

## SCHEDULE

### RULES OF THE SCOTTISH LAND COURT 2014

#### *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.

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(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—

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- (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.

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(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.

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(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.