

CHAPTER 41B

QUALIFIED ONE-WAY COSTS SHIFTING

Application and interpretation of this Chapter

41B.1.—(1) This Chapter applies in civil proceedings, where either or both—

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

(2) Where this Chapter applies—

- (a) rules 29.1(2) and (3) (abandonment of actions)(a), 40.15(6) (appeals deemed abandoned)(b) and 41.17(3)(c) (procedure on abandonment)(c);
- (b) any common law rule entitling a pursuer to abandon an action or an appeal, 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(d);
“the applicant” has the meaning given in rule 41B.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.

Application for an award of expenses

41B.2.—(1) Where civil proceedings have been brought by a pursuer, another party to the action (“the applicant”) may make an application to the court 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) abandonment of the action or the appeal by the pursuer in terms of rules 29.1(1), 40.15(1) or 41.15(1), or at common law.

Award of expenses

41B.3.—(1) Subject to paragraph (2), the determination of an application made under rule 41B.2(1) is at the discretion of the court.

(a) Rule 29.1(2) was amended by S.S.I. 2001/305.
(b) Rule 40.15 was substituted by S.S.I. 2010/30.
(c) Chapter 41 was substituted by S.S.I. 2011/303.
(d) 2018 asp 10.

(2) Where, having determined an application made under rule 41B.2(1), the court makes an award of expenses against the pursuer on the ground specified in rule 41B.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, who lodged 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 court 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 the expenses in terms of rule 42.5 (modification or disallowance of expenses)(a) or 42.6(1) (modification of expenses awarded against assisted persons), that such modification 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 court, failing agreement between the applicants, is to apportion the award of expenses recoverable under the tender procedure between them.

(3) Where, having determined an application made under rule 41B.2(1), the court makes an award of expenses against the pursuer on the ground specified in rule 41B.2(2)(c), the court 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.

Procedure

41B.4.—(1) An application under rule 41B.2(1)—

- (a) must be made by motion, in writing, and Chapter 23 (motions)(b) otherwise applies to motions made under this Chapter;
- (b) may be made at any stage in the case prior to the pronouncing of an interlocutor disposing of the expenses of the action or, as the case may be, the appeal.

(2) Where an application under rule 41B.2(1) is made, the court may make such orders as it 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

41B.5. Section 8(2) of the Act does not prevent the court 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.

(a) Rule 42.5 was amended by S.S.I. 2019/74.
(b) Chapter 23 was last amended by S.S.I. 2017/414