
SCOTTISH STATUTORY INSTRUMENTS

2019 No. 75

Act of Sederunt (Taxation of Judicial Expenses Rules) 2019

CHAPTER 4

OUTLAYS

Application

4.1. This Chapter applies for the purpose of determining the outlays incurred by, or on behalf of, the entitled party that are to be allowed at taxation.

Allowance of outlays

4.2. Subject to rules 4.3 to 4.5, outlays reasonably incurred in order to conduct the proceedings in a proper manner are to be allowed.

Fees of counsel in the sheriff court or Sheriff Appeal Court

4.3.—(1) This rule applies to the taxation of accounts of expenses relating to proceedings in the sheriff court or Sheriff Appeal Court.

(2) No fees are to be allowed for the work of counsel unless the proceedings, or particular work involved in the conduct of the proceedings, have been sanctioned as suitable for the employment of counsel in accordance with rule 5.4 (sanction for the employment of counsel in the sheriff court and Sheriff Appeal Court).

(3) Where particular work has been sanctioned as suitable for the employment of counsel the Auditor is to allow the reasonable fees of counsel for—

- (a) doing that work, and
- (b) subject to paragraph (6), consultations reasonably required in relation to that work.

(4) Where the proceedings have been sanctioned as suitable for the employment of counsel—

- (a) it is for the Auditor to determine the work in relation to which it was reasonable for counsel to be instructed;
- (b) subject to sub-paragraph (c), the Auditor is to allow the reasonable fees of counsel for carrying out that work;
- (c) subject to paragraph (3), no fees are to be allowed for work carried out before the date on which sanction was granted unless the proceedings are—
 - (i) proceedings subject to Chapter 36 of the Ordinary Cause Rules 1993⁽¹⁾;
 - (ii) a simple procedure case; or
 - (iii) proceedings in the Sheriff Appeal Court.

⁽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.

(5) In the determination of reasonable fees for the purposes of paragraphs (3) and (4), the Auditor must disregard the fact that counsel who carried out the work was senior counsel unless the proceedings, or the particular work, have been sanctioned as suitable for the employment of senior counsel.

(6) Except on cause shown, the Auditor is to allow fees for only two consultations in the course of proceedings.

(7) In this rule, references to fees of counsel for carrying out work include, where appropriate in the case of proofs, trials or other hearings that do not proceed, fees reflecting counsel's inability to accept alternative commitments.

Fees of solicitor advocates in the Court of Session

4.4. Where a solicitor advocate exercises a right of audience in the Court of Session, the Auditor is to allow such fee for each item of work done by the solicitor advocate in the exercise of the right of audience as the Auditor would allow to an advocate for an equivalent item of work.

Skilled persons

4.5.—(1) No charge incurred to a person who has been engaged for the purposes of the application of that person's skill is to be allowed as an outlay unless—

- (a) the person has been certified as a skilled person in accordance with rule 5.3 (certification of skilled persons); and
- (b) except where paragraph (4) applies, the charge relates to work done, or expenses incurred, after the date of certification.

(2) Where a person has been so certified, the Auditor is to allow charges for work done or expenses reasonably incurred by that person which were reasonably required for a purpose in connection with the proceedings, or in contemplation of the proceedings.

(3) The charges to be allowed under paragraph (2) are such charges as the Auditor determines to be fair and reasonable.

(4) This paragraph applies where—

- (a) the account relates to—
 - (i) proceedings subject to Chapter 43 of the Rules of the Court of Session 1994;
 - (ii) proceedings subject to Chapter 36 of the Ordinary Cause Rules 1993; or
 - (iii) a simple procedure case; or
- (b) the sheriff has determined in accordance with rule 5.3(5) that the certification has effect for the purposes of work done, or expenses incurred, before the date of certification.

Witnesses

4.6.—(1) Payments relating to the attendance of a witness at a proof or trial, when the witness is not called to give evidence, are to be allowed as an outlay only where the court has granted a motion certifying the witness as being in attendance.

(2) Payments to witnesses are to be aggregated in the account as a single outlay, and the details of the payments are to be entered in a separate schedule appended to the account.

(3) Receipts and vouchers for all payments claimed are to be produced to the paying party prior to the taxation, and to the Auditor if the Auditor so requires.