

## SCHEDULE

### RULES OF THE SCOTTISH LAND COURT 2014

#### *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

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- (e) stating what interim orders (if any) should be made to assist 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.