1971 No. 90 (S.5)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Alteration of Sheriff Court Fees) 1971

Made - - -	14*th January* 1971
Laid before Parliament	27*th January* 1971
Coming into Operation	15*th February* 1971

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 by section 39 of the Administration of Justice (Scotland) Act 1933(b), and of all other powers competent to them in that behalf, do hereby enact and declare as follows:—

1. None of the provisions referred to in Schedule 1 hereto shall apply to any work done or expenses incurred on or after 15th February 1971.

2. In the case of any work done or expenses incurred on or after 15th February 1971, the Regulations and Table of Fees contained in Schedule 2 hereto shall be applied in substitution for the relative provisions referred to in Schedule 1 hereto. The Regulations and Table of Fees contained in Schedule 2 hereto shall apply only to the said work or expenses.

3. This Act of Sederunt may be cited as the Act of Sederunt (Alteration of Sheriff Court Fees) 1971 and shall come into operation on 15th February 1971.

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

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

Edinburgh,
14th January 1971.

SCHEDULE 1

PROVISIONS WHICH SHALL CEASE TO APPLY TO WORK DONE OR EXPENSES INCURRED ON OR AFTER 15TH FEBRUARY 1971

1. The Regulations, and Chapters I, III, V, VI, VII, IX and X of the Table of Fees, contained in the Schedule to the Act of Sederunt of 7th May 1935(c).

2. The Regulations and Table of Fees contained in the Schedule to the Act of Sederunt (Alteration of Sheriff Court Fees) 1965(d).

3. The Regulations and Table of Fees contained in the Schedule to the Act of Sederunt (Alteration of Sheriff Court Fees) 1967(e).

(a) 1907 c. 51. (b) 1933 c. 41.
(c) S.R. & O. 1935/488 (Rev. XX, p. 880: 1935 p. 1588).
(d) S.I. 1965/1611 (1965 II, p. 4637). (e) S.I. 1967/1294 (1967 II, p. 3744).

SCHEDULE 2

General Regulations

1. This Table of Fees shall regulate the taxation of accounts between (a) solicitor and client, client paying, (b) solicitor and client, third party paying, and (c) party and party; and shall be subject to the aftermentioned powers of the sheriff to increase or modify such fees.

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

3. Except where the Sheriff otherwise directs the fees in this table shall be reduced by 20 per cent. in actions where the value of the action, if ascertainable from the process, or the sum craved, does not exceed £250 and in removing and ejection actions where the annual rent or gross annual value does not exceed £250. Where a counterclaim is lodged the value of the action shall be the addition of the sum sued for and the sum in the counterclaim.

4. In the Small Debt Court expenses as between party and party shall be regulated in accordance with the scale set forth in Chapter IV of this Table. As between solicitor and client, a solicitor shall have the option of charging either under Chapter IV, or under Chapter III less twenty per cent.

5. 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.

6. Fees for work done in terms of the Social Work (Scotland) Act 1968 shall be chargeable under Chapter III.

7. The Sheriff shall have the following discretionary powers in relation to this Table of Fees:—

(i) in all cases the Sheriff may direct that expenses shall be subject to modification,

(ii) in cases falling under Regulation 3 hereof the Sheriff may direct that the deduction of 20 per cent. shall not be made,

(iii) in cases where the sum decerned for does not exceed £50 the Sheriff may allow Small Debt expenses only,

(iv) in cases of importance or requiring special preparation the Sheriff hearing the case may, upon a motion made not later than seven days after the date of any interlocutor containing a finding for expenses, pronounce a further interlocutor regarding these expenses allowing a percentage increase not exceeding 50 per cent of the fees authorised by this Table 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;

(*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.

(v) 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 or 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.

8. 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.

9. Save as otherwise provided in the Table 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.

10. 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.

11. 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 expenses has been occasioned through his own fault he shall not be allowed the expense of such parts of the proceedings.

12. 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.

13. 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 15 per cent. of the taxed amount of fees.

14. 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 18 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*) Except on cause shown 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.

15. This Table of Fees shall apply to all work done or expenses incurred in any action or other litigation on or after 15th February 1971. References in any Statute or Act of Sederunt to the fees allowed in Acts of Sederunt of earlier date than these presents shall subject to Regulation 16 hereof be held as referring to the fees allowed in the like circumstances in the Table of Fees underwritten.

16. The general percentage increases in fees provided for in Tables or Acts of Sederunt prior to the date hereof shall have no application to this Table.

TABLE OF FEES

CHAPTER I—UNDEFENDED ACTIONS

1. ACTIONS (other than those specified in paragraph 2 of this Chapter) IN WHICH DECREE IS GRANTED WITHOUT PROOF

Inclusive fee to cover all work from taking instructions up to and including obtaining Extract Decree ... ... £12·00

In cases where settlement is effected after service of a Writ but before the expiry of the induciae ... ... £9·00

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, ADHERENCE AND ALIMENT AND CUSTODY AND ALIMENT WHERE PROOF TAKES PLACE

Inclusive fee to cover all work from taking instructions up to and including obtaining Extract Decree ... ... £45·00

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 together with the shorthand writer's fee actually charged in terms of the Table of Shorthand Writers' Fees in force from time to time and of other outlays up to £7 without the necessity for taxation. If outlays in excess of £7, excluding the shorthand writer's fee aforesaid 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 (except as hereinafter otherwise specially provided for in this Chapter) to the lodging of Defences including copyings ... ... £18·00

Where separate Statement of Facts and Counter claim and Answers lodged, additional fee of ... ... £9·00

2. ADJUSTMENT FEE

To cover all work (except as hereinafter otherwise specially provided for in this Chapter) in connection with the adjustment of the Record including (when appropriate) closing thereof, making up and lodging Closed Record and copyings

(*a*) Pursuer's Agent ... ... £16·00

Defender's Agent ... ... £12·50

(*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 ... ... £12·50

(*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 ... ... £4·50

(*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 ... ... £6·50

3. (*a*) DEBATE FEE

To include preparation for and conduct of any Hearing or Debate other than on evidence, enquiring for cause at avizandum and noting Interlocutor ...
When debate does not exceed 1 hour ... ... £12·00

For every half hour engaged after the first hour ... ... £2·00

(*b*) INTERIM INTERDICT HEARINGS

Pursuer's solicitor. The same fees as for debate fee above, but to include both the appearance at lodging of writ and the hearing at second diet.
Defender's solicitor's fee where the debate does not exceed 1 hour ... £6·00

4. APPLICATION FOR JURY TRIAL

To include application to have cause tried by Jury, including drawing, attending Court, drawing and discussing questions of fact to be submitted to Jury, and procuring Jury list ... ... £8·00

Fee to opposing Solicitor ... ... £5·50

5. PRECOGNITIONS

Drawing Precognitions. (To include instructions, attendances with witnesses, and all relative meetings and correspondence)

(i) Where cause concluded before Proof or Trial allowed, per sheet (250 words) ... ... £2·00

(ii) Where cause concluded after Proof or Trial allowed, per sheet ... £2·50

Note: Where a skilled witness prepares his own precognition or report, the solicitor shall be allowed half of above drawing fee for revising and adjusting it.

6. COMMISSIONS TO TAKE EVIDENCE

(*a*) On Interrogatories
Fee to Solicitor applying for commission to include drawing, intimating and lodging Motion, drawing and lodging Interrogatories, instructing Commissioner and all incidental work (except as otherwise specially provided for in this Chapter) but excluding attendance at execution of Commission ... ... £13·50

Fee to opposing Solicitor if cross-Interrogatories prepared and lodged £10·50

If no cross-Interrogatories lodged ... ... £3·00

Fee for attendance at execution of Commission—per hour including travelling time ... ... £3·00

(*b*) Open Commissions
Fee to Solicitor applying for Commission to include all work (except as otherwise specially provided for in this Chapter) up to lodging Report of Commission but excluding attendance thereat ... ... £8·00

Fee to Solicitor for opposing party ... ... £3·00

Fee for attendance at execution of Commission—per hour ... ... £3·00

Travelling time—per hour ... ... £3·00

7. SPECIFICATION OF DOCUMENTS

Fee to cover drawing, intimating and lodging Specification and relative Motion and attendance at Court debating Specification ... ... £5·00

Inclusive fee to opposing Solicitor ... ... £4·50

Fee for citation of havers, preparation for and attendance before Commissioner at execution of Commission
Where attendance before Commissioner does not exceed 1 hour ... £7·00

For each additional half hour after the first hour ... ... £3·00

If Commission not executed—Fee for serving each party with copy of Specification to include recovering and examining documents or productions referred to therein ... ... £2·50

8. AMENDMENT OF RECORD

Fee to cover drawing, intimating and lodging Minute of Amendment and relative Motion and relative attendances at Court.

(*a*) Where Answers lodged ... ... £11·00

(*b*) Where no Answers lodged ... ... £7·00

Inclusive fee to opposing Solicitor

(*a*) Where Answers lodged ... ... £9·00

(*b*) Where no Answers lodged ... ... £6·00

9. MOTIONS AND MINUTES

Fee to cover drawing, intimating and lodging any written Motion or Minute, including a Reponing Note, and relative attendances at Court (except as otherwise provided for in this Chapter)

(*a*) Where opposed ... ... £6·00

(*b*) Where unopposed (including for each party a Joint Minute other than under paragraph 14(*b*)) ... ... £3·50

Fee to cover considering opponent's written Motion, Minute or Reponing Note and relative attendances at Court

(*a*) Where Motion, Minute or Reponing Note opposed ... ... £5·00

(*b*) Where Motion, Minute or Reponing Note unopposed ... ... £3·00

10. PROCEDURE PRELIMINARY TO PROOF

(*a*) Fee to cover fixing Diet of Proof, citation of witnesses, and generally preparing for Trial or Proof and if necessary instructing Shorthand Writer ... ... £12·00

(*b*) Fee to cover preparing for adjourned diet and all incidental work as in (*a*) if diet postponed for more than 6 days
For each adjourned diet ... ... £5·00

(*c*) Drawing and lodging an Inventory of Productions, lodging the productions specified therein and considering opponent's productions (to be charged once only in each process) ... ... £4·00

Where only one party lodges productions, opponent's charges for considering same ... ... £2·00

11. CONDUCT OF PROOF OR TRIAL

Fee to cover conduct of Proof or Trial and Debate on Evidence if taken at close of Proof—per half hour ... ... £3·00

If Counsel Employed
Fee to Solicitor appearing with Counsel—per half hour ... ... £2·50

12. DEBATE ON EVIDENCE

Where Debate on Evidence not taken at conclusion of Proof preparing for Debate ... ... £8·00

Fee for conduct of Debate—per half hour ... ... £3·00

If Counsel employed—Fee to Solicitor appearing with Counsel—per half hour ... ... £2·50

13. APPEALS

(*a*) To Sheriff Principal

Fee to cover instructions, marking of Appeal or noting that Appeal marked, noting Diet of Hearing thereof and preparation for Hearing	£15·00
Fee to cover conduct of Hearing—per half hour	£3·00
If Counsel employed—Fee to Solicitor appearing with Counsel—per half hour	£2·50

(*b*) To Court of Session

Fee to cover instructions, marking Appeal or noting that Appeal marked and instructing Edinburgh Correspondents	£7·50

14. SETTLEMENTS

(*a*) Judicial Tender

Fee for preparation and lodging or for consideration of Minute of Tender	£6·00
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	£4·00

(*b*) Extra-Judicial Settlements

Fee to cover negotiations resulting in settlement, framing or revising Joint Minute and attendance at Court when authority interponed thereto	£10·00

15. FINAL PROCEDURE

Fee to cover settling with witnesses, enquiries for cause at avizandum, noting Final Interlocutor	£3·00
Fee to cover drawing Account of Expenses, arranging, intimating and attending Diet of Taxation and obtaining approval of Auditor's Report and adjusting Account with opponent where necessary, ordering, procuring and examining Extract Decree	£6·00
Fee to cover considering opponent's Account of Expenses and attending Diet of Taxation or adjusting account with opponent	£3·00

16. COPYING FEES

Copying all necessary papers by any means	
First copy—per sheet	£0·30
Additional copies—per sheet	£0·10

A sheet shall be 250 words. When copied by photostatic or similar process, each page shall be charged as one sheet.

17. 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.

Ten per cent on total fees and copyings allowed on taxation.

18. FEE FOR INSTRUCTION OF COUNSEL

Fee for instructing Counsel to revise Record	£5·00
Fee for instructing Counsel to conduct Debate, Proof or Trial	£10·00
Fee for instructing Counsel to conduct Appeal to Sheriff Principal ...	£10·00

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

Fee to Counsel to be allowed as outlay.

CHAPTER III—CHARGES FOR TIME, DRAWING OF PAPERS, CORRESPONDENCE, ETC.

1.	Attendance at Court conducting trial, proof or formal debate or hearing—per half hour	£3·00
2.	Time occupied in the performance of all other work including attendances with client and others and attendances at Court in all circumstances, except as otherwise specifically provided.	
	(*a*) Solicitor—per half hour	£2·50
	(*b*) Unqualified Assistant—per half hour	£1·50
	Note: Time necessarily occupied in travelling to such be chargeable at these rates.	
3.	Drawing all necessary papers (the sheet throughout this Chapter to consist of 250 words or numbers)—per sheet	£1·00
4.	Revising papers where revisal ordered—for each five sheets	£0·50
5.	Copying all necessary papers by any means	
	First copy—per sheet	£0·30
	Additional copies—per sheet	£0·10
	When copied by photostatic or similar process each page shall be charged as one sheet.	
6.	Certifying or signing a document	£0·50
7.	Perusing any document (other than a letter) not exceeding 2 sheets in length	£1·00
8.	Lodging in process	
	Each necessary lodging in or uplifting from process, also for each necessary enquiry for documents due to be lodged	£0·50
9.	Borrowing process	
	Each necessary borrowing of process to include return of same	£0·50
10.	Extracts	
	Ordering, procuring and examining Extracts, interim or otherwise ...	£2·00
11.	Correspondence, Intimations, etc.	
	(1) Formal letters and intimations	£0·20
	(2) Letters other than above—per page of 125 words	£0·80
	(3) Telephone calls except under (4)	£0·50
	(4) Telephone calls (lengthy) to be treated as attendances or long letters.	
12.	Citations	
	Each citation of party or witness including execution thereof	£1·00
13.	Instructions to Officers	
	Instructing officer to serve, execute or intimate various kinds of writs or diligence including the examination of executions	£0·50
	For each party after the first on whom service or intimation is simultaneously made	£0·50
	Agency accepting service of any writ	£1·00
	Reporting diligence	£1·00

14. Personal diligence

(1) Recording execution of charge	£1·00
(2) Procuring fiat	£1·00
(3) Instructing apprehension	£1·00
(4) Framing state of debt and attendance at settlement	£1·50

15. Sales

(1) Obtaining Warrant to sell	£1·00
(2) Instructing auctioneer or officer to conduct sale	£1·00
(3) Perusing report of sale	£1·00
(4) Reporting sales under poindings or sequestrations or any other judicial sales	£0·75
(5) Noting approval of roup roll	£0·75
(6) Obtaining warrant to pay	£0·75

Chapter IV—Small Debt Cases

1. Fee for either party to cover all work, other than under paragraph 8, from taking instructions up to and including attendance at first diet when necessary

(*a*) where sum sued for is under £20	£1.00
(*b*) where sum sued for is £20 or over or the proceedings are taken under Section 3 of the Sheriff Court (Civil Jurisdiction and Procedure) (Scotland) Act 1963	£4·20

2. Attendance at Court on each occasion subsequent to the first diet. For each hour or part thereof ... ... £1·00

3. Preparing for proof when proof allowed ... ... £3·00

4. Where a case is remitted under Section 48 of the Sheriff Courts (Scotland) Act 1907 to the Ordinary Court Roll, the fees to the date of the remit shall be chargeable under this Chapter and thereafter under Chapters II or III.

5. Where 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, the fees to the date of the remit shall be chargeable under Chapters II or III and thereafter under Sections 2 and 3 of this Chapter.

6. Necessary outlays, including fees for witnesses calculated in accordance with the provisions of the Act of Sederunt (Sheriff Court Witnesses Fees) 1953 as amended or of any enactment which shall supersede that Act of Sederunt, shall be allowed in addition to the foregoing fees.

7. Fees for diligence in terms of Sections 13, 14 and 15 of Chapter III so far as applicable to diligence.

8. Fee in terms of the Citation Amendment (Scotland) Act 1882 to be allowed in addition.

Chapter V—Mercantile Sequestration

Charge according to Chapters III and VII of the Table

Chapter VI—Summary Sequestration

Charge according to Chapter III of the Table—Less 20 per cent

CHAPTER VII—EXECUTRY BUSINESS—INTESTATE MOVEABLE SUCCESSION

1. Taking instructions to present petition for decree-dative, drawing petition and making necessary copies, lodging and directing publication, attendance at Court, moving for decree-dative, extracting decree where necessary and all matters incidental to petition.

   Inclusive fee ... ... £7·00

2. Preliminary Investigation and Confirmation of Executors.
   To be charged for according to General Table of Fees for Conveyancing and General Business in Testate Succession in force from time to time.

3. Bonds of Caution.

   Taking out Bond of Caution, getting it signed and lodged with Clerk of Court, and procuring attestation of cautioner's sufficiency ... ... £3·50

   Where caution is found through the medium of a Guarantee Company for all the work in connection therewith ... ... £3·00

4. Restriction of Caution.

   Taking Instructions to prepare petition for restriction of caution, drawing petition and making necessary copies, lodging, instructing advertisement, and all matters incidental to petition.

   Inclusive fee ... ... £7·00

EXPLANATORY NOTE

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

This Act of Sederunt prescribes new Regulations and a new Table of Fees for solicitors in the Sheriff Court in respect of work done and expenses incurred on or after 15th February, 1971.