

SCHEDULE

RULES OF THE SCOTTISH LAND COURT 2014

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.

Status: This is the original version (as it was originally made).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

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 consignment 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.