

Update on Judicial Expenses as at 29th April 2019

Hamilton Mullan Law Accountants are pleased to provide you with a brief overview of the new rules due to come into force on the **29th April 2019**. The acts will see the most significant change to the rules governing Judicial Expenses in over a hundred years.

The relevant Acts of Sederunt governing these rules can be found on the following link:

[2019 No.74 Act of Sederunt \(Rules of the Court of Session, Sheriff Appeal Court Rules and Ordinary Cause Rules Amendment\) \(Taxation of Judicial Expenses\) 2019](#)

[2019 No.75 Act of Sederunt \(Taxation of Judicial Expenses Rules\) 2019](#)

<http://www.hm-lawaccountants.co.uk/useful-links/documents/>

Act of Sederunt (Taxation of Judicial Expenses Rules) 2019

- Applies to accounts of expenses for both the Court of Session and Sheriff Courts
- The rules combine many provisions from the Sheriff Court General Regulations and Court of Session Rule 42 in an attempt to create a consistent and uniform approach to the taxation of expenses across all courts
- Summary Cause Personal Injury cases will continue to be assessed by applying the General Regulations. It is anticipated this will continue until these types of cases move to Simple Procedure

The Four-month Rule

- Now applies to accounts of expenses for cases proceeding under Sheriff Court Ordinary and Sheriff Appeal Court procedure
- Accounts must be lodged four-months after the date of the final judgement (previously referred to as the final interlocutor)
- Applies to cases where the final judgment is pronounced on or after 29th April 2019
- Failure to lodge an account of expenses within the four months will require a motion to allow the account to be lodged late
- The court may impose conditions on the account for failing to lodge it within the timescale
- We expect the case law will develop in time on this particular point

Framing an Account of Expenses

- New unit charge introduced to the table of fees
- A “unit” equates to a monetary value currently set at £16.40
- The introduction of a unit rate allows all tables of fees to be updated without the need to review individual tables
- As with the previous rules:
 - An account of expenses must be framed setting out all items for which payment is claimed in chronological order
 - Fees and outlays must be listed in separate columns
 - Accounts must be prepared using the detailed fees or the inclusive fees but not both
- New requirement for a statement to be provided confirming whether the entitled party will bear the burden of the value-added tax

Procedure for Diets of Taxation in the Sheriff Courts

- The auditors of court in the sheriff court must assign a diet of taxation on receiving:
 - (a) the account of expenses;
 - (b) the process;
 - (c) vouchers in respect of all outlays claimed in the account, including counsel’s fees; and
 - (d) a letter addressed to the auditor of court—
 - (i) confirming that the items referred to in sub-paragraph (c) have been intimated to the party found liable in expenses; and
 - (ii) providing such information as is required to enable the auditor of court to give intimation to the party found liable in expenses in accordance with paragraph (4)(b)
- Notwithstanding the above, the auditor of court will fix a diet of taxation even if (c) and (d) have not been complied with however this would need to be addressed at the diet of taxation to avoid the non-recovery of items not sufficiently vouched

Points of Objection

- The liable party will need to intimate and lodge points of objection by 4 pm on the fourth business day before the diet of taxation
- Should the liable party fail to take this step on time, the auditor of court is directed to disregard the Objections raised
- Where failure to comply with the requirement was due to mistake, oversight or other excusable cause, the auditor of court may relieve the party from the consequences of this failure but may impose such conditions, if any, as the auditor thinks fit

After the diet of taxation

- The party found entitled to expenses must intimate the taxed account within seven days of receiving the date of the auditor’s statement

Objecting to the Outcome of a Diet of Taxation

- A party to a cause who has appeared or been represented at a diet of taxation has 14 days from the date of the auditor of court's statement to lodge a note of objection
- On lodging the note of objection the objecting party must apply by motion for an order (a) allowing the note of objection to be received and (b) allowing a hearing on the note of objection
- Once the order is granted the objecting party must intimate to the auditor of court (a) the note of objection and (b) the interlocutor containing the order
- The auditor then has 14 days after receipt of intimation of the above items to lodge in process a statement of reasons in the form of a minute stating the reasons for the auditor's decision in relation to the items which objection is taken in the note

Interest on Expenses

- The new rules introduce a provision for recovery of interest on expenses.
- The period for which the court will grant interest on expenses will be from a date no earlier than 28 days after the date on which the account of expenses was lodged for taxation

Copying and Scanning

- When the auditor of court is satisfied that pages reasonably copied or scanned exceed 2000 pages, one unit will be chargeable per 100 pages copied or scanned in excess of this figure

Travel

- The time allowed for travel is now charged at 0.9 units per six minutes
- The test remains that charges for travel will only be allowed at the discretion of the auditor and on cause shown.
- A useful authority relating to travel is the case of *Donald Geddes Heuchan v Alistair Flanagan*

Solicitor Advocates

- Outlays for solicitor advocates will only be allowed when they are acting on the instructions of another solicitor

Certification of Skilled Persons

- The new rules see significant changes introduced relating to the certification of skilled persons and the charges allowed (please give extra consideration to these rules)
- The test remains broadly similar to the previous but with the introduction in part to the test of proportionality. This part of the test relates purely to the granting of certification and does not apply to the test which the Auditor must consider when taxing the account
- Charges for work undertaken before certification is granted will not be allowed except in actions proceeding under Chapter 43 of the Rules of the Court of Session 1994, Chapter 36 of the Ordinary Cause Rules 1993, Simple Procedure Rules or on cause shown

Sanction for Counsel in the Sheriff Courts

- As with certification of skilled persons, no fees will be allowed for work completed by counsel before the sanction is granted except in actions proceeding under Chapter 36 of the Ordinary Cause Rules, Simple Procedure Cases, and proceedings in the Sheriff Appeal Court
- The court may only sanction particular work already carried out on cause shown for other types of actions
- Sanction must also be specifically granted for senior counsel to allow fees to be recovered

Witnesses Attending Court

- Witnesses attending at Proof and not called, require a motion certifying the witness as being in attendance (per previous practice)
- The liability to reimburse witnesses cited to attend court cannot exceed £400 per day with sufficient vouching required in support of their losses

Additional Charges (Fee Uplift)

- This test remains similar to the rules set out previously for additional fees (now referred to as additional charges)
- The sheriff determines the application and the percentage increase for sheriff court matters
- For applications in the Court of Session, the application and the percentage increase can be determined by the Judge or can be remitted to the Auditor to decide both
- Previously, it was rare for a Judge to determine the percentage uplift and we do not anticipate this changing with the new rules

This note is a brief overview of some of the changes being introduced on the **29th April 2019**. As part of our ongoing commitment to our clients, Hamilton Mullan Law Accountants are available to provide CPD and cover these items in more detail. We are also available to discuss any matters which may arise when the rules come into practice.

This update highlights some of the changes however we strongly recommend that you give full consideration to both Acts.

Link to both Acts of Sederunt: <http://www.hm-lawaccountants.co.uk/useful-links/documents/>