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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 468**

**Act of Sederunt (Sheriff Appeal Court Rules) 2021**

**PART 5**

**INCIDENTAL PROCEDURE: STANDARD PROCEDURES**

**CHAPTER 20**

**EXPENSES**

**Taxation of expenses**

**20.1.**—(1) Where the Court makes an award of expenses in any appeal, those expenses must be taxed before decree is granted for them.

(2) This rule does not apply where the Court modifies those expenses to a fixed sum.

**Time for lodging account of expenses**

**20.2.**—(1) A party found entitled to expenses must lodge an account of expenses in process—

- (a) no later than 4 months after the final judgment; or
- (b) at any time with permission of the court, but subject to such conditions, if any, as the Court thinks fit to impose.

(2) Where the account of expenses is lodged by the Scottish Legal Aid Board in reliance on regulation 39(2)(a) of the Civil Legal Aid (Scotland) Regulations 2002 (recovery of expenses)(1), paragraph (1)(a) applies as if the period specified there is 8 months.

(3) In this rule, “final judgment” has the meaning assigned by section 136(1) of the 2014 Act (interpretation).

**Diet of taxation**

**20.3.**—(1) Where an account of expenses is lodged for taxation, the Clerk must transmit the account and the process to the auditor of court.

(2) Subject to paragraph (3), the auditor of court must fix a diet of taxation on receipt of—

- (a) the account of expenses;
- (b) the process;
- (c) vouchers in respect of all outlays claimed in the account, including counsel’s fees; and
- (d) a letter addressed to the auditor of court—
  - (i) confirming that the items referred to in sub-paragraphs (a) and (c) have been intimated to the party found liable in expenses; and

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(1) [S.S.I. 2002/494](#), last amended by [S.S.I. 2021/333](#).

(ii) providing such information as is required to enable the auditor of court to give intimation to the party found liable in expenses in accordance with paragraph (4)(b).

(3) The auditor of court may fix a diet of taxation where paragraph (2)(c) or (d), or both, have not been complied with.

(4) The auditor of court must intimate the diet of taxation to—

- (a) the party found entitled to expenses;
- (b) the party found liable in expenses.

(5) The party found liable in expenses must, no later than 1600 hours on the fourth business day before the diet of taxation, intimate to the auditor of court and to the party found entitled to expenses particular points of objection, specifying each item objected to and stating concisely the nature and ground of objection.

(6) Subject to paragraph (7), if the party found liable in expenses fails to intimate points of objection under paragraph (5) within the time limit set out there, the auditor of court must not take account of them at the diet of taxation.

(7) Where a failure to comply with the requirement contained in paragraph (5) was due to mistake, oversight or other excusable cause, the auditor of court may relieve a party of the consequences of such failure on such conditions, if any, as the auditor thinks fit.

(8) At the diet of taxation, or within such reasonable period of time thereafter that the auditor of court may allow, the party found entitled to expenses must make available to the auditor of court all documents, drafts or copies of such documents sought by the auditor and relevant to the taxation.

(9) In this rule, a “business day” means any day other than a Saturday, Sunday or public or court holiday.

#### **Auditor’s statement**

**20.4.**—(1) The auditor of court must—

- (a) prepare a statement of the amount of expenses as taxed;
- (b) transmit the process, the taxed account and the statement to the Clerk;
- (c) on the day on which the documents referred to in sub-paragraph (b) are transmitted, intimate that fact and the date of the report to each party to whom the auditor intimated the diet of taxation.

(2) The party found entitled to expenses must, within 7 days after the receipt of intimation under paragraph (1)(c), send a copy of the taxed account to the party found liable in expenses.

(3) Where no objections are lodged under rule 20.5(1), the court may grant decree for the expenses as taxed.

#### **Objections to taxed account**

**20.5.**—(1) A party to an appeal who has appeared or been represented at a diet of taxation may object to the auditor of court’s statement by lodging in process a note of objection within 14 days after the date of the statement.

(2) The party lodging a note of objection is referred to in this rule as “the objecting party”.

(3) On lodging the note of objection the objecting party must apply by motion for an order—

- (a) allowing the note to be received;
- (b) allowing a hearing on the note of objection.

(4) On the granting of the order mentioned in paragraph (3), the objecting party must intimate to the auditor of court—

- (a) the note of objection;
- (b) the interlocutor containing the order.

(5) Within 14 days after receipt of intimation of the items mentioned in paragraph (4), the auditor of court must lodge in process a statement of reasons in the form of a minute stating the reasons for the auditor's decision in relation to the items to which objection is taken in the note.

(6) On the lodging of the statement of reasons, the Clerk must fix a hearing on the note of objection.

(7) At the hearing, the Court may—

- (a) sustain or repel any objection in the note of objection or remit the account of expenses to the auditor of court for further consideration;
- (b) find any party liable in the expenses of the procedure on the note of objection.

#### **Decree for expenses in name of solicitor**

**20.6.** The Court may allow a decree for expenses to be extracted in the name of the solicitor who conducted the appeal.

#### **Expenses of curator *ad litem* appointed to a respondent**

**20.7.**—(1) This rule applies where a curator *ad litem* is appointed to any respondent to an appeal.

(2) The appellant is responsible in the first instance for the payment of the expenses of a curator *ad litem* mentioned in paragraph (3).

(3) Those expenses are any fees of the curator *ad litem* and any outlays incurred by the curator from the date of appointment until any of the following steps occur—

- (a) the lodging of a minute stating that the curator does not intend to lodge answers to the note of appeal;
- (b) the lodging of answers by the curator, or the adoption of answers that have already been lodged; or
- (c) the discharge of the curator before either of the steps in sub-paragraphs (a) or (b) occurs.