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STATUTORY INSTRUMENTS

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**1992 No. 1433 (S.140)**

**COURT OF SESSION, SCOTLAND**

**Act of Sederunt (Rules of the Court of Session  
Amendment No.3) (Taxation of Accounts) 1992**

*Made* - - - - - *14th June 1992*  
*Coming into force* - - - - - *20th July 1992*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 5 of the Court of Session Act 1988((1)) 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.3) (Taxation of Accounts) 1992 and shall come into force on 20th July 1992.

(2) This Act of Sederunt shall 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((2)) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 347(a) (General Regulations as to the Preparation and Taxation of Accounts)((3)), for the words “, (b) between Solicitor and Client, and (c)” substituted the words “and (b)”.

(3) In rule 348 (Remit to Auditor of Court)((4)) omit paragraph (5).

(4) In rule 349 (Report, Objections and Modification)((5)) for paragraph (2) substitute the following paragraph:—

“(2) Any party to a cause may object to the report of the Auditor by stating his reasons for objection in a note of objections which shall be lodged within 14 days of the date of the report.”.

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(1) 1988 c. 36.

(2) S.I. 1965/321; relevant amending instruments are S.I. 1970/1746, 1972/2022, 1973/360, 1974/1686, 1978/947, 1981/497 and 1984/499.

(3) Rule 347 was substituted by S.I. 1970/1746 and amended by S.I. 1972/2022, 1973/360, 1974/1686, 1978/947, 1981/497 and 1984/499.

(4) Rule 348 was substituted by S.I. 1983/826 and amended by S.I. 1990/705.

(5) Rule 349 was substituted by S.I. 1983/826 and amended by S.I. 1991/1157.

(5) For rule 350 (Summary Application for Taxation of Solicitors' Accounts) substitute the following rule:—

**“350 Remit of solicitor’s account for taxation**

(1) Subject to section 61A(1) of the Solicitors (Scotland) Act 1980((6)), the court may remit to the Auditor of Court for taxation the account of a solicitor to his client—

- (a) where the account is for work done in relation to a litigation in the Court of Session, on the motion of the solicitor or the client; and
- (b) in any case, in an action in which the solicitor or his representatives sue the client for payment of the account.

(2) A motion under paragraph (1)(a) may be enrolled notwithstanding that final decree in the litigation has been extracted.

(3) Where a remit is made under paragraph (1)—

- (a) the solicitor shall, within 21 days, lodge in the office of the Auditor of Court the account, which shall be in such form as shall enable the Auditor of Court readily to establish the nature and extent of the work done to which the account relates and shall detail the outlays incurred by the solicitor together with such supporting material as is necessary to vouch the items on the account;
- (b) the Auditor of Court shall assign a diet of taxation not earlier than fourteen days from the date he receives the account and intimate that diet forthwith to the solicitor;
- (c) the solicitor shall then, forthwith, send by first class recorded delivery post, a copy of the account lodged, the interlocutor remitting the account, and give notice in terms of Form 73 of the date, time and place of the taxation to the client; and
- (d) the Auditor shall report his decision to the court and shall forthwith send a copy of his report to the solicitor and to the client.

(4) Either party, provided that he or his representative has attended at the diet of taxation, may, in accordance with rule 349, state objections to the report mentioned in paragraph (3) above, otherwise the report shall be final.

(5) Where the Auditor taxes the account of a solicitor to his client in respect of the conduct of a litigation on behalf of the client, he—

- (a) shall allow a sum in respect of such work and outlays as have been reasonably incurred;
- (b) shall allow in respect of each item of work and outlay such sum as may be fair and reasonable having regard to all the circumstances of the case;
- (c) shall, in determining whether a sum charged in respect of an item of work is fair and reasonable, take into account—
  - (i) the complexity of the litigation and the number, difficulty or novelty of the questions raised;
  - (ii) the skill, labour, specialised knowledge and responsibility involved;
  - (iii) the time spent on the item of work and on the litigation as a whole;
  - (iv) the number and importance of any documents or other papers prepared or perused without regard to length;

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(6) 1980 c. 46; section 61A was inserted by section 36(3) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

- (v) the place where and the circumstances (including the degree of expedition required) in which the solicitor's work or any part of it has been done;
  - (vi) the amount or value of any money or property involved in the litigation; and
  - (vii) the importance of the litigation or its subject matter to the client;
- (d) shall presume (unless the contrary is demonstrated to his satisfaction) that—
- (i) an item of work or outlay was reasonably incurred if it was incurred with the express or implied approval of the client;
  - (ii) the fee charged in respect of an item of work or outlay was reasonable if the amount of the fee or the outlay was expressly or impliedly approved by the client; and
  - (iii) an item of work or outlay was not reasonably incurred, or that the fee charged in respect of an item of work or outlay was not reasonable if the item of work, outlay or fee charged, was unusual in the circumstances of the case, unless the solicitor informed the client prior to carrying out the item of work or incurring the outlay that it might not be allowed (or that the fee charged might not be allowed in full) in a taxation in judicial proceedings between party and party; and
- (e) may disallow any item of work or outlay which is not vouched to his satisfaction.”.
- (6) In the Appendix, after Form 72 (Form of Caveat)((7)), insert the form in Schedule to this Act of Sederunt.

Edinburgh  
16th June 1992

*J.A.D. Hope*  
Lord President, IPD

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(7) Form 72 was inserted by S.I. 1990/2118.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## SCHEDULE

### Notice to Client intimating Diet of Taxation of Solicitors' Account FORM 73

To: *(name and address)*

Date: *(date of posting)*

*(Name of Solicitors)*, Applicants v. [CD], Respondent

Case Number:

1. We enclose a copy of the solicitors' account in respect of which we seek payment.
2. The Court has in terms of the enclosed interlocutor remitted the account to the Auditor of Court for taxation (assessment).
3. The taxation hearing will take place at the offices of the Auditor of Court, Parliament House, 11 Parliament Square, Edinburgh on *(date and time)*.
4. If you wish to object to any part of the account you must appear or be represented at the taxation hearing.
5. You will lose any right to object to the account if you do not appear or are not represented at the taxation hearing.

*(signed)*  
Solicitors [for Pursuers]  
*(address)*

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE YOU SHOULD CONSULT A SOLICITOR**

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## EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session by—

- (a) excluding solicitor and client accounts from the ambit of the taxations under rule 347 and the Tables in that rule (paragraph 2(2));
- (b) allowing a party's account to the other party in a decree in absence to be remitted to the Auditor of Court for taxation (paragraph 2(3)); and
- (c) providing a new procedure for remits for taxation of solicitor and client accounts, and principles which the Auditor of Court is to apply in taxing solicitors' litigation accounts (paragraphs 2(4) to 2(5));

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- (d) providing a standard form for intimation of diet of taxation by the solicitor to the client (paragraph 2(6) and Schedule).