SCOTTISH STATUTORY INSTRUMENTS

2014 No. 229

SCOTTISH LAND COURT

The Rules of the Scottish Land Court Order 2014

Made - - - -	*19th August 2014*
Laid before the Scottish Parliament - - - -	*21st August 2014*
Coming into force - -	*22nd September 2014*

The Scottish Land Court, with the approval of the Scottish Ministers, makes the following Order in exercise of the powers conferred by paragraph 12 of the Schedule 1 to the Scottish Land Court Act 1993(**1**).

Citation and commencement

1. This Order may be cited as the Rules of the Scottish Land Court Order 2014 and comes into force on 22nd September 2014.

Rules

2.—(1) The Rules of the Scottish Land Court 2014 are set out in the Schedule.

(2) The Scottish Land Court Rules 1992(**2**) are revoked.

(**1**) 1993 c.45. Paragraph 12 of Schedule 1 has been amended by the Crofting Reform etc. Act 2007 (asp 7) section 34(7)(a). The functions of the Secretary of State and the Treasury were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(**2**) S.I. 1992/2656.

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13th August 2014

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19th August 2014

SCHEDULE Article 2

RULES OF THE SCOTTISH LAND COURT 2014

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Purpose of the rules etc.

1.—(1) The purpose of these rules is to enable the court, with the assistance of the parties, to reach a just result fairly in any case with due regard to economy, proportionality and efficient use of the resources of parties and the court and any provision in the rules falls to be read in light of that purpose.

(2) The court may, as regards a particular case, make any order it considers appropriate to regulate the procedure to be followed at any stage in the case.

(3) Any such order is to accord with the rules unless the court is satisfied that it is necessary to depart from the rules in the interests of justice.

(4) The court is to have regard to—

(a) the terms of its own practice notes; and

(b) practice in the sheriff court,

in making any order in relation to a matter not expressly provided for in these rules.

(5) This rule is without prejudice to rule 114.

Interpretation

Interpretation

2. In these rules, unless the context otherwise requires—

"the Act" means the Scottish Land Court Act 1993;

"advocate" means a member of the Faculty of Advocates;

"the auditor of court" is the Principal Clerk or any other person to whom the Principal Clerk has delegated the role of auditor;

"appropriate form" has the meaning given by rule 3;

"Chairman" means the Chairman of the Scottish Land Court and, in relation to judicial functions, includes any Deputy Chairman;

"day" means a clear working day (that is to say a day when the office of the court is open to the public);

"divisional court" means a member (or 2 members) of the Scottish Land Court to whom powers have been delegated under paragraph 6 of Schedule 1 to the Act;

"electronic means" means email, fax, memory sticks, CD ROMs or other means of electronic communication of the contents of documents;

"final decision" means, as regards a substantive issue, a decision declared by the court to be a final decision on that issue;

"final order" means an order of the court which either by itself or taken with a previous order or orders disposes of the subject matter of all substantive issues in a case and of the question of liability for expenses (even if issues of law or of fact referred to in the pleadings have not been decided or issues of modification, taxation or the like in relation to expenses are still to be resolved);

"hearing" includes a hearing by way of debate and a procedural hearing;

"hear" or "be heard" means that an opportunity is to be given to a party to make representations either orally or in writing;

"practice note" means a formal statement signed by the Chairman, providing for the conduct of the business of the court or giving guidance in dealing with proceedings pending before the court;

"solicitor" means a solicitor qualified in terms of section 4 of the Solicitors (Scotland) Act 1980; and

"Table of Fees" means the Table of Fees in the Schedule to the Scottish Land Court (Fees) Order 1996(**3**).

Applications generally

Making an application: general

3.—(1) An application must be in, or as nearly as may be in, the appropriate form and is made by lodging it with the Principal Clerk.

(2) The court may provide a form special to a kind of application; and if it does then, for the purposes of paragraph (1), that form is the appropriate form for that kind of application.

(**3**) S.I. 1996/680.

(3) An application must comply with the requirements of any statutory provision under which it is brought.

(4) An application does not fail to be a valid application for the purposes of any statutory provision solely because it does not comply with all, or any, of the requirements of these rules.

Content of application

4. An application must—

(a) identify the applicant clearly and any special capacity in which the applicant is acting;

(b) provide the name and details of any agent acting for the applicant;

(c) give a full postal address and postal code for communication with the applicant or agent, together with any appropriate email address and a telephone number for such communication;

(d) list the persons who to the applicant's knowledge may have an interest to respond to the application and provide sufficient detail (including, where reasonably ascertainable, the persons' full postal addresses and postal codes)—

(i) for the nature of the interests to be identified by the Principal Clerk; and

(ii) to enable those persons to be clearly identified and to receive due intimation in terms of these rules;

(e) adequately identify the land in issue (and in so far as practicable include an address for that land);

(f) state clearly what the court is being asked to do or decide;

(g) set out the facts and circumstances relied on in support of the application in short concise numbered paragraphs; and

(h) provide such information as may be requisite for the purposes of any relevant statutory provision.

Abandonment or withdrawal

5.—(1) An application may not be abandoned or withdrawn without leave of the court.

(2) Where an application is abandoned or withdrawn the court may impose such conditions as to expenses or otherwise as it thinks fit.

Further procedure in application

6. After the application is lodged the court is to direct further procedure in the case by giving such intimation and making such orders as appear to it to be appropriate.

Inadequate or defective applications

7.—(1) If the Principal Clerk is not satisfied that an application gives full specification of all matters specified in rules 3 and 4 she may—

(a) accept the application;

(b) accept the application under reservation; or

(c) place it before the court.

(2) Where an application is placed before the court, the court may determine that it be accepted or accepted under reservation, or, after hearing the applicant, may determine that it be rejected.

(3) Where an application is accepted under reservation—

(a) it is to be intimated to the named respondents;

(b) they and the applicant are to be advised that it will be sisted until the applicant provides information sufficient to satisfy the Principal Clerk that the application can be accepted without reservation; and

(c) any respondent may move to have the sist recalled.

(4) Without prejudice to any statutory provision, an application accepted under reservation is to be taken as having been received on the date on which it was first lodged with the Principal Clerk.

(5) Where an application is rejected following procedure under paragraph (2), it is to be taken to have been accepted for the purposes of any appeal from the determination that it be rejected.

Call for clarification

8.—(1) In the circumstances mentioned in paragraph (2) the court may at any stage in a case call upon a party—

(a) to lodge a statement dealing with such matter or matters as may be specified in the order;

(b) to adjust that party's pleadings;

(c) to provide greater specification in any statement in those pleadings which relates to disputed material facts; or

(d) explicitly to admit or deny any statement in another party's pleadings which relates to material facts.

(2) The circumstances are that the court considers the statement, adjustment, specification, admission or denial to be needed in order to define or clarify what is really in dispute.

Call for specification of legal principles etc. upon which party relies

9. The court may at any stage in a case order a party to provide, within such period as is specified in the order, a statement of the legal propositions upon which the party relies together with details of the enactments and authorities cited by the party as founding or supporting those propositions.

Amendment of application

10.—(1) At any time before the issue of the final order in a case the court may, either at its own instance or on the motion of an interested person—

(a) allow the specification of any order sought by a party to be amended;

(b) where a person has improperly or unnecessarily been made a party to the case, strike out any reference to the person as a party;

(c) where a person—

(i) was not made a party who should have been; or

(ii) though made a party was not properly characterised (for example as applicant or respondent or as an individual),

add the name of the person as a party or as the case may be properly characterise the person,

(d) add (whether or not in substitution) the name of any person as a party who by reason of—

(i) any assignation or renunciation by any of the parties;

(ii) the sequestration or death of any of the parties; or

(iii) any other event,

has acquired a right or interest, or become subject to a liability, in respect of matters to which the case relates; or

(e) allow a party to amend any assertion of fact by that party in written pleadings.

(2) Without prejudice to the generality of sub-paragraph (a) of paragraph (1), amendment under that sub-paragraph may include—

(a) seeking an additional or alternative remedy;

(b) where a sum of money is sought, seeking a different sum; or

(c) subjecting an additional area of, or right in, land to the adjudication of the court.

(3) A motion granted under paragraph (1) may be granted subject to such conditions as to expenses or otherwise as the court thinks fit.

(4) Opportunity is to be given either—

(a) if the motion is granted, for amendment in answer; or

(b) for answer before the motion is granted.

Conjunction etc. of applications

11.—(1) Where—

(a) the same or similar questions of law or fact arise in each of two or more applications; or

(b) two or more applications are in some way related,

the court may take any step mentioned in paragraph (2).

(2) The steps are—

(a) to sist a case and appoint another to proceed;

(b) to direct that all or part of the evidence in one case is to be treated for all purposes (or for such purposes as the court may specify) as evidence in another;

(c) to make such arrangements for cases to be joined or otherwise heard together as seem to it appropriate;

(d) to dispose of cases together or separately, as it finds expedient.

Appointment of curator *ad litem*

12. The court may, either at its own instance or on the motion of an interested person, appoint a curator *ad litem* to a party in a case.

Appointment of advocate or solicitor to assist the court

13.—(1) The court may, in any case, appoint an advocate or solicitor to assist it by presenting to it submissions on any issue or in respect of any interest.

(2) The court may order that the fee of the person appointed is, at such rate as the court may sanction, to be paid by one or more of the parties to the case.

Answers etc. and adjustment of pleadings

Answers and other responses

14.—(1) A respondent is not required to lodge answers or other responses unless and until ordered to do so by the court.

(2) The date on which answers or other responses are received by the Principal Clerk is to be noted.

(3) Answers and other responses are—

(a) to be framed so as to deal explicitly with all matters of fact set out in the application or other document to which they relate; and

(b) to identify explicitly—

(i) what in the application or other document is admitted and what denied; and

(ii) any legal proposition in the application or other document which is admitted or challenged; and

(c) to give notice of any legal proposition on which the respondent intends to rely.

(4) Without prejudice to the generality of this rule, a party may, in an answer or response, ask for an order as respects a matter (either or both)—

(a) forming part of, or arising out of the grounds of, the application;

(b) the decision of which is necessary for the proper determination of the application,

provided that it is an order which might have been asked for in a separate application in which no person other than the respondent would have had an interest to respond.

(5) Where a party asks for an order by virtue of paragraph (4), the court may order that the matter should be dealt with by way of a separate application.

(6) Where a respondent asks for an order in terms of paragraph (4), the court may deal with that request even if, for any reason, the application does not proceed.

(7) Where a party asks for an order by virtue of paragraph (4), the party is to set out in the answer or response such matters of fact and law as may be necessary to support the request.

Adjustment of pleadings

15.—(1) On receipt of answers to an application the Principal Clerk is to consider whether to delay fixing a hearing—

(a) in order to allow changes to be made to written pleadings by way of adjustment; or

(b) in order to allow parties time to attempt to resolve the dispute by negotiation or other means; or

(c) for any other purpose (as for example to afford parties an opportunity to agree to have the application disposed of on written submissions).

(2) If the Principal Clerk does not consider there is reason for such delay, she—

(a) is to proceed in accordance with rule 19 to fix a hearing;

(b) may specify a timetable within which the applicant may respond to the answers and parties may adjust, clarify or supplement the statements of fact or any pleas in law in their written pleadings; (b)and

(c) may ask the court to make such further order as to procedure as it thinks fit.

(3) Within 2 weeks after the last period allowed under paragraph (2)(b) or (c) has expired, each party must, unless otherwise instructed by the Principal Clerk, lodge a copy of that party's written pleadings in their revised form.

(4) Parties may, at any time up to 4 weeks before the date fixed for a hearing, adjust any statements of fact or pleas in law in their written pleadings—

(a) to clarify or supplement them;

(b) to admit or deny any matter; or

(c) in so far as is requisite to give fair notice of matters to be raised, or relied on, at the hearing.

(5) A party making adjustments by virtue of paragraph (4) must lodge a copy of their pleadings as adjusted and at the same time send a copy to the other party or parties.

(6) The provisions of paragraph (4) are without prejudice to the rights of other parties to object to all or any part of the adjustment either—

(a) because it is alleged to be out of time as a matter of substantive law; or

(b) because that party would be prejudiced by allowance of the change at the time when it is proposed.

Determinations, orders and directions as to procedure etc.

Determinations and orders as to procedure

16.—(1) A party may at any time request that the court order a particular form of procedure to be adopted for the disposal of all or any of the issues in the case.

(2) On receipt of such a request the court may—

(a) invite the other parties to lodge written submissions as regards the request; or

(b) deal with it by way of hearing.

(3) Having considered any submissions made by the parties, the court is to determine the form of procedure (whether or not the form requested) to be adopted for the disposal of all or any of the issues in the case.

Orders concerning preliminary or procedural points

17.—(1) Without prejudice to rule 16—

(a) a party may apply for an order such as is mentioned in paragraph (3) or an order or direction such as is mentioned in paragraph (4); and

(b) the court may on its own initiative make an order such as is mentioned in paragraph (3) or give an order or direction such as is mentioned in paragraph (4).

(2) An order or direction made on the application of a party may be made without having regard to the views of other parties.

(3) The order is an order concerning a preliminary point, determination of which may wholly or substantially resolve an issue which the court considers significant in the case.

(4) The order or direction is one concerning procedure; and any such order or direction may—

(a) relate to the procedure required to deal with a particular issue;

(b) require a party to intimate to the court, with or without intimation to the other parties, an outline of intended argument;

(c) require a party to lodge a statement setting out that party's contentions as to any issue of fact specified in the direction or order and the main evidence the party will rely on in support of that contention;

(d) require production of such documents or other things as may be so specified; or

(e) provide for parties to attempt such way of resolving a dispute (being an alternative to that of resolution by the court) as may be so specified.

Delegation

Delegation

18.—(1) At any time before a final order is made disposing of a case the court may, under paragraph 6(1) of Schedule 1 to the Act, delegate the determination of the case to a divisional court.

(2) The fact of such delegation is sufficiently vouched by a certificate by the Principal Clerk.

(3) A case delegated under paragraph (1) may at any time be remitted back by the divisional court to the court.

(4) A question of law arising in a case so delegated may at any time be submitted by the divisional court to the court for determination.

(5) Where a question is submitted under paragraph (4), the court may, if the divisional court has heard evidence relevant to the question, require the divisional court to report to it in relation to any matter of fact so relevant.

Hearings

Fixing a hearing

19.—(1) The court may at any time, either at its own instance or on the motion of a party, order that a case, or part of a case, be dealt with by way of a hearing.

(2) The place, date and time of the hearing are to be fixed by the Principal Clerk so that the period of notice in respect of the hearing, in the case of—

(a) a procedural hearing, is to be at least 3 days;

(b) a hearing by way of debate, is to be at least 4 weeks;

(c) a hearing by way of proof, is to be at least 6 weeks.

(3) If the court considers—

(a) that there are circumstances of urgency; or

(b) that there is some other good cause (which, without prejudice to the generality of this sub-paragraph, may include the convenience of the court),

it may, notwithstanding the provisions of paragraph (2), fix such date and time for, and give such notice of, the hearing as it considers requisite.

(4) A date fixed under this rule for a hearing by way of debate or a hearing by way of proof may be changed to another date (which need not be specified if it is not practicable to do so) on the application of a party on special cause shown; and if it is so changed the court is to give such notice of the hearing as it considers requisite.

(5) For the purposes of paragraph (4) the fact—

(a) that a particular legal representative or particular expert witness will not be available on the date fixed for the hearing; or

(b) that the other parties consent to that date being altered,

is not to be accepted as being a special cause unless there are special circumstances such as an inability to find an adequate substitute in the time available.

Preparation for hearing by way of proof

20.—(1) The rights conferred by paragraphs (2) and (6) of this rule may be exercised—

(a) as soon as a date is fixed for a hearing by way of proof; and

(b) at any time after that until a date 2 weeks before the date on which the hearing takes place.

(2) A party may apply to the court for an order requiring another party to admit a fact relating to the subject matter of the application being dealt with by the hearing.

(3) An application under paragraph (2) must be accompanied by a minute specifying the facts which the applicant seeks to have admitted but in the order the court shall specify such facts as it sees fit.

(4) Any admission made in response to an order under paragraph (2) is admissible in evidence—

(a) only as between the party who applied for the order and the party required to make the admission; and

(b) only for the purposes of the application being dealt with by the hearing.

(5) If—

(a) a party required by order under paragraph (2) to admit a fact does not do so;

(b) the fact is subsequently proved; and

(c) the court considers it would have been reasonable to admit it,

then that party may be found liable for such expenses as the party who applied for the order incurred in proving the fact.

(6) A party may move the court to require a person named and designed in the motion to attend, on such date and at such time and place as may be specified by the court, for the purpose of giving evidence in relation to the subject matter of the case being dealt with by the hearing.

Order for delivery of material relevant to a hearing

21.—(1) The court may order any person—

(a) to deliver to the Principal Clerk such material—

(i) in the person's possession or control; and

(ii) relating to the subject matter of a case,

as may be specified or described in the order, and

(b) to state—

(i) whether any material so specified or described is, or has at any time been, in the person's possession or control; and

(ii) if any material so specified or described has at any time been in the person's possession or control but has been parted with, what has become of it.

(2) Where the court considers it appropriate, it may appoint a member of the court, the Principal Clerk, any clerk of court or any other person as a commissioner for the purposes of this rule and the court or such commissioner may order a person to attend at a place, date and time—

(a) specified in the order; or

(b) to be notified to the person at some time after the order is made,

for the purpose of producing all such material as may be specified in the order and may require such person to give evidence in relation to the matters specified in paragraph (1)(b) and the court may authorise the Principal Clerk or any such commissioner to take possession of, copy or take excerpts from such material as the person produces and to report to the court.

(3) The court may authorise a party to examine any material delivered under paragraph (1) or produced, copied or excerpted under paragraph (2) and to lodge as a production all or any part or parts of the material, copy or excerpt in question.

(4) The court may order a party—

(a) to prepare or obtain a map or plan specified in the order; and

(b) to lodge that map or plan as a production within a period so specified.

(5) In this rule, "material" includes writings, documents and plans and any other item which may conveniently be produced or delivered to the court or as the case may be to the commissioner.

Intimating authorities and statutory provisions to be relied on and referred to at a hearing

22.—(1) At least three days before the date fixed for a hearing a party must intimate to the Principal Clerk and to the other parties—

(a) the main legal authorities on which the party intends to rely; and

(b) the statutory provisions to which the party intends to refer.

(2) A party who seeks to rely on any authority or statutory provision not so intimated may do so but the court is to consider whether any adjournment or continuation should be allowed in respect of such material and any conditions as to expenses occasioned thereby.

Lodging material etc.

23.—(1) Any writings, documents, plans, photographs, books or excerpts from books which a party intends, at a hearing, to refer to, use or put in evidence must be lodged in process by the party (together with as many copies for use by the court as the Principal Clerk directs or as are agreed to by the Principal Clerk) at least 2 weeks before the date fixed for the hearing.

(2) But if any such writings, documents, plans, photographs, books or excerpts are fragile, brittle or flimsy the party may intimate their location to the Principal Clerk and hold them available for inspection in lieu of their being lodged in process.

(3) Where any other moveable thing which a party intends, at a hearing, to put in evidence, is a thing in the party's possession or under the party's control, the party must, at least 2 weeks before the date fixed for the hearing, either—

(a) lodge it in process; or

(b) intimate its location to the Principal Clerk and make arrangements allowing for its inspection.

(4) Where a party has made intimation in terms of paragraph (2) or paragraph 3(b) the court may make such arrangements and impose such conditions for inspection as it thinks fit. (3)

(5) A party lodging material under paragraph (1) must lodge an inventory of productions listing the material lodged and intimate that inventory and, where reasonably practicable, copies of the material, to any other party.

Late lodging

24.—(1) Provided that the condition mentioned in paragraph (2) is met, the court may allow material not timeously lodged to be received, referred to, used or put in evidence at a hearing.

(2) The condition is that the court is satisfied that there is no significant risk of prejudice to another party or that arrangements can be made to obviate any such prejudice.

(3) The court may exercise its power under paragraph (1) upon such—

(a) conditions as to expenses, adjournment or further allowance of proof; or

(b) other conditions,

as the court thinks fit.

Copy documents

25. Where a copy of a document is lodged the court may treat it as the original to such extent and for such purposes as it considers appropriate having regard—

(a) to the nature of the document;

(b) to such explanation as there is for failure to produce the original; and

(c) to any risk of prejudice to another party.

Expert witnesses

26.—(1) A party who intends to call a person to give evidence at a hearing as an expert witness must, at least 4 weeks before the date fixed for the hearing (or such other time or date as may be set by the court), intimate to the other parties—

(a) the person's identity and qualifications; and

(b) the substance of the evidence to be given by the person.

(2) An expert witness is not—

(a) except with the leave of the court; and

(b) on such conditions (if any) as to expenses or otherwise as appear to the court to be appropriate,

to give evidence in examination-in-chief on matters which fall outwith what is contained in the intimation given, as respects that witness, under paragraph (1)(b).

(3) The court may, at any time, order expert witnesses to confer with each other and then prepare and lodge a document setting out any relevant issues upon which they cannot reach agreement; and they are to include in the document a broad statement of why they cannot reach agreement.

(4) The court may make such order as it thinks appropriate (which may be an interim order) as to liability for any expenses incurred in complying with paragraph (3).

Public right to attend hearing

27.—(1) A member of the public is entitled to attend any hearing unless the court is of the opinion that such attendance would, or would be likely to, prejudice the justness or fairness of that hearing.

(2) But to be heard (other than as a witness) a person must be a party to the application or a representative of a party with a right of audience in terms of rule 100 and, if a respondent, must have lodged answers.

Responsibility for presentation of evidence

28.—(1) The presentation of a party's evidence is the responsibility of that party.

(2) Where material can only be presented, or can only be presented effectively, by means of some device or equipment, it is the responsibility of the party who has lodged the material to ensure that the device or equipment is available at the hearing.

Non-appearance at a hearing

29.—(1) If at the place, date and time fixed for a hearing, the case is called and appearance is made by or on behalf of the respondent but not by or on behalf of the applicant—

(a) the case may be continued;

(b) the court may, in respect of the failure to appear, dismiss the case (whether with or without expenses); or

(c) the respondent—

(i) may, so far as is consistent with the order appointing the hearing or as is allowed by the court, proceed to lead evidence in relation to any matter of fact which is in dispute or make submissions; and

(ii) having led such evidence or made submissions, may move for an order disposing of the subject matter of the case.

(2) If, at that place, date and time, the case is called and appearance is made by or on behalf of the applicant but not by or on behalf of the respondent—

(a) the case may be continued;

(b) the court may, in respect of the failure to appear, repel any defence, objection or claim pled by the respondent and grant the application or make an order in favour of the applicant (which may include an award of expenses); or

(c) the applicant—

(i) may, so far as is consistent with the order appointing the hearing or as is allowed by the court, proceed to lead evidence in relation to any matter in respect of which the applicant requires to satisfy the court or to make submissions; and

(ii) having led such evidence or made submissions, move for an order disposing of the subject matter of the case.

(3) If, at that place, date and time, the case is called and appearance is made by or on behalf of neither (or as the case may be none) of the parties, the case may, as the court thinks fit—

(a) be continued (either indefinitely or to such date as the court may fix); or

(b) be dismissed.

(4) Where a person has failed to appear at the place, date and time fixed for a hearing any relevant provision of this rule applies in relation to that person even if another applicant or respondent, as the case may be, has appeared.

Objection to document or deed

30. Where an objection to a document or deed founded on in a case is stated and maintained by an opposing party, the court may—

(a) for the purposes of the case, dispose of the objection; or

(b) sist the proceedings if it thinks it necessary or more convenient to do so in order to allow the party to proceed by way of reduction.

Giving of oral evidence at hearing

31.—(1) Any oral evidence at a hearing is to be given on oath or affirmation unless the court otherwise allows.

(2) Such evidence may be given through a live television link (or through any other electronic means by which a live image is transmitted) if—

(a) the parties agree; or

(b) though they do not agree, the court is satisfied that its being so given would not prejudice the justness and fairness of the hearing.

Noting evidence

32.—(1) The Principal Clerk may, whether or not at the request of a party, arrange for notes of evidence to be recorded—

(a) by a shorthand writer appointed by the court; or

(b) by means of an electronic or mechanical device.

(2) The fees of any shorthand writer so appointed—

(a) are to be fixed by the court; and

(b) may be ordered by the court to be paid by the parties equally or in such proportions as are specified in the order.

(3) Any notes recorded under paragraph (1) may, in any appeal or re-hearing of the case, be used—

(a) by the court; and

(b) by a party provided that any expenses incurred in having the notes transcribed have been paid.

Lists of witnesses

33.—(1) Not later than 2 weeks before the date fixed for a hearing by way of proof each party is to give written intimation to every other party and to the Principal Clerk of a list containing the name, address and occupation (if known) of each person whom that party intends to call as a witness.

(2) A party who seeks to call as a witness a person not on the list so intimated may do so subject to such conditions, if any, as the court thinks fit.

Dispensing with attendance by witness

34.—(1) A party may, no later than 2 weeks before the date fixed for a hearing of evidence, intimate to the other parties and to the court the evidence proposed to be given by a witness called by that party.

(2) That evidence is to be set out, in the intimation, as a copy statement or report by, or affidavit of, the witness.

(3) A party to whom such intimation is given may, no later than 1 week before the date on which the hearing takes place, notify the Principal Clerk and the party calling the witness that the witness is required to attend the hearing.

(4) Where timeous notification under paragraph (3) is not given, the witness is not required to attend the hearing as a witness called by the intimating party; and unless the witness attends the hearing as a witness called by another party (or attends and is called by the intimating party or by another party) the evidence set out in terms of paragraph (2) is to be taken to be the witness's evidence.

Further provision as regards witness statements

35.—(1) Without prejudice to rule 34, the court may treat a signed statement by a witness as part of the witness's evidence in chief.

(2) But unless the copy was intimated to the court and to the other parties no later than 1 day before the hearing the court may, if requested to do so by any of those parties, adjourn the hearing for such period as will enable those parties to consider the terms of the statement.

Interrogatories

36.—(1) The court may order that a person answer interrogatories and cross-interrogatories within such period as it may specify in the order.

(2) The court may approve, reject, modify, expand or curtail any proposed interrogatories or cross-interrogatories lodged by a party.

(3) The court may make such provision as it thinks fit for a person to vouch or certify the truth of their answers.

(4) The court may appoint a commissioner who may put a witness on oath or affirmation before requiring that witness to answer interrogatories or cross-interrogatories.

(5) Such commissioner may require a witness to answer such supplementary questions as the commissioner considers necessary for the purpose of clarifying any answers made in response to the interrogatories or cross-interrogatories.

Examination of witness who has not been called by any party

37.—(1) The court may call and examine, or grant a commission to examine, as a witness in a case, any person—

(a) whose evidence appears to it to be necessary for the fair and just determination of a matter in dispute; but

(b) who has not been called by any of the parties.

(2) If the court exercises its powers under paragraph (1), it may direct that the fees and expenses of the witness are to be paid, as expenses of the case, by the parties, or by any of them, in such proportions as are specified in the direction.

Evidence on commission

38.—(1) The court may at any time, in the circumstances mentioned in paragraph (2), order that the evidence of any witness be taken on commission, with or without interrogatories, by a member of the court, the Principal Clerk, any clerk of court or any other person delegated or appointed by the court for the purposes of this paragraph.

(2) The circumstances are—

(a) that the evidence is in danger of being lost;

(b) that the witness resides furth of Scotland;

(c) that the witness is infirm (whether or not by reason of age); or

(d) that in the opinion of the court there is other reasonable cause.

Remit to take evidence etc.

39.—(1) The court may, with the consent of the parties, remit a matter mentioned in paragraph (2) to a member of the court, the Principal Clerk, any clerk of court or any other person delegated or appointed by the court for the purposes of this paragraph.

(2) The matters are—

(a) taking evidence bearing on a particular point;

(b) preparing a map or plan;

(c) making a photographic record,

and reporting with regard to that evidence, map, plan or record to the court.

(3) A report with regard to evidence so taken may set out any findings in fact which the reporter considers established by that evidence; but the court is not bound to accept such findings.

Remit to person specially qualified by skill and experience

40.—(1) If the court considers that all, or any, of the material facts in dispute in a case may appropriately be reported on by a person specially qualified by skill and experience it may—

(a) at any time before the issue of the final order in the application; and

(b) either at its own instance or on the motion of a party,

remit the matters mentioned in paragraph (2) to such a person.

(2) The matters are—

(a) enquiring into such matters of fact as the court may specify in making the remit; and

(b) furnishing the court with a report as to the resultant findings.

(3) Having received such a report and without further inquiry or evidence, but after giving the parties an opportunity of being heard or of lodging written submissions with regard to it, the court may determine the matters of fact which were specified under paragraph (2)(a).

Person specially qualified by skill and experience: acting as assessor

41.—(1) If the court considers that the assistance of a person specially qualified by skill and experience is desirable for the better disposal of a matter in dispute, it may appoint such a person to act as an assessor.

(2) An assessor may (either or both)—

(a) sit with the court at any hearing;

(b) accompany the court at any inspection.

(3) Where the assessor is a surveyor member of the Lands Tribunal for Scotland such assessor may act for all purposes as if he or she was an additional member of the court but shall not be required to sign any order of the court.

(4) Where any other person is appointed as assessor, the court shall make a note of each question put to the assessor by the court and the answer and publish this as an appendix to any order following such hearing or inspection.

Person specially qualified: appointed as witness

42. The court may, at any time before the issue of the final order in a case, appoint a person with special qualifications relevant to a matter specified by the court—

(a) to attend and give evidence as a witness; and

(b) to be subject to examination or cross-examination by all parties,

in relation to that matter.

Fees and expenses of commissioners, reporters and assessors

43.—(1) The court may direct that the reasonable fees and expenses of any person—

(a) granted a commission under rule 38;

(b) to whom a matter has been remitted under rule 39 or 40;

(c) appointed assessor under rule 41; or

(d) appointed under rule 42,

are to be paid, as expenses of the case, by the parties, or by any of them, in such proportions as are specified in the direction.

(2) The court may remit to the auditor of court to determine whether any such fees or expenses are reasonable.

Consents and undertakings

44.—(1) Where a party gives a consent or undertaking—

(a) by minute, or letter, to the court or to the Principal Clerk;

(b) orally in open court; or

(c) orally, in the course of an inspection under rule 45,

the court is entitled to proceed on the basis of that consent or undertaking.

(2) If the consent or undertaking is given orally and is a material element in the disposal of the case, its tenor is to be set out in the order disposing of the case or in a note appended to that order.

Inspections

45.—(1) The court or any authorised person—

(a) may, during daylight hours on any day, enter upon and view land (whether or not land which is the subject of an application); and

(b) if it (or as the case may be the person) thinks fit, make such record of the entry and viewing as the court (or the person) considers appropriate.

(2) In paragraph (1), "authorised person" means a person who—

(a) is authorised in writing by the court for those purposes; and

(b) is a reporter, assessor, valuer, surveyor or, if the court thinks fit, a person of some different description.

(3) If the court considers it necessary to do so, it may require a party or a party's representative to attend at an inspection under this rule for the purpose of clarifying—

(a) any reference made to physical features of land or buildings as necessary to allow the court confidently to identify the land or buildings referred to; or

(b) such matters as may be specified by notice given by the court,

and for that purpose may authorise the party or witness to enter upon and view the land at the time of inspection.

(4) At least 1 day's notice of the time of any inspection, under this rule, of the interior of a building is to be given to the parties and to the occupier unless the court is satisfied that it is necessary to commence without giving notice.

Buildings: entry without consent

46.—(1) The powers conferred by rule 45 do not include the power to enter a dwelling-house without the consent of its occupier unless the court considers it necessary to do so—

(a) for the proper resolution of any issue arising, or likely to arise, in the case; or

(b) to safeguard the rights of any party.

(2) The court may take such steps, and employ such assistance, as it considers necessary to effect entry (including, in so far as requisite, entry to lockfast places) under paragraph (1) or rule 45.

Determination of application without hearing

Determination of application without hearing

47. The court may, if it thinks fit and if the parties agree, determine a case or any part of a case on the basis of written submissions and without a hearing.

Information obtained by the court

Information obtained by the court

48.—(1) For the purpose of determining a case, the court may, if it thinks fit, obtain by any means it thinks fit such factual information (being information which supplements or is otherwise additional to the factual information contained in the written submissions) as it considers may be relevant.

(2) Where the court obtains information by virtue of paragraph (1) it is to—

(a) inform the parties of the substance of the information;

(b) identify to the parties the source of the information;

(c) inform the parties of the means of communication employed in obtaining the information; and

(d) give the parties an opportunity to make further written submissions, or to be heard orally, as respects the information.

(3) But the court may elect to carry out—

(a) some only of the things listed in sub-paragraphs (a) to (d) of paragraph (2); or

(b) none of those things,

if it is satisfied that the information so obtained is irrelevant to its determination or that it is appropriate in the circumstances for it so to elect.

Documents and productions etc.

Exhibition of application and process in application etc.

49.—(1) A person who is a party, or prospective party, to an application (or an authorised representative of such a person) may—

(a) require the Principal Clerk to exhibit the application, or any part of the process in the application; and

(b) make, free of charge but under supervision, a copy of—

(i) the application;

(ii) any order made in respect of the application; or

(iii) any part of the process in the application,

at the office of the court at any time that office is open for business.

(2) Such a person may obtain from the Principal Clerk a copy of—

(a) the application;

(b) any order made in respect of the application; or

(c) in so far as copying is reasonably practicable, of any part of the process in the application,

on payment of the fee provided for in that regard in the Table of Fees.

(3) For the purposes of paragraphs (1) and (2) (and without prejudice to the generality of those paragraphs), the process in the application includes any deed, writing, plan, document or other production lodged in relation to the application and in the custody of the Principal Clerk.

Borrowing

50.—(1) The following provisions of this rule apply only where a person who is a party, or a prospective party, to an application, (or an authorised representative of such a person) can demonstrate to the court that it is (either or both)—

(a) not practicable; or

(b) not reasonable,

for the person to obtain a copy of the application or part of the process in the case under rule 49.

(2) The person may, with the permission either of a member of the court or of the Principal Clerk, borrow any original deed, writing, plan, document or other production which is part of the process in the application.

(3) A person borrowing under paragraph (2) must—

(a) grant a receipt to the Principal Clerk;

(b) undertake to return what is borrowed to the office of the court within 2 days after its return is demanded by the Principal Clerk; and

(c) grant such security (if any) as the court may specify.

Retention of documents etc. after issue of final order

51.—(1) After the issue of the final order in a case the Principal Clerk is—

(a) to retain within the process sufficient maps, plans and other documents (or copies of such maps, plans and other documents) as are requisite for understanding all orders and notes in the case; and

(b) to return any other deed, writing, plan, document or other production lodged in the case to the party who lodged it, or to the authorised representative of that party, on that party or representative granting a receipt to the Principal Clerk.

(2) Sub-paragraph (a) of paragraph (1) applies whether or not the orders or notes refer expressly to the maps, plans or other documents.

Sisted and inactive cases

Sisted cases

52.—(1) On cause shown, the court may sist a case either indefinitely or to a date or event specified.

(2) Where a case is sisted for a party to obtain legal aid, the initial period of sist is to be the period needed for the party to lodge the application for legal aid.

(3) A further sist for the purpose mentioned in paragraph (2) is not to be granted unless the court is satisfied that the person applying for legal aid has taken all reasonable steps to proceed with that application without delay.

Inactive cases

53.—(1) Where, in any case, no order has been pronounced during a continuous period of twelve months, the court may pronounce an order requiring the applicant to intimate, within such period as is specified in the order, proposals for further procedure in the case.

(2) If such intimation is not made timeously the application may be treated as abandoned and disposed of by the court accordingly.

Restoration and recall

Restoration of a party

54.—(1) This rule applies where an order has been made—

(a) dismissing the case;

(b) granting all or any craves or counter-craves; or

(c) repelling pleas, objections or claims,

and the reason for making the order is that the applicant, or respondent, has failed to comply timeously with an order of the court or has defaulted in some other way.

(2) The party who has so failed or defaulted may, within 4 weeks after the date of intimation of the order under paragraph (1), move the court to recall that order and restore the party to the process.

(3) The court, if satisfied that the failure or default occurred through mistake or inadvertence or was in the circumstances excusable, may on such terms and conditions as to expenses or further hearing or otherwise as it thinks fit—

(a) recall the order under paragraph (1) (or any part of that order); and

(b) make such order as is requisite to allow the case to proceed as if the failure or default had not occurred.

Recall for want of intimation

55. Where an application has not been intimated to a person who might properly have been called as respondent the court may recall any order (including a final decision) or any part of an order and appoint the case to proceed appropriately if it is satisfied that—

(a) it would have been appropriate for the person to have received intimation;

(b) the failure to intimate was not attributable to fault on the part of the person (or on the part of any agent of the person);

(c) there has been no delay on the part of the person (or on the part of any agent of the person) in bringing the matter to the attention of the court; and

(d) it is appropriate for it to do so having regard to all the circumstances (including the nature and consequences of any actings which there have been in reliance on the order or as the case may be on the part of the order).

Recall of decree in absence

56. An order granting decree in absence (in circumstances other than are mentioned in rule 55) may be recalled, and the case appointed to proceed appropriately, if the court is satisfied that it is just and fair in all the circumstances to do so having regard in particular to—

(a) the reasons for failing to lodge an appropriate response in time;

(b) the nature of the proposed response; and

(c) the nature and consequences of any actings which there have been in reliance on the order.

Recall for non-compliance with terms or conditions

57. Where a party obtains an order but fails—

(a) within a time specified by the order (or by any subsequent order); or

(b) if no time is so specified, within such time as the court considers reasonable,

to comply with any terms or conditions set out in the order then, at any time (whether before or after the issue of the final order in the case), a party in whose interest the terms or conditions were imposed may move the court to recall or vary the order or make such further order as may seem necessary to compel compliance with the intention of the original order.

Appeals to the court

Appeals to the court

58.—(1) Subject to the provisions of any enactment allowing appeals to the Scottish Land Court, this rule and rules 59 to 63 apply to such appeals.

(2) Written intimation of the appeal is to be made to the Principal Clerk within 4 weeks of intimation of the decision appealed against.

(3) Intimation of the appeal must contain a clear statement of the grounds of appeal.

(4) The Principal Clerk is to intimate the appeal to the body whose decision is challenged and to such parties as made submissions to that body in respect of the relevant proceedings before it as she considers likely to have a relevant interest in the appeal.

(5) Any party intending to oppose the appeal is not required to lodge any note of opposition or answers unless and until asked to do so by the court.

Consideration of basis for proceeding with appeal etc62.

59.—(1) The Chairman is to consider whether the grounds set out in the statement submitted in terms of rule 58 demonstrate a basis upon which the order or determination in question might realistically be expected to be changed or set aside; and for the purposes of such consideration the court may—

(a) allow the appellant to lodge written submissions in support of all or any of those grounds;

(b) allow the appellant to be heard in support of all or any of those grounds; or

(c) allow the appellant to amend or add to those grounds.

(2) Where the Chairman is satisfied of the sufficiency of the grounds of appeal the court is to order any party it considers to have a relevant interest in the appeal to lodge a note of opposition to all or any of those grounds and a note of any separate grounds of appeal which are to be advanced by that party together with such answers, if any, as that party considers appropriate and to do so within such period as is specified in the order.

Refusal after consideration

60. If, after due consideration, the Chairman is not satisfied of the sufficiency of the grounds set out in the statement of grounds of appeal the appeal is to be refused.

Dispensing with hearing of appeal

61. If the parties agree, the court may give judgment in an appeal—

(a) without ordering written submissions or a hearing; or

(b) upon written submissions only.

Outline of argument

62. No later than 2 weeks before the day set down for hearing the appeal, the appellant, and where appropriate the respondent, is to lodge with the Principal Clerk and intimate to the other parties an outline of argument which includes—

(a) in relation to each ground of appeal, a short summary of the arguments intended to be relied on;

(b) in relation to each such ground, the main authorities intended to be relied on; and

(c) a statement as to whether any ground set out in the statement of grounds of appeal is not to be insisted upon.

Powers of court on appeal

63.—(1) The court may in an appeal—

(a) vary, recall or annul an order challenged or appealed against—

(i) in whole;

(ii) in so far only as affecting a severable and distinct part of the matters in dispute; or

(iii) as between some only of the parties;

(b) make any order which it considers should have been made; and

(c) make any other order which it thinks requisite to—

(i) deal with any change of circumstances occurring after the date of an order challenged or appealed against; or

(ii) set right any substantial error, omission, defect, wrong or miscarriage of justice.

(2) In making an order under paragraph (1), the court may impose such conditions (if any) as it thinks fit.

Internal appeals

Appeals from decisions of a divisional court

64.—(1) This rule and rules 65 to 73 apply where the determination of a case has been delegated under the provisions of paragraph 6(1) of Schedule 1 of the Act.

(2) Subject to paragraph (4), appeal is to be by way of a written statement of grounds of appeal lodged with the Principal Clerk within 4 weeks after the date of intimation of the order or determination appealed against. (3)

(3) A party may, within 4 weeks after the date of intimation of an order or determination, apply to the court for leave to defer presentation of an appeal against that order or determination until a later stage of the case.

(4) Where an application has been made in terms of paragraph (3), the court may allow intimation of the statement of grounds of appeal to be deferred to a date no later than 4 weeks after the issue of the final order in the case.

(5) A party lodging a statement of grounds of appeal must include in it a statement as to whether a supplementary note is sought under rule 67.

(6) On receiving a statement of grounds of appeal the Principal Clerk is to intimate the appeal to each party to the proceedings before the divisional court; but any of them intending to oppose the appeal is not required to lodge a note of opposition or answers unless and until ordered to do so. (6)

(7) The court may order the inclusion of a person as a party to the appeal even if that person was not a party to the proceedings before the divisional court.

(8) The appellant may at any time apply to the court for leave to amend the statement of grounds of appeal.

(9) The court may at any time determine that procedure in the appeal be sisted to allow such further procedure before the divisional court as it may specify.

Consideration of basis for proceeding with appeal etc.

65.—(1) The Chairman is to consider whether the grounds set out in a statement lodged in terms of rule 64 demonstrate a basis upon which the order or determination in question might realistically be expected to be changed or set aside; and for the purposes of such consideration the court may—

(a) allow the appellant to lodge written submissions in support of all or any of those grounds;

(b) allow the appellant to be heard in support of the all or any of those grounds; or

(c) allow the appellant to amend or add to those grounds.

(2) Where the Chairman is satisfied of the sufficiency of the grounds of appeal the court is to allow any party it considers to have a relevant interest in the appeal to lodge a note of opposition to all or any of those grounds and a note of any separate grounds of appeal which are to be advanced by that party together with such answers, if any, as the party considers appropriate and to do so within such period as is specified in the order.

Refusal after consideration

66. If, after due consideration, the Chairman is not satisfied of the sufficiency of the grounds set out in the statement of grounds of appeal the appeal is to be refused.

Supplementary note

67.—(1) This rule applies where a party contends that, in relation to a material issue relevant to a ground of appeal—

(a) a reference to evidence in any note appended to the decision appealed against (including any narrative of findings at inspection appended to that note) is inaccurate or incomplete;

(b) any finding in fact in such a note is not justified by evidence led; or

(c) that, on the basis of evidence, some other finding of fact should have been made.

(2) On a party so contending the divisional court may, after or without considering submissions by any of the parties and after such further procedure, if any, as it considers requisite, issue a supplementary note—

(a) responding to the contention; and

(b) making such relevant additions, deletions or other changes, if any, as it thinks fit to the note (or appended narrative).

(3) When issuing a supplementary note under paragraph (2), the court is to send a copy of it to each of the parties to the appeal.

(4) Within 2 weeks after receiving such a copy a party who seeks—

(a) a proof for the purpose of establishing the nature and content of the evidence which was led before the divisional court; or

(b) an inspection of the land which constitutes the subjects of the appeal,

is to intimate to the Principal Clerk that the proof or inspection is sought.

(5) On the Principal Clerk's receipt of such intimation the court may—

(a) allow, or refuse to allow, the proof or inspection; or

(b) defer consideration of the matter until such time (which may include a time during the course of hearing the appeal) as appears to the court appropriate.

Dispensing with hearing of appeal

68. If the parties agree, the court may give judgment in an appeal—

(a) without ordering written submissions or a hearing; or

(b) upon written submissions only.

Outline of argument

69.—(1) No later than 2 weeks before the day set down for hearing the appeal the appellant, and where appropriate the respondent, is to lodge with the Principal Clerk and intimate to the other parties an outline of argument which includes—

(a) in relation to each ground of appeal, a short summary of the arguments intended to be relied on;

(b) in relation to each such ground, the main authorities intended to be relied on;

(c) a statement as to whether any ground set out in the statement of grounds of appeal is not to be insisted in; and

(d) a statement specifying what, if any, challenge is made, or change proposed, to a previous order in the case.

(2) The court is to have regard to the nature of any failure to comply with the provisions of paragraph (1) when dealing with any questions of expenses relating to the appeal process.

Effect of appeal on previous orders in the case

70. In order that the court may do justice between the parties without hindrance, a competent appeal has the effect of submitting to review, at the instance of any party in the appeal, all orders in the case which precede the appeal being taken.

Entitlement to insist in appeal abandoned by appellant

71. Where an appellant obtains leave to abandon, or is deemed to have abandoned, an appeal any other party appearing in the appeal may insist in the appeal in the same manner and to the same effect as if it had originally been taken by that party on the party's own grounds of appeal as advanced under rule 65(2) or as the case may be on grounds specified in answers lodged under rule 65(2).

Appeal against order which is not final decision

72.—(1) If an order appealed against is not a final decision, the taking of the appeal does not stay procedure in the case and the divisional court may make such order, or interim order, as appears to it to be requisite having regard to the balance of convenience.(1)

(2) Without prejudice to the generality of paragraph (1) an order, or interim order, under that paragraph may include one—

(a) concerning the preservation of evidence;

(b) for the consignation or payment of money;

(c) as regards custody of anything; or

(d) for the production of documents.

(3) Except on special cause shown, any such order or interim order is not to be subject to review other than when the appeal is heard or determined.

Powers of court on appeal

73.—(1) The court may in an appeal—

(a) vary, recall or annul an order challenged or appealed against—

(i) in whole;

(ii) in so far only as affecting a severable and distinct part of the matters in dispute; or

(iii) as between some only of the parties,

(b) make any order which it considers should have been made; and

(c) make any other order which it thinks requisite to—

(i) deal with any change of circumstances occurring after the date of an order challenged or appealed against; or

(ii) set right any substantial error, omission, defect, wrong or miscarriage of justice.

(2) In making an order under paragraph (1), the court may impose such conditions (if any) as it thinks fit.

Re-hearing

Re-hearing

74.—(1) Where an order which is a final decision has been made in a case a party, or any successor in title to a party, may move the court, on one or more of the grounds set out in paragraph (3), to order that the case be re-heard, in whole or in part, on such terms or conditions as to expenses or otherwise as the court thinks fit.(1)

(2) The provisions of paragraph (1) do not apply to any appeal.

(a) The grounds are that—

(b) the order proceeded upon material error (other than an error in law), either shared by all the parties to the original proceedings or induced by one or more of the other parties;

(c) the order was obtained by fraud, fabrication of documents, perjury, subornation or other like misconduct on the part of one or more of the other parties;

(d) relevant and material evidence is available, of a nature specified in a statement under rule 76, being evidence which at the time the order was made was unknown to the party moving for re-hearing and could not have been discovered before that time by that party by exercise of due diligence;

(e) another party has failed substantially to fulfil or comply with a condition imposed in the interest of the party moving for re-hearing;

(f) the order, because of a change of circumstance, is no longer appropriate; and

(g) the order is no longer capable of enforcement.

(3) Where an order which is a final decision has been made in a case and all parties concur the court may order the case to be reheard.

(4) Any motion under paragraph (1) is to be by note in writing lodged with the Principal Clerk.

(5) But it is not competent to move for re-hearing if more than 4 weeks has elapsed since the order was intimated to the parties unless—

(a) leave to move is granted by the court on special cause shown; or

(b) all parties concur in the motion.

(6) The court may determine whether there is special cause for the purposes of paragraph (6)(a) on the basis of written submissions of parties.

Note under rule 74(5)

75.—(1) Any note under paragraph (5) of rule 74 is to—

(a) specify the order to which the motion relates; and

(b) be accompanied by a statement which complies with rule 76.

(2) Intimation of a motion for re-hearing does not stay procedure under, or in implement of, the order to which the motion relates unless the court so orders.

Statement to accompany note under rule 74(5)

76. The statement must either—

(a) be to the effect that all parties with a relevant interest concur in the motion or are not expected to oppose it; or

(b) set out—

(i) the ground mentioned in rule 74(3) on which the motion for a re-hearing is made;

(ii) a short narrative of the facts relied upon in support of that ground;

(iii) which order (or part of an order) should be varied, recalled or annulled;

(iv) the nature of any new evidence which it is desired to lead at a re-hearing;

(v) an explanation of why that evidence was not led at the hearing;

(vi) whether it is desired that the whole evidence in the case should be re-heard;

(vii) where it is not desired that the whole evidence in the case should be re-heard, what parts of that evidence are accepted;

(viii) which witnesses will require to be recalled;

(ix) whether it is practicable to limit the re-hearing of their evidence to specific matters (and if so to which matters); and

(x) whether it is likely that all or any part of the land which was the subject of the original proceedings will require to be inspected (and if the likely requirement relates to part only of the land, to which part).

Powers of court in respect of motion for re-hearing

77.—(1) This rule relates to the court's powers in respect of a motion under rule 74.

(2) The court may refuse the motion—

(a) after considering the statement which accompanies the relevant note; or

(b) after considering that statement and either—

(i) hearing the party who is moving for re-hearing; or

(ii) considering written submissions from that party.

(3) Where the motion is not refused under paragraph (2), the court is to allow any other interested party to lodge answers.

(4) After considering any such answers the court may defer consideration of the motion—

(a) until some later stage in proceedings; or

(b) until after some further opportunity has been afforded for there to be a hearing or submissions.

(5) Where the court does not, under paragraph (4), defer consideration of the motion it may—

(a) after hearing all interested parties; or

(b) with the consent of those parties, after considering any written submissions,

do any of the things mentioned in paragraph (6).

(6) Those things are—

(a) allow a re-hearing in whole or in part, in such manner and on such terms and conditions as it thinks fit;

(b) refuse a re-hearing; or

(c) if there is an appeal in the case, defer determination of the motion until the appeal has been heard.

(7) The court is not to allow a re-hearing on a ground mentioned in any of sub-paragraphs (a) to (c) of rule 74(3) unless satisfied—

(a) that if the order to which the motion relates is allowed to stand a miscarriage of justice is likely to be occasioned; and

(b) that re-hearing is likely to be the most convenient way of dealing with the matter.

(8) The court may dispense with a re-hearing on a ground mentioned in either of sub-paragraphs (d) and (e) of rule 74(3), recall the order to which the motion relates and substitute for that order such order as it thinks fit if satisfied—

(a) after hearing parties; or

(b) after considering written submissions from parties,

that it is reasonable in all the circumstances to do so.

Powers of court on allowing re-hearing

78. The court may, on allowing a re-hearing, vary, recall or annul the order to which the motion for re-hearing related—

(a) in whole;

(b) in so far only as affecting a severable and distinct part of the matters in dispute; or

(c) as between some only of the parties.

Conduct of re-hearing

79. Where a re-hearing is allowed, the court is to determine whether the re-hearing is to be conducted—

(a) by way of delegation to the member or members to whom the original proceedings were delegated;

(b) by way of delegation to a different divisional court; or

(c) by the court.

Powers of court conducting re-hearing

80. The court conducting a re-hearing—

(a) may (a)make such order (if any) as it considers appropriate in respect of an order varied, recalled or annulled under rule 78; and

(b) may vary, recall or annul any other order made in the original proceedings.

Conjunction of appeal and re-hearing

81. If in any case there is both an appeal and a motion for a re-hearing, the Chairman is to consider the order in which matters are to be heard and whether they can be heard together.

Appeal to the Court of Session in certain proceedings

Appeal to the Court of Session in certain proceedings

82. Where a party has appealed to the Court of Session, the Principal Clerk—

(a) is, on proper request, to transmit to the appropriate clerk of the Court of Session such parts of process as may be requisite for the purposes of that court; and

(b) is to retain such copies of those parts as the Principal Clerk considers necessary for maintaining the records of the Scottish Land Court.

Special case

Requirement that a case be stated

83.—(1) If a party to a case intends, in terms of the provisions of section 1(7) of the Act, to require that a special case be stated on a question of law for the opinion of the Court of Session, that party must (1)notify the Principal Clerk in writing, within 4 weeks after intimation to the party of a decision in respect of which the question arises, that the party does so require.

(2) Unless the decision was a final decision—

(a) the notification must show why it is appropriate, in the interests of a just and fair disposal, that a special case be presented at the stage the proceedings have reached; and

(b) the Chairman may determine that, in the interests of such a disposal, the fulfilment of the requirement is to be deferred until such further procedures as the Chairman may specify (which, without prejudice to the generality of this sub-paragraph, may include the hearing of all or any part of the case by the court) have taken place.

(3) The Chairman may invite submissions, written or oral, before making such a determination.

Draft statement of case

84.—(1) Any notification under rule 83 must be accompanied by a draft statement of case.

(2) The draft statement of case must specify—

(a) the decision to which it relates;

(b) whether that decision adequately sets out the facts necessary for the determination of the proposed question of law and, if it does not, any findings which the court is asked to make (being findings necessary for such determination);

(c) in what respect the decision is erroneous in law;

(d) the question of law proposed to be submitted to the Court of Session; and

(e) what interim orders are requested to sist procedure or otherwise to regulate the affairs of parties pending determination of the special case.

(3) On receipt of a notification under rule 83(1) and a draft statement of case under rule 84(1), the Principal Clerk is to send a copy of the notification and the draft statement to each of the other parties.

Responses to draft statement of case

85. A party may, within 3 weeks after receiving intimation of a requisition for a special case and draft statement lodged in terms of rule 84, lodge with the Principal Clerk a note—

(a) of any alterations which the party proposes should be made to the draft statement of case;

(b) of the party's observations on anything specified in the draft under paragraph (2)(b) of rule 84;

(c) specifying any question of law not included in the draft but which the party considers it appropriate to submit to the Court of Session;

(d) stating whether, and if so in what respect, the party considers the decision to be erroneous in law; and

(e) stating what interim orders (if any) should be made to sist procedure or otherwise to regulate the affairs of parties pending determination of the special case.

Finalisation of special case

86.—(1) After the period of 3 weeks mentioned in rule 85 has expired, the court is to settle the terms of the special case after giving such opportunity for further comment and adjustment by the party giving notification under rule 83 as it thinks fit.

(2) It is the responsibility of the court when settling the case to satisfy itself that the facts set out in the case accurately reflect the findings of the court.

(3) The court may make such changes to the wording of the special case as it considers appropriate for the purpose of clarifying or explaining any matter.

(4) The Principal Clerk is to send each of the parties a copy of the special case as settled.

(5) Within 1 week after receiving a copy of the special case by virtue of paragraph (4) the party who gave notification under rule 83 must notify the Principal Clerk and each of the other parties in writing as to whether or not the party requests that the case be sent to the Court of Session.

(6) If notification—

(a) is not given timeously under paragraph (5); or

(b) is given timeously but is to the effect that the party does not request that the case be sent to the Court of Session,

any other party may, within 2 weeks after receiving a copy of the settled special case by virtue of paragraph (4), request the Principal Clerk to send the case to the Court of Session in respect of any question of law stated in it.

(7) Within 1 week after receiving a request under paragraph (5) or (6), the Principal Clerk is—

(a) to transmit the special case as settled to the Court of Session; and

(b) to advise the parties accordingly.

(8) It is the responsibility of the party requesting under paragraph (5) or (6) that the case be sent to the Court of Session to ensure compliance with the rules of that court by making up such process and delivering such copies as are required by those rules.

(9) If no party requests that the case be sent to the Court of Session, the court (that is to say the Scottish Land Court) is to determine any question of expenses relating to the preparation and settling of the special case but is otherwise to proceed as if no special case had been required to be stated.

Further provision as regards the opinion of the Court of Session on a question of law

87.—(1) The party who desired under paragraph (5) or (6) of rule 86 that the case be sent to the Court of Session must, as soon as reasonably practicable after that court has pronounced its opinion upon the question of law, ensure that—

(a) a certified copy of that opinion; and

(b) any productions relating to that opinion,

are transmitted to the Principal Clerk.

(2) On receipt of the opinion the Scottish Land Court is, if and in so far as is necessary, to bring its decisions on matters with regard to which the question of law arose into conformity with the opinion.

Expenses

Award of expenses

88. The court may award such expenses in a case, or in any part of a case, as it thinks fit.

Employment of counsel

89.—(1) For the purposes of taxation, (1)the court may sanction the employment of junior counsel for any stage of a case in any or all of the following circumstances—

(a) the case is difficult or complex;

(b) the case, or a matter arising as regards the case, is of particular importance or value to the party represented;

(c) junior counsel has been employed at a hearing and there has been no attendance by a solicitor.

(2) The court may sanction the employment of senior counsel (alone or along with junior counsel) in any or all of the circumstances mentioned in paragraphs (a) to (c) of paragraph (1) if it accepts that such employment of senior counsel is justified.

(3) The fees allowed at taxation as counsel's fees are to take account of those for the time being payable to junior counsel for the type of work in question or for work analogous to the type of work in question (account being also taken of the fee proposed for any solicitor acting in the case, or as the case may be, of the fact that the employment of counsel is being sanctioned in the circumstances mentioned in sub-paragraph (1)(c)).

(4) Where the employment of senior counsel is sanctioned, the auditor may determine what fee should be allowed in addition to that allowed under paragraph (3).

Fixing or modifying expenses

90. In a case where the court finds a party entitled to expenses it may fix a specific sum to be paid or may make a finding subject to such modification, if any, as it sees fit.

Expenses of representative who is not an advocate or solicitor

91.—(1) Where a party is represented by a person who is not an advocate or solicitor the court may, in finding the party entitled to expenses, allow, or direct the auditor to allow, expenses comprising—

(a) outlays which, in all the circumstances, appear to the auditor to have been reasonably incurred for the proper conduct of the case; and

(b) remuneration for the person's services, being remuneration proportionate to the extent of those services and the value of the case.

(2) Unless the court on special cause shown otherwise directs, any amount allowed under subparagraph (1)(b) is not to exceed two-thirds of the amount which would have been allowed as expenses under these rules to a solicitor representing a party.

Expenses of party litigant

92.—(1) The court may, i(1)n finding a party litigant entitled to expenses, direct the auditor to allow expenses comprising—

(a) outlays which, in all the circumstances, appear to the auditor to have been reasonably incurred for the proper conduct of the case; and

(b) such sum by way of remuneration as, in all the circumstances, appears to the auditor to be reasonable in respect of work done and reasonably required in connection with the case.

(2) Without prejudice to the generality of sub-paragraph (b) of paragraph (1), the circumstances mentioned in that sub-paragraph include—

(a) the nature of the work done;

(b) the time taken to do the work (and the time reasonably required to do it);

(c) whether the party litigant lost earnings in doing the work;

(d) the importance of the case to the party litigant; and

(e) the complexity of the issues in the case.

(3) Any sum allowed under sub-paragraph (1)(b) to a party litigant is not to exceed two-thirds of the amount which would have been allowed as expenses under these rules to a solicitor representing a party.

Charges for skilled persons

93.—(1) If, in response to a motion made prior to the expiry of the periods allowed in terms of paragraphs (3) to (6) of rule 96 (Taxation of expenses), or, where a diet of taxation has been fixed, prior to that diet, the court has certified a person as skilled or expert, or if there has been no objection to the inclusion of such charges in an account of expenses on the ground of absence of such certification, charges may be allowed for any work done or expenses reasonably incurred by that person which were reasonably required for a purpose in connection with the case or in contemplation of the case.

(2) Where a motion under paragraph (1) is enrolled after the court has awarded expenses, the expenses of the motion shall be borne by the party enrolling it.

(3) In determining whether to sanction recovery of such charges the court may have regard to—

(a) whether and to what extent the person's special qualifications fall within a recognised area of knowledge, expertise or experience;

(b) what those special qualifications are;

(c) the relevance of the person's knowledge, expertise and experience to the issues in dispute;

(d) if a report from the person was instructed, whether it was reasonable in all the circumstances to give that instruction at the time it was given;

(e) the terms of the instruction; and

(f) the quality of any—

(i) report produced; or

(ii) evidence given,

by the person and the value of that report or evidence to the court in resolving an issue in the case.

Expenses where certain applications heard together

94.—(1) This rule applies where two or more cases are conjoined or otherwise heard together, the holdings to which the cases relate have the same landlord and—

(a) where the landlord is respondent, all or some of the applicants are represented by a single person; or

(b) where the landlord is applicant, all or some of the respondents are represented by a single person.

(2) The court, in awarding expenses—

(a) may allow an inclusive fee or remuneration to the person in respect of the cases in which the person appeared; and

(b) if that fee or remuneration is to be paid by the parties whom the person represented, may fix the proportions in which it is to be paid by them.

Special direction

95.—(1) Without prejudice to the power of the court to modify expenses in any case, in the circumstances set out in paragraph (2) the court may make a special direction that no fee is to be charged by a legal representative against the client or any other party to the action in respect of a specified item or specified items of work.

(2) The circumstances are—

(a) that the court is satisfied that the standard of performance of such work fell short of that expected from a reasonably competent member of the profession of which the legal representative is a member; and

(b) that the representative in question had an opportunity to be heard on the issue.

Taxation of expenses

Taxation of expenses

96.—(1) A party found entitled to expenses—

(a) may, within 6 months after intimation of that finding, lodge an account of the expenses with the auditor of court; and

(b) must make available to the auditor all vouchers and other documents relevant to the account and requested by the auditor.

(2) The period of 6 months specified in paragraph (1)(a) may be varied in any of the following circumstances—

(a) the party liable in expenses has agreed in writing to some other period;

(b) the auditor has, before the expiry of the period of 6 months, authorised a longer period; or

(c) the court has, at any time, and on such conditions as it may specify, appointed a different period.

(3) On receipt of the account the auditor is to send a copy of it to the party found liable in expenses and is to intimate to that party that any challenge to the account must—

(a) be by written submission lodged with the auditor within 4 weeks after intimation under this paragraph;

(b) identify each item challenged; and

(c) state concisely on what grounds the challenge is made.

(4) On receipt of any such written submissions the auditor is to send a copy of them to the party entitled to expenses and to invite that party to answer them, in writing, within 2 weeks after receipt of the copy.

(5) On receipt of answers under paragraph (4) the auditor is to send a copy of them to the party found liable in expenses.

(6) The auditor may, on cause shown, extend the periods specified in paragraphs (3) and (4).

(7) Where—

(a) no submissions are lodged within the period mentioned in paragraph (3)(a) or such extended period as the auditor may allow;

(b) submissions are so lodged but no answers are lodged within the period mentioned in paragraph (4) or such extended period as the auditor may allow; or

(c) submissions and answers are duly lodged under paragraphs (3)(a) and (4) or within such extended period or periods as the auditor may have allowed,

the auditor is to proceed to tax the account taking into consideration any submissions and answers timeously lodged.

(8) In taxing the account the auditor may consider whether any item of account has been properly charged even where that item has not been challenged and may add to the account any item which she considers might properly have been included in the account.

Diet of taxation

97.—(1) The auditor of court may at any time fix a diet of taxation in substitution for all or part of the procedures provided for in rule 96(3) to (7).

(2) Where a diet of taxation is fixed under paragraph (1), the party found liable in expenses must, no later than 2 weeks before the diet, by written submission to the auditor identify any item of expenses challenged, stating concisely on what grounds the challenge is made.

(3) A party who lodges a written submission under paragraph (2) must send a copy of that submission to the party found entitled to expenses.

(4) At taxation the party found liable in expenses is not entitled to be heard in relation to any item unless intimation has been given in terms of paragraph (3), but the auditor may allow the party to be heard if satisfied that failure to give such intimation arose because of mistake, oversight or other excusable cause.

Report on taxation and objections

98.—(1) After the account has been taxed, the*(4)* auditor is to prepare a report on the taxation, stating the amount of the expenses as taxed, and is to send a copy of the report to the parties.

(2) Where a party has, in a written submission or at a diet of taxation, requested the auditor to give written reasons as to any matter, the report is to include a statement of those reasons.

(3) Within 1 week after receiving a copy of the report a party who considers the auditor has erred in any respect may request the auditor to reconsider any matter and provide such material in support of such request as will enable the auditor properly to reconsider the matter.

(4) Within 3 weeks after receiving a copy of the report a party who considers that the auditor has erred on a point of law may lodge a note of objection in that regard with the Principal Clerk.

(5) Any such note must set out the party's objection together with either—

(a) a statement of the grounds of objection; or

(b) a request that the auditor be required to submit a statement in relation to such matters as may be specified in the note (being matters relevant to what is contained, as respects the point of law, in the report).

(6) The court is to make such order for further procedure as respects a note of objection lodged under paragraph (4) as it thinks fit.

Fees allowed at taxation

99.—(1) The fees allowed to solicitors at taxation are to accord with those for the time being payable in ordinary actions in the sheriff court except in so far as the court may, as regards a particular case, order otherwise.

(2) The auditor may, if satisfied that it is in the interests of justice and fairness, allow interest on outlays incurred more than 18 months prior to the date of the order awarding expenses, at such rate or rates as the auditor considers appropriate.

Rights of audience, duties of representatives etc.

Rights of audience etc.

100.—(1) A party who is a natural person is entitled to act and appear on the party's own behalf.

(2) A party is entitled to be represented (either or both)—

(a) by a solicitor;

(b) by an advocate.

(3) A party may, with the permission of the court, be represented by—

(a) a member of the party's family as defined in section 71 of the Agricultural Holdings (Scotland) Act 2003 unless the court is satisfied that it would not be consistent with the just disposal of the case in accordance with rule 1;

(b) any other person where the court is satisfied that the person is likely to be able to present the party's case efficiently and to assist the court in reaching a just result in accordance with rule 1.

(4) Representation permitted under paragraph (3) may, if the court thinks fit, be confined to representation (either or both)—

(a) during a stage in proceedings;

(b) for a purpose,

specified by the court.

Party to be satisfied as to assertions in written pleadings

101. It is the duty of any person by whom a party is represented to ensure—

(a) that the party has had the opportunity to consider any assertions of fact in the party's application, answers, replies, objections or other written pleadings; and

(b) that the party is satisfied that those assertions are accurate and not misleading.

General provisions

Postponement or adjournment

102. A sitting or hearing may be postponed or adjourned by the court to—

(a) a time or date and time fixed by it; or

(b) a date and time to be fixed by it.

Language and special requirements

103.—(1) Subject to the following provisions of this rule, the proceedings of the court are to be conducted in English.

(2) A party may employ Gaelic in any part of the proceedings if the party—

(a) requests to do so; and

(b) gives reasonable notice in that regard to the court,

unless the court is satisfied that it would be unjust or unfair to grant the request.

(3) Where the court grants such request, it is to make such arrangements for the attendance at the proceedings of an interpreter as appear to it to be appropriate.

(4) A party or witness who is unable to understand English or who has difficulty in understanding it must, as soon as is reasonably practicable, advise the court of that fact.

(5) The court on being so advised (or on becoming aware of that fact other than on receiving such advice), is to make such arrangements for the attendance at the proceedings of an interpreter as appear to it to be appropriate.

(6) Where by reason of the mental or physical disability of a person who is a party, witness or representative it is necessary or desirable that special arrangements be made in relation to the attendance of the person at the proceedings, the person must, as soon as is reasonably practicable, advise the court of that fact.

(7) The court on being so advised (or on becoming aware of that fact other than on receiving such advice), is to make such arrangements in relation to that attendance as appear to it to be appropriate.

Fees

104.—(1) There must be paid to the court, as and when required by the Principal Clerk, the fee for lodging an application and such other fees as may be specified in the Table of Fees.

(2) The Principal Clerk—

(a) is entitled to refuse to accept an application or motion in relation to which paragraph (1) is not complied with; but

(b) may accept it subject to the condition that if the appropriate fee is not paid within 1 week after such acceptance—

(i) an application which is an initial application is to be deemed not to have been made; and

(ii) any other application and any motion may be so deemed.

(3) The court may at its own instance sist at any time a case in respect of which a fee is outstanding.

(4) A fee may be paid in any way approved by the Principal Clerk; and such approval may be intimated by way of practice note, via the court's website or individually to a party.

Lodging by electronic communication

105.—(1) Applications, pleadings, productions and any other documents capable of being—

(a) transmitted and received in legible form by electronic means; and

(b) readily converted to hard copy by the recipient,

may be lodged with the court by such means.

(2) Any document lodged with the court by electronic means must also be provided to the court in hard copy.

(3) Where reasonably practicable, the contents of any documents lodged with the court in hard copy are also to be provided to the court in electronic form. (3)

Provision of copies

106.—(1) Where a party lodges with the court any document which requires to be intimated to another party or other parties, the party lodging the document must also provide to the court sufficient hard copies of the document for one to be sent by the Principal Clerk to each of the other parties.

(2) Where a party has failed, following a request from the Principal Clerk, to provide sufficient hard copies of a document which requires to be intimated to allow one to be sent to each of the other parties, the Principal Clerk may—

(a) return the document to the party who lodged it and advise that party that the document will not be intimated until the requisite number of hard copies has been provided; or

(b) if practicable, have sufficient hard copies of the document made for the purposes of intimation.

(3) Where the Principal Clerk instructs copies to be made in accordance with paragraph (2)(b), the party lodging the document shall be liable to pay the fee for copying as prescribed by the Table of Fees.

(4) Where a document has been lodged by electronic means, and the Principal Clerk is satisfied that intimation of the document to the appropriate parties may satisfactorily be achieved by electronic means, she may dispense with the requirement for intimation copies to be provided, but the principal hard copy of the document must still be provided in accordance with rule 105(2).

Intimation

107.—(1) Subject to the provisions of these rules, intimation of an application, or of anything required to be intimated in the proceedings as respects any case, is to be effected by the Principal Clerk.

(2) But the court or the Principal Clerk may direct that anything required to be intimated in respect of a case is intimated by a party or parties direct to the other party or parties, and may specify the manner by which and the time within which such intimation is to be effected.

(3) Where the Principal Clerk is satisfied that the application or other item, and the copies provided or made in accordance with rule 106, are in proper form and that the appropriate fee has been paid, the Principal Clerk is to intimate the application or other item (including in the intimation a copy of the order of the court as to when and how any response is to be made) by sending to each of the appropriate recipients one of the copies—

(a) by a registered post service or by a postal service which provides for delivery to be recorded and seeks to effect delivery no later than the next working day in all or the majority of cases;

(b) where the recipient has provided details of a document exchange system of which the recipient is a member, by means of that system; or

(c) by electronic communication.

(4) But intimation by electronic communication is to be used only where the Principal Clerk is satisfied that arrangements are in place for the communication to be—

(a) received in legible form; and

(b) kept by the recipient in a form capable of being used for subsequent reference,

and for its receipt to be electronically or otherwise acknowledged.

(5) Where intimation is by a postal service, the envelope within which the intimation is contained is to bear on its outside a label, firmly attached and clearly visible, stating "This envelope contains an intimation from the Scottish Land Court. If delivery cannot be effected it is requested that the envelope be returned without delay to the Principal Clerk, Scottish Land Court, 126 George Street, Edinburgh EH2 4HH.".

(6) In any application where neither the respondent's address nor the address of any agent or factor acting for the respondent is known to, or readily ascertainable by, the applicant the court may allow or direct the applicant to intimate the application, or other item required to be intimated,—

(a) by publication of an advertisement, in such form as the court may order, in a newspaper circulating—

(i) in the district in which the land to which the application relates is situated, or in which the last known address of the respondent is situated; or

(ii) in such other place as the court may order, or

(b) in such other manner as the court may order.

(7) For the purpose of these rules, anything posted is to be taken to be sent on the day of posting, anything sent through a document exchange is to be taken to be sent on the day it was left at the document exchange and anything sent by electronic communication is to be taken to be sent on the day of transmission.

(8) Any period which, in terms of these rules or in terms of an order of the court, is to run from intimation is to be taken to run from the end of the day after intimation is sent.

(9) Subject to paragraphs (10) and (11), intimation of anything to a landlord is effected by sending it—

(a) to the landlord; or

(b) to the landlord's factor, solicitor or other agent if that factor, solicitor or agent is the person to whom rent for the land to which the application relates is normally paid.

(10) Where in any application a party is represented in the proceedings by a solicitor, factor or other agent, then unless and until the other parties and the Principal Clerk are notified that the solicitor, factor or agent has ceased to act for the party intimation to the party may be effected by intimation to the representative at that person's office or place of business.

(11) Intimation of anything to a body corporate, partnership or other unincorporated body is effected by sending it, under the name or description which the body or partnership ordinarily uses—

(a) to the principal office or place of business of the body or partnership; or

(b) if that principal office or place of business is not in Scotland, either to that principal office or place of business or to any office or place within Scotland (including the office of a clerk, secretary or representative) where the body or partnership carries on business.

(12) In any application relating to a common grazing, if the total number of relevant persons exceeds 10 the court may direct that, rather than for there to be intimation in any other way, the applicant is to intimate the application, or the applicant or any other party is to intimate any proceedings in the application—

(a) by publication of an advertisement, in such form as the court may order, in a newspaper circulating in the district in which the land to which the application relates is situated; or

(b) in such other manner (which may include intimation to the clerk of the grazings committee) as the court thinks fit.

(13) For the purposes of paragraph (12), a relevant person is one—

(a) named as a respondent or as a person who may have an interest to respond; or

(b) to whom the court considers intimation would be appropriate.

Dispensing with intimation

108.—(1) A respondent in an application or any person made a party to it may agree to dispense with intimation in the proceedings.

(2) Any such agreement must be—

(a) by signed endorsement on the application;

(b) by formal minute lodged with the court;

(c) by statement in open court; or

(d) by letter—

(i) to the person whose motion or request to the court would, but for the agreement, require to be intimated; or

(ii) to the Principal Clerk.

Evidence of intimation

109.—(1) Where intimation is made by advertisement under paragraph (6)(a) or (12)(a) of rule 107, a copy of the page on which the advertisement was published is to be lodged with the court as soon after the advertisement has appeared as is reasonably practicable, and such copy is sufficient evidence of intimation provided that it contains the name of the newspaper and the date of publication.

(2) In relation to intimation effected in accordance with rule 107(3)(a) or ordered by the court to be effected by a postal service the relevant receipt of the postal service for a delivery certified by the Principal Clerk (or otherwise proved) to have contained a true copy of the application or thing intimated is sufficient proof of intimation having been effected at the time at which the delivery would ordinarily have taken place.

(3) In relation to intimation effected in accordance with rule 107(3)(b), a certificate by the Principal Clerk that a copy of the item requiring intimation was left at the document exchange for the recipient on the date of certification is to be taken to be sufficient proof of intimation having been effected no later than the end of the next day on which the item would ordinarily have been available for collection by the recipient.

(4) In relation to intimation effected in accordance with rule 107(3)(c), a certificate by the Principal Clerk that a copy of the item requiring intimation was sent to the recipient's email address on the date of certification is to be taken to be sufficient proof of intimation having been effected no later than the end of the next day following the date of transmission.

(5) Intimation is to be taken to have been made to the person to whom it was intended to be made if it was addressed to the person at the last known residence, place of business or email address of the person (unless it is proved that it was not made to the person).

Insufficiency or irregularity in intimation

110.—(1) If—

(a) there has been an insufficiency or irregularity in intimation to a person and that person has not appeared in court or lodged objections, answers or other pleadings; and

(b) it seems to the court expedient that intimation to that person should be made anew or in some other or further manner than is provided for in rule 107,

the court may grant authorisation or make a direction accordingly.

(2) Any such authorisation or direction of the court may include provision for intimation—

(a) by sheriff officers in accordance with the procedures of the sheriff court; or

(b) by any other person in a manner authorised by the court and on such conditions as the court thinks fit.

Orders etc. of the court

111.—(1) Every order of the court is to be—

(a) in writing; and

(b) signed or otherwise authenticated by a clerk or member,

unless it is an order made in the course of a hearing and regulating procedure in the case.

(2) Any member of the court or the Principal Clerk may sign an order which—

(a) appoints—

(i) answers, replies, objections, minutes, statements or other pleadings; or

(ii) documents or articles founded on by a party,

to be lodged with the Principal Clerk,

(b) directs service to be made, or notice or intimation to be given, to a party;

(c) grants an unopposed motion for an order requiring a (c)witness or haver to attend at a specified time and place for the purpose of (either or both)—

(i) giving evidence;

(ii) producing documents or articles;

(d) fixes or alters the date of a sitting;

(e) requires borrowed productions to be returned; or

(f) is a record of an order pronounced in the course of a sitting.

(3) Any member of the court may sign an order—

(a) in an unopposed application; or

(b) which—

(i) gives effect to a joint minute for parties; or

(ii) allows an application or appeal, or a motion for rehearing in an application or appeal, to be, by consent of all parties, amended, abandoned or withdrawn.

(4) Where an order comprising a finding or determination of the court is not signed by all members of the court which heard the case it must be signed by at least one member and certified by a clerk or member as having been agreed by all non-signing members.

(5) Where a member of the court which heard a case dissents from a finding or determination of that court, the member may by note appended to the order in question record such dissent.

(6) Where the court which made an order is satisfied—

(a) that the order does not accurately reflect the intention of the court; and

(b) that no party who has acted in the reasonable belief that the order was correct would be materially prejudiced were the order changed so that it did so reflect that intention,

the court may, at its own instance or on the motion of a party, change the order accordingly.

(7) An extract or copy of an order of the court is, if it is required for the purposes of any proceedings (whether before a court of law or otherwise), to be authenticated by the signature of—

(a) a member of the court; or

(b) the Principal Clerk,

and is to be sealed with the seal of the court before being issued.

(8) The Principal Clerk, on being satisfied that a person requesting an extract of an order of the court has a proper interest to receive it, is to issue that extract to the person free of charge.

(9) Such an extract may include a warrant for execution in the terms "and the court grants warrant for all lawful execution hereon".

(10) Paragraphs (8) and (9) do not apply to an order as regards which the time limit for lodging an appeal has not yet expired.

Payments into court

112.—(1) Any sum of money which a party desires, or is ordered, to pay into court for any purpose is to be—

(a) consigned in the hands of the Principal Clerk; and

(b) held by the Principal Clerk subject to the directions of the court,

in the same manner as in an ordinary action in the sheriff court.

(2) No money so consigned is to be paid or uplifted without either—

(a) leave of the court; or

(b) the consent in writing of all interested parties.

Time limits

113. Subject to any express provision in these rules the court may set such time limits as it considers appropriate for compliance with any order it makes.

Non-compliance with a rule or order

114.—(1) If a party fails to comply with a rule or order of the court, the court may—

(a) in the event of failure by an applicant, dismiss the case or make such finding in favour of the respondent as it thinks appropriate;

(b) in the event of failure by a respondent, repel any pleas, objections or claims made by the respondent and grant the application or make an order in favour of the applicant as it thinks appropriate; or

(c) relieve the party from the consequences of the failure if the court considers it reasonable to do so, on such terms and conditions as to expenses or otherwise as it considers just.

(2) Where the court so relieves a party under paragraph (1)(c) it may pronounce such order as it thinks fit to enable the case to proceed as if the failure had not occurred.

(3) But the court is not to relieve a party, under paragraph (1)(c), from the consequences of a failure to comply with the time limits imposed by rule 64(3) or rule 83(1) unless satisfied that the failure is wholly attributable to some cause outwith the control of the party.

Extension of time and taking procedural step out of time

115.—(1) Where it is competent to do so, (1)a party may request the court for—

(a) an extension of time; or

(b) permission to take a procedural step out of time.

(2) The court may grant or refuse such a request without hearing the other party.

(3) Where granting such a request the court may make such order as to expenses as it considers just and proportionate to mark the failure to comply.

Calculation of time

116. Where any period of time specified in these rules or in any order of the court ends on a day which is a Saturday or Sunday or on a day which is not a working day for the court, the period is to be taken as expiring at the end of the first working day thereafter.

Transition and citation

Transitional provision

117. The Principal Clerk shall give such directions in relation to any individual case or type of case as appear necessary to allow a smooth transition to use of these rules and, in particular, may excuse compliance with such provision of these rules as may appear to conflict with the reasonable expectations of parties as to procedure in respect of cases which commenced before the coming into effect of these rules.

Citation

118. These rules may be cited as the Rules of the Scottish Land Court 2014.

EXPLANATORY NOTE

(This note is not part of the Order)

These Rules govern the practice and procedure to be followed in the Scottish Land Court with effect from 22nd September 2014. They replace the previous Rules which are revoked.

Rule 1 sets out the overriding purpose of the rules.

Rule 2 contains interpretation provisions.

Rules 3 to 13 make general provision regarding the making of applications and their acceptance by the court, the amendment, clarification and further specification of matters referred to in applications, the conjoining of applications and the appointment of a curator *ad litem* to a party in a case or a solicitor or advocate to assist the court.

Rules 14 and 15 deal with answers or responses and with the adjustment of pleadings.

Rules 16 and 17 provide for the making of procedural orders in specific cases.

Rule 18 deals with the delegation of cases to a divisional court.

Rules 19 to 46 make provision about miscellaneous matters relating to hearings and the taking of evidence, including the fixing of dates, preparation and lodging of material in advance of a proof, witnesses and witness statements, appointment of commissioners, reporters and assessors, and inspection of land or buildings by the court.

Rule 47 provides for the court to determine a case without a hearing.

Rule 48 provides for the court itself to obtain information relevant to a case if it thinks fit.

Rules 49 to 51 provide for the exhibition or borrowing of the process of an application and for the retention or return of documents after a case is finished.

Rules 52 and 53 deal with sisting of cases and inactive cases.

Rules 54 to 57 provide for a party to be restored to a case and for orders to be recalled in certain circumstances.

Rules 58 to 63 make provision regarding appeals to the court from the decisions of other bodies, such as the Crofting Commission.

Rules 64 to 73 make provision regarding appeals from decisions of a divisional court.

Rules 74 to 81 provide for the re-hearing of a case in whole or part in specified circumstances.

Rules 82 to 87 make provision regarding appeals from the court to the Court of Session.

Rules 88 to 95 deal with expenses, including the expenses of party litigants and charges for skilled persons.

Rules 96 to 99 deal with the taxation of accounts of expenses by the auditor of court.

Rules 100 and 101 deal with rights of audience and the duties of representatives.

Rules 102 to 116 deal with general matters including payment of fees, lodging of documents by electronic communication, the provision of copies, intimation, the signing and authentication of orders, non-compliance with orders and the calculation of time limits.

Rule 117 contains transitional provisions and rule 118 provides for citation.