

2017 No. 53

COURT OF SESSION

SHERIFF COURT

Act of Sederunt (Fees of Solicitors in the Court of Session and Sheriff Court Amendment) (Pursuers' Offers) 2017

Made - - - - - *28th February 2017*
Laid before the Scottish Parliament *2nd March 2017*
Coming into force - - - *3rd April 2017*

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council with such modifications as it thinks appropriate.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by sections 105(1) and 106(1) of the Courts Reform (Scotland) Act 2014(b) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Fees of Solicitors in the Court of Session and Sheriff Court Amendment) (Pursuers' Offers) 2017.

(2) It comes into force on 3rd April 2017.

(3) A certified copy is to be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session 1994(c) are amended in accordance with this paragraph.

(2) In rule 42.16(3) (table of fees), in Chapter III of the Table of Fees—

(a) in Part V (defended actions)(d), for paragraph 21 (settlement), substitute—

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4)(a).
(b) 2014 asp 18.
(c) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443), last amended by S.S.I. 2017/52.
(d) Part V was substituted by S.S.I. 2014/15.

“21. Settlement

- (a) Judicial tender or pursuer’s offer—
 - (i) lodging or considering first tender or pursuer’s offer 234.00
 - (ii) lodging each further tender or pursuer’s offer, subject to the Auditor being satisfied that the tender or offer was a genuine attempt to settle the proceedings 156.00
 - (iii) considering each further tender or pursuer’s offer 156.00
 - (iv) if tender accepted, additional fee to each accepting party 156.00
 - (v) if pursuer’s offer accepted, additional fee to offering party 156.00
- (b) Extrajudicial settlement – advising on, negotiating and agreeing extrajudicial settlement (not based on judicial tender or pursuer’s offer) to include preparation and lodging of joint minute 390.00
- (c) The Auditor may allow a fee in respect of work undertaken with a view to settlement (whether or not settlement is in fact agreed), including offering settlement 624.00
- (d) If consultation held to consider tender, pursuer’s offer, extrajudicial settlement or with a view to settlement (whether or not settlement is in fact agreed), attendance at it, per quarter hour 39.00”;

(b) in Part VA (defended personal injury actions commenced on or after 1 April 2003)(a), for paragraph 21 (settlement), substitute—

“21. Settlement

- (a) Judicial tender or pursuer’s offer—
 - (i) lodging or considering first tender or pursuer’s offer 234.00
 - (ii) lodging each further tender or pursuer’s offer, subject to the Auditor being satisfied that the tender or offer was a genuine attempt to settle the proceedings 156.00
 - (iii) considering each further tender or pursuer’s offer 156.00
 - (iv) if tender accepted, additional fee to each accepting party 156.00
 - (v) if pursuer’s offer accepted, additional fee to offering party 156.00
- (b) Extrajudicial settlement – advising on, negotiating and agreeing extrajudicial settlement (not based on judicial tender or pursuer’s offer) to include preparation and lodging of joint minute 390.00

(a) Part VA was substituted by S.S.I. 2014/15.

- | | | |
|-----|---|---------|
| (c) | The Auditor may allow a fee in respect of work undertaken with a view to settlement (whether or not settlement is in fact agreed), including offering settlement | 624.00 |
| (d) | If consultation held to consider tender, pursuer's offer, extrajudicial settlement or with a view to settlement (whether or not settlement is in fact agreed), attendance at it, per quarter hour | 39.00". |

Amendment of the Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993

3.—(1) Schedule 1 of the Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993(a) is amended in accordance with this paragraph.

(2) In Part II of Chapter II of the Table of Fees (defended ordinary actions, commercial actions and family actions)(b)—

- (a) for paragraph 26 (settlements), substitute—

“26. Settlements

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|-------|--|----------|
| (a) | Judicial tender or pursuer's offer— | |
| (i) | preparing and lodging, or considering first tender or pursuer's offer | 234.00 |
| (ii) | preparing and lodging each further tender or pursuer's offer, subject to the Auditor being satisfied that the tender or offer was a genuine attempt to settle the proceedings | 156.00 |
| (iii) | considering each further tender or pursuer's offer | 156.00 |
| (iv) | if tender accepted, additional fee to each accepting party to include preparation and lodging of minute of acceptance of tender and attendance at court when decree granted (not including drawing, intimating and lodging any written motion) | 117.00 |
| (v) | if pursuer's offer accepted, additional fee to offering party to include consideration of minute of acceptance and attendance at court when decree granted (not including drawing, intimating and lodging any written motion) | 117.00 |
| (b) | Extrajudicial settlement, to include negotiations resulting in settlement, framing or revising joint minute and attendance at court when authority interponed thereto (not to include drawing, intimating and lodging any written motion) | 292.50 |
| (c) | Whether or not fees are payable under (a) or (b) above, where additional work has been undertaken with a view to effecting settlement, including offering settlement, although settlement is not agreed, a fee not exceeding | 292.50"; |

(a) S.I. 1993/3080, last amended by S.S.I. 2016/316.

(b) Part II was substituted by S.S.I. 2014/14 and amended by S.S.I. 2015/246.

- (b) in paragraph 30(c) (instruction of counsel or solicitor advocate), after “solicitor advocate” insert “, including consultation held to consider tender, pursuer’s offer or extrajudicial settlement, or with a view to settlement”.

(3) In Part IIA of Chapter II of the Table of Fees (defended personal injuries actions proceeding under Part A1 of Chapter 36 of the Ordinary Cause Rules)(a)—

- (a) for paragraph 24 (settlements), substitute—

“24. Settlements

- (a) Judicial tender or pursuer’s offer—
- | | | |
|-------|--|--------|
| (i) | preparing and lodging, or considering first tender or pursuer’s offer | 234.00 |
| (ii) | preparing and lodging each further tender or pursuer’s offer, subject to the Auditor being satisfied that the tender or offer was a genuine attempt to settle the proceedings | 156.00 |
| (iii) | considering each further tender or pursuer’s offer | 156.00 |
| (iv) | if tender accepted, additional fee to each accepting party to include preparation and lodging of minute of acceptance of tender and attendance at court when decree granted (not including drawing, intimating and lodging any written motion) | 117.00 |
| (v) | if pursuer’s offer accepted, additional fee to offering party to include consideration of minute of acceptance and attendance at court when decree granted (not including drawing, intimating and lodging any written motion) | 117.00 |
- (b) Extrajudicial settlement, to include negotiations resulting in settlement, framing or revising joint minute and attendance at court when authority interponed thereto (not to include drawing, intimating and lodging any written motion) 292.50
- (c) Whether or not fees are payable under (a) or (b) above, where additional work has been undertaken with a view to effecting settlement, including offering settlement, although settlement is not agreed, a fee not exceeding 292.50”;

(a) Part IIA was substituted by S.S.I. 2014/14 and last amended by S.S.I. 2016/316.

- (b) in paragraph 28(c) (instruction of counsel or solicitor advocate), after “solicitor advocate” insert “, including consultation held to consider tender, pursuer’s offer or extrajudicial settlement, or with a view to settlement”.

Saving

4. Paragraphs 2 and 3 do not affect the fees payable as regards any work carried out before 3rd April 2017.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
28th February 2017

EXPLANATORY NOTE

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

This Act of Sederunt amends the Court of Session and Sheriff Court Tables of Fees to include provision regarding the fees that may be charged under an award of expenses in connection with the preparation, lodging, consideration and acceptance of pursuers' offers.

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