1966 No. 335 (S.21)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court Amendment No. 1) 1966

Made - - - - 23*rd March* 1966
Coming into Operation 2*nd May* 1966

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 16 of the Administration of Justice (Scotland) Act 1933(a) and of all other powers competent to them in that behalf, do hereby enact as follows:—

1. In the case of any Summons signetted on or after 2nd May 1966, or of any Petition lodged on or after the said date, or of any proceedings commenced on or after the said date by a Minute lodged in a process in which leave to apply to the Court has been reserved by the Court or by virtue of an Act of Parliament, or of any other action commenced on or after the said date, the provisions of Rule 347 of the Rules of Court(b) as amended shall not apply. Instead there shall be substituted a new Rule as set forth in the Schedule annexed hereto, which shall apply to, and only to, the said cases.

2. The Rules of Court(b) shall be amended by deleting the word and figure "SECTION 5" occurring above the words "TAXATION OF ACCOUNTS" in the heading preceding Rule 348.

3. This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment No. 1) 1966, and shall come into operation on 2nd May 1966.

And the Lords appoint this Act of Sederunt to be inserted in the Books of Sederunt.

J. L. Clyde,
I.P.D.

Edinburgh,
23rd March 1966.

SCHEDULE

SECTION 2

347. TABLES OF FEES OF SOLICITORS IN THE COURT OF SESSION

Preliminary
General Regulations as to the Preparation and Taxation of Accounts in Judicial Proceedings

(*a*) These Tables of Fees shall regulate the taxation of Accounts in judicial proceedings—(a) between Party and Party, (b) between Solicitor and Client, and (c) between Husband and Wife in consistorial cases.

(*b*) When a Remit shall be made by the Court whether *ex proprio motu* or on the motion of the parties or any of them regarding matters in the Record to a Reporter

(a) 23 & 24 Geo. 5. c. 41. (b) S.I. 1965/321 (1965 I, p. 803).

the Solicitor shall not, without special agreement and subject to the orders of the Court, be personally responsible to the Reporter for his remuneration, the party alone being liable.

(*c*) In all cases as between party and party the Court may direct that expenses shall be subject to such modification as the Court may deem fit.

(*d*) In all cases an additional fee may be allowed at the discretion of the Court to cover the responsibility undertaken by the solicitor in the conduct of the case. The Court in deciding whether to allow such a fee and if it is allowed the Auditor in fixing it shall take into account the following factors:—

(*a*) The complexity of the litigation and the number, difficulty or novelty of the questions involved;

(*b*) the skill, specialised knowledge and responsibility required of and the time and labour expended by the solicitor;

(*c*) the number and importance of the documents prepared or perused;

(*d*) the place and circumstances of the litigation or in which the solicitor's work of preparation for, and conduct thereof has been carried out;

(*e*) the importance of the litigation or the subject matter thereof to the client;

(*f*) the amount or value of money or property involved; and

(*g*) any other fees and allowances payable to the solicitor in respect of other items in the same litigation and otherwise charged for in the account.

(*e*) In all cases where by reason of the procedure involved or otherwise the inclusive fees as set forth in the Alternative Table of Fees Chapter III hereof, are not conveniently applicable or do not properly cover the work involved, accounts shall be charged on the basis of the Table of Fees Chapter I hereof. In all other cases it shall be in the option of the solicitor to charge an account either on the basis of the Table of Fees Chapter I hereof or on the basis of the Alternative Table of Fees Chapter III hereof, but in accounts as between party and party it shall not be competent to charge partly on one basis and partly on the other. In accounts as between Husband and Wife in consistorial cases and between solicitor and client, however, it shall be competent to charge an account partly on one basis and partly on the other but so however that if an inclusive fee is charged under the Alternative Table of Fees Chapter III hereof no work falling thereunder shall be charged again under the Table of Fees Chapter I hereof.

CHAPTER I

TABLE OF DETAILED CHARGES

	£	s.	d.
1. (*a*) Framing precognitions and other papers, not drawn by Counsel—per sheet	1	0	0
(*b*) Framing formal documents such as Inventories, Title pages and Accounts of Expenses, etc.—per sheet	0	10	0

NOTES

1. The sheet throughout this Table shall consist of 250 words or numbers.

2. Each solicitor shall be entitled to charge for copies of the precognitions for the use of Counsel and himself.

3. Charges for the precognitions and attendances of witnesses present at a Proof or Trial but not examined nor held as concurring with a witness who has been examined may be allowed, provided a motion to this effect is made at the close of the Proof or Trial and the Court grants the same and the witnesses' names are noted.

4. Where a skilled witness prepares his own precognition or report the solicitor shall be allowed half drawing fees for revising and adjusting it.

5. Where the business can properly be performed by a local solicitor the Auditor in taxing an account shall allow such expenses as would have been incurred if it had been done by the nearest local solicitor, including reasonable fees for instructing and corresponding with him, unless the Auditor is satisfied that it was in the interests of the client that the solicitor in charge of the case should attend personally.

6. No allowance shall be made for plans or photographs lodged in process or prepared for use of counsel except such as are either ordered or subsequently sanctioned by the Court prepared by mutual arrangement of parties, or lodged and proved at the trial or proof.

	£	s.	d.
2. Copying papers			
1st copy—per sheet	0	5	0
Additional copies—each per sheet	0	2	6
If by photostatic process—for each copy, per actual page photocopied	0	5	0
3. Revising papers drawn by Counsel, Open and Closed Records etc.—for each five sheets or part thereof	0	10	0
4. Citation of Parties, witnesses, havers, instructions to Messengers-at-Arms			
1st Party, witness or haver	0	10	0
Each additional witness or haver	0	5	0
Instructing Messenger-at-Arms including examining execution and settling fee	0	10	0
5. Time Charges			
(*a*) Attendances at meetings, preparation for proof, trial, debate and at Court, Consultation with Counsel, etc.			
Per half hour	1	10	0
(*b*) Perusal of documents			
Per half hour	1	10	0
(*c*) Allowance for time of Clerk—one half of above.			

NOTES

1. Time necessarily occupied in travelling to be regarded as if occupied on business. Reasonable travelling and maintenance expenses to be allowed in addition.

2. In the event of a party in a trial or proof being represented by one Counsel only allowance may be made to the solicitor should the case warrant it for the attendance of a clerk at one-half the rate chargeable for the solicitor's attendance.

(*d*) Attendance at Court Offices for performance of formal work ...	0	10	0
with the exception of lodging Summons, Defences, Petitions and all first steps of process, when the fee shall be	1	5	0
6. Correspondence			
Letters including instructions to Counsel—each page of 125 words ...	0	10	0
Formal letters	0	5	0
Telegrams or telephone calls, including letters confirming	0	10	0

CHAPTER II

Witnesses' Fees

(*a*) Professional persons, persons in managerial or like executive positions, and officers in H.M. Services or in the Mercantile Marine, per day.

Such sum not exceeding £15 15s. as the Auditor may determine.

(*b*) Witnesses whose attendance entails loss of wages or payment of substitute, per day,

Such sum not exceeding £1 as the Auditor may determine plus loss of wages or cost of a substitute as vouched to the Auditor's satisfaction.

(*c*) Other witnesses, per day,

Such sum, not exceeding £1 per day as the Auditor may determine.

NOTES

1. In addition to the foregoing, a witness shall be allowed (a) a travelling allowance, being such sum as the Auditor may determine to have been necessarily incurred by the witness in travelling from and to his residence or place of business and the Court; and (b) a subsistence allowance, being such sum as the Auditor may determine to have been reasonably incurred by the witness for the extra cost of subsistence during his absence from his home or place of business for the purpose of giving evidence, and, where the witness is necessarily detained overnight, for the cost of board and lodging. Provided that (i) the amount of such travelling and subsistence allowances shall be fixed on the basis of no more than reimbursing to the witness any out-of-pocket expenses necessarily incurred by him, and (ii) the subsistence allowance in respect of the period on any one day during which the witness is necessarily absent from his residence or place of business for the purpose of giving evidence shall not exceed,—

(*a*) where the said period is not more than 4 hours—10s. and

(*b*) where the said period is more than 4 hours—£1, and where the said period extends overnight an additional payment not exceeding £3 per night shall be allowed.

2. Receipts and vouchers for all sums stated to have been paid to witnesses shall be produced to the opposite party and to the Auditor if required by him.

3. In the case of maritime witnesses detained ashore to give evidence, no longer than 28 days detention shall be allowed against an opposite party, and then only when notice of intention to detain has been given.

4. Charges for the attendance of witnesses present at a Proof or Trial but not examined nor held as concurring with another witness who has been examined may be allowed provided a motion to this effect is made at the close of the Proof or Trial and the Court grants the same, and witnesses' names are noted.

5. In cases where it is necessary to employ skilled persons to make investigations prior to a proof or trial in order to qualify them to give evidence thereat, charges therefor, and for their attendance at such proof or trial, shall be allowed in addition to the ordinary witness fees of such persons at such rate in the discretion of the Auditor as shall be fair and reasonable for each skilled person if the Lord Ordinary shall, on a motion made not later than the application of the verdict in the case of a trial, or within seven days of the issue of the judgment in the case of a proof, or, if the judgment is issued in vacation, within the first seven days of the ensuing session, certify such persons for additional remuneration as skilled witnesses.

6. The fees charged for witnesses examined at a trial or proof shall be stated in the body of the Account in a lump sum and the details of the charges shall be entered in a separate schedule appended to the account as follows:—

Name and Designation	Where from	Days Charged	Rate per day	Travelling and Subsistence Allowance	Total	Taxed off

The fees for witnesses not examined shall be entered in the Schedule separately and included in the lump sum.

CHAPTER III

TABLE OF ALTERNATIVE FEES

PART I. UNDEFENDED ACTIONS

(other than consistorial actions)

In undefended cases where no proof is led the pursuer's solicitor may in his option elect to charge an inclusive fee to cover all work from taking

instructions up to and including obtaining extract decree. The option shall be exercised by pursuer's solicitor endorsing a Minute to the above effect on the Principal Summons or Petition before decree is taken.

	£	s.	d.
Fee to pursuer's solicitor for all work up to and obtaining Extract Decree	14	14	0

Outlays to an amount not exceeding £15 15s. shall also be allowed.

PART II. UNDEFENDED CONSISTORIAL ACTIONS

	£	s.	d.
1. **Fee for all work (other than precognitions) up to and including the calling of the Summons in Court**	15	15	0
2. **Incidental procedure—**			
Fixing Diet, preparing for Proof, citing witnesses, etc....	8	8	0
3. **Amendment—**			
Where Summons amended and re-service not ordered	1	11	6
Where re-service ordered	3	3	0
4. **Commissions to take evidence**			
(i) **On Interrogatories**			
Basic fee to cover all work up to and including lodging completed Interrogatories but excluding attendance at execution of Commission	4	4	0
If Solicitor attends execution of Commission an additional fee at rate per hour of	3	0	0
In addition to above a fee per sheet for completed Interrogatories including all copies of	1	11	6
(ii) **Open Commissions**			
Basic fee to Solicitor applying for Commission up to and including lodging Report of Commission but excluding attendance at execution thereof	8	8	0
For attendance at execution of Commission a fee at the rate per hour of	3	0	0
5. Where applicable charges under Part IV Sections 5, 6, 7, 9, 13, 14(b), 17, 18, and 19.			
6. **Proof fee—**			
For every hour or part thereof (to include instruction of Counsel) ...	3	3	0
7. **Accounts—**			
Framing and lodging Account and attending taxation	3	13	6

PART III. OUTER HOUSE PETITIONS

(opposed or unopposed)

	£	s.	d.
1. Fee for all work up to and including lodging Petition, obtaining Warrant of Service and executing Warrant	18	18	0
and in addition charges for copying or duplicating Petition.			
2. Where applicable charges under Part II and Part IV of this Table.			
3. **Reports—**			
(*a*) for each Report by Accountant of Court	3	13	6
(*b*) for any other Report as under IV 6.			
4. Obtaining Bond of Caution	3	3	0

PART IV. DEFENDED ACTIONS

	£	s.	d.
1. Fee on Instructions—			
To cover all work apart from Precognitions until lodgment of Open Record	18	18	0
If Counter-Claim lodged, additional fee of	5	5	0
2. Record fee			
To cover all work in connection with adjustment and closing of Record including subsequent work in connection with "By Order Adjustment Roll"	21	0	0
or			
Where action is settled or disposed of before Record closed	15	15	0
(i) An additional fee to the pursuer and existing defender to be allowed for each defender or third party brought in prior to the Record being closed, of	7	7	0
(ii) If an additional defender or third party is brought in after the Record is closed, an additional fee (to include necessary amendments) to pursuer and existing defender or defenders, of	10	10	0
3. Summar Roll, Short Roll and Procedure Roll			
Fee preparing for discussion and all work incidental thereto including instruction of Counsel	6	6	0
Attendance fee for every hour or part thereof	3	0	0
4. Adjustment of Issues and Counter Issues			
(i) Fee to pursuer to include all work in connection with and incidental to the lodging of an Issue and adjustment and approval thereof	5	5	0
(ii) If one Counter Issue, an additional fee to pursuer of	2	2	0
(iii) Where more than one Counter Issue, an additional fee to pursuer for each additional Counter Issue	1	1	0
(iv) Fee to defender or third party to include all work in connection with lodging of Counter Issue and adjustment and approval thereof	5	5	0
(v) Fee to defender or third party for considering Issue where no counter issue lodged	2	2	0
(vi) Fee to defender or third party for considering each additional Counter Issue	1	1	0
5. Precognitions			
Taking and drawing precognitions.			
(i) Before Proof or Trial allowed—per sheet	1	11	6
(ii) After Proof or Trial allowed—per sheet	2	2	0

NOTES

1. In addition each solicitor shall be entitled to charge for copies of the precognitions for the use of Counsel and himself.

2. Charges for the precognitions and attendances of witnesses present at a Proof or Trial but not examined nor held as concurring with a witness who has been examined may be allowed, provided a motion to this effect is made at the close of the Proof or Trial and the Court grants the same and the witnesses' names are noted.

3. Where a skilled witness prepares his own precognition or report the solicitor shall be allowed half drawing fees for revising and adjusting it.

6. Reports obtained under Order of Court excluding Auditor's Report—			
Fee for all work incidental thereto	8	8	0
Additional fee per sheet of Report to include all copies required ...	1	11	6

	£	s.	d.
7. Specification of Documents—			
Basic fee to cover drawing, revising and lodging and all incidental procedure to obtain a diligence up to and including obtaining Interlocutor	6	6	0
(*a*) Fee to opponent's Solicitor...	3	13	6
(*b*) If Commission executed an additional fee per hour engaged of	3	0	0
(*c*) If alternative procedure adopted a fee per person upon whom Order served, of	2	2	0
8. Commissions to take evidence—			
(i) On Interrogatories—			
Basic fee to solicitor applying for Commission to cover all work up to and including lodging Report of Commission with completed Interrogatories and Cross-Interrogatories but excluding attendance at execution of Commission	5	5	0
Basic fee to opposing Solicitor if Cross-Interrogatories are lodged	4	4	0
If no Cross-Interrogatories lodged	2	2	0
If Solicitor attends execution of Commission an additional fee at the rate per hour of	3	0	0
In addition to above a fee per sheet for completed Interrogatories including all copies, of	1	11	6
(ii) Open Commissions—			
Basic fee to Solicitor applying for Commission up to and including lodging Report of Commission but excluding attendance at execution thereof	8	8	0
Basic fee to opposing Solicitor	4	4	0
For attendance at execution of Commission a fee at the rate per hour of—	3	0	0
9. Miscellaneous Motions where not otherwise covered by this Table—			
1. Where attendance of Counsel not required	1	11	6
2. Where attendance of Counsel required including instructing Counsel			
(*a*) Not exceeding half an hour	3	13	6
(*b*) Exceeding half an hour	7	7	0
10. Incidental Procedure—			
Fixing Diet, obtaining Note on Line of Evidence, etc. not chargeable prior to pronouncing of an Interlocutor approving of Issues or allowing a Proof	12	12	0
11. Amendment of Record			
(*a*) Amendment of Conclusions only—Proposer	3	3	0
—Opponent	1	11	6
(*b*) Amendment of Pleadings after Record closed			
(i) Where no Answers lodged—Proposer	4	4	0
—Opponent	2	2	0
(ii) Where Answers lodged—each party lodging Answers ...	10	10	0
(iii) Where parties ordered to adjust Minute and Answers, an additional fee to each party of	8	8	0
12. Preparation for Trial or Proof—			
Fee where action settled before the Proof or Trial (provided Proof or Trial allowed) or proof or Trial lasts only one day	15	15	0

	£	s.	d.
Fee for each day or part of a day after the first day	5	5	0
(To cover fee funding precept, lodging and borrowing process and productions adjusting Joint Minute of Admissions, considering productions lodged by opponents, and recovered under diligence, arranging and attending consultations, preparing for Trial or Proof).			
13. Copies			
Productions, Reports of Commissions, duplicate Inventory, Jury List, List of Witnesses, Lord Ordinary's opinion.			
1st copy per sheet	0	5	0
Additional copies—each per sheet	0	2	6
If by photostatic process—for each copy—per actual page photocopied	0	5	0
14. Settlements—			
(*a*) **Tender**			
(i) Basic fee for lodging or considering first Tender as the case may be	7	7	0
(ii) Fee for lodging or considering each further Tender, as the case may be	5	5	0
(iii) If Tender accepted an additional fee of	3	3	0
(*b*) **Extrajudicial Settlement, including Joint Minute**	10	10	0
15. Proof or Trial			
Attendance fee (to include instruction of Counsel)			
First hour	5	5	0
Every subsequent hour	3	3	0
16. Accounts			
Framing and lodging account and attending taxation	6	6	0
17. Extracts			
Obtaining Decree and ordering Extract	3	3	0
18. Final Procedure			
(i) If case goes to Trial or Proof to include all work to close of litigation so far as not otherwise provided for, including in particular settlement of witnesses' fees and procuring and booking verdict	4	4	0
(ii) If case disposed of before Trial or Proof	2	2	0
19. Session Fee—to cover communication with Counsel when no fee is sent and client			
(*a*) Where no correspondent—7½% of total fees and copyings allowed on taxation			
(*b*) Where correspondent involved—10% of total fees and copyings allowed on taxation.			

NOTE

To be charged only where whole account is charged under Chapter III.

PART V. INNER HOUSE BUSINESS

(opposed or unopposed proceedings)

1. Reclaiming Motions from Outer House and Appeals from Inferior Courts—			
Fee to reclaimer or appellant			
(*a*) For all work up to and including Interlocutor sending case to the Roll	8	8	0

	£	s.	d.
(*b*) Additional fee for every 50 pages of Appendix of documents lodged	5	5	0

Fee to respondent—one half of above.

2. Where applicable further charges under Part IV of this Table.

3. **Special Cases and all Inner House Petitions**

According to the circumstances of the case.

4. Obtaining Bond of Caution	3	3	0

PART VI. ADMIRALTY AND COMMERCIAL CASES, MERCANTILE SEQUESTRATIONS AND APPLICATIONS FOR SUMMARY TRIAL UNDER SECTION 10 OF THE ADMINISTRATION OF JUSTICE (SCOTLAND) ACT 1933

The charges shall be based on these Tables according to the circumstances.

PART VII. GENERAL

The Auditor shall have power to apportion the foregoing fees between parties' solicitors in appropriate circumstances or to modify them in the case of a solicitor acting for more than one party in the same litigation or in the case of the same solicitor acting in more than one litigation arising out of the same circumstances or in the event of a litigation being settled or disposed of at a stage when the work covered by any inclusive fee has not been completed, or to vary the said fees in any other appropriate circumstances.

CHAPTER IV

TABLE OF FEES TO SHORTHAND WRITERS

1. Attending trials, proofs and commissions, per hour	1	9	0
With a minimum fee of £4 6s. per day.			
The above fees will be paid by the Treasury. No fee will be paid where intimation of postponement or settlement is made by 4 p.m. on the previous day.			
2. Extending Notes, except when these are transcribed daily, per sheet of 250 words	0	6	3
Extending Notes, when these are transcribed daily but not on stencils, per sheet of 250 words	0	8	0
Extending Notes, when these are transcribed daily on stencils, per sheet of 250 words	0	10	0

3. Transcripts of Notes of Evidence will only be made on directions from the Court, and the cost thereof in defended cases will in the first instance be payable by the solicitors for the parties in equal shares. The daily transcript of Notes of Evidence shall be made only if all compearing parties shall consent thereto, and the daily transcript of Notes of Evidence on stencils shall be made only if all compearing parties shall consent to such transcript on stencils. Where an undefended case is continued, or where for other reasons the Court considers it necessary that the Notes should be extended for the use of the Court and so directs, the cost will be borne by the pursuer's solicitor in the first instance. In any case where the Notes of Evidence have not been extended, but are required for a reclaiming motion, the solicitor for the reclaimer may request the shorthand writer to extend the Notes, and the transcript thereof will thereupon be lodged in process, the cost being payable in the first instance by the reclaimer's solicitor.

4. In any case where the Court on a motion enrolled for that purpose certifies that there is reasonable ground for reclaiming and that the reclaimer is unable, for financial reasons, to meet the cost of the necessary transcript from which copies for the use of the Inner House are made, the cost of such transcript will be paid out of public funds.

5. **Carbon Copies—**

Where Notes of Evidence have been directed to be supplied for the use of the Court, carbon or duplicate copies may be made available to parties at a cost of 1s. 3d. per sheet payable to the shorthand writer by the solicitors for the parties obtaining the said copies.

CHAPTER V

TABLE OF FEES TO CLERKS OF COUNSEL

	£	s.	d.
1. Where Counsel's fee is £1 1s.	0	2	6
£2 2s. to £4 4s.	0	5	0
£5 5s. to £10 10s.	0	7	6
Over £10 10s.—5 per cent. on amount			
2. For all writings, per sheet	0	2	6

CHAPTER VI

UNDEFENDED CONSISTORIAL ACTIONS
under Legal Aid (Scotland) Act 1949

In undefended consistorial actions in which the pursuer, having a finding for expenses, has been throughout the whole of the proceedings an Assisted Person under the Legal Aid (Scotland) Act 1949, the pursuer's solicitor may in his option either:—

elect to charge an inclusive charge to cover all work from taking instructions up to and including obtaining extract decree with in addition a charge for outlays as hereinafter provided. Provided that such inclusive charge shall be—

(i) where only an Edinburgh solicitor is engaged in the case ...	40	0	0
or (ii) where the Legal Aid Certificate shows that both an Edinburgh solicitor and a solicitor outside Edinburgh are engaged in the case or where an official on behalf of the Legal Aid Supreme Court Committee of the Law Society so certifies—	52	10	0

In addition to the said inclusive charge a sum of up to £26 5s. shall be allowed as outlays where a Certificate by the Auditor of Court is lodged certifying the outlays which have been incurred, and the Court shall grant decree accordingly, and if outlays in excess of £26 5s. are claimed an account for the said outlays shall be remitted to the Auditor of Court for taxation.

This option shall be exercised by the pursuer's solicitor enrolling a motion for decree for either the appropriate inclusive charge and for a sum for outlays as shown in the said Certificate not exceeding £26 5s. or a motion for the appropriate inclusive charge and an order remitting the account of outlays to the Auditor of Court for taxation.

EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt.)

This Act of Sederunt prescribes new tables of fees for solicitors in the Court of Session in respect of actions commenced on or after 2nd May 1966.