the diet of taxation, or within such reasonable period of time thereafter as the auditor of court may allow, the party found entitled to expenses must make available to the auditor of court all documents, drafts or copies of documents sought by the auditor and relevant to the taxation.

(9) In this rule, “business day” means any day other than a Saturday, Sunday or public or court holiday.

### **Auditor’s statement**

**32.3A.**—(1) The auditor of court must—

- (a) prepare a statement of the amount of expenses as taxed;
- (b) transmit the process, the taxed account and the statement to the sheriff clerk; and
- (c) on the day on which the documents referred to in sub-paragraph (b) are transmitted, intimate that fact and the date of the statement to each party to whom the auditor intimated the diet of taxation.

(2) The party found entitled to expenses must, within 7 days after the date of receipt of intimation under paragraph (1)(c), send a copy of the taxed account to the party found liable in expenses.

(3) Where no objections are lodged under rule 32.4 (objections to taxed account), the sheriff may grant decree for the expenses as taxed.

### **Objections to taxed account**

**32.4.**—(1) A party to a cause who has appeared or been represented at a diet of taxation may object to the auditor of court’s statement by lodging in process a note of objection within 14 days after the date of the statement.

(2) The party lodging a note of objection is referred to in this rule as “the objecting party”.

(3) On lodging the note of objection the objecting party must apply by motion for an order—

- (a) allowing the note of objection to be received; and
- (b) allowing a hearing on the note of objection.

(4) On the granting of the order mentioned in paragraph (3), the objecting party must intimate to the auditor of court—

- (a) the note of objection; and
- (b) the interlocutor containing the order.

(5) Within 14 days after receipt of intimation of the items mentioned in paragraph (4) the auditor of court must lodge in process a statement of reasons in the form of a minute stating the reasons for the auditor’s decision in relation to the items to which objection is taken in the note.

(6) On the lodging of the statement of reasons the sheriff clerk must fix a hearing on the note of objection.

(7) At the hearing, the sheriff may—

- (a) sustain or repel any objection or remit the account of expenses to the auditor of court for further consideration; and
- (b) find any party liable in the expenses of the procedure on the note of objection.

### **Interest on expenses**

**32.5.**—(1) Paragraph (2) applies where the sheriff grants decree for payment of—

- (a) expenses as taxed; and
- (b) interest thereon.

(2) Without prejudice to the sheriff’s other powers in relation to interest, the decree pronounced may require the party decerned against to pay interest on the taxed expenses, or any part thereof, from a date no earlier than 28 days after the date on which the account of expenses was lodged.”.