

The Court of the Seneschal (Costs and Fees) Rules, 2015

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Rule

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SCHEDULE: Court fees, etc. in respect of civil proceedings.

The Court of the Seneschal (Costs and Fees) Rules, 2015

THE COURT OF THE SENESCHAL, in exercise of the powers conferred upon it by section 18 of the Reform (Sark) Law, 2008^a and all other powers enabling it in that behalf, hereby orders:-

PART I COURT FEES AND RECOVERABLE COSTS

Costs and security therefor.

1. (1) The Court may, in any action -
 - (a) make such order as to the costs of the proceedings, or of any stage or application in the proceedings, and
 - (b) order any party to give security for costs in such amount, on such terms and in such manner,

as the Court thinks just.

(2) An order under paragraph (1)(b) for the giving of security for costs may provide that -

- (a) the proceedings shall be stayed until the security is given, and
- (b) if the security is not given within such time as may be specified in the order, the proceedings may be dismissed by order of the Court.

Court fees, etc. in respect of civil proceedings.

2. (1) In civil proceedings there shall be paid, in respect of a proceeding or matter described in column 1 of the Schedule, a fee of the amount

^a Orders in Council Nos. V, VI and XXVII of 2008; No. XIV of 2010 and No. XII of 2011.

specified in column 2 in relation to the proceeding or matter.

(2) A fee payable under paragraph (1) is, unless the Court orders payment by another party or by a party's Advocate, payable by the person at whose instance the proceeding or matter was taken or carried out.

(3) Column 2 of the Schedule specifies to whom the fees mentioned therein are payable.

(4) The Court may if it thinks fit remit, in whole or in part, any fee specified in column 2 of the Schedule.

(5) Any fee specified in column 2 of the Schedule is recoverable as a civil debt.

(6) Where any fee remains unpaid at the date of any related Court hearing, the Court may, at its absolute discretion -

- (a) decline to hear the proceeding or matter until such time as the fee has been paid, and
- (b) make such consequential orders as to costs as seems appropriate, having regard to all the circumstances.

Advocates' fees in respect of civil proceedings.

3. (1) In civil proceedings, the maximum Advocates' fees recoverable shall be (subject to the following provisions of this rule and the provisions of Part II of these Rules and to any direction of the Court as to the extent to which costs are to be paid) the costs of and incidental to the proceedings which have been incurred by the party to whom costs have been awarded and which are -

- (a) reasonable in amount,
- (b) proportionate to the matters in issue, and
- (c) reasonably incurred.

(2) The maximum Advocates' fees recoverable shall (unless the Court orders otherwise) be limited to such hourly amount as shall from time to time be specified under Rule 2(2) of the Royal Court (Costs and Fees) Rules, 2012^b.

(3) Any doubts which a person appointed under rule 8 to conduct a taxation may have as to whether costs are -

- (a) reasonable in amount,
- (b) proportionate to the matters in issue, and
- (c) reasonably incurred,

shall, except in relation to costs awarded on a full or partial indemnity basis, be resolved in favour of the paying party.

(4) Notwithstanding the foregoing provisions of this rule, the Court may, in the circumstances mentioned in paragraph (5), order that Advocates' fees or security therefor shall be paid on a full or partial indemnity basis.

(5) The circumstances referred to in paragraph (4) are as follows -

- (a) where, in the special circumstances of the case, the Court is of the opinion that costs should be ordered otherwise than on the basis provided by the foregoing provisions of this Rule, or
- (b) where any party has pleaded or otherwise pursued or defended an action, claim or counterclaim unreasonably, scandalously, frivolously or vexatiously, or has otherwise abused the process of the Court.

^b ORC No. III of 2012; amended by ORC No. II of 2014.

(6) In relation to costs awarded on the full or partial indemnity basis set out in paragraph (4), all Advocates' fees shall be allowed except insofar as they are, having regard to all the circumstances, unreasonable in amount, disproportionate to the matters in issue or unreasonably incurred, and any doubts which a person appointed under rule 8 to conduct a taxation may have as to whether such costs are -

- (a) reasonable in amount,
- (b) proportionate to the matters in issue, and
- (c) reasonably incurred,

shall be resolved in favour of the receiving party.

(7) An order made under paragraph (4) shall indicate that it is made on a full or partial indemnity basis, failing which the provisions of paragraphs (4) to (6) shall not apply.

Witnesses' allowances in respect of civil and criminal proceedings.

4. (1) The allowances recoverable on account of, and payable to -
- (a) a witness attending to give evidence in civil or criminal proceedings before the Court (whether or not he gives evidence), and
 - (b) a witness examined in proceedings preliminary to such proceedings,

shall be determined in accordance with this rule.

(2) There may be allowed, in respect of a professional or expert witness, for attending to give professional or expert evidence and for work in

connection with its preparation, an allowance of the amount considered reasonable having regard to the nature and difficulty of the case and the work necessarily involved.

(3) There may be allowed, in respect of a witness who attends to give evidence other than professional or expert evidence -

(a) if he thereby loses remuneration or necessarily incurs additional expense (other than expense on account of travelling, lodging or subsistence), an allowance not exceeding the amount of -

(i) the remuneration actually and reasonably lost, and

(ii) the expense actually and reasonably incurred, and

(b) if he is not resident in the Island of Sark (or, where the Court is sitting in Guernsey pursuant to section 8(4) of the Reform (Sark) Law, 2008, if he is not resident in the Island of Guernsey), a subsistence allowance not exceeding the amount of the costs actually and reasonably incurred.

(4) There may be allowed, in respect of a witness who is necessarily absent from his place of residence overnight for the purpose of attending to give evidence, a night allowance not exceeding the amount actually and reasonably incurred for board and lodging for the night.

(5) There may be allowed, in respect of a seaman who is detained on shore for the purpose of attending to give evidence and who thereby misses his ship, for the time during which he is, and is likely to be, necessarily detained on shore –

(a) an allowance not exceeding the amount of the wages

actually and reasonably lost by him, and

- (b) a subsistence allowance and night allowance not exceeding the amounts referred to in paragraphs (3)(b) and (4),

and paragraphs (2) to (4) do not apply to a person in respect of whom an allowance is made under this paragraph.

(6) There shall be allowed, in respect of a witness who necessarily incurs expense in travelling to and from the Court or any other place for the purpose of attending to give evidence, an allowance not exceeding the expense actually and reasonably incurred.

Items used for proceedings.

5. (1) The cost of an item shall be recoverable where the use of that item for the purposes of proceedings was reasonable.

(2) Where the cost of any item is recoverable, the amount recoverable is the amount actually and reasonably paid for the item.

(3) For the avoidance of doubt, the amount recoverable in respect of a fee payable upon the swearing of a declaration is the amount of the fee.

(4) For the avoidance of doubt, video conference costs are recoverable.

Other disbursements.

6. (1) The cost of any other disbursement shall be recoverable where the payment of that disbursement for the purposes of proceedings was reasonable and appropriate in all the circumstances.

(2) Where the cost of any disbursement is recoverable, the amount recoverable is the amount actually and reasonably paid by way of disbursement.

PART II
TAXATION OF COSTS

Request for taxation.

7. (1) Where in any proceedings the Court awards costs against any party, that party may, within a period of one month immediately following the date when he or his Advocate receives the opposing party's bill of costs, submit a written request –

- (a) to the judge who presided over the proceedings ("**the presiding judge**"), or
- (b) if the presiding judge is unavailable, to the Seneschal,

for the costs to be taxed.

(2) The presiding judge or, if he is unavailable, the Seneschal may allow further time for the submission of a request under paragraph (1) upon being satisfied that there are exceptional circumstances making it just to do so.

(3) Taxation under this Part of the Rules is inapplicable in respect of a party's own costs payable to his Advocate.

Appointment of person to conduct taxation.

8. (1) On receipt of a request under Rule 7(1), the presiding judge or, as the case may be, the Seneschal shall appoint –

- (a) himself,
- (b) any other person or persons whomsoever (hereinafter called "**Commissioners**"), or
- (c) both himself and one or more Commissioners,

to conduct either the entirety of the taxation or such part thereof as he may specify.

- (2) An appointment under paragraph (1) –
 - (a) shall, subject to paragraph (3), be final,
 - (b) may be made for all purposes of the taxation or for such limited purposes thereof as may be specified by the presiding judge or, as the case may be, by the Seneschal, and
 - (c) may be made subject to such terms and conditions as may be so specified.

(3) The presiding judge or, if he is unavailable, the Seneschal may at any time, if satisfied that it is just to do so, rescind or amend an appointment under paragraph (1), including the rescission or amendment of the purposes stipulated under subparagraph (2)(b), or may make a new appointment, whether in addition to the person or persons already appointed or in replacement of a rescinded appointment.

Conduct of taxation.

9. (1) The person conducting the taxation shall make such decision in respect of the taxation as he thinks just; and, in making his decision, he may, without limitation, take into account the seniority and experience of the Advocate whose costs are to be taxed.

(2) The person conducting the taxation may, in his absolute discretion, accept oral or written representations from any of the parties to the proceedings or from any of their Advocates.

(3) The party whose costs are to be taxed shall submit his bill of costs and all necessary papers and vouchers to the person conducting the taxation.

Appeal against taxation decision.

10. (1) The decision of the person conducting the taxation, which may confirm, reduce or disallow any of the costs in question, shall be subject to appeal, by any party aggrieved by the decision, as follows –

- (a) where the decision is that of the presiding judge himself, the decision shall be deemed to be part of the Court's award as to costs, and appealable as such,
- (b) where the decision is not that of the presiding judge himself, the decision shall be subject to appeal to the Royal Court sitting as an Ordinary Court constituted by the Bailiff sitting alone.

(2) An appeal under paragraph (1)(b) shall be instituted, within a period of one month immediately following the date of the decision, by way of summons served on the other party.

(3) The grounds of the appeal shall be that the decision was wrong in law.

(4) In all other respects, the decision of the person conducting the taxation shall be final.

Amount recoverable.

11. The amount recoverable in respect of costs shall not exceed the amount stated in the decision of the person conducting the taxation (as varied, where applicable, on appeal).

PART III
GENERAL PROVISIONS

Time for complying with an order for costs.

12. (1) A party must comply with an order for the payment of costs -

- (a) within 14 days of the date of the judgment or order that states the amount of those costs, or
- (b) on or before such other date as the Court may specify.

Interpretation.

13. (1) In these Rules, except where the context requires otherwise -

"**Advocate**" means an Advocate of the Royal Court of Guernsey and includes Her Majesty's Procureur,

"**Advocates' fees**" means Advocates' fees and disbursements,

"**enactment**" means any Law, Ordinance or subordinate legislation,

"**items**" means models, plans, photographs, transcripts, documents and other things, in each case used for the purposes of proceedings,

"**proceedings**" means proceedings before the Court of the Seneschal whether in open court or in chambers, whether sitting in Sark, or sitting in Guernsey pursuant to section 8(4) of the Reform (Sark) Law, 2008, and includes ex parte proceedings and other matters,

"**recoverable**", in relation to Advocates' fees and in relation to allowances and other amounts, means recoverable by a party to whom costs are awarded by the Court from the party against whom costs are awarded,

"**the Schedule**" means the schedule to these Rules,

"**video conference costs**" means the charges made by the Court or other provider of video conference facilities whether in the court building or elsewhere and whether within or outside the Island of Sark,

"**witness**" in relation to any civil or criminal proceedings, includes a party to such proceedings,

and other expressions have the same meaning as in the Reform (Sark) Law, 2008.

(2) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of these Rules as it applies to the interpretation of an enactment in force in the Island of Guernsey.

(3) Any reference in these Rules to an enactment is a reference thereto as from time to time amended, extended, re-enacted or applied.

Citation.

14. These Rules may be cited as the Court of the Seneschal (Costs and Fees) Rules, 2015.

Commencement and transitional provisions.

15. (1) These Rules were made by the Court of the Seneschal on 28th August, 2015 and, having been approved by the Royal Court on 10th September, 2015 in accordance with section 18 of the Reform (Sark) Law, 2008, shall come into force on 25th September, 2015.

(2) The Court of the Seneschal may make such orders in respect of actions commenced before 25th September, 2015 as it thinks just.

^c Ordres en Conseil Vol. XIII, p. 355.

SCHEDULE

Rule 2

COURT FEES, ETC. IN RESPECT OF CIVIL PROCEEDINGS

1. DESCRIPTION OF PROCEEDING OR MATTER	2. FEE
1. Service of summons	Prevot: £50
2. Service of documents	Prevot: £50
3. Court hearing (per hour or part thereof) – (a) for recovery of a sum of money not exceeding £10,000 (b) for recovery of a sum of money exceeding £10,000 (c) in any other case	 Court: £80 Court: £160 Court: £80
4. Provision of recording or transcript of proceedings	Court: full cost of production
5. Video conferencing (a) video conference booking fee (b) set-up and test video link	 Court: £50 Court: £150 Set-up and test video link, for the first 15 minutes (or part of), use of equipment and attendance of court

	officer Court: £25 for subsequent 15 minutes (or part of) including use of equipment and attendance of court officer. Additional technical assistance will be charged at £60 per hour (or part thereof). Transmission costs will be charged at cost.
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