
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 226

**Act of Sederunt (Rules of the Court of Session 1994,
Sheriff Appeal Court Rules and Sheriff Court Rules
Amendment) (Qualified One-Way Costs Shifting) 2021**

Amendment of the Ordinary Cause Rules 1993

- 5.—(1) The Ordinary Cause Rules 1993⁽¹⁾ are amended in accordance with this paragraph.
(2) After Chapter 31 (appeals)⁽²⁾ insert—

“CHAPTER 31A

QUALIFIED ONE-WAY COSTS SHIFTING

Application and interpretation of this Chapter

31A.1.—(1) This Chapter applies in civil proceedings, where either or both—

- (a) an application for an award of expenses is made to the sheriff;
- (b) such an award is made by the sheriff.

(2) Where this Chapter applies—

- (a) rules 23.1(2) and (3) (abandonment of causes)⁽³⁾;
- (b) any common law rule entitling a pursuer to abandon a cause, to the extent that it concerns expenses,

are disapplied.

(3) In this Chapter—

“the Act” means the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018⁽⁴⁾;

“the applicant” has the meaning given in rule 31A.2(1), and “applicants” is construed accordingly;

“civil proceedings” means civil proceedings to which section 8 of the Act (restriction on pursuer’s liability for expenses in personal injury claims) applies.

(1) The Ordinary Cause Rules 1993 are in schedule 1 of the Sheriff Courts (Scotland) Act 1907 (c.51). Schedule 1 was substituted by S.I. 1993/1956 and last amended by S.S.I. 2021/75.
(2) Chapter 31 was last amended by S.S.I. 2015/419.
(3) Rule 23.1 was amended by S.S.I. 2003/26.
(4) 2018 asp 10.

Application for an award of expenses

31A.2.—(1) Where civil proceedings have been brought by a pursuer, another party to the action (“the applicant”) may make an application to the sheriff for an award of expenses to be made against the pursuer, on one or more of the grounds specified in either or both—

- (a) section 8(4)(a) to (c) of the Act;
- (b) paragraph (2) of this rule.

(2) The grounds specified in this paragraph, which are exceptions to section 8(2) of the Act, are as follows—

- (a) failure by the pursuer to obtain an award of damages greater than the sum offered by way of a tender lodged in process;
- (b) unreasonable delay on the part of the pursuer in accepting a sum offered by way of a tender lodged in process;
- (c) decree of absolvitor or decree of dismissal has been granted against the pursuer in terms of rule 17.2(3)(b) (applications for summary decree)(**5**);
- (d) abandonment of the cause in terms of rule 23.1(1), or at common law.

Award of expenses

31A.3.—(1) Subject to paragraph (2), the determination of an application under rule 31A.2(1) is at the discretion of the sheriff.

(2) Where, having determined an application made under rules 31A.2(1), the sheriff makes an award of expenses against the pursuer on the ground specified in rule 31A.2(2)(a) or (b)—

- (a) the pursuer’s liability is not to exceed the amount of expenses the applicant has incurred after the date of the tender;
- (b) the liability of the pursuer to the applicant, or applicants, lodging the tender is to be limited to an aggregate sum, payable to all applicants (if more than one) of 75% of the amount of damages awarded to the pursuer and that sum is to be calculated without offsetting against those expenses any expenses due to the pursuer by the applicant, or applicants, before the date of the tender;
- (c) the sheriff must order that the pursuer’s liability is not to exceed the sum referred to in sub-paragraph (b), notwithstanding that any sum assessed by the Auditor of Court as payable under the tender procedure may be greater or, if modifying those expenses to a fixed amount in terms of rule 32.1 (taxation before decree for expenses)(**6**), that such amount does not exceed that referred to in sub-paragraph (b);
- (d) where the award of expenses is in favour of more than one applicant the sheriff, failing agreement between the applicants, is to apportion the award of expenses recoverable under the tender procedure between them.

(3) In the event that the sheriff makes an award of expenses against the pursuer on the ground specified in rule 31A.2(2)(d), the sheriff may make such orders in respect of expenses, as it considers appropriate, including—

- (a) making an award of decree of dismissal dependant on payment of expenses by the pursuer within a specified period of time;
- (b) provision for the consequences of failure to comply with any conditions applied by the court.

(5) Rule 17.2 was substituted by [S.S.I. 2012/188](#) and amended by [S.S.I. 2015/227](#).

(6) Rule 32.1 was amended by [S.S.I. 2019/74](#).

Procedure

31A.4.—(1) An application under rule 31A.2(1)—

- (a) must be made by written motion, and Chapters 15 (motions)(7) and 15A (motions intimated and lodged by email)(8) otherwise apply to motions made under this Chapter;
- (b) may be made at any stage in the case prior to the granting of an order disposing of the expenses of the cause.

(2) Where an application under rule 31A.2(1) is made, the sheriff may make such orders as the sheriff thinks fit for dealing with the application, including an order—

- (a) requiring the applicant to intimate the application to any other person;
- (b) requiring any party to lodge a written response;
- (c) requiring the lodging of any document;
- (d) fixing a hearing.

Award against legal representatives

31A.5. Section 8(2) of the Act does not prevent the sheriff from making an award of expenses against a pursuer’s legal representative in terms of section 11 (awards of expenses against legal representatives) of the Act.”.

(7) Chapter 15 was last substituted by S.I. 1996/2445 and last amended by S.S.I. 2015/227.

(8) Chapter 15A was inserted by S.S.I. 2015/227 and amended by S.S.I. 2015/296.