
SCOTTISH STATUTORY INSTRUMENTS

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 Sheriff Appeal Court Rules 2015

4.—(1) The Act of Sederunt (Sheriff Appeal Court Rules) 2015⁽¹⁾ is amended in accordance with this paragraph.

(2) After Chapter 19 (expenses)⁽²⁾ insert—

“CHAPTER 19A

QUALIFIED ONE-WAY COSTS SHIFTING

Application and interpretation of this Chapter

19A.1.—(1) This Chapter applies in civil proceedings, where either or both—

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

(2) Where this Chapter applies—

- (a) rules 9.1(4) and (5) (application to abandon appeal);
- (b) any common law rule entitling a pursuer to abandon an appeal, to the extent that it concerns expenses,

are disapplied.

(3) In this Chapter—

“the Act” means the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018⁽³⁾;

“the applicant” has the meaning given in rule 19A.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.

⁽¹⁾ S.S.I. 2015/356, last amended by S.S.I. 2020/28.

⁽²⁾ Chapter 19 was amended by S.S.I. 2019/74.

⁽³⁾ 2018 asp 10.

Application for an award of expenses

19A.2.—(1) Where civil proceedings have been brought by a pursuer, another party to the action (“the applicant”) may make an application to the Court 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 appeal by the pursuer in terms of rule 9.1(1) to (3), or at common law.

Award of expenses

19A.3.—(1) Subject to paragraph (2), the determination of an application made under rule 19A.2(1) is at the discretion of the court.

(2) Where, having determined an application made under rule 19A.2(1), the Court makes an award of expenses against the pursuer on the ground specified in rule 19A.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, who lodged 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 Court must 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 Auditor of Court as payable under the tender procedure may be greater or, if modifying those expenses to a fixed sum in terms of rule 19.1(2) (taxation of expenses), that such sum does not exceed that referred to in sub-paragraph (b);
- (d) where the award of expenses is in favour of more than one applicant the Court, 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 Court makes an award of expenses against the pursuer on the ground specified in rule 19A.2(2)(c), the Court may make such orders in respect of expenses, subject to such conditions if any, as it considers appropriate.

Procedure

19A.4.—(1) An application under rule 19A.2(1)—

- (a) must be made by motion, in writing, and Chapters 12 (motions: general), 13 (motions lodged by email)⁽⁴⁾ and 14 (motions lodged by other means) otherwise apply to motions made under this Chapter;

(4) Chapter 13 was amended by [S.S.I. 2015/419](#).

- (b) may be made at any stage in the case prior to the granting of an order disposing of the expenses of the appeal.
- (2) Where an application under rule 19A.2(1) is made, the Court may make such orders as it 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

19A.5. Section 8(2) of the Act does not prevent the Court 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.”