

INTERIM AWARDS OF EXPENSES

Purpose

1. To consider making provision for the court to make an interim award of expenses, whilst the parties await the Auditors final figure for the “expenses as taxed”.

Background

2. The attached rules request (Paper 5.3A) was submitted by the Dean of the Faculty of Advocates on 28 May 2026. It reflects that the potential time taken between the court remitting an account for taxation until the court makes an award of expenses is problematic for practitioners, particularly those progressing a significant case volume on a “no win, no fee” basis.
3. In his view paying parties are now “weaponising” that delay period as a tactic to simply defer payment. Hence the Dean has asked the Council to urgently consider introducing a new rule that would provide the court with the ability to require a paying party to pay an interim award of expenses to the party successful in expenses, with the court being able to decree that interim payment within say 28 days of receiving the lodged Account of Expenses.
4. The amount fixed would be a matter for judicial discretion in each case. It would be based on paying what the court considered to be a reasonable % amount (say 50% of the amount claimed within the account of expenses as lodged) to cover the delay whilst the parties await the final taxed account of expenses being issued by the Auditor of the Court of Session. The paying party would retain the right to object to any such request for an interim payment, if appropriate.

The proposed rule

5. By way of example, the Dean has proposed inserting a new paragraph 4 into RCS rule 42.1 (remit to the auditor) that would read as follows:

4) Within 28 days of the lodging of an account of expenses under paragraph (2)(a) or (b)—

(a) the party found entitled to expenses may apply by motion to the court for an interim award on account of those expenses;

(b) where no opposition to such motion is made, the court shall grant an interim award of a sum equal to 50 per cent of the amount of the account of expenses lodged under paragraph (2)(a) or (b); and

(c) the party found liable in expenses may oppose such motion and, on cause shown, seek that the court order payment of a different percentage of the amount of the account of expenses, and the court may order payment of such different percentage as it considers appropriate in all the circumstances.

6. The Auditor of the Court of Session supports adding such an option, as providing the judiciary with the discretion to make such an interim award of expenses would help to strengthen the imperative for settlement.
7. The views of insurers in PI cases are likely to vary depending on whether they are involved as a defender or pursuer in any given proceedings. The Council may wish to consider seeking the views of the PI Users Group and then assessing whether (or not) to undertake a targeted consultation.

Recommendation

8. **The Council should consider the option raised and instruct the preparation of a draft Act of Sederunt for consideration by correspondence.**

**Secretariat to the Scottish Civil Justice Council
June 2026**