STATUTORY INSTRUMENTS

1979 No. 1438 (S.119)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court Amendment No. 6) (Solicitors' Fees) 1979

Made - - - - 9*th November* 1979

Coming into Operation 28*th November* 1979

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 and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment No. 6) (Solicitors' Fees) 1979 and shall come into operation on 28th November 1979.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Fee for framing affidavits

2. In Rule 347 of the Rules of Court**(b)**, Chapter 1 (Table of detailed charges), in paragraph 1—

(*a*) in sub-paragraph (*a*), after the word "papers" insert the words "(but not including affidavits)";

(*b*) after sub-paragraph (*b*), add the following sub-paragraph—"(*c*) Framing affidavits, per sheet.....£3.50".

Inclusive fees in undefended consistorial actions

3. In the said Rule 347, in Chapter III (Table of alternative fees), after Part II (Undefended Consistorial Actions), add the following Part—

"Part III Undefended Consistorial Actions: Affidavit Procedure

1. In any undefended action of divorce or separation where—

(*a*) the facts set out in section 1(2)(*a*) (adultery) or 1(2)(*b*) (unreasonable behaviour) of the Divorce (Scotland) Act 1976 ("the 1976 Act") are relied upon; and

(*b*) there are no conclusions relating to any ancillary matters; and

(*c*) the pursuer seeks to prove those facts by means of affidavits,

the pursuer's solicitor may in respect of the work specified in column 1 of Table A charge, in a case where he is an Edinburgh solicitor acting alone, the inclusive fee specified in respect of that work in column 2 of that Table, and in any other case, the inclusive fee specified in respect of that work in column 3 of that Table.

(a) 1933 c. 41. **(b)** S.I. 1965/321 as amended by S.I. 1978/947.

TABLE A

Column 1 Work done	Column 2 Inclusive Fee Edinburgh Solicitors only	Column 3 Inclusive Fee Edinburgh Solicitors and Solicitors outside Edinburgh
1. All work to and including calling of the summons	100	115
2. All work from calling to and including swearing affidavits	70	85
3. All work from swearing affidavits to and including sending extract decree	20	30
4. All work to and including sending extract decree	190	230
Add session fee to item 4	of 7½%	of 10%

2. In any undefended action of divorce or separation where—

(*a*) the facts set out in section 1(2)(*c*) (desertion), 1(2)(*d*) (2 years non-cohabitation and consent) and 1(2)(*e*) (5 years non-cohabitation) of the 1976 Act are relied on; and

(*b*) there are no conclusions relating to any ancillary matters; and

(*c*) the pursuer seeks to prove these facts by means of affidavits,

the pursuer's solicitor may in respect of the work specified in column 1 of Table B charge, in a case where he is an Edinburgh solicitor acting alone, the inclusive fee specified in respect of that work in column 2 of that Table, and in any other case, the inclusive fee specified in respect of that work in column 3 of that Table.

TABLE B

Column 1 Work done	Column 2 Inclusive Fee Edinburgh Solicitors only	Column 3 Inclusive Fee Edinburgh Solicitors and Solicitors outside Edinburgh
1. All work to and including calling of the summons	80	95
2. All work from calling to and including swearing affidavits	38	50
3. All work from swearing affidavits to and including sending extract decree	20	30
4. All work to and including sending extract decree	138	175
Add session fee to item 4	of 7½%	of 10%

3. If—

(*a*) the pursuer's solicitor charges an inclusive fee under either paragraph 1 or paragraph 2 of this Part, and

(*b*) the action to which the charge relates includes a conclusion relating to an ancillary matter,

in addition to that fee, he may charge in respect of the work specified in column 1 of Table C the inclusive fee specified in respect of that work in column 2 of that Table, being the same additional inclusive fee whether he is an Edinburgh solicitor acting alone or on the instructions of a solicitor outside Edinburgh.

TABLE C

Column 1 Work done	Column 2 Inclusive Fee
1. All work to and including calling of the summons	20
2. All work from calling to and including swearing affidavits	23
3. All work under items 1 and 2	43

Add session fee to item 3 of 7½% if Edinburgh solicitor only.
Add session fee to item 3 of 10% if Edinburgh solicitor and solicitor outside Edinburgh.

4. A pursuer's solicitor charging one or more of the inclusive fees under paragraphs 1, 2 or 3 shall endorse a minute on the principal summons to that effect before decree is taken."

Revocation of separate provision for legal aid cases

4. In the said rule 347, omit Chapter V (Inclusive fees in undefended legally aided consistorial actions).

G. C. Emslie,
Lord President
I.P.D.

Edinburgh.
7th November 1979.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of Court to make new provisions in respect of solicitors' fees for work done by them in connection with undefended consistorial actions where evidence by affidavit is adduced. The amendments made to Chapter III of Rule 347 enable solicitors to charge inclusive fees in relation to such actions as an alternative to making up a detailed account. These inclusive fees apply to legal aid cases and non-legal aid cases. The existing 10% deduction applicable in legal aid cases will apply to those fees when charged in respect of a legal aid case. In these circumstances the existing provisions in Chapter V of Rule 347 are unnecessary and are revoked.

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