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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 560**

**The Inquiries (Scotland) Rules 2007**

*Awards*

**Application for an award under section 40(1) of the Act**

17.—(1) An applicant may apply in writing to the chairman at any time for an award to be made under section 40(1) of the Act (award of compensation and expenses by chairman).

(2) Where the application relates to amounts to be incurred in respect of legal representation, it must state—

- (a) the nature and estimated duration of the legal representation for which the award is sought;
- (b) the proposed hourly rates of any legal representative providing that representation; and
- (c) any other expenses relating to legal representation.

**Criteria for determination of applications**

18.—(1) Subject to section 40(4) of the Act (conditions or qualifications notified by the Minister), the chairman must take into account the criteria set out in paragraph (2) when determining whether an award should be made.

(2) The criteria are—

- (a) the financial resources of the applicant; and
- (b) the public interest so far as relating to the making of an award.

**Determination conditions for awards**

19.—(1) Where the chairman has determined an award should be made, in the determination of the application the chairman—

- (a) must set conditions according to paragraphs (2) to (4); and
- (b) may set any other conditions the chairman considers appropriate.

(2) Where an award is for amounts to be incurred in respect of legal representation the conditions must include—

- (a) the nature and scope of the work to be funded;
- (b) the hourly rates to be paid;
- (c) any upper limit or limits on the sums or number of hours which will be paid;
- (d) the frequency with which bills must be submitted to the chairman; and
- (e) the form in which bills must be so submitted.

(3) Where an award is for amounts to be incurred by way of compensation for loss of time the conditions must include—

- (a) an upper limit or limits on the sums which will be paid;
- (b) the form in which bills must be submitted to the chairman; and

- (c) the supply of such documentary evidence as the chairman considers necessary.
- (4) Where an award is for amounts to be incurred which are not already covered by paragraphs (2) and (3) the conditions must include—
  - (a) an upper limit or limits on the sums which will be paid;
  - (b) a requirement that the applicant provide evidence that the expenditure has been properly incurred; and
  - (c) the form in which bills must be submitted to the chairman.

#### **Notification or referral following determination**

- 20.**—(1) This rule applies where the chairman has determined that an award should be made.
- (2) Where the application relates to amounts which are to be incurred, the chairman must—
  - (a) send the determination to the applicant; and
  - (b) where the applicant has a legal representative, that legal representative.
- (3) Where the application relates to amounts which have been incurred, the chairman must refer the application to the solicitor to the inquiry for an initial assessment of the amount of the award under rule 21 as soon as practicable.

#### **Assessment of award by the solicitor to the inquiry**

- 21.**—(1) The solicitor to the inquiry must make an initial assessment of the amount of the award within 21 days of the referral by the chairman.
- (2) Where the solicitor to the inquiry assesses that the full amount applied for by the applicant should be paid, the initial assessment of the amount of the award is also the final assessment of the amount of the award.
- (3) If the applicant disagrees with the initial assessment of the amount of the award, or a part of it, the applicant must notify the solicitor to the inquiry of this in writing as soon as reasonably practicable and, in any event, within 21 days of the date on which the initial assessment of the amount of the award is sent to the applicant in accordance with paragraph (5).
- (4) Where the applicant has not responded within 21 days of the initial assessment of the amount of the award being sent to the applicant, the solicitor to the inquiry must make the final assessment of the amount of the award.
- (5) An initial or final assessment of the amount of the award made by the solicitor to the inquiry must be in writing and sent—
  - (a) to the applicant; and
  - (b) where the applicant has a legal representative, that legal representative.

#### **Matters to be taken into account for the initial assessment**

- 22.**—(1) When assessing an award for an amount by way of compensation for loss of time, the solicitor to the inquiry must have regard to—
  - (a) actual sums lost by the applicant as a result of attending the inquiry; or
  - (b) if no such sums can be identified, such other amount as the solicitor to the inquiry considers proportionate and reasonable.
- (2) When assessing an award for an amount in respect of expenses incurred, the solicitor to the inquiry must have regard to all the circumstances and in particular—
  - (a) whether the expenses have been proportionately and reasonably incurred;

(b) whether the expenses are proportionate and reasonable in amount.

(3) The solicitor to the inquiry must exclude amounts from the initial assessment of the amount of the award in relation to which any condition set under rule 19 has not been complied with.

### **Procedure where initial assessment is not agreed to in relation to an award other than for legal representation**

**23.**—(1) Where—

- (a) notification has been given by the applicant under rule 21(3); and
- (b) it relates to an application for an award for amounts which have been incurred otherwise than in respect of legal representation,

the solicitor to the inquiry must reconsider the initial assessment of the amount of the award.

(2) Having reconsidered the initial assessment of the amount of the award under paragraph (1) the solicitor to the inquiry must issue the final assessment of the amount of the award to the applicant within a reasonable time.

### **Dispute procedure in respect of initial assessment in relation to an award for legal representation**

**24.**—(1) Where—

- (a) notification has been given by the applicant under rule 21(3); and
- (b) it relates to an application for an award for amounts which have been incurred in respect of legal representation,

the solicitor to the inquiry must send the applicant a response in accordance with paragraph (2).

(2) That response must—

- (a) be in writing; and
- (b) set out details of the points of dispute within 21 days of receipt of the notification.

(3) Those details must—

- (a) identify each item to which the solicitor to the inquiry objects;
- (b) state the nature of the objection for each item; and
- (c) propose an alternative amount to be allowed for each item in respect of which a reduction is sought.

(4) The applicant must provide a reply in accordance with paragraph (5).

(5) That reply must be—

- (a) in writing; and
- (b) sent to the solicitor to the inquiry within 21 days of the response having been sent to the applicant.

(6) The solicitor to the inquiry and the applicant may agree to extend the deadlines set out in paragraphs (2)(b) and (5)(b).

### **Review by the Auditor of the Court of Session of the amount of an award for legal representation**

**25.**—(1) Where the applicant has replied under rule 24(5) and there remains a dispute, the chairman must either—

- (a) refer the initial assessment to the Auditor of the Court of Session together with all relevant evidence and documentation, including the application and any correspondence between the solicitor to the inquiry and the applicant given under rules 21 and 24; or
- (b) require the solicitor to the inquiry to issue a final assessment of the amount of the award.

(2) Where the initial assessment of the amount of an award for legal representation has been referred under paragraph (1)(a), the Auditor of the Court of Session must hold a review hearing within a reasonable time.

(3) The Auditor of the Court of Session must notify the solicitor to the inquiry and the applicant of the date and location of the review hearing, in writing, as soon as practicable and in any event not later than 14 days before the date of the hearing.

- (4) A person other than—
- (a) the applicant;
  - (b) the solicitor to the inquiry; and
  - (c) the applicant’s qualified lawyers,

may be heard at the review hearing only if the Auditor of the Court of Session gives permission for that person to be heard.

- 26.—**(1) The Auditor of the Court of Session must send—
- (a) the applicant; and
  - (b) the chairman,

the Auditor of the Court of Session’s assessment of the amount of the award as soon as reasonably practicable following the review hearing.

(2) The Auditor of the Court of Session’s assessment under paragraph (1) is the final assessment of the amount of the award.

**Agreement prior to a review hearing**

**27.—**(1) This rule applies where, after the date on which the chairman makes a referral under rule 25(1) but before the date of the review hearing, the solicitor to the inquiry and the applicant agree on the amount of the initial assessment.

- (2) Such an agreed amount is the final assessment of the amount of the award.

(3) The solicitor to the inquiry must issue the final assessment of the amount of the award as soon as practicable following an agreement being reached under paragraph (2).

**Making an award**

**28.—**(1) The chairman must make an award and arrange for payment of the final assessment of the amount of the award.

(2) Where the award is not to be reviewed under rule 25 payment must be made within 28 days of the final assessment of the amount of the award being sent to the applicant.

(3) Where the amount of the award has been reviewed under rule 25 payment must be made within 28 days of the final assessment of the amount of the award being sent under rule 26.