

**2011 No. 403**

**SHERIFF COURT**

**Act of Sederunt (Fees of Solicitors and Witnesses in the Sheriff Court) (Amendment) 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 40(1) of the Sheriff Courts (Scotland) Act 1907(a) and of all other powers enabling them in that behalf, do hereby enact and declare:

**Citation, commencement and interpretation**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Fees of Solicitors and Witnesses in the Sheriff Court) (Amendment) 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.

(3) In this Act of Sederunt—

“the 1992 Act of Sederunt” means the Act of Sederunt (Fees of Witnesses and Shorthand Writers in the Sheriff Court) 1992(b);

“the 1993 Act of Sederunt” means the Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993(c); and

“the Table of Fees” means the Table of Fees set out in Schedule 1 to the 1993 Act of Sederunt.

**Amendment of the 1992 Act of Sederunt**

2.—(1) Schedule 1 to the 1992 Act of Sederunt is amended in accordance with the following subparagraphs.

(2) For paragraph (1) (skilled persons)(d) substitute—

**“Skilled Persons**

1.—(1) If, at any time before the diet of taxation, the sheriff has granted a motion for the certification of a person as skilled, charges shall be allowed for any work done or expenses

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(a) 1907 c.51. Section 40 was amended by Schedule 1 to the Sheriff Courts (Scotland) Act 1913 (c.28); section 1(3) of the Secretaries of State Act 1926 (c.18); the Schedule to the Administration of Justice (Scotland) Act 1933 (c.41); paragraph 7 of Schedule 1 and Schedule 2 to the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c.12). Section 40 was renumbered as section 40(1), words were repealed and section 40(2) was inserted by S.S.I. 2011/396.

(b) S.I. 1992/1878; last amended by S.S.I. 2011/166.

(c) S.I. 1993/3080; last amended by S.S.I. 2011/86.

(d) Paragraph 1 was last amended by S.S.I. 2004/152.

reasonably incurred by that person which were reasonably required for a purpose in connection with the cause or in contemplation of the cause.

(2) A motion under paragraph (1) may be granted only if the sheriff is satisfied that—

- (a) the person was a skilled person; and
- (b) it was reasonable to employ the person.

(3) Where a motion under paragraph (1) is enrolled after the sheriff has awarded expenses, the expenses of the motion shall be borne by the party enrolling it.

(4) The charges which shall be allowed under paragraph (1) shall be such as the Auditor of Court determines are fair and reasonable.

(5) Where a sheriff grants a motion under paragraph (1), the name of the person shall be recorded in the interlocutor.”.

(3) For paragraph (2) (witnesses)(a) substitute—

#### **“Witnesses**

**2.—**(1) Charges for the attendance at a proof or jury trial of a witness present but not called to give evidence may be allowed if the sheriff has, at any time before the diet of taxation, granted a motion for the name of that witness to be noted in the minute of proceedings in the cause.

(2) A person who is cited to give evidence and in consequence incurs financial loss shall be allowed reimbursement, being such sum as the Auditor of Court may determine to have been reasonably and necessarily incurred by the witness, but not exceeding £400 per day.”.

#### **Sanction for employment of counsel**

**3.—**(1) The 1993 Act of Sederunt is amended in accordance with the following subparagraphs.

(2) For general regulation 12 in Schedule 1 (employment of counsel), substitute—

**“12.** Where the court has sanctioned work in a cause as suitable for the employment of counsel, the Auditor is to allow—

- (a) where counsel is instructed, the reasonable fees of counsel for doing that work and the applicable fees for instructing counsel in Chapter II, Chapter III or Chapter IV of the Table of Fees; or
- (b) where a solicitor advocate is instructed, the reasonable fees of a solicitor advocate for doing that work and, where the solicitor advocate is appearing on the instructions of another solicitor rather than on his or her own, the applicable fees for instructing counsel in Chapter II, Chapter III or Chapter IV of the Table of Fees.

**12A.** The Auditor may also allow fees of counsel or a solicitor advocate and of the instructing solicitor for consultations reasonably required in relation to the work for which sanction is granted, but except on cause shown, fees for only two consultations in the course of the cause are to be allowed.

**12B.** Otherwise, no fees are to be allowed for the work of counsel and no special account is to be taken of the work of a solicitor advocate.

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(a) Paragraph 2 was last amended by S.S.I. 2005/149.

**12C.** In paragraphs 12 to 12B of these general regulations and in the Table of Fees, “solicitor advocate” means a solicitor who possesses a right of audience in the Court of Session by virtue of section 25A of the Solicitors (Scotland) Act 1980 (rights of audience in the Court of Session etc.)(a).”.

(3) In each of the following places in Part II of Chapter II of the Table of Fees (defended ordinary actions etc.)(b), after “counsel” wherever it occurs insert “or solicitor advocate”—

- (a) paragraph 8(a) and (b) (debate (other than on evidence));
- (b) paragraph 9(c) (interim interdict hearings and other interim hearings);
- (c) paragraph 11(b)(iv) (commissions to take evidence);
- (d) paragraph 16(aa) (preparation for proof);
- (e) paragraph 17(b) (conduct of proof);
- (f) paragraph 18(c) (debate on evidence);
- (g) paragraph 19(a)(i) and (iii) (appeals);
- (h) paragraph 24(a), (b) and (c) (instruction of counsel);
- (i) in the heading of paragraph 24.

(4) In each of the following places in Part IIA of Chapter II of the Table of Fees (defended personal injuries actions etc.)(c) after “counsel” wherever it occurs insert “or solicitor advocate”—

- (a) paragraph 14(b) (incidental procedure);
- (b) paragraph 19(aa) (preparation for proof);
- (c) paragraph 20(b) and (c) (pre-proof conference).

(5) In each of the following places under the heading “Personal Injury Claims Only” in Part III of Chapter IV of the Table of Fees (defended summary cause actions etc.)(d) after “counsel” wherever it occurs insert “or solicitor advocate”—

- (a) paragraph 19(b) (appeals);
- (b) paragraph 21(a) and (b) (instruction of counsel);
- (c) in the heading of paragraph 21.

#### **Amendment of the Table of Fees**

4.—(1) The Table of Fees is amended in accordance with the following subparagraph.

(2) In Part IIA of Chapter II (defended personal injuries actions etc.)—

- (a) for paragraph 1(b) (perusal fee for consideration of reports etc.) substitute—

(b) Perusal fee for consideration of reports (whether or not in the course of so doing the solicitor revises or adjusts it), one-half thereof, per sheet

“£  
33.25”

- (b) in paragraph (2) (pre-litigation fee), after “or such” insert “lesser”;

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(a) 1980 c.46. Section 25A was inserted by section 24 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40); and amended by paragraph 31 of Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40); S.I. 1999/1042; S.S.I. 2000/121; paragraph 32(3) of Schedule 9(1) to the Constitutional Reform Act 2005 (c.4); and paragraph 1(5) of schedule 5 to the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5).

(b) Part II of Chapter II was last amended by S.S.I. 2011/86.

(c) Part IIA of Chapter II was inserted by S.S.I. 2009/321 and last amended by S.S.I. 2011/86.

(d) Part III of Chapter IV was last amended by S.S.I. 2009/81.

(c) after paragraph 3(e) (arranging commission to recover documents etc.), insert—

(ea)	Fee to opponent where a commission arranged	“£ 69.75”
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(d) for paragraph 25 (final procedure) substitute—

“**25.** Final procedure

(a)	If case goes to proof, or is settled within 14 days before the diet of proof, fee to cover settling with witnesses and enquiring for cause at avizandum and noting final interlocutor	£ 198.90
(b)	In any other case	87.60”

(e) after paragraph 26 (copying) insert—

“**26A.** Process fee

Fee to cover all consultations between solicitor and client during the progress of the cause and all communications, written or oral, passing between them – 10 per cent on total fees and copyings allowed on taxation”

(f) for paragraph 29 (accounts) substitute—

“**29.** Accounts

	Fee to cover drawing account of expenses, arranging, intimating and attending diet of taxation and obtaining approval of auditor’s report and where necessary, ordering, procuring and examining extract decree or adjusting account with opponent	£ 172.55”
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**Saving**

5. Paragraphs 2, 3 and 4 do not affect fees chargeable for work done, or outlays incurred, before 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 makes amendments to the Act of Sederunt (Fees of Witnesses and Shorthand Writers in the Sheriff Court) 1992 (S.I. 1992/1878) and the Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993 (S.I. 1993/3080).

Paragraph 2 amends the 1992 Act of Sederunt in relation to charges for skilled persons and witnesses.

Paragraphs 3 and 4 amend the 1993 Act of Sederunt.

Paragraph 3(2) substitutes general regulation 12 (sanction for employment of counsel) to provide that where the court has sanctioned work in a cause as suitable for the employment of counsel, the auditor is to allow the reasonable fees of counsel or a solicitor advocate. Paragraphs 3(3) to (5) make consequential amendments.

Paragraph 4 amends the Table of Fees set out in the Schedule to the 1993 Act of Sederunt. The Table of Fees was last amended by the Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2011 (S.S.I. 2011/86).

The Act of Sederunt does not apply as respect fees chargeable for work done, or outlays incurred, before it comes into force.

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