

## SCHEDULE

### RULES OF THE SCOTTISH LAND COURT 2014

#### *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.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

### **Expenses of party litigant**

**92.**—(1) The court may, in 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.