1988 No. 684 (S.77)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of the Court of Session Amendment No.2) (Solicitors' Fees) 1988

Made - - - -	*7th April 1988*
Coming into force	*16th May 1988*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 16 of the Administration of Justice (Scotland) Act 1933(**a**) 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.2) (Solicitors' Fees) 1988 and shall come into force on 16th May 1988.

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

Solicitors' fees

2. In rule 347 of the Rules of the Court of Session(**b**) (fees of solicitors) in Chapters I and III, there is substituted the table of fees set out under those Chapters in the Schedule to this Act of Sederunt, and the fees so substituted shall apply to work, in respect of which those fees are chargeable, done on or after the date on which this Act of Sederunt comes into force.

Edinburgh
7th April 1988

Emslie
Lord President, I.P.D.

(**a**) 1933 c.41; section 16 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c.12), Schedule 1, paragraph 8.
(**b**) S.I. 1965/321; relevant amending instrument is S.I. 1987/871.

SCHEDULE

Paragraph 2

CHAPTER I

TABLE OF DETAILED CHARGES

1. (a) Framing precognitions and other papers (but not including affidavits), not drawn by counsel—per sheet £5.00

(b) Framing formal documents such as Inventories, title pages and Accounts of Expenses etc.—per sheet £2.00

(c) Framing affidavits—per sheet £7.00

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. As between party and party 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. As between party and party, 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.

2. Copying papers by any means (including facsimile transmission)–

1st copy—per sheet £1.00

Additional copies—per sheet £0.30

When copied by photostatic or similar process each page shall be charged as one sheet.

3. Revising papers drawn by counsel, Open and Closed Records, etc.—for each five sheets or part thereof £2.00

4. Citation of parties, witnesses, havers, instructions to Messengers-at-Arms–

Each party £5.00

Each witness or haver £5.00

Instructing Messenger-at-Arms including examining execution and settling fee £5.00

5. Time Charges–

(a) Attendances at meetings, preparation for proof, trial, debate and, at court, consultation with counsel, etc.–

Per quarter hour £8.50

or such other sum as in the opinion of the Auditor is justified.

(b) Perusal of documents–

Per quarter hour £8.50

or such other sum as in the opinion of the Auditor is justified.

(c) Allowance for time of clerk—one half of above.

(d) Attendance at court offices for performance of formal work £2.00

with the exception of lodging all first steps of process, when the fees shall be £5.00

Plus for making up and lodging process £5.00

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.

6. Correspondence–

Letters including instructions to counsel (whether sent by hand, post, telex or facsimile transmission)—each page of 125 words	£5.00
Formal letters	£1.00
Telephone calls (except those under next item)	£2.00
Telephone calls (lengthy), to be charged at attendance rate.	

CHAPTER III

PART I—UNDEFENDED ACTIONS

(other than consistorial actions)

In all 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.

Fee to pursuer's solicitor for all work up to and obtaining extract decree	£80.00
Outlays to an amount not exceeding £100 shall also be allowed.	

PART II—UNDEFENDED CONSISTORIAL ACTIONS

1. Fee for all work (other than precognitions) up to and including the calling of summons in court £115.00

Note:

Precognitions to be charged as in Part IV paragraph 5.

2. Incidental Procedure–

Fixing diet, enrolling action, preparing for proof, citing witnesses, etc. ...	£65.00

3. Amendment–

(a) where summons amended, where re-service is not ordered, and motion is not starred	£17.00
(b) where summons amended, where re-service is not ordered and motion is starred	£25.00
(c) where summons amended and re-service is ordered	£30.00

4. Commissions to take evidence on interrogatories–

(a) Basic fee to cover all work up to and including lodging completed interrogatories, but excluding attendance at execution of Commission...	£30.00
(b) Attendance at execution of Commission (if required)—per quarter hour	£8.50
(c) In addition to above, a fee per sheet for completed interrogatories, including all copies, of	£5.00

5. Commissions to take evidence on Open Commission–

(a) Basic fee to solicitor applying for Commission but excluding attendance at execution thereof	£28.00
(b) Attendance at execution of Commission—per quarter hour...	£8.50

6. Where applicable, charges under Part IV paragraphs 6, 7, 10, 14, 16 and 21.

7. Proof and completion fee—excluding Accounts of Expenses but including instructing counsel for proof, attendance at proof, settling with witnesses, borrowing and returning productions, procuring interlocutor, and obtaining Extract Decree of Divorce £85.00

8. Accounts–

Framing and lodging account and attending taxation £27.50

PART IIA—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.

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	£170.00	£195.00
2. All work from calling to and including swearing affidavits	£120.00	£145.00
3. All work from swearing affidavits to and including sending extract decree	£ 35.00	£ 55.00
4. All work to and including sending extract decree	£325.00	£395.00
Add session fee	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 those 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	£140.00	£165.00
2. All work from calling to and including swearing affidavits	£ 65.00	£ 85.00
3. All work from swearing affidavits to and including sending extract decree	£ 35.00	£ 55.00
4. All work to and including sending extract decree	£240.00	£305.00
Add session fee	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	£35.00
2. All work from calling to and including swearing affidavits	£40.00
3. All work under items 1 and 2	£75.00

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

4. The Lord Ordinary shall, on pronouncing an interlocutor granting decree of divorce or separation in any action to which paragraph 1 or 2 apply, include in that interlocutor, where appropriate, a finding in respect of expenses.

5. On pronouncing an interlocutor under paragraph 4 making a finding in respect of expenses, the Lord Ordinary shall pronounce a further interlocutor decerning for payment of those expenses as taxed by the person found liable to pay them.

PART III—OUTER HOUSE PETITIONS

Unopposed Petitions

1. Fee for all work, including precognitions and all copyings, up to and obtaining Extract Decree–
   Edinburgh solicitors only £175.00
   Edinburgh solicitors and solicitors outside Edinburgh £240.00
   Outlays including duplicating charges to be allowed in addition.

Opposed Petitions

2. Fee for all work (other than precognitions) up to and including lodging Petition, obtaining and executing warrant for service £120.00
   Outlays including Duplicating Charges to be allowed in addition.
3. Where applicable, charges under Part IV pargraphs 2, 3 and 5 to 21 of this Table.
4. Reports in opposed petitions–
   (a) for each report by Accountant of Court £20.00
   (b) for any other report, as under Part IV section 6.
5. Obtaining Bond of Caution £20.00

PART IV—DEFENDED ACTIONS

1. Instruction Fee–
   (a) To cover all work (apart from precognitions) until lodgement of Open Record £165.00
   (b) Instructing re-service where necessary £17.50
   (c) If Counter-Claim lodged, additional fee for each party £35.00
2. Record Fee–
   (a) To cover all work in connection with adjustment and closing of Record including subsequent work in connection with By Order Adjustment Roll £175.00

(b) To cover all work as above, so far as applicable, where action settled or disposed of before Record closed £110.00

(c) If consultation held before Record closed, additional fees may be allowed as follows:–

(i) arranging consultation £17.50

(ii) attendance at consultation—per quarter hour £8.50

(d) Additional fee to (a) and (b) (to include necessary amendments) to the pursuer and existing defender, to be allowed for each pursuer, defender or third party brought in prior to the Record being closed, each of £50.00

(e) If an additional pursuer, defender or third party is brought in after Record closed, an additional fee shall be allowed to the existing pursuer and the existing defender or defenders, each of £75.00

3. Procedure Roll or Debate Roll–

(a) Preparing for discussion and all work incidental thereto including instruction of counsel £35.00

(b) Attendance at court—per quarter hour £8.50

(c) Fee for advising and work incidental thereto £26.00

4. Adjustment of Issues and Counter-Issues–

(a) Fee to pursuer to include all work in connection with and incidental to the lodging of an Issue, and adjustment and approval thereof £32.50

(b) If one Counter-Issue, additional fee to pursuer of £10.00

(c) Where more than one Counter-Issue, an additional fee to pursuer for each additional Counter-Issue £5.00

(d) Fee to defender or third party for all work in connection with lodging of Counter-Issue and adjustment and approval thereof £32.50

(e) Fee to defender or third party for considering Issue where no Counter-Issue lodged... ... ... £10.00

(f) Fee to defender or third party for considering each additional Counter-Issue £5.00

5. Precognitions–

Taking and drawing precognitions—per sheet £17.00

Notes

1. In addition each solicitor shall be entitled to charge for copies of the precognition 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, for revising and adjusting it, half of the taking and drawing fee per sheet.

6. Reports obtained under order of court excluding Auditor's report–

(a) Fee for all work incidental thereto £35.00

(b) Additional fee per sheet of report to include all copies required (maximum £25) £5.00

7. Specification of Documents–

(a) Basic fee to cover instructing counsel, revising and lodging and all incidental procedure to obtain a diligence up to and including obtaining interlocutor £35.00

(b) Fee to opponent's solicitor £17.00

(c) Fee for attendance at execution of commission, per quarter-hour, of £8.50

(d) If alternative procedure adopted, a fee per person upon whom order served, of £13.50

8. Commission to take evidence–

ON INTERROGATORIES

(a) 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... ... ... £70.00

(b) Basic fee to opposing solicitor if cross-interrogatories lodged £55.00

(c) Fee to opposing solicitor if no cross-interrogatories lodged £20.00

(d) In addition to above, fee per sheet to each party for completed interrogatories or cross-interrogatories, including all copies, of... ... ... £5.00

9. Commission to take evidence–

OPEN COMMISSIONS

(a) Basic fee to solicitor applying for commission up to and including lodging report of commission, but excluding (c) £75.00

(b) Basic fee to opposing solicitor £35.00

(c) Fee for attendance at execution of commission at the rate per quarter-hour of £8.50

10. Miscellaneous motions where not otherwise covered by this Table–

(a) Where attendance of counsel and/or solicitor not required £10.00

(b) Where attendance of counsel and/or solicitor required, inclusive of instruction of counsel—not exceeding half-hour £25.00

(c) Thereafter attendance fee per additional quarter-hour £8.50

(d) Basic fee to solicitor for instructing counsel for a Minute (other than a Minute ordered by the court), revising and lodging as a separate step in process including any necessary action £25.00

11. Incidental procedure (not chargeble prior to approval of Issue or allowance of proof)–

Fixing diet, obtaining Note on the Line of Evidence, etc., borrowing and returning process, lodging productions, considering opponent's productions, and all other work prior to the consultation on the sufficiency of evidence... ... ... £100.00

12. Amendment of Record–

(a) Amendment of conclusions only—fee to proposer £25.00

(b) Amendment of conclusions only—fee to opponent £10.00

(c) Amendment of pleadings after Record closed, where no answers to the amendment are lodged—fee to proposer £37.50

(d) In same circumstances—fee to opponent £17.50

(e) Amendment of pleadings after Record closed where answers are lodged—fee for proposer and each party lodging answers £90.00

(f) Fee for adjustment of Minute and Answers, where applicable to be allowed in addition to each party of £45.00

13. Preparation for trial or proof to include fixing consultation on the sufficiency of evidence and attendance thereat, fee-funding precept, citing witnesses, all work checking and writing up process, and preparing for trial or proof–

(a) If action settled before trial or proof, or the same lasts only one day, to include, where applicable, instruction of counsel £235.00

(b) For each day or part of a day after the first, including instruction of counsel £20.00

(c) To cover preparing for adjourned diets and all work incidental as in (a), if diet postponed more than 5 days £42.50

14. Copyings–

Productions, Reports of Commissions, Duplicate Inventory, Jury list, List of Witnesses, Lord Ordinary's Opinion, etc.—as per Chapter I paragraph 2.

When copied by photostatic or similar process each page to be charged as one sheet.

15. Settlement by Tender—Fees for either party–

(a) Basic fee for lodging, or for considering, first Tender £50.00

(b) Fee for lodging, or for considering, each further Tender £35.00

(c) If Tender accepted, an additional fee to each party £35.00

16. Extrajudicial settlement–

Fee inclusive of Joint Minute (not based on a Judicial Tender) £85.00

17. Proof or trial–

Attendance fee—per quarter-hour £8.50

18. Accounts—to include framing and lodging account, and attending taxation, uplifting account and noting taxations £62.50

19. Ordering and obtaining extract £15.00

20. Final procedure–

(a) 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 settling with witnesses and procuring and booking verdict, or attendance at judgment £70.00

(b) If case disposed of before trial or proof £20.00

21. Session fee—to cover communications with client and counsel–

(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 on that part of the account charged under Chapter III.

PART V—INNER HOUSE BUSINESS

1. Reclaiming Motions—

(a) Fee for appellant for all work up to interlocutor sending case to Roll £50.00

(b) Fee for respondent £25.00

(c) Additional fee for each party for every 50 pages of Appendix £20.00

2. Appeals from inferior courts–

(a) Fees for appellant £62.50

(b) Fee for respondent £30.00

(c) Additional fee for each party for every 50 pages of Appendix £20.00

3. Summar or Short Roll–

(a) Preparing for discussion, instructing counsel, and preparing Appendix £50.00

(b) Attendance fee—per quarter-hour £8.50

4. Where applicable, charges under Part IV of this Chapter.

5. Special Cases and Inner House petitions, according to circumstances of the case.

6. Obtaining Bond of Caution £20.00

EXPLANATORY NOTE

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

This Act of Sederunt substitutes new Chapters I and III of the Table in rule 347 of the Rules of the Court of Session (fees of solicitors) with minor amendments and increases the fees in these Chapters by 8 per cent overall.