SCOTTISH STATUTORY INSTRUMENTS

2016 No. 316

COURT OF SESSION
SHERIFF APPEAL COURT
SHERIFF COURT

Act of Sederunt (Fees of Solicitors and Shorthand Writers in the Court of Session, Sheriff Appeal Court and Sheriff Court Amendment) 2016

Made - - - -	*12th October 2016*
Laid before the Scottish Parliament - - - -	*14th October 2016*
Coming into force - -	*28th November 2016*

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(**1**), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council with such modifications as it thinks appropriate.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by sections 105(1) and 106(1) of the Courts Reform (Scotland) Act 2014(**2**) 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 and Shorthand Writers in the Court of Session, Sheriff Appeal Court and Sheriff Court Amendment) 2016.

(2) It comes into force on 28th November 2016.

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

(**1**) 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)(a).

(**2**) 2014 asp 18.

Amendment of the Act of Sederunt (Fees of Witnesses and Shorthand Writers in the Sheriff Court) 1992

2.—(1) The Act of Sederunt (Fees of Witnesses and Shorthand Writers in the Sheriff Court) 1992(**3**) is amended in accordance with this paragraph.

(2) In schedule 2 (shorthand writers' fees)(**4**)—

(a) in paragraph 1 (attendance), for "£41.75" and "£166.80" substitute "£43.20" and "£172.60" respectively;

(b) in paragraph 4 (transcripts), for "£6.80" and "£8.35" substitute "£7.05" and "£8.65" respectively; and

(c) in paragraph 5 (copies), for "£0.57" substitute "£0.59".

Amendment of the Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993

3.—(1) Schedule 1 of the Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993(**5**) is amended in accordance with this paragraph.

(2) In the General Regulations—

(a) after paragraph 3, insert—

"**3A.** In a simple procedure case, unless the sheriff orders otherwise—

(a) only expenses under Chapter V of the Table of Fees shall be allowed;

(b) where the total value of the claim is £1000 or less, those expenses must be reduced by 50%;

(c) where the total value of the claim is more than £1000 and not more than £2,500, those expenses must be reduced by 25%."; and

(b) after paragraph 7, insert—

"**7A.** The Auditor may increase or reduce an inclusive fee in Chapter II in appropriate circumstances.".

(3) In Chapter II of the Table of Fees, in Part IIA (defended personal injuries actions proceeding under Part AI of Chapter 36 of the ordinary cause rules), for paragraph 2 (pre-litigation fee), substitute—

"**2.**	**Pre-litigation fee**	
(1)	Where the Protocol in Appendix 4 of the Ordinary Cause Rules 1993(**6**) applied to the claim prior to the commencement of proceedings, the sum of—	
	(a)	£546;
	(b)	3.5% of the total amount of any damages awarded, or payable under a settlement, up to £25,000; and
	(c)	such further sum, not exceeding 50% of the sum of (a) and (b), as the Auditor considers to be justified in respect of work undertaken prior to the commencement of proceedings that (i) was not required for the purposes of complying with the

(**3**) S.I. 1992/1878, last amended by S.S.I. 2013/112.
(**4**) Schedule 2 was last amended by S.S.I. 2013/112.
(**5**) S.I. 1993/3080, last amended by S.S.I. 2015/246.
(**6**) Appendix 4 was inserted by S.S.I. 2016/215.

"**2.**	**Pre-litigation fee**	
	Protocol, (ii) involved the sharing of information with the opposing party, and (iii) is not included in any other fee in this Part.	
(2)	In any other case, all work which the Auditor is satisfied has reasonably been undertaken in contemplation of, or preparatory to the commencement of proceedings (or such lesser sum as in the opinion of the Auditor is justified).	624.00
Note: Where the Protocol applied and the Auditor is satisfied that the party found entitled to expenses failed to adhere to its terms in material respects, there may be substituted for the fees specified at paragraph 2(1)(a) and (b) such lesser sum as in the opinion of the Auditor is justified."		

(4) In Chapter IV of the Table of Fees, in Part IIIB (defended actions: personal injury claims commenced on or after 1st March 2014), for paragraph 2 (work before action commences), substitute—

"**2.**	**Work before action commences**	
(1)	Where the Protocol in Appendix 3 of the Summary Cause Rules 2002(**7**) applied to the claim prior to the commencement of proceedings, the sum of—	
	(a) £546;	
	(b) 3.5% of the total amount of any damages awarded, or payable under a settlement; and	
	(c) such further sum, not exceeding 50% of the sum of (a) and (b), as the Auditor considers to be justified in respect of work undertaken prior to the commencement of proceedings that (i) was not required for the purposes of complying with the Protocol, (ii) involved the sharing of information with the opposing party, and (iii) is not included in any other fee in this Part.	
(2)	In any other case, all work which the Auditor is satisfied has reasonably been undertaken in contemplation of, or preparatory to the commencement of proceedings (or such lesser sum as in the opinion of the Auditor is justified).	426.00
Note: Where the Protocol applied and the Auditor is satisfied that the party found entitled to expenses failed to adhere to its terms in material respects, there may be substituted for the fees specified at paragraph 2(1)(a) and (b) such lesser sum as in the opinion of the Auditor is justified."		

(5) After Chapter IV of the Table of Fees (summary causes), insert the chapter in the schedule of this Act of Sederunt(**8**).

(**7**) Appendix 3 was inserted by S.S.I. 2016/215.
(**8**) Provision previously comprising Chapter V of the Table of Fees was revoked by S.I. 1998/2675.

Amendment of the Rules of the Court of Session 1994

4.—(1) The Rules of the Court of Session 1994(**9**) are amended in accordance with this paragraph.

(2) In Chapter IV (transcripts of evidence etc.) of the Table of Fees in rule 42.16(3)(**10**)—

(a) in paragraph 1 (attendance of shorthand writer), for "£41.75" and "£166.80" substitute "£43.20" and "£172.60" respectively; and

(b) in paragraph 2 (notes of evidence: extension by shorthand writer or transcriber), for "£6.80", "£8.35" and "£0.57" substitute "£7.05", "£8.65" and "£0.59" respectively.

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

5.—(1) The Act of Sederunt (Fees of Solicitors in the Sheriff Appeal Court) 2015(**11**) is amended in accordance with this paragraph.

(2) In part 3 of schedule 2 (inclusive fees: appeals from summary causes and small claims)—

(a) in the heading, for "AND SMALL CLAIMS" substitute ", SMALL CLAIMS AND SIMPLE PROCEDURE CASES";

(b) in paragraph 1 after "rule 29.4", insert "(or rule 16.4 of the Simple Procedure Rules(**12**))"; and

(c) in paragraph 9 after "extract", insert "or, in simple procedure, a Decision Form".

Saving

6. Paragraphs 2 and 4 do not affect the fees payable as respects any work carried out before 28th November 2016.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
12th October 2016

(**9**) 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. 2016/315.
(**10**) Chapter IV was last amended by S.S.I. 2013/111.
(**11**) S.S.I. 2015/387.
(**12**) The Simple Procedure Rules are in schedule 1 of the Act of Sederunt (Simple Procedure) 2016 (S.S.I. 2016/200).

SCHEDULE Paragraph 3(5)

CHAPTER V

SIMPLE PROCEDURE

PART 1 – ADMITTED CLAIMS

Column 1		Column 2
Work done		**Fee (£)**
1. Inclusive fee		
All work, including taking instructions, preparing Claim Form, first formal service and applying for a decision.		213.00
2. Formal service		
(a)	Instructing formal service of a party, after first formal service of a party, within the United Kingdom, Isle of Man, Channel Islands or Republic of Ireland.	17.75
(b)	Instructing any formal service, after first formal service of a party, elsewhere.	35.50

PART 2 – DISPUTED CLAIMS

Column 1		Column 2
Work done		**Fee (£)**
1. Before the simple procedure case begins		
All work before the simple procedure case begins, including discussions and correspondence with the other party, exchanges of documentation, etc. *(or such lesser sum as is in the opinion of the sheriff clerk justified)*		213.00
2. Making and responding to a claim		
(a)	Taking instructions, preparing the Claim Form and considering the Response Form.	213.00
(b)	Taking instructions, considering the Claim Form and preparing a Response Form.	213.00
(c)	Where additional respondents are brought in, work incurred by an original party.	142.00
3. Formal service		
(a)	Instructing formal service by post of a party within the United Kingdom, Isle of Man, Channel Islands or Republic of Ireland.	17.75
(b)	Instructing formal service elsewhere.	35.50
(c)	Instructing formal service of a party by sheriff officer, including considering a confirmation of service and paying the sheriff officer.	17.75
(d)	Instructing service by advertisement.	17.75

Column 1		Column 2
4. Attendance at a discussion in court or a case management discussion		
(a)	Preparing for and attendance at a case management discussion (up to the first half hour).	213.00
(b)	Where a case management discussion exceeds half an hour, or for any part of a continued case management discussion, for each quarter hour.	35.50
(c)	Any other attendance ordered by the sheriff (except as otherwise provided for), for each quarter hour.	35.50
(d)	Waiting, for each quarter hour.	32.00
5. Precognitions and reports		
(a)	Taking and drawing precognitions, for each sheet.	71.00
(b)	Perusing a precognition or report prepared by a skilled witness (whether the solicitor is also revising it or not), for each sheet.	35.50
(c)	All work relating to a report ordered to be obtained by the sheriff.	142.00
(d)	Perusing a report ordered to be obtained by the sheriff, for each quarter hour.	32.00
(e)	Framing an affidavit ordered by the court, for each sheet.	35.50
6. Applications		
(a)	Preparing any application (except as otherwise provided for), including sending it to the court and the other party.	71.00
(b)	Considering and returning any application (except as otherwise provided for), including sending it to the court and the other party.	71.00
(c)	Where the sheriff orders a discussion in court to consider the application, preparing for that discussion in court.	35.50
7. Limiting the scope of the hearing		
All work done (except as otherwise provided for) with a view to limiting the scope of the hearing, including agreeing evidence, exchanging documents, precognitions and reports, and agreeing facts and statements not in dispute.		142.00
(or such lesser sum as is in the opinion of the sheriff clerk justified)		
8. Preparing for the hearing		
(a)	Preparing for the hearing (except as otherwise provided for), where the claim is settled not later than 7 days before the hearing.	390.50
(b)	Preparing for the hearing (except as otherwise provided for), in any other case.	461.50
(c)	Preparing for the hearing continued to another day, where that continuation is for more than 6 days.	142.00
(d)	Inspecting the other party's documents, for each quarter hour.	35.50
9. The hearing		

Column 1		Column 2
(a)	Conducting the hearing, for each quarter hour.	35.50
(b)	Waiting, for each quarter hour.	32.00
10. Settlement		
(a)	Negotiating a settlement, including preparing an Incidental Orders Application to give effect to that settlement and any attendance at court required.	248.50
(b)	Additional work done with a view to a settlement, including offering a settlement, whether or not a settlement is agreed. *(or such lesser sum as is in the opinion of the sheriff clerk justified)*	248.50
(c)	Preparing and lodging, or considering a tender.	142.00
(d)	Accepting a tender, including any attendance at court required.	106.50
11. Appeals		
(a)	Taking instructions, preparing the Appeal Form, considering the draft Appeal Report, preparing any notes and sending them to the sheriff.	319.50
(b)	Taking instructions, considering the Appeal Form, considering the draft Appeal Report, preparing any notes and sending them to the sheriff.	319.50
(c)	Conducting the appeal hearing, for each quarter hour.	35.50
12. The decision and expenses		
(a)	Settling with witnesses and noting the Decision Form	159.75
(b)	Preparing an account of expenses, considering notice of expenses as assessed, attending an expenses hearing and all connected work. *(or such lesser sum as is in the opinion of the sheriff clerk justified)*	142.00
(c)	Considering the other party's account of expenses and attending an expenses hearing, for each quarter hour.	35.50

EXPLANATORY NOTE

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

This Act of Sederunt makes various changes to the provisions governing the taxation of accounts of expenses in the sheriff court and Sheriff Appeal Court, and to the rules regulating the fees of shorthand writers.

Paragraphs 2 and 4 amend the fees chargeable by shorthand writers in relation to proceedings in the Court of Session and civil proceedings in the sheriff court.

Paragraphs 3(2)(a) and (5) amend the Table of Fees for proceedings in the sheriff court, and the associated General Regulations, to make provision regarding the charges that can be recovered under a finding of expenses in a simple procedure case for work undertaken by the successful party's solicitor. The provisions apply subject to any applicable limit on expenses.

Paragraph 3(2)(b) amends the General Regulations that accompany the Table of Fees for proceedings in the sheriff court to allow an auditor to increase or reduce an inclusive fee specified in Chapter II of the Table (defended ordinary actions) in appropriate circumstances.

Paragraph 3(3) and (4) amend the Table of Fees for proceedings in the sheriff court by making provision for the pre-litigation fee that is payable under a finding of expenses where the claim was subject to the personal injury pre-action protocol.

Paragraph 5 makes minor amendments to the Table of Fees for proceedings in the Sheriff Appeal Court consequential on the introduction of the simple procedure.