

**2015 No. 387**

**SHERIFF APPEAL COURT**

**Act of Sederunt (Fees of Solicitors in the Sheriff Appeal Court)  
2015**

*Made* - - - - - *17th November 2015*

*Laid before the Scottish Parliament* *18th November 2015*

*Coming into force* - - - *1st January 2016*

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 with such modifications as it thinks fit.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 106(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 (Fees of Solicitors in the Sheriff Appeal Court) 2015.

(2) It comes into force on 1st January 2016.

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

**Application**

**2.**—(1) This Act of Sederunt regulates the taxation of accounts of expenses between party and party in the Court.

(2) Nothing in this Act of Sederunt affects the inherent powers of the Court in relation to expenses.

**Interpretation**

**3.**—(1) In this Act of Sederunt—

“advocate” means a practising member of the Faculty of Advocates;

“the Court” means the Sheriff Appeal Court;

“solicitor” means a person qualified to practise as a solicitor under section 4 of the Solicitors (Scotland) Act 1980(c);

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(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3).

(b) 2014 asp 18.

(c) 1980 c. 46.

“solicitor advocate” means a solicitor having a right of audience before the Court of Session by virtue of section 25A of the Solicitors (Scotland) Act 1980(a).

(2) In this Act of Sederunt—

- (a) a sheet consists of 250 words or numbers;
- (b) a page consists of 125 words.

(3) Where there is a reference in this Act of Sederunt to a rule, it is a reference to that rule in the Act of Sederunt (Sheriff Appeal Court Rules) 2015(b).

### **Basis of charging**

4.—(1) A solicitor may prepare an account of expenses on the basis of—

- (a) Schedule 1 (detailed fees); or
- (b) Schedule 2 (inclusive fees).

(2) A solicitor may not prepare an account of expenses partly on the basis of Schedule 1 and partly on the basis of Schedule 2.

(3) Only the proper expenses of process may be included in an account of expenses.

### **Outlays**

5. Any outlays reasonably incurred by a solicitor in relation to an appeal may be included in an account of expenses.

### **Value added tax**

6.—(1) This paragraph applies where work done by a solicitor constitutes a supply of services in respect of which value added tax is chargeable.

(2) The amount of value added tax chargeable may be included in an account of expenses.

### **Copying of documents**

7.—(1) This paragraph applies where a solicitor proposes to include a charge for copying of documents in an account of expenses.

(2) Where the copying was done other than in the place of business of the solicitor, it is to be shown as an outlay.

(3) The account of expenses must specify—

- (a) the purpose of the copying;
- (b) the number of copies made;
- (c) the amount of the charge or outlay that the solicitor proposes should be allowed.

(4) The auditor of court is only to allow a charge or outlay if the auditor determines that—

- (a) the copying had to be done in circumstances which were in some way exceptional;
- (b) the documents which required to be copied were unusually numerous having regard to the nature of the appeal.

(5) Where the auditor allows a charge or outlay, the auditor is to allow an amount that the auditor considers reasonable in the circumstances.

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(a) Section 25A was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 24, and amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), Schedule 4, paragraph 31, the Constitutional Reform Act 2005 (c. 4), Schedule 9, paragraph 32(3), the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), schedule 5, paragraph 1(5), the Enterprise and Regulatory Reform Act 2013 (c. 24), Schedule 6, paragraph 10, S.I. 1999/1042 and S.S.I. 2000/121.

(b) S.S.I. 2015/356.

### **Travel time**

8. Where a charge for travel time is included in an account of expenses, the auditor is only to allow it on cause shown.

### **Employment of advocate or solicitor advocate**

9.—(1) This paragraph applies where the Court has sanctioned work in an appeal as suitable for the employment of counsel.

(2) Where an advocate or a solicitor advocate is instructed, the auditor is to allow—

- (a) the reasonable fees of an advocate or a solicitor advocate for doing that work; and
- (b) the applicable fees for instructing an advocate or a solicitor advocate.

(3) Where a consultation is reasonably required in relation to that work, the auditor may allow—

- (a) the reasonable fees of an advocate or a solicitor advocate for the consultation;
- (b) the applicable fees for attending a consultation.

(4) Except on cause shown, the auditor may only allow fees under paragraph (3) in respect of one consultation in the course of the appeal.

(5) Where a solicitor advocate is not instructed by another solicitor, the auditor is not to allow the fees mentioned in subparagraphs (2)(b) and (3)(b).

### **Disallowance of expenses**

10.—(1) At taxation, the auditor may only allow expenses if they are reasonable for conducting the appeal in a proper manner.

(2) The auditor is to disallow any expenses—

- (a) that the auditor considers to be unnecessary;
- (b) in relation to any part of the appeal where the party entitled to expenses was unsuccessful;
- (c) where any part of the expenses have been incurred through the fault of the party entitled to them.

### **Inclusive fees: modification by auditor**

11. Where an account of expenses is prepared on the basis of Schedule 2 (inclusive fees), the auditor may increase or reduce any fee if the auditor thinks it appropriate to do so.

*CJM Sutherland*  
Lord Justice Clerk  
I.P.D.

Edinburgh  
17th November 2015

**SCHEDULE 1**  
**DETAILED FEES**

Paragraph 4(1)(a)

£

**Time charges**

1. Attendance at court conducting any hearing, per quarter hour	39.00
2. Any other attendances with clients and others and at court except as otherwise provided—	
(a) by solicitor, per quarter hour	39.00
(b) by clerk, per quarter hour	19.50
3. Travel time, per quarter hour	35.00
4. Considering any document, per quarter hour	39.00

**Documents**

5. Preparation of all necessary documents (except affidavits), per sheet	19.50
6. Preparation of affidavits, per sheet	39.00
7. Certifying or signing a document	9.75
8. Revising documents (where revisal ordered), per five sheets	9.75

**Lodging in and borrowing from process**

9. Making up and lodging the process	19.50
10. Lodging each necessary document in process	9.75
11. Borrowing from process, where necessary	9.75
12. Uplifting from process, where necessary	9.75

**Note:**

The fee in paragraph 11 includes returning the borrowed item to the process.

**Correspondence**

13. Letters (except formal letters), per page	19.50
14. Formal letters	4.88
15. Telephone calls (except lengthy telephone calls)	9.75
16. Lengthy telephone calls, per quarter hour	39.00

**Note:**

For the purposes of paragraph 16, the auditor is to determine whether a

telephone call is lengthy. £

**Sheriff officers and extracts**

17. Accepting intimation of any appeal or application	19.50
18. Instructing sheriff officer to give intimation or to execute diligence	9.75
19. For each additional party on whom intimation is simultaneously made	9.75
20. Ordering, procuring and examining any extract	39.00

**Note:**

The fee in paragraph 18 includes examining the execution of intimation or diligence.

**SCHEDULE 2**  
**INCLUSIVE FEES**

Paragraph 4(1)(b)

**PART 1**

**APPEALS UNDER THE STANDARD APPEAL PROCEDURE OR THE  
ACCELERATED APPEAL PROCEDURE**

£

**Initiation of appeal**

1. All work (except appearances) up to appointment of appeal to standard appeal procedure or accelerated appeal procedure—

(a) fee for appellant	390.00
(b) fee for respondent	195.00

**Cross appeals**

2. Preparing and lodging—

(a) grounds of appeal	156.00
(b) answers to grounds of appeal	156.00

3. Considering opponent's grounds of appeal or answers to grounds of appeal

78.00

**Referral of questions about competency of appeal**

4. Preparing and lodging reference	156.00
5. Considering opponent's reference	78.00
6. Preparing and lodging note of argument	156.00

**Lodging documents prior to procedural hearing**

7. Lodging all necessary documents (except appendix) as required by the timetable	156.00
8. Preparing or revising appendix, per 50 pages	97.50

**Conduct of and attendance at hearings**

9. Conducting any hearing, per quarter hour	39.00
10. Attending any hearing (where advocate or solicitor advocate is instructed to conduct hearing), per quarter hour	35.00

**Note:**

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Paragraphs 9 and 10 do not apply where any other paragraph in this Part specifies that it includes initial attendance at court, unless that hearing is continued.

### **Preparation for appeal hearing**

11. Preparing for appeal hearing (including instruction of advocate or a solicitor advocate to conduct the hearing) 156.00

### **Motions and minutes**

12. Preparing and lodging any written motion or minute, including initial attendance at court to conduct hearing—

(a) where opposed 195.00

(b) where unopposed 78.00

13. Considering opponent's written motion or minute, including initial attendance at court to conduct hearing—

(a) where opposed 195.00

(b) where unopposed 78.00

### **Amendment of pleadings**

14. Preparing and lodging motion to amend 156.00

15. Considering opponent's motion to amend 117.00

16. Preparing and lodging opposition to motion 78.00

17. Considering opponent's opposition to motion 78.00

### **Withdrawal of solicitors**

18. All work preparing for a preemptory hearing fixed under rule 17.3(1), including initial attendance at court to conduct preemptory hearing 156.00

### **Expenses**

19. Preparing and lodging account of expenses 234.00

20. Conducting taxation hearing, per quarter hour 39.00

### **Extracts**

21. Ordering and obtaining an extract 58.50

### **Instruction of advocate or solicitor advocate**

22. Instructing advocate or solicitor advocate to revise pleadings 58.50

	£
<b>23.</b> Instructing advocate or solicitor advocate to attend court to conduct a hearing	195.00
<b>24.</b> Attending consultation with advocate or solicitor advocate	
(a) where total time engaged does not exceed one hour	195.00
(b) for each additional quarter hour	39.00

**PART 2**  
**APPLICATIONS FOR NEW TRIAL OR TO ENTER JURY VERDICT**

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**Initiation of application**

- |                                                            |        |
|------------------------------------------------------------|--------|
| 1. All work (except appearances) up to issue of timetable— |        |
| (a) fee for applicant                                      | 390.00 |
| (b) fee for respondent                                     | 195.00 |

**Referral of questions about competency of application**

- |                                           |        |
|-------------------------------------------|--------|
| 2. Preparing and lodging reference        | 156.00 |
| 3. Considering opponent's reference       | 78.00  |
| 4. Preparing and lodging note of argument | 156.00 |

**Lodging documents prior to procedural hearing**

- |                                                                                   |        |
|-----------------------------------------------------------------------------------|--------|
| 5. Lodging all necessary documents (except appendix) as required by the timetable | 156.00 |
| 6. Preparing or revising appendix, per 50 pages                                   | 97.50  |

**Conduct of and attendance at hearings**

- |                                                                                                                    |       |
|--------------------------------------------------------------------------------------------------------------------|-------|
| 7. Conducting any hearing, per quarter hour                                                                        | 39.00 |
| 8. Attending any hearing (where advocate or solicitor advocate is instructed to conduct hearing), per quarter hour | 35.00 |

**Note:**

Paragraphs 7 and 8 do not apply where any other paragraph in this Part specifies that it includes initial attendance at court, unless that hearing is continued.

**Preparation for hearing required to dispose of application**

- |                                                                                                                                                 |        |
|-------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 9. Preparing for hearing required to dispose of application (including instruction of advocate or a solicitor advocate to conduct the hearing). | 156.00 |
|-------------------------------------------------------------------------------------------------------------------------------------------------|--------|

**Motions and minutes**

- |                                                                                                                   |        |
|-------------------------------------------------------------------------------------------------------------------|--------|
| 10. Preparing and lodging any written motion or minute, including initial attendance at court to conduct hearing— |        |
| (a) where opposed                                                                                                 | 195.00 |
| (b) where unopposed                                                                                               | 78.00  |

	£
<b>11. Considering opponent's written motion or minute, including initial attendance at court to conduct hearing—</b>	
(a) where opposed	195.00
(b) where unopposed	78.00
<b>Amendment of pleadings</b>	
<b>12. Preparing and lodging motion to amend</b>	156.00
<b>13. Considering opponent's motion to amend</b>	117.00
<b>14. Preparing and lodging opposition to motion</b>	78.00
<b>15. Considering opponent's opposition to motion</b>	78.00
<b>Withdrawal of solicitors</b>	
<b>16. All work preparing for a peremptory hearing fixed under rule 17.3(1), including initial attendance at court to conduct peremptory hearing</b>	156.00
<b>Expenses</b>	
<b>17. Preparing and lodging account of expenses</b>	234.00
<b>18. Conducting taxation hearing, per quarter hour</b>	39.00
<b>Extracts</b>	
<b>19. Ordering and obtaining an extract</b>	58.50
<b>Instruction of advocate or solicitor advocate</b>	
<b>20. Instructing advocate or solicitor advocate to revise pleadings</b>	58.50
<b>21. Instructing advocate or solicitor advocate to attend court to conduct a hearing</b>	195.00
<b>22. Attending consultation with advocate or solicitor advocate</b>	
(a) where total time engaged does not exceed one hour	195.00
(b) for each additional quarter hour	39.00

**PART 3**  
**APPEALS FROM SUMMARY CAUSES AND SMALL CLAIMS**

£

**Preparation for hearing required to dispose of appeal**

1. Preparing for hearing under rule 29.4 (including instruction of advocate or a solicitor advocate to conduct the hearing) 156.00

**Conduct of and attendance at hearings**

2. Conducting any hearing, per quarter hour 39.00

3. Attending any hearing (where advocate or solicitor advocate is instructed to conduct hearing), per quarter hour 35.00

**Note:**

Paragraphs 2 and 3 do not apply where any other paragraph in this Part specifies that it includes initial attendance at court, unless that hearing is continued.

**Motions and minutes**

4. Preparing and lodging any written motion or minute, including initial attendance at court to conduct hearing—

(a) where opposed 195.00

(b) where unopposed 78.00

5. Considering opponent's written motion or minute, including initial attendance at court to conduct hearing—

(a) where opposed 195.00

(b) where unopposed 78.00

**Withdrawal of solicitors**

6. All work preparing for a preemptory hearing fixed under rule 17.3(1), including initial attendance at court to conduct preemptory hearing 156.00

**Expenses**

7. Preparing and lodging account of expenses 234.00

8. Conducting taxation hearing, per quarter hour 39.00

**Extracts**

9. Ordering and obtaining an extract 58.50

£

**Instruction of advocate or solicitor advocate**

<b>10.</b> Instructing advocate or solicitor advocate to attend court to conduct a hearing	195.00
<b>11.</b> Attending consultation with advocate or solicitor advocate	
(a) where total time engaged does not exceed one hour	195.00
(b) for each additional quarter hour	39.00

## **EXPLANATORY NOTE**

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

This Act of Sederunt regulates the taxation of accounts of expenses between parties in relation to proceedings in the Sheriff Appeal Court.

Paragraph 4 provides that an account of expenses may be prepared either on the basis of the detailed fees set out in Schedule 1, or on the basis of the inclusive fees set out in Schedule 2.

Paragraphs 5 and 6 respectively provide that reasonably incurred outlays and VAT may be included in an account.

Paragraph 7 sets out the procedure to be followed where a solicitor wishes to include a charge for the copying of documents in an account.

Paragraph 8 provides that a charge for travel time is only to be allowed by the auditor on cause shown.

Paragraph 9 regulates the allowance of fees of advocates and solicitor advocates as outlays.

Paragraph 10 sets out the principles to be applied by the auditor in taxing an account.

Paragraph 11 enables the auditor to modify fees where an account has been prepared on the basis of the inclusive fees set out in Schedule 2.

Schedule 1 specifies the charges that may be included in an account if it is prepared on a detailed fee basis.

Schedule 2 specifies the charges that may be included in an account if it is prepared on an inclusive fee basis. The fees in Part 1 apply to appeals under the standard appeal procedure or the accelerated appeal procedure. Special provision is made in Parts 2 and 3 for certain special appeal proceedings: Part 2 applies to applications for a new trial or to enter a jury verdict, and Part 3 applies to appeals from summary causes and small claims.

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