

## POLICY NOTE

### ACT OF SEDERUNT (FEES OF SOLICITORS IN THE COURT OF SESSION, SHERIFF APPEAL COURT AND SHERIFF COURT) (TAXATION OF JUDICIAL EXPENSES RULES) (AMENDMENT) 2023

S.S.I. 2023/165

#### Introduction

1. This Policy Note is published to accompany the Act of Sederunt (Fees of Solicitors in the Court of Session, Sheriff Appeal Court and Sheriff Court) (Taxation of Judicial Expenses Rules) (Amendment) 2023 made by the Court of Session on 30 May 2023. The Policy Note has been prepared by the Scottish Civil Justice Council Secretariat to set out the Council's policy behind the rules. It does not form part of the rules.

#### Policy Objectives

2. The objective of the Act of Sederunt is to provide court rules to implement an uplift in the fees chargeable for those carrying out relevant services in civil court proceedings.

#### Background

3. The Scottish Civil Justice Council's functions are set out in section 2 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013<sup>1</sup>. These functions were amended in April 2015<sup>2</sup> to include the preparation and submission to the Court of Session of draft fees rules.
4. The Court of Session, will consider draft instruments submitted to it by the Council to be made under the powers conferred on the Court by sections 105 and 106 of the Courts Reform (Scotland) Act 2014. Inter alia, these powers allow the Court of Session to make provision for or about the fees of solicitors in relation to proceedings in the Court of Session and civil proceedings in the Sheriff Appeal Court and sheriff court.
5. The Council approved a fee increase of 5% in June 2018<sup>3</sup> and carried out a review of solicitors' fees in 2018-19. The key policy output from the review was a new rules instrument, the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019/75 that took account of recommendations in [Sheriff Principal Taylor's Review of Expenses](#)

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<sup>1</sup> <https://www.legislation.gov.uk/asp/2013/3/section/2>

<sup>2</sup> Amendment of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 by Schedule 5 of Court Reform (S) Act 2014 (Sch. 5 para. 31 in force at 1.4.2015 by S.S.I. 2015/77, art. 2(2)(3), Sch.)

<sup>3</sup> The Act of Sederunt (Fees of Solicitors in the Court of Session, Sheriff Appeal Court and Sheriff Court) (Amendment) 2018/186 came into force on 24 September 2018.

[and Funding of Civil Litigation in Scotland](#) and reframed the tables of solicitors' fees to provide for unit-based charging. The current unit charge was £16.40.

### **Rules provision**

6. The instrument provides for a 9.75% increase in the unit rate provided for in rule 3.2 of the 2019 rules. This uplift results in an hourly rate of £180.00 with the unit charge increasing to a value of £18.00.
7. The uplift applies to all items contained in the tables of fees set out in Schedules 1 to 5 of the 2019 rules. These tables regulate the charges that an entitled party can recover in respect of the work carried out by their solicitor in the conduct of civil proceedings in the Court of Session, Sheriff Appeal Court and sheriff court (where the proceedings are commenced on or after 29th April 2019).
8. The taxation of accounts in proceedings commenced before SSI 2019/75 came into force on 29th April 2019, and in summary causes commenced on or after that date, continue to be subject to the rules and tables of fees in place prior to the 2019 rules.
9. As noted, the last increase approved by Council to these 'non-unitised' fee tables was made by SSI 2018/186. That instrument provided for a 5% uplift to the various tables of solicitors' fees prescribed in:
  - Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993<sup>4</sup>;
  - Rules of the Court of Session 1994;
  - Act of Sederunt (Fees of Solicitors in the Sheriff Appeal Court) 2015.
10. These tables regulate the fees that can be recovered under an award of expenses in respect of work carried out by a party's solicitor in civil proceedings on or after 24th September 2018.
11. There are a number of such cases still in dependence, so in the interests of consistency and fairness, the Council agreed that the tables of fees, for proceedings raised before 29 April 2019 (i.e. non-unitised), should also be subject to a 9.75% increase to come into force on the same date as the change in the unitised rate. The instrument

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<sup>4</sup> The fees in Chapter 2, Part I Defended Actions Commenced on or before 31st December 1993 were not updated in the previous fee amendment and so have not been included in this schedule of uplifts. Within the tables of inclusive fees for sheriff court ordinary causes, the prescribed fees for appeals to the sheriff principal/Court of Session have not been updated since it is no longer competent to appeal to the sheriff principal or directly to the Court of Session. Fees for appeals to the Sheriff Appeal Court are prescribed in the table of fees for that court. Within the Sheriff Court table of fees, the tables of inclusive charges for summary causes/simple procedure cases have been updated as they include charges associated with preparation of a stated case, which would require to be included in a prospective sheriff court account of expenses (rather than within any Sheriff Appeal Court account).

therefore makes amendments to the rules that apply to ongoing civil proceedings which were commenced before 29 April 2019. The changes made by the instrument will also impact on the charges that may be allowed in respect of work undertaken by a party litigant.

12. In preparing the fees tables, the Council policy on the matter of 'rounding' of figures is that sums are rounded up or down to the nearest 50p/£1. Whilst the new solicitor fee tables have a unit based charging system, there may be occasions (such as the present instrument) which will involve uplifts to previous tables. This rounding approach is intended to provide consistency throughout the fee tables and to reduce the administrative burden and margin for error when compiling tables, which usually run into several hundred individual entries.
13. The Council agreed that due to current inflationary pressures and economic trends, under our system, the cost burden of litigation means that those entitled to awards of judicial expenses are likely to be worse off than they were 2-3 years ago.
14. In terms of context, the Council noted that it is important to consider how law firms charge their clients. For most cases, firms have terms of business with clients and apply rates to the work done on an agent and client basis. The Council does not control the fee rates for Solicitors and whilst the current judicial rate is £164 hourly, firms might charge significantly more per hour for some solicitors. Not all work will therefore be recoverable under a party/party account and the shortfall is ordinarily met by the client and does not affect solicitors' earnings. In personal injury cases, many pursuers' firms generally charge their clients on a 'no win/no fee' basis and will recover any judicial expenses awarded.
15. The Council acknowledged that cost recovery factors do feed into access to justice questions such as whether or not people choose to litigate and whether cases are raised in this jurisdiction or in others with better costs recovery.
16. The Council therefore approved a 9.75% inflationary increase to all aspects of the tables of fees based on a blend of the Consumer Price Index (CPI) and the Consumer Price Index with Housing (CPIH) over the last 3 years.
17. This approach was considered appropriate as it takes account of the inflation figures over the 3 year period and reflects a number of years' inflation in the costs of solicitors performing their role. Annex A sets out the increases to the hourly rate from 2002 onwards. Indexation of the figures indicates that 9.75% is a reasonable and justifiable uplift to bring fees up to a fully inflation adjusted position since the last approved fee increase in 2019.

18. In arriving at the increase to the charge rate, the Council anticipates that there will be considerable volatility in consumer-based indices over the next few years and that CPI/CPIH are likely to be unreliable measurements after September 2021.

**Scottish Civil Justice Council Secretariat**  
**May 2023**

## Annex A

Increases to the hourly rate:

<b>Date</b>	<b>Hourly Rate</b>
01/7/02 - 31/3/03	£ 98
01/4/03 - 03/5/04	£110
04/5/04 - 24/4/04	£112.80
25/4/05 - 30/6/06	£118.20
01/7/06 - 31/3/07	£123
01/4/07 - 31/3/06	£128
01/4/08 - 26/4/09	£136
27/4/09 - 28/2/14	£142
01/3/14 - 23/9/18	£156
24/9/18 to date	£164