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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 226**

**Act of Sederunt (Rules of the Court of Session 1994,  
Sheriff Appeal Court Rules and Sheriff Court Rules  
Amendment) (Qualified One-Way Costs Shifting) 2021**

**Amendment of the Summary Cause Rules 2002**

- 6.—(1) The Summary Cause Rules 2002<sup>(1)</sup> are amended in accordance with this paragraph.  
(2) After Chapter 23 (decrees, extracts, execution and variation)<sup>(2)</sup> insert—

**“CHAPTER 23A**

**QUALIFIED ONE-WAY COSTS SHIFTING**

**Application and interpretation of this Chapter**

**23A.1.**—(1) This Chapter applies in civil proceedings, where either or both—

- (a) an application for an award of expenses is made to the sheriff;
- (b) such an award is made by the sheriff.

(2) Where this Chapter applies—

- (a) rules 21.1(2) to (4) (abandonment of action);
- (b) any common law rule entitling a pursuer to abandon an action, to the extent that it concerns expenses,

are disapplied.

(3) Where the sheriff would be entitled to make an award of expenses, and before expenses are dealt with in terms of rules 23.3 (expenses)<sup>(3)</sup>, 23.3A (taxation)<sup>(4)</sup> and 23.3B (objections to auditor’s report), the sheriff is to have regard to rules 23A.2 and 23A.3.

(4) In this Chapter—

“the Act” means the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018<sup>(5)</sup>;

“the applicant” has the meaning given in rule 23A.2(1), and “applicants” is construed accordingly;

“civil proceedings” means civil proceedings to which section 8 of the Act (restriction on pursuer’s liability for expenses in personal injury claims) applies.

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(1) The Summary Cause Rules are in schedule 1 of the Act of Sederunt (Summary Cause Rules) 2002 (S.S.I. 2002/132), last amended by S.S.I. 2017/186.  
(2) Chapter 23 was last amended by S.S.I. 2015/419.  
(3) Rule 23.3 was last amended by S.S.I. 2015/419.  
(4) Rules 23.3A and 23.3B were inserted by S.S.I. 2002/516.  
(5) 2018 asp 10.

### **Application for an award of expenses**

**23A.2.**—(1) Where proceedings have been brought by a pursuer, another party to the action (“the applicant”) may make an application to the sheriff for an award of expenses to be made against the pursuer, on one or more of the grounds specified in either or both—

- (a) section 8(4)(a) to (c) of the Act;
- (b) paragraph (2) of this rule.

(2) The grounds specified in this paragraph, which are exceptions to section 8(2) of the Act, are as follows—

- (a) failure by the pursuer to obtain an award of damages greater than the sum offered by way of a tender lodged in process;
- (b) unreasonable delay on the part of the pursuer in accepting a sum offered by way of a tender lodged in process;
- (c) abandonment of the action by the pursuer in terms of rule 21.1, or at common law.

### **Award of expenses**

**23A.3.**—(1) Subject to paragraph (2), the determination of an application made under rule 23A.2(1) is at the discretion of the sheriff.

(2) Where, having determined an application made under rule 23A.2(1), the sheriff makes an award of expenses against the pursuer on the ground specified in either rule 23A.2(2)(a) or (b)—

- (a) the pursuer’s liability is not to exceed the amount of expenses the applicant has incurred after the date of the tender;
- (b) the liability of the pursuer to the applicant, or applicants, lodging the tender is to be limited to an aggregate sum, payable to all applicants (if more than one) of 75% of the amount of damages awarded to the pursuer and that sum is to be calculated without offsetting against those expenses any expenses due to the pursuer by the applicant, or applicants, before the date of the tender;
- (c) the sheriff is to order that the pursuer’s liability is not to exceed the sum referred to in sub-paragraph (b), notwithstanding that any sum assessed by the Sheriff Clerk, or by the Auditor of Court as payable under the tender procedure may be greater;
- (d) where the award of expenses is in favour of more than one applicant the sheriff, failing agreement between the applicants, is to apportion the award of expenses recoverable under the tender procedure between them.

(3) In the event that the sheriff makes an award of expenses against the pursuer on the ground other than that specified in rule 23A.2(2)(c), the sheriff may make such orders in respect of expenses, as it considers appropriate, including—

- (a) making an award of decree of dismissal dependant on payment of expenses by the pursuer within a specified period of time;
- (b) provision for the consequences of failure to comply with any conditions applied by the court.

### **Procedure**

**23A.4.**—(1) An application under rule 23A.2(1)—

- (a) is to be made by incidental application, in writing, and Chapter 9 (incidental applications and sists) otherwise applies to incidental applications under this Chapter;

- (b) may be made at any stage in the case prior to assessment of the amount of expenses to be awarded in the cause, in terms of rule 23.3, an order for an account of expenses to be taxed in terms of rule 23.3A or a finding by the sheriff that expenses in the cause are to be awarded as not due to or by any party.
- (2) Where an application under rule 23A.2(1) is made, the sheriff may make such orders as the sheriff thinks fit for dealing with the application, including an order—
  - (a) requiring the applicant to intimate the application to any other person;
  - (b) requiring any party to lodge a written response;
  - (c) requiring the lodging of any document;
  - (d) fixing a hearing.

#### **Award against legal representatives**

**23A.5.** Section 8(2) of the Act does not prevent the sheriff from making an award of expenses against a pursuer’s legal representative in terms of section 11 (awards of expenses against legal representatives) of the Act.”