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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 21**

**QUALIFIED ONE-WAY COSTS SHIFTING**

**Application and interpretation of this Chapter**

**21.1.**—(1) This Chapter applies in civil proceedings, where either or both—

- (a) an application for an award of expenses is made to the Court;
- (b) such an award is made by the Court.

(2) Where this Chapter applies—

- (a) rules 10.1(5) and (6);
- (b) any common law rule entitling a pursuer to abandon an appeal, to the extent that it concerns expenses,

are disapplied.

(3) In this Chapter—

“the 2018 Act” means the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018(1);

“the applicant” has the meaning given in rule 21.2(1), and “applicants” is construed accordingly;

“civil proceedings” means civil proceedings to which section 8 of the 2018 Act (restriction on pursuer’s liability for expenses in personal injury claims) applies.

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**Commencement Information**

**11** Para. 21.1 in force at 6.1.2022, see [para. 1.1\(2\)](#)

**Application for an award of expenses**

**21.2.**—(1) Where civil proceedings have been brought by a pursuer, another party to the action (“the applicant”) may make an application to the Court for an award of expenses to be made against the pursuer, on one or more of the grounds specified in either or both—

- (a) section 8(4)(a) to (c) of the 2018 Act;
- (b) paragraph (2) of this rule.

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(1) 2018 asp 10.

(2) The grounds specified in this paragraph, which are exceptions to section 8(2) of the 2018 Act, are as follows—

- (a) failure by the pursuer to obtain an award of damages greater than the sum offered by way of a tender lodged in process;
- (b) unreasonable delay on the part of the pursuer in accepting a sum offered by way of a tender lodged in process;
- (c) abandonment of the appeal by the pursuer in terms of rule 10.1(1) to (4), or at common law.

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**Commencement Information**

**I2** Para. 21.2 in force at 6.1.2022, see [para. 1.1\(2\)](#)

**Award of expenses**

**21.3.—**(1) Subject to paragraph (2), the determination of an application made under rule 21.2(1) is at the discretion of the Court.

(2) Where, having determined an application made under rule 21.2(1), the Court makes an award of expenses against the pursuer on the ground specified in rule 21.2(2)(a) or (b)—

- (a) the pursuer’s liability is not to exceed the amount of expenses the applicant has incurred after the date of the tender;
- (b) the liability of the pursuer to the applicant, or applicants, who lodged the tender is to be limited to an aggregate sum, payable to all applicants (if more than one) of 75% of the amount of damages awarded to the pursuer and that sum is to be calculated without offsetting against those expenses any expenses due to the pursuer by the applicant, or applicants, before the date of the tender;
- (c) the Court must order that the pursuer’s liability is not to exceed the sum referred to in sub-paragraph (b), notwithstanding that any sum assessed by the Auditor of Court as payable under the tender procedure may be greater or, if modifying those expenses to a fixed sum in terms of rule 20.1(2), that such sum does not exceed that referred to in sub-paragraph (b);
- (d) where the award of expenses is in favour of more than one applicant the Court, failing agreement between the applicants, must apportion the award of expenses recoverable under the tender procedure between them.

(3) In the event that the Court makes an award of expenses against the pursuer on the ground specified in rule 21.2(2)(c), the Court may make such orders in respect of expenses, subject to such conditions, if any, as it considers appropriate.

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**Commencement Information**

**I3** Para. 21.3 in force at 6.1.2022, see [para. 1.1\(2\)](#)

**Procedure**

**21.4.—**(1) An application under rule 21.2(1)—

- (a) must be made by motion, in writing;
- (b) may be made at any stage in the case prior to the granting of an order disposing of the expenses of the appeal.

(2) Where an application under rule 21.2(1) is made, the Court may make such orders as it thinks fit for dealing with the application, including an order—

- (a) requiring the applicant to intimate the application to any other person;
- (b) requiring any party to lodge a written response;
- (c) requiring the lodging of any document;
- (d) fixing a hearing.

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**Commencement Information**

**I4** Para. 21.4 in force at 6.1.2022, see [para. 1.1\(2\)](#)

**Award against legal representatives**

**21.5.** Section 8(2) of the 2018 Act does not prevent the Court from making an award of expenses against a pursuer's legal representative in terms of section 11 (awards of expenses against legal representatives) of that Act.

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**Commencement Information**

**I5** Para. 21.5 in force at 6.1.2022, see [para. 1.1\(2\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Act of Sederunt (Sheriff Appeal Court Rules) 2021, CHAPTER 21.