

## THE DEFINITION OF “OUTLAY’S”

### Purpose

1. To consider whether an amendment to the taxation rules on “outlays” could better meet the guiding principle for court rules being “easy to use and understand”?

### Background

2. One of the policy aims in 2019 when the Council introduced the *Taxation of Judicial Expenses Rules* was to create a “generic procedure” to regulate the level of “judicial expenses” considered reasonable to recover from “the party liable in expenses” across all procedural codes.
3. Within that generic procedure any member of the public trying to understand what they can claim is being signposted to Chapter 4 with rule 4.2 helping to establish that as a generality they could claim for any outlays that are:  
“...reasonably incurred in order to conduct the proceedings in a proper manner”.
4. From the headings of the 4 rules that follow they may then deduce some (but not all) of the specific types of “outlays” they could recover if they were to win their case and proceed to lodging an ‘account of expenses’ for taxation or assessment:

Rule	Heading
4.3	Fees of counsel in the sheriff court or Sheriff Appeal Court
4.4	Fees of solicitor advocates in the Court of Session
4.5	Skilled persons
4.6	Witnesses

5. At that point they would be left asking some very basic questions such as:
  - Can I claim court fees as an outlay?
  - What else would qualify as an outlay?

### Conclusion

6. At present that absence of explicit statements covering every type of outlay that could be claimed (or alternatively a comprehensive legal definition of “outlay”) implies the rules fall short of statutory guiding principle that: “...rules relating to practice and procedure should be as clear and easy to understand as possible”.
7. **Members may wish to discuss whether the *taxation rules* do need to more explicitly convey the meaning of “outlays”.**