

SCHEDULE

RULES OF THE SCOTTISH LAND COURT 2014

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 subparagraph, 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.

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(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

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- (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.

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(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.