

2017 No. 52

COURT OF SESSION

SHERIFF COURT

**Act of Sederunt (Rules of the Court of Session 1994 and
Ordinary Cause Rules 1993 Amendment) (Pursuers' Offers)
2017**

<i>Made</i>	- - - -	<i>28th February 2017</i>
<i>Laid before the Scottish Parliament</i>		<i>2nd March 2017</i>
<i>Coming into force</i>	- -	<i>3rd April 2017</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 with such modification as it thinks appropriate.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 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) (Pursuers' Offers) 2017.

(2) It comes into force on 3rd April 2017.

(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 34 (reports to Inner House), insert—

(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. 2017/26.

**“CHAPTER 34A(a)
PURSUERS’ OFFERS**

Interpretation of this Chapter

34A.1. In this Chapter—

“appropriate date” means the date by which a pursuer’s offer could reasonably have been accepted;

“fees” means fees of solicitors, and includes any additional fee;

“pursuer’s offer” means an offer by a pursuer to settle a claim against a defender made in accordance with this Chapter;

“relevant period” means the period from the appropriate date to the date of acceptance of the pursuer’s offer or, as the case may be, to the date on which judgment was given, or on which the verdict was applied.

Pursuers’ offers

34A.2.—(1) A pursuer’s offer may be made in any cause where the summons includes a conclusion for an order for payment of a sum or sums of money, other than an order—

- (a) which the court may not make without evidence; or
- (b) the making of which is dependent on the making of another order which the court may not make without evidence.

(2) This Chapter has no effect as regards any other form of offer to settle.

Making of offer

34A.3.—(1) A pursuer’s offer is made by lodging in process an offer in the terms specified in rule 34A.4.

(2) A pursuer’s offer may be made at any time before—

- (a) the court makes avizandum or, if it does not make avizandum, gives judgment; or
- (b) in a jury trial, the jury retires to consider the verdict.

(3) A pursuer’s offer may be withdrawn at any time before it is accepted by lodging in process a minute of withdrawal.

Form of offer

34A.4. A pursuer’s offer must—

- (a) state that it is made under this Chapter;
- (b) offer to accept—
 - (i) a sum or sums of money, inclusive of interest to the date of the offer; and
 - (ii) the taxed expenses of process; and
- (c) specify the conclusion or conclusions of the summons in satisfaction of which the sum or sums and expenses referred to in paragraph (b) would be accepted.

Disclosure of offers

34A.5.—(1) No averment of the fact that a pursuer’s offer has been made may be included in any pleadings.

(a) The rules previously comprising Chapter 34A were revoked by S.I. 1996/2769.

- (2) Where a pursuer's offer has not been accepted—
 - (a) the court must not be informed that an offer has been made until—
 - (i) the court has pronounced judgment; or
 - (ii) in the case of a jury trial, the jury has returned its verdict; and
 - (b) a jury must not be informed that an offer has been made until it has returned its verdict.

Acceptance of offers

34A.6.—(1) A pursuer's offer may be accepted any time before—

- (a) the offer is withdrawn;
- (b) the court makes avizandum or, if it does not make avizandum, gives judgment; or
- (c) in the case of a jury trial, the jury retires to consider its verdict.

(2) It is accepted by lodging in process an acceptance of the offer in the form of a minute of acceptance.

(3) A minute of acceptance must be unqualified other than as respects any question of contribution, indemnity or relief.

(4) On acceptance of a pursuer's offer either the pursuer or the defender may apply by motion for decree in terms of the offer and minute of acceptance.

(5) Where a pursuer's offer includes an offer to accept a sum of money in satisfaction of a conclusion for decree jointly and severally against two or more defenders, the offer is accepted only when accepted by all such defenders.

(6) However, the court may, on the motion of the pursuer, and with the consent of any defender who has lodged a minute of acceptance, grant decree in terms of the offer and minute of acceptance.

Late acceptance of offers

34A.7.—(1) This rule applies to the determination of a motion under rule 34A.6(4) where the court is satisfied that a defender lodged a minute of acceptance after the appropriate date.

(2) On the pursuer's motion the court must, except on cause shown—

- (a) allow interest on any sum decerned for from the date on which the pursuer's offer was made; and
- (b) find the defender liable for payment to the pursuer of a sum calculated in accordance with rule 34A.9.

(3) Where the court is satisfied that more than one defender lodged a minute of acceptance after the appropriate date the court may find those defenders liable to contribute to payment of the sum referred to in paragraph (2)(b) in such proportions as the court thinks fit.

(4) Where the court makes a finding under paragraph (2)(b), the pursuer may apply for decerniture for payment of the sum as so calculated no later than 21 days after the later of—

- (a) the date of the Auditor's report of the taxation of the pursuer's account of expenses; and
- (b) the date of the interlocutor disposing of a note of objection.

Non-acceptance of offers

34A.8.—(1) This rule applies where—

- (a) a pursuer's offer has been made, and has not been withdrawn;

- (b) the offer has not been accepted;
- (c) either—
 - (i) the court has pronounced judgment; or
 - (ii) in the case of a jury trial, the verdict of the jury has been applied;
- (d) the judgment or verdict, in so far as relating to the conclusions of the summons specified in the pursuer’s offer, is at least as favourable in money terms to the pursuer as the terms offered; and
- (e) the court is satisfied that the pursuer’s offer was a genuine attempt to settle the proceedings.

(2) For the purpose of determining if the condition specified in paragraph (1)(d) is satisfied, interest awarded in respect of the period after the lodging of the pursuer’s offer is to be disregarded.

(3) On the pursuer’s motion the court must, except on cause shown, decern against the defender for payment to the pursuer of a sum calculated in accordance with rule 34A.9.

(4) No such motion may be enrolled after the expiry of 21 days after the later of—

- (a) the date of the Auditor’s report of the taxation of the pursuer’s account of expenses; and
- (b) the date of the interlocutor disposing of a note of objection.

(5) Where more than one defender is found liable to the pursuer in respect of a conclusion specified in the offer, the court may find those defenders liable to contribute to payment of the sum referred to in paragraph (3) in such proportions as it thinks fit.

Extent of defender’s liability

34A.9. The sum that may be decerned for under rule 34A.7(2)(b) or rule 34A.8(3) is a sum corresponding to half the fees allowed on taxation of the pursuer’s account of expenses, in so far as those fees are attributable to the relevant period, or in so far as they can reasonably be attributed to that period.”

Amendment of the Ordinary Cause Rules 1993

- 3.—(1) The Ordinary Cause Rules 1993(a) are amended in accordance with this paragraph.
- (2) After Chapter 27 (caution and security), insert—

**“CHAPTER 27A
PURSUERS’ OFFERS**

Interpretation of this Chapter

27A.1. In this Chapter—

- “appropriate date” means the date by which a pursuer’s offer could reasonably have been accepted;
- “fees” means fees of solicitors, and includes any additional fee;
- “pursuer’s offer” means an offer by a pursuer to settle a claim against a defender made in accordance with this Chapter;

(a) 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. 2016/415.

“relevant period” means the period from the appropriate date to the date of acceptance of the pursuer’s offer or, as the case may be, to the date on which judgment was given, or on which the verdict was applied.

Pursuers’ offers

27A.2.—(1) A pursuer’s offer may be made in any cause where the initial writ includes a crave for an order for payment of a sum or sums of money, other than an order—

- (a) which the sheriff may not make without evidence; or
- (b) the making of which is dependent on the making of another order which the sheriff may not make without evidence.

(2) This Chapter has no effect as regards any other form of offer to settle.

Making of offer

27A.3.—(1) A pursuer’s offer is made by lodging in process an offer in the terms specified in rule 27A.4.

(2) A pursuer’s offer may be made at any time before—

- (a) the sheriff makes avizandum or, if the sheriff does not make avizandum, gives judgment; or
- (b) in a jury trial, the jury retires to consider the verdict.

(3) A pursuer’s offer may be withdrawn at any time before it is accepted by lodging in process a minute of withdrawal.

Form of offer

27A.4. A pursuer’s offer must—

- (a) state that it is made under this Chapter;
- (b) offer to accept—
 - (i) a sum or sums of money, inclusive of interest to the date of the offer; and
 - (ii) the taxed expenses of process; and
- (c) specify the crave or craves of the initial writ in satisfaction of which the sum or sums and expenses referred to in paragraph (b) would be accepted.

Disclosure of offers

27A.5.—(1) No averment of the fact that a pursuer’s offer has been made may be included in any pleadings.

(2) Where a pursuer’s offer has not been accepted—

- (a) the sheriff must not be informed that an offer has been made until—
 - (i) the sheriff has pronounced judgment; or
 - (ii) in the case of a jury trial, the jury has returned its verdict; and
- (b) a jury must not be informed that an offer has been made until it has returned its verdict.

Acceptance of offers

27A.6.—(1) A pursuer’s offer may be accepted any time before—

- (a) the offer is withdrawn;
- (b) the sheriff makes avizandum or, if the sheriff does not make avizandum, gives judgment; or

(c) in the case of a jury trial, the jury retires to consider its verdict.

(2) A pursuer's offer is accepted by lodging in process an acceptance of the offer in the form of a minute of acceptance.

(3) A minute of acceptance must be unqualified other than as respects any question of contribution, indemnity or relief.

(4) On acceptance of a pursuer's offer either the pursuer or the defender may apply by motion for decree in terms of the offer and minute of acceptance.

(5) Where a pursuer's offer includes an offer to accept a sum of money in satisfaction of a crave for decree jointly and severally against two or more defenders, the offer is accepted only when accepted by all such defenders.

(6) However, the sheriff may, on the motion of the pursuer, and with the consent of any defender who has lodged a minute of acceptance, grant decree in terms of the offer and minute of acceptance.

Late acceptance of offers

27A.7.—(1) This rule applies to the determination of a motion under rule 27A.6(4) where the sheriff is satisfied that a defender lodged a minute of acceptance after the appropriate date.

(2) On the pursuer's motion the sheriff must, except on cause shown—

(a) allow interest on any sum decerned for from the date on which the pursuer's offer was made; and

(b) find the defender liable for payment to the pursuer of a sum calculated in accordance with rule 27A.9.

(3) Where the sheriff is satisfied that more than one defender lodged a minute of acceptance after the appropriate date the sheriff may find those defenders liable to contribute to payment of the sum referred to in paragraph (2)(b) in such proportions as the sheriff thinks fit.

(4) Where the sheriff makes a finding under paragraph (2)(b), the pursuer may apply for decerniture for payment of the sum as so calculated no later than the granting of decree for expenses as taxed.

Non-acceptance of offers

27A.8.—(1) This rule applies where—

(a) a pursuer's offer has been made, and has not been withdrawn;

(b) the offer has not been accepted;

(c) either—

(i) the sheriff has pronounced judgment; or

(ii) in the case of a jury trial, the verdict of the jury has been applied;

(d) the judgment or verdict, in so far as relating to the craves specified in the pursuer's offer, is at least as favourable in money terms to the pursuer as the terms offered; and

(e) the sheriff is satisfied that the pursuer's offer was a genuine attempt to settle the proceedings.

(2) For the purpose of determining if the condition specified in paragraph (1)(d) is satisfied, interest awarded in respect of the period after the lodging of the pursuer's offer is to be disregarded.

(3) On the pursuer's motion the sheriff must, except on cause shown, decern against the defender for payment to the pursuer of a sum calculated in accordance with rule 27A.9.

(4) Such a motion must be lodged no later than the granting of decree for expenses as taxed.

(5) Where more than one defender is found liable to the pursuer in respect of a crave specified in the offer, the sheriff may find those defenders liable to contribute to payment of the sum referred to in paragraph (3) in such proportions as the sheriff thinks fit.

Extent of defender's liability

27A.9. The sum that may be decerned for under rule 27A.7(2)(b) or rule 27A.8(3) is a sum corresponding to half the fees allowed on taxation of the pursuer's account of expenses, in so far as those fees are attributable to the relevant period, or in so far they can reasonably be attributed to that period.”.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
28th February 2017

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session 1994 and the Ordinary Cause Rules 1993 by inserting rules that provide for a formal system of pursuers' offers.

A pursuer's offer can be made in any case in which the summons or initial writ includes a pecuniary conclusion or crave, other than a conclusion or crave that cannot be granted without evidence. The offer, which is lodged in process, must offer to accept a sum or sums of money, inclusive of interest to the date of the offer, along with the taxed expenses of process. It must also specify the conclusions or craves in satisfaction of which the sum or sums would be accepted.

A pursuer's offer is accepted by lodging a minute of acceptance in process. The acceptance must be unqualified other than as regards any question of contribution, indemnity or relief. On the acceptance of an offer, either party may apply by motion for decree in terms of the offer and acceptance. Where the offer relates to a conclusion or crave for decree against more than one defender, it is only accepted when accepted by all such defenders, but the pursuer may nevertheless seek decree against an accepting defender, with the consent of that defender, although the offer has not been accepted by all defenders.

Where an offer is accepted, and the court is satisfied that it was accepted later than it could reasonably have been accepted, the rules provide for the defender to be found liable for interest on the principal sum from the date of the offer, and for payment of an additional sum to the pursuer.

The rules also provide for the defender to be found liable for payment of an additional sum to the pursuer where an offer is not accepted, where the judgement or verdict is at least as favourable to the pursuer as the terms offered, and where the court is satisfied that the offer was a genuine attempt to settle.

The additional sum for which the defender is found liable in these circumstances is calculated by reference to the pursuer's taxed expenses, being a sum corresponding to half the fees allowed on taxation that are attributable to the period following the making of the offer.

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