STATUTORY INSTRUMENTS

1965 No. 1611 (S. 84)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Alteration of Sheriff Court Fees) 1965

Made - - - -	*17th August* 1965
Laid before Parliament	*26th August* 1965
Coming into Operation	*1st October* 1965

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 40 of the Sheriff Courts (Scotland) Act 1907(a), as amended, and of all other powers competent to them in that behalf, do hereby enact as follows:—

1. In all actions and other litigations in which the first deliverance on the Initial Writ is dated on or after 1st October 1965 the Regulations and Table of Fees contained in the Schedule hereto shall be substituted for the Regulations and for Chapters I, III, V, VI, VII, IX and X of the Schedule to the Act of Sederunt of 7th May 1935(b).

2. This Act of Sederunt may be cited as the Act of Sederunt (Alteration of Sheriff Court Fees) 1965 and shall come into operation on 1st October 1965.

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

Edinburgh,

17th August 1965.

(Signed) J. L. Clyde,
I.P.D.

SCHEDULE

GENERAL REGULATIONS

1. This Table of Fees shall regulate the taxation of accounts as well between solicitor and client as between party and party and in all cases the Sheriff may appoint that expenses shall be subject to modification.

2. Save as provided in Regulations 3 to 7 the fees set out in the Table shall be reduced by 20 per cent in ordinary actions in which the principal sum concluded for does not exceed £250 and in ordinary removings and ejections where the annual rent is £250 or less.

(a) 7 Edw. 7. c. 51.

(b) S.R. & O. 1935/488 (Rev. XX, p. 880: 1935, p. 1588).

3. In all cases it shall be competent to the Sheriff to direct that the expenses shall be taxed by reference to the sum decerned for.

4. Where the principal sum concluded for does not exceed £250 it shall be competent for the Sheriff to direct that 20 per cent shall not be deducted from the fees in the Table.

5. The pursuer's agents' account as between party and party shall be taxed by reference to the sum decerned for unless the Sheriff otherwise directs.

6. Where the demand made does not exceed the value which may be competently concluded for in the Small Debt Court, Small Debt expenses only shall be allowed, unless the Sheriff shall otherwise appoint.

7. Where the principal amount decerned for does not exceed £50, the Sheriff may allow Small Debt expenses only.

8. In all actions where the pecuniary amount or value of the question in dispute cannot be ascertained from the process, the fees set forth in the Table shall apply without deduction, except where the Sheriff shall otherwise direct.

9. In the Small Debt Court the scale of fees shall be as set forth in Chapter IV of the Table.

10. In cases of importance or requiring special preparation, it shall be in the discretion of the Sheriff to allow a percentage increase, not exceeding 50 per cent, of the fees authorised by the Table of Fees hereinafter provided, to cover the responsibility undertaken by the Solicitor in the conduct of the litigation. Where such an increase is allowed a similar increase shall be chargeable by each Solicitor in the cause against his own client. In fixing the amount of the percentage increase the following factors shall be taken into account:—

(*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 (however brief) 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.

11. The expenses to be charged against an opposite party shall be limited to proper expenses of process, without any allowance (beyond that specified in the Table) for preliminary investigations, subject to this proviso, that precognitions, plans, analyses, reports, and the like (so far as relevant and necessary for proof of the matters in the record between the parties), although taken or made before the raising of an action or the preparation of defences, or before proof is allowed, and although the case may not proceed to trial or proof, may be allowed where eventually an interlocutor allowing a proof shall be pronounced.

12. In all cases (save as otherwise provided in the Table) where by reason of the procedure involved or otherwise the inclusive fees as set forth in Chapters I and II do not properly cover the work involved, accounts shall be charged on the basis of the detailed fees for time, drawing of papers, correspondence, etc. set forth in Chapter III. In all other circumstances it shall be in the option of the solicitor to charge an account either on the basis of the inclusive fees of Chapters I and II or on the basis of the detailed fees of Chapter III but in accounts as between party and party it shall not be competent to make charges partly on the one basis and partly on the other. In accounts as between solicitor and client, however, it shall be competent to charge an account partly on the basis of the inclusive fees of Chapters I and II and partly on the basis of the detailed fees of Chapter III but so, however, that if an inclusive fee is charged under Chapters I or II no work falling thereunder shall be charged again under Chapter III.

13. In order that the expenses of litigation may be kept within proper and reasonable limits only such expenses shall be allowed in the taxation of accounts between party and party as are necessary for conducting it in a proper manner with due regard to economy. And it shall be competent to the Auditor to disallow all charges for papers, parts of papers or particular procedure or agency which he shall judge irregular or unnecessary.

14. Notwithstanding that a party shall be found entitled to expenses generally yet if on the taxation of the account it shall appear that there is any particular part of the litigation in which such party has proved unsuccessful or that any part of the expense has been occasioned through his own fault he shall not be allowed the expense of such parts of the proceedings.

15. Wherever a party or his solicitor on one side attends any Diet of Proof or Debate or any meeting ordered by the Sheriff and the other is absent or not prepared to proceed the Sheriff shall have power to decern against the latter party for payment of such expenses as the Sheriff may consider reasonable. If an Appeal be abandoned or any Debate on preliminary pleas or otherwise ordered by the Sheriff be departed from by any party and notice to that effect be given to the opposite party at least three lawful days before the date fixed for the Hearing no debate fee shall be allowed; But failing such notice a debate fee shall be allowed to the respondent's or other party's solicitor of one-half of the amount which would have been allowed had the Debate proceeded.

16. When a Remit is made by the Court regarding matters in the Record between the parties to an accountant, engineer, or other reporter the solicitors shall not, without special agreement, be personally responsible to the reporter for his remuneration, the parties alone being liable therefor.

17. In all cases the solicitor's outlays reasonably incurred in the furtherance of the litigation shall be allowed. These outlays shall include a charge in respect of posts and sundries of 5 per cent of the taxed amount of fees.

18. In the taxation of accounts as between party and party where Counsel is employed:—

(*a*) Counsel's fees and the fees for instruction of Counsel in Item 17 of Chapter II or in a detailed account charged under Chapter III are to be allowed only where the Sheriff has sanctioned the employment of Counsel,

(*b*) In the absence of special circumstances warranting any other course fees to Counsel and Solicitor for only one consultation in the course of the case are to be allowed except where Counsel is employed both before the Sheriff-Substitute and the Sheriff Principal and there is a consultation prior to the debate on the appeal when fees for an additional consultation are to be allowed.

19. This Table of fees shall apply to all actions and other litigation in which the first deliverance on the Initial Writ is dated on or after 1st October 1965. References in any Statute or Act of Sederunt to the fees allowed in Acts of Sederunt of earlier date than these presents shall be held as referring to the fees allowed in the like circumstances in the Table of Fees underwritten.

TABLE OF FEES

Chapter I—Undefended Actions

1. *Actions in which decree is granted without proof*

Inclusive fee to cover all work from taking instructions up to and including obtaining Extract Decree	£10:10: -
In cases where settlement is effected after service of a Writ but before the expiry of the induciae	8: -: -

If the Pursuer's solicitor elects to charge this inclusive fee he shall endorse a Minute to that effect on the initial writ before ordering extract of the decree. Outlays such as Court dues for deliverance and posts shall be chargeable in addition and taxation shall be unnecessary.

2. *Actions of separation and aliment and adherence and aliment*

Inclusive fee to cover all work from taking instructions up to and including obtaining Extract Decree	36: -: -

If the Pursuer's solicitor elects to charge this inclusive fee he shall endorse a Minute to that effect on the initial writ after the close of the proof and before extract of the decree is ordered and when the option is so exercised decree for expenses shall be granted against the defender for said sum with outlays of up to £3:15/-, without the necessity for taxation. If outlays in excess of £3:15/- are claimed an account of such outlays shall be remitted to the Auditor of Court for taxation and the sum allowed for outlays shall be the amount of the account as taxed.

Chapter II—Defended Actions

1. *Instruction Fee*—To cover all work to the lodging of Defences	£14:10: –
2. *Adjustment Fee*—To cover all work in connection with the adjustment of the Record including (when appropriate) closing thereof and making up and lodging Closed Record.	
(*a*) Pursuer's Agent	10:10: –
Defender's Agent	8:10: –
(*b*) If action settled before Record is closed or in Summary Causes before an Interlocutor allowing proof or debate is pronounced.	
Each original party's Agent	8:10: –
(*c*) If additional Defender brought in before closing of Record or in Summary Causes before an Interlocutor allowing proof or debate is pronounced.	
Additional fee to each original party's Agent	3: 5: –
(*d*) If additional Defender brought in after closing of Record or in Summary Causes after an Interlocutor allowing proof or debate is pronounced.	
Additional fee to each original party's Agent	5: 5: –
3. *Debate Fee*—To include preparation for and conduct of Debate on Preliminary Pleas, enquiring for cause at avizandum and noting Interlocutor—	
Where Debate does not exceed 1 hour	8:10: –
For every hour or part of an hour engaged after the first hour	3:10: –
4. *Application for Jury Trial*—To include application to have cause tried by Jury including drawing and intimating Motion, attending Court, discussing questions of fact to be submitted to Jury, procuring Jury List, making copies thereof and making copies of questions of fact to be submitted to Jury	6:10: –
Fee to opposing Solicitor	4:10: –
5. *Precognitions*—To include instructions, attendances with witnesses, instructing skilled witnesses and all relative meetings and correspondence	6: –: –
Drawing Precognitions—per sheet (250 words)	1: –: –
6. *Commissions to take Evidence*	
(*a*) *On Interrogatories*	
Fee to Solicitor applying for commission to include framing and lodging Motion, framing, extending and lodging Interrogatories, instructing Commissioner and all incidental work but excluding attendance at execution of Commission	13:10: –

Additional fee for attendance at execution of Commission—per hour	£3: –: –
Inclusive fee to opposing Solicitor if cross-Interrogatories prepared and lodged	10:10: –
If no cross-Interrogatories lodged	3: –: –

(*b*) *Open Commissions*

Fee to Solicitor applying for Commission to include all work up to lodging Report of Commission but excluding attendance thereat	7:10: –
Inclusive fee to Solicitor for opposing party	3: –: –
Fee for attendance at execution of Commission—per hour ...	3: –: –

7. *Specification of Documents*

Fee to cover drawing, extending and lodging Specification and relative Motion and attendance at Court debating Specification	5: –: –
Inclusive fee to opposing Solicitor	3: –: –
Fee for citation of havers, preparation for and attendance before Commissioner at execution of Commission	
Where attendance before Commissioner does not exceed 1 hour	4:10: –
For each additional hour after the first	3: –: –
If Commission not executed—Fee for each party served with copy of Specification	1: –: –

8. *Amendment of Record*

Fee to cover framing, extending and lodging Minute of Amendment and relative Motion, intimating and relative attendances at Court	
(*a*) Where Answers lodged	8: –: –
(*b*) Where no Answers lodged	6: –: –
Inclusive fee to opposing Solicitor	
(*a*) Where Answers lodged	7: –: –
(*b*) Where no Answers lodged	5: –: –

9. *Incidental Procedure*

Fee to cover fixing Diet or Diets of Proof, citation of witnesses, lodging Productions, framing and lodging Inventories of Productions, considering Opponent's Productions and generally preparing for Trial or Proof and if necessary instructing Shorthand Writer	10: –: –

10. *Conduct of Proof or Trial*

Fee to cover conduct of Proof or Trial and Debate on Evidence if taken at close of Proof—per hour	£3:10: –
If Counsel employed	
(*a*) Fee to Solicitor appearing with Counsel—per hour ...	2: 5: –
(*b*) Fee to opposing Solicitor conducting Proof or Trial without Counsel—per hour	4: –: –

11. *Debate on Evidence*

Where Debate on Evidence not taken at conclusion of Proof—Preparing for Debate	6: –: –
Fee for conduct of Debate—per hour	3:10: –
If Counsel employed—Fee to Solicitor appearing with Counsel—per hour	2: 5: –
Fee to opposing Solicitor conducting Debate without Counsel—per hour	4: –: –

12. *Appeals*

(1) *To Sheriff Principal*

Fee to cover instructions, marking of Appeal or noting that Appeal marked, noting Diet of Hearing thereof and preparation for Hearing	10: –: –
Fee to cover conduct of Hearing—per hour	3:10: –
If Counsel employed—Fee to Solicitor appearing with Counsel—per hour	2: 5: –
Fee to opposing Solicitor conducting Hearing without Counsel—per hour	4: –: –

(2) *To Court of Session*

Fee to cover instructions, marking Appeal or noting that Appeal marked and instructing Edinburgh Correspondents with papers	7:10: –

13. *Settlements*

(*a*) *Judicial Tender*

Fee for preparation and lodging or for consideration of Minute of Tender	5: –: –
Fee on acceptance of Tender, to include preparation and lodging or consideration of Minute of Acceptance and attendance at Court when Decree granted in terms thereof ...	3: –: –

(*b*) *Extra Judicial Settlements*

Fee to cover negotiations resulting in settlement, framing or revising Joint Minute and attendance at Court when authority interponed thereto	7: –: –

14. *Final Procedure*

Fee to cover settling with witnesses, enquiries for cause at avizandum, noting Final Interlocutor	£2:10: –
Fee to cover framing or considering Account of Expenses, arranging, intimating and attending Diet of Taxation, obtaining approval of Auditor's Report, ordering, procuring and examining Extract Decree	3:10: –

15. *Copying Fees*

Copying all necessary papers (sheet 250 words)	
First copy—per sheet	–: 4: –
Each subsequent copy—per sheet	–: 2: –

(*a*) Copying charges shall be allowed to the Solicitor as follows—viz., at full copying rate: (1) a full copy of the Record and Interlocutors; and (2) productions so far as necessary for the efficient conduct of the cause. At half copying rate: (3) copy Record up to the date of closing for use of Sheriff: (4) copy of every Interlocutor disposing of questions of fact or law for the client: (5) copy of productions for use of Sheriff where number is so great as to warrant this and (6) Notes of Evidence taken at proof if required for hearing not taken at conclusion of proof or for hearing of Appeal. No charge shall be allowed for copies of any documents not lodged in process.

(*b*) Where more than 6 copies of papers are necessary these may be reproduced by duplicating process or printed, and the appropriate charges recovered as outlay. If this is not done a charge for 6 copies only at copying rates shall be allowed.

16. *Process Fee*

Fee to cover all consultations between Solicitor and client during the progress of the cause and all communications, written or verbal, passing between them

5% on total fees and copyings allowed on taxation

17. *Fee for instruction of Counsel*

Fee for instructing Counsel to revise Record	5: –: –
Fee for instructing Counsel to conduct Proof or Trial ...	10: –: –
Fee for instructing Counsel to conduct Appeal to Sheriff Principal	10: –: –

In each case to cover all consultations, revisal of papers and all incidental work

Fees to Counsel and Clerk to be allowed as outlay.

Chapter III—Charges for Time, Drawing of Papers, Correspondence, etc.

1. Time occupied in the performance of all work including attendances with client and others and attendances at Court in all circumstances other than at the conduct of a trial, proof or formal debate—

Note:—Time necessarily occupied in travelling to be chargeable at these rates

(*a*) Solicitor—per half hour ... ... £1:10: –

(*b*) Unqualified Assistant—per half hour ... ... –:15: –

2. Attendance at Court conducting trial, proof or formal debate —per hour ... ... 3:10: –

If Counsel employed—Fee to Solicitor appearing with Counsel—per hour ... ... 2: 5: –

Fee to opposing Solicitor conducting proceedings without Counsel—per hour ... ... 4: –: –

3. Drawing all necessary papers (the page throughout this Chapter to consist of 125 words or numbers)—per page ... –:10: –

4. Revising papers where revisal ordered—per page ... ... –: 5: –

5. Copying all necessary papers—

First copy—per page ... ... –: 2: –

Each subsequent copy—per page ... ... –: 1: –

(*a*) Copying charges shall be allowed to the Solicitor as follows—viz., at full copying rates: (1) a full copy of the Record and Interlocutors; and (2) productions so far as necessary for the efficient conduct of the cause. At half copying rate: (3) copy Record up to the date of closing for use of Sheriff: (4) copy of every Interlocutor disposing of questions of fact or law for the client; (5) copy of productions for use of Sheriff where number is so great as to warrant this and (6) Notes of Evidence taken at proof if required for Hearing not taken at conclusion of proof or for hearing of Appeal. No charge shall be allowed for copies of any documents not lodged in process.

(*b*) Where more than 6 copies of papers are necessary these may be reproduced by duplicating process or printed, and the appropriate charges recovered as outlay. If this is not done a charge for 6 copies only at copying rates shall be allowed.

6. Certifying copies—for each copy required to be certified ... –:10: –

7. Lodging in process

Each necessary lodging in process ... ... –:10: –

8. Borrowing process

Each necessary borrowing of process to include return of same ... ... –:10: –

9. *Extracts*

Ordering, procuring and examining Extracts, interim or otherwise ... ... 1: –: –

10. *Correspondence, Intimations, etc.*	
(1) Formal letters and intimations	£–: 5: –
(2) Letters other than above—per page of 125 words ...	–:10: –
(3) Telephone calls not later confirmed by letter	–: 7: 6
11. *Citations*	
Each citation of party or witness including execution thereof (plus postages)	–:10: –
12. *Instructions to Officers*	
Instructing officer to serve, execute or intimate various kinds of writs or diligence including the examination of executions	–:10: –
For each party on whom service or intimation is made ...	–:10: –
Agency accepting service of any writ	–:10: –
13. *Personal diligence*	
1. Recording execution of charge	–:10: –
2. Procuring fiat	–:10: –
3. Instructing apprehension	–:15: –
4. Framing state of debt and attendance at settlement ...	1: –: –
14. *Sales*	
1. Instructing auctioneer or officer to conduct sale	–:15: –
2. Perusing report of sale	–:15: –
3. Reporting sales under poindings or sequestrations or any other judicial sales	–:10: –
4. Noting approval of roup roll	–:10: –
5. Obtaining warrant to pay	–:10: –

Chapter IV—Small Debt Cases

1. Uncontested cases in which the sum sued for is under £20—if Sheriff allows fees:—	
Taking out summons and drawing claim where that is necessary, making copy and attendance at calling	1: –: –
(*a*) where the case is settled before calling, fee to be allowed against the defenders	–:13: 6
2. Uncontested cases in which the sum sued for is £20 or over—if Sheriff allows fees:—	
Inclusive fee to cover all work from taking instructions up to and including obtaining extract decree	4: 4: –
(*a*) where the case is settled before calling, fee to be allowed against the defenders	2:12: 6
3. Contested cases in which the sum sued for is under £20—if Sheriff allows fees:—	
Fee as in 1, and for conduct of the case, per hour	1: –: –

4. Contested cases in which the sum sued for is £20 or over—if Sheriff allows fees:—

Fee as in 2, and for conduct of the case, per hour ... ... £1: –: –

(*a*) Irrespective of the sum sued for, cases shall be considered contested only where the defender appears or is represented, and states a defence.

5. Where a case is remitted under section 48 of the Sheriff Courts (Scotland) Act, 1907, to the Ordinary Court Roll, the fees chargeable from the date of the remit shall be the same as if the cause had been originally raised in the Ordinary Court: and, in addition, there shall be allowed to cover the procedure anterior to the remit a fee of

(*a*) in cases in which the sum sued for is under £20 ... ... 3:18: –

(*b*) in cases in which the sum sued for is £20 and over ... 6: 2: –

6. When a case is remitted under Rule 61 of the Sheriff Courts (Scotland) Act, 1907, to be dealt with under the provisions of the Small Debt Acts, there shall be allowed for the trial of the case to cover all trouble thereafter a fee of ... ... 4: –: –

(*a*) Unless where the case is transferred to the Ordinary Roll, or the Sheriff shall otherwise order, judicial fees, if allowed, shall not exceed one-third of the sum sued or decerned for, but with a minimum fee of 15s. in uncontested cases and £1: 10s in contested cases. Necessary outlays also to be allowed.

(*b*) In all cases where a proof has been allowed it shall be in the power of the Sheriff, if he shall think proper, to allow a fee not exceeding £1: 10s per hour for taking instructions and seeing witnesses; and in very special cases he may allow a fee to the successful party not exceeding seven and a half guineas for the conduct of the cause, and in that event a like fee shall be chargeable to his client by the solicitor of the unsuccessful party.

7. Fees of diligence in terms of sections 12, 13 and 14 of Chapter III so far as applicable to diligence.

Chapter V—Mercantile Sequestration

Taking instructions to apply for sequestration, obtaining deliverance, taking instructions to prove notour bankruptcy, drawing abbreviate of sequestration, drawing advertisement for Gazette, and instructing insertion

Inclusive fee ... ... 5: –: – to 10: –: –

Charges for drawing petition and relative copyings, etc. to be allowed in addition, also charges for citation of bankrupt where petition is not at his instance.

1. Attending meeting of creditors and of trustee and commissioners for first hour ... ... 3: –: –

2. For every hour after or part of an hour	£2: –: –
3. Writing minutes of meeting where not written during meeting, per sheet	1: –: –
4. Writing minutes of meeting where written during meeting, per sheet	–: 7: 6
5. Lodging process with Sheriff Clerk, and obtaining deliverance declaring election of trustee and commissioners	1: –: –
6. Taking out bond of caution for trustee, and getting it signed and for all the work connected therewith	3: –: –
7. Taking out act and warrant, and transmitting same to accountant in bankruptcy	1: 5: –
8. Drawing abbreviate for register of adjudications, and copying and recording same	1: 5: –
9. Engrossing proceedings in Sederunt Book, per sheet ...	–: 5: –
No charge shall be allowed to the solicitor for making engrossments in the Sederunt Book after the confirmation of the trustee.	
Taking instructions for examination of bankrupt	1:10: –
Taking instructions for the examination of third parties ...	1:10: –
(*a*) for each party after the first	1: –: –
(*b*) All other charges to be at the same rates for similar or analogous work under Chapter III for general business. Attendance at examination of bankrupt and other parties to be charged as in Chapter III section 2.	

Chapter VI—Summary Sequestration

Taking instructions to apply for summary sequestration, obtaining deliverance, proving notour bankruptcy, drawing abbreviate of sequestration, drawing advertisement for Gazette, and instructing insertion	
Inclusive fee	3: –: – to 7: –: –
All other charges to be charged under Chapter V so far as applicable, otherwise under Chapter III.	

EXPLANATORY NOTE

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

This Act of Sederunt alters the fees chargeable by Solicitors for work done by them in certain litigations in the Sheriff Court.