

2011 No. 402

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment
No. 7) (Taxation of Accounts and Fees of Solicitors) 2011**

Made - - - - - *16th November 2011*

Laid before the Scottish Parliament *18th November 2011*

Coming into force - - - *1st January 2012*

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 5 of the Court of Session Act 1988(a) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 7) (Taxation of Accounts and Fees of Solicitors) 2011 and comes into force on 1st January 2012.

(2) A certified copy of this Act of Sederunt is to be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session

2. The Rules of the Court of Session 1994(b) are amended in accordance with paragraphs 3 to 9.

Diet of taxation

3. For rule 42.2 (diet of taxation) substitute—

“**42.2.**—(1) Subject to paragraph (2), the Auditor shall fix a diet of taxation on receipt of—

- (a) the process of the cause;
- (b) vouchers in respect of all outlays, including counsel’s fees; and
- (c) a letter addressed to the Auditor confirming that the items referred to in subparagraph (b) have been intimated to the party found liable in expenses.

(2) The Auditor may fix a diet of taxation notwithstanding that paragraphs (1)(b) and (c) have not been complied with.

(3) The Auditor shall intimate the diet of taxation to—

(a) 1988 c.36. Section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c.32), section 2(3); the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), Schedule 9; the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 45; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1); and the Judiciary and Courts (Scotland) Act 2008 (asp 6), section 46(3).

(b) S.I. 1994/1443, last amended by S.S.I. 2011/385.

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

(4) The party found liable in expenses shall, not later than 4.00pm on the fourth business day before the diet of taxation, intimate to the Auditor 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.

(5) Subject to paragraph (6), if the party found liable in expenses fails to intimate points of objection under paragraph (4) within the time limit set out there, the Auditor shall not take account of them at the diet of taxation.

(6) The Auditor may relieve a party from the consequences of a failure to comply with the requirement contained in paragraph (5) because of mistake, oversight or other excusable cause on such conditions, if any, as the Auditor thinks fit.

(7) At the diet of taxation, the party found entitled to expenses shall make available to the Auditor all documents, drafts or copies of documents sought by the Auditor and relevant to the taxation.

(8) In this rule, a “business day” means any day other than a Saturday, Sunday, or public holiday as directed by the Lord President of the Court of Session.”.

Report of taxation

4.—(1) Rule 42.3 (report of taxation) is amended in accordance with the following subparagraphs.

(2) In paragraph (1)(b) after “the process of the cause” insert “, the taxed account”.

(3) In paragraph (2) for “the date of the report prepared under paragraph (1)” substitute “the date of receipt of intimation under paragraph (1)(c)”.

Objections to report of the Auditor

5.—(1) Rule 42.4 (objections to report of the Auditor) is amended in accordance with the following subparagraphs.

(2) In paragraph (1) for “state any objection” substitute “object”.

(3) For paragraph (2) substitute—

“(2) A party lodging a note of objection shall—

- (a) intimate a copy of the note and a motion under subparagraph (b) to the Auditor and to any party who appeared or was represented at the diet of taxation;
- (b) apply by motion for an order allowing the note to be received; and
- (c) intimate forthwith to the Auditor a copy of the interlocutor pronounced on a motion under subparagraph (b).

(2A) Within 14 days after the date of receipt of intimation under paragraph (2)(c), the Auditor shall lodge a minute stating the reasons for his or her decision in relation to the items to which objection is taken in the note.”.

(4) Omit paragraph (5).

Taxation of solicitors’ own accounts

6.—(1) Rule 42.7 (taxation of solicitors’ own accounts) is amended in accordance with the following subparagraphs.

(2) In paragraph (7)(a) after “paragraph (1)” insert “, stating the fees and outlays as taxed”.

(3) In paragraph (7)(b) after “his report” insert “and the taxed account”.

(4) After paragraph (7) insert—

“(7A) The solicitor shall, within 7 days after the date of receipt of the report under paragraph (7)(c), exhibit the taxed account, or send a copy of it, to his or her client.”.

Charges for skilled persons

7.—(1) Rule 42.13A (charges for skilled persons)(a) is amended in accordance with the following subparagraph.

(2) In paragraph (1), on each occasion, for “action” substitute “cause”.

Table of fees

8.—(1) Subject to subparagraph (4), the table of fees in rule 42.16(b) is amended in accordance with subparagraphs (2) and (3).

(2) In Part V of Chapter III (defended actions)—

- (a) in the heading of paragraph 1B (lodging productions etc.), omit “prior to approval of issue or allowance of proof”;
- (b) for paragraph 11 (incidental procedure etc.), substitute—

“11. Incidental Procedure (not chargeable prior to the approval of issue or allowance of proof)

£

Fixing diet, obtaining note on the line of evidence etc.,
borrowing and returning process, and all other work prior
to the consultation on the sufficiency of evidence

330.00”

- (c) in paragraph 13(c) (preparation for proof or jury trial etc.), for “£180.35” substitute “£233.10”.

(3) In Part VA of Chapter III (defended personal injuries actions etc.)—

- (a) in the heading of paragraph 2A (lodging productions etc.), omit “prior to approval of issue or allowance of proof”;
- (b) after paragraph 3(f) (instruction), insert—

“£

(fa) Fee to opponent where a commission arranged

69.75”

(c) for paragraph 9 (incidental procedure), substitute—

“9. Incidental Procedure (not chargeable prior to the approval of issue or allowance of proof)

£

Fixing diet, obtaining note on the line of evidence etc.,
borrowing and returning process, and all other work prior
to the consultation on the sufficiency of evidence

330.00”

- (d) in paragraph 10(ca) (specification of documents), for “£69.90” substitute “£69.75”;

(a) Rule 42.13A was inserted by S.S.I. 2011/288.

(b) The table of fees was last amended by S.S.I. 2011/87.

- (e) in paragraph 16(c) (preparation for proof or jury trial), for “£179.75” substitute “£233.10”;
- (f) after paragraph 17(b) (pre-trial meeting) insert—

“£

(ba) Fee for preparing for continued pre-trial meeting (each occasion) 155.40”

(4) This paragraph does not affect fees chargeable for work done, or outlays incurred, before 1st January 2012.

Saving

9. The amendments made to the Rules of the Court of Session 1994 by paragraphs 3, 4, 5 and 6 shall only have effect in respect of diets of taxation fixed after 1st January 2012.

A.C. HAMILTON
Lord President
I.P.D.

Edinburgh
16th November 2011

EXPLANATORY NOTE

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

This Act of Sederunt amends Chapter 42 (taxation of accounts and fees of solicitors) of the Rules of the Court of Session 1994 (S.I. 1994/1443).

Paragraph 3 amends rule 42.2 in respect of diets of taxation. It is now provided that a diet of taxation will not be fixed until the Auditor has received the process of the cause, vouchers in respect of all outlays including counsel's fees and a letter confirming that the vouchers have been intimated to the party found liable in expenses. The Auditor does, however, retain discretion under new rule 42.2(2) to fix a diet of taxation where the matters referred to in new rule 42.2(1)(b) and (c) have not been produced.

Paragraph 4 amends rule 42.3(1) in respect of reports of taxation to make it clear that the Auditor shall transmit the taxed account to the Department of the Office of Court, together with his or her report and the process. Paragraph 42.3(2) is amended so that the party found entitled to expenses must exhibit the taxed account to the party found liable to pay the expenses within 7 days after the date of receipt of intimation from the Auditor under paragraph (1)(c).

Paragraph 5 amends rule 42.4 in respect of objections to the report of the Auditor.

Paragraph 6 amends rule 42.7 in respect of the taxation of solicitors own accounts. It is now provided that a solicitor must exhibit a copy of the taxed account to his or her client.

Paragraph 7 makes a minor correction to rule 42.13A to ensure that the charges for skilled witnesses apply to all causes in the Court of Session.

Paragraph 8 amends the table of fees provided in rule 42.16. Paragraph 8(2) amends Part V of Chapter III (defended actions) and paragraph 8(3) amends Part VA of Chapter III (defended personal injuries actions). The table of fees was last amended by the Act of Sederunt (Rules of the Court of Session Amendment) (Taxation of Accounts and Fees of Solicitors) 2011 (S.S.I. 2011/87). Paragraph 8(4) provides that the amendments to the table of fees do not apply as respects fees chargeable for work done, or outlays incurred, before 1st January 2012.

Paragraph 9 contains a savings provision in respect of the changes made by paragraphs 3, 4, 5 and 6 so that the changes only have effect in respect of diets of taxation fixed after 1st January 2012.

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