

2002 No. 516

SHERIFF COURT

Act of Sederunt (Summary Cause Rules) (Amendment) 2002

Made

21st November 2002

Coming into force

1st January 2003

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 32 of the Sheriff Courts (Scotland) Act 1971(a) and of all other powers enabling them in that behalf, having consulted with the Sheriff Court Rules Council and taken into consideration views expressed by the Council in accordance with section 32(3) of that Act, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Summary Cause Rules) (Amendment) 2002 and shall come into force on 1st January 2003.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Amendment of Summary Cause Rules: taxation of accounts

2.—(1) The Act of Sederunt (Summary Cause Rules) 2002(b) shall be amended in accordance with the following paragraphs.

(2) In rule 23.2, for “rule 23.3” there is substituted “rules 23.3, 23.3A and 23.3B”.

(3) In rule 23.3—

(a) in paragraph (1), before “paragraphs” there is inserted “rule 23.3A and”; and

(b) in paragraph (5), for the word “In” there is substituted “Except where an account of expenses is allowed to be taxed under rule 23.3A, in”.

(4) After rule 23.3, there is inserted—

“Taxation

23.3A—(1) Either—

(a) the sheriff, on his own motion or on the motion of any party; or

(b) the sheriff clerk on cause shown,

may allow an account of expenses to be taxed by the auditor of court instead of being assessed by the sheriff clerk under rule 23.3.

(2) Where an account of expenses is lodged for taxation, the account and process shall be transmitted by the sheriff clerk to the auditor of court.

(3) The auditor of court shall—

(a) 1971.c.58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4), the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2) and the Adults with Incapacity (Scotland) Act 2000 (asp 4), Schedule 5, paragraph 13, and was extended by sections 39(2) and 49 of the Child Support Act 1991 (c.48).

(b) S.S.I. 2002/132.

- (a) assign a diet of taxation not earlier than 7 days from the date he receives the account from the sheriff clerk; and
- (b) intimate that diet forthwith from to the party who lodged the account.

(4) The party who lodged the account of expenses shall, on receiving intimation from the auditor of court under paragraph (3)–

- (a) send a copy of the account; and
- (b) intimate the date, time and place of the diet of taxation,

to every other party.

(5) After the account has been taxed, the auditor of court shall transmit the process with the account and his report to the sheriff clerk.

(6) Where the auditor of court has reserved consideration of the account at the date of the taxation, he shall intimate his decision to the parties who attended the taxation.

(7) Where no objections are lodged under rule 23.3B (objections to auditor's report), the sheriff may grant decree for the expenses as taxed.

Objections to auditor's report

23.3B—(1) A party may lodge a note of objections to an account as taxed only where he attended the diet of taxation.

(2) Such a note shall be lodged within 7 days after–

- (a) the diet of taxation; or
- (b) where the auditor of court reserved consideration of the account under paragraph (6) of rule 23.3A, the date on which the auditor of court intimates his decision under that paragraph.

(3) The sheriff shall dispose of the objection in a summary manner, with or without answers.”.

Transitional provision

3. Paragraph (2) of this Act of Sederunt does not apply to a summary cause commenced before 1 January 2003 and any such action shall proceed according to the law and practice in force immediately before that date.

W. Douglas Cullen
Lord President
I.P.D.

Parliament House
Edinburgh
21st November 2002

EXPLANATORY NOTE

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

This Act of Sederunt amends the new Summary Cause Rules to provide power to the Sheriff or Sheriff Clerk in summary causes to allow an account of expenses to be taxed by the auditor of court. The Act sets out the procedure to be followed and allows objections to be made to the auditor's report. The procedure follows the procedure for taxation of accounts under Chapter 32 of the Ordinary Cause Rules.

The power does not apply to summary cause actions commenced before 1 January 2003.

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