

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of policy	Proposals for Fees Charged by the Court of Session, Accountant of Court, Sheriff & Justice of the Peace Courts, High Court, Office of the Public Guardian, Sheriff Personal Injury Court and the Sheriff Appeal Court
Summary of aims and desired outcomes of policy	The instruments make provision for court fees and fees in the Office of the Public Guardian during 2015-2018. The instruments incorporate court fees in the Sheriff Personal Injury Court
Directorate: Division: team	Justice: Civil Law and Legal System Division: Courts

Executive summary

In considering the impact of the fees increases on specific groups, the Scottish Government considers that affordability would be the main issue. If some groups identified by age, sex, pregnancy and maternity, disability, race, religion or belief, gender reassignment or sexual orientation typically earn less than average, the Scottish Government considers that assistance from legal aid and the available exemptions ensure that these groups would be protected and so the Scottish Government consider that they would not be discriminated against as a result of higher court and OPG fee increases. Some specific extensions to fees exemptions and some clarifications within the instruments will benefit some groups of court users.

Background

The Scottish Government published a “Consultation on Proposals for Fees Charged by the Court of Session, Accountant of Court, Sheriff & Justice of the Peace Courts, High Court, Office of the Public Guardian, Personal Injury Court and the Sheriff Appeal Court” on 23 February 2015.¹

¹ The consultation can be viewed at <http://www.gov.scot/Resource/0047/00471895.pdf>.

The main proposals within the consultation on the current round of fees instruments were:

- Proposals to move closer towards full cost recovery (including an increase to take account of inflation).
- Proposals to adjust/align/clarify specific fees referenced in the consultation paper.
- Proposals to provide for specific fees as a consequence of the implementation of certain measures from the Courts Reform (Scotland) Act 2014.

The package of instruments included court fees pertaining to court fees in the Sheriff Personal Injury Court. The Sheriff Appeal Court (criminal) will also be established in September 2015 but will not require new tables of court fees as the existing criminal appeals fees structures will be used. Court fees relating to the Sheriff Appeal Court (civil) were also part of the consultation process and an ad hoc instrument will be tabled in time for the commencement of the court in early 2016. Court fees relating to simple procedure will be the subject of a consultation by the Scottish Civil Justice Council (“the SCJC”) with a further court fees instrument to be laid later this year. The new courts are created under the Courts Reform (Scotland) Act 2014 (“the 2014 Act”)² and further enabling SSIs including for example the All-Scotland Sheriff Court (Sheriff Personal Injury Court) Order 2015³.

The Scottish Government's and the Scottish Courts & Tribunals Service's (“the SCTS”) policies are to move towards fees which reflect the full cost of the processes involved with a well-targeted system of fee exemptions to protect access to justice. In line with that aim, the current set of fee proposals will move cost recovery levels slightly closer to full-cost pricing, i.e. upwards from the 80% level. In addition to inflationary increases and the realigning of minor fees to provide consistency across the courts, it is the intention that any above inflationary increases in 2015 will be directed towards the costs of delivering improvements to the civil courts system.

² The Courts Reform (Scotland) Bill together with information about the Bill's passage can be found here - <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/72771.aspx>

³ The All-Scotland Sheriff Court (Sheriff Personal Injury Court) Order 2015 can be found here - <http://www.legislation.gov.uk/ssi/2015/213/article/1/made>

In terms of the Sheriff Personal Injury Court, making provision for tables of court fees is part of the operational structure of putting this court in place, without which it could not function.

The Sheriff Personal Injury Court will provide:

- A central specialist forum for PI cases
- Specialist PI sheriffs (hearing fees will be lower than in the Court of Session to reflect the difference in terms of Outer House judges)
- Specialist PI procedures
- The availability of civil jury trials in certain cases
- E-motions and the availability of court rolls on the SCTS website.
- The possibility for solicitors to be able to argue cases (with sanction for counsel where deemed appropriate by the sheriff e.g. in complex cases).

All of which should result in personal injury (“PI”) cases being processed swiftly and efficiently resulting in fewer continuations and less unnecessary expenditure for litigants.

It is the intention for court fees for the Sheriff Personal Injury Court to be in line with those for the Court of Session had these cases been raised there previously. Cases will be heard under specialist personal injury procedure. The Hearing Fees will be charged at 80% of the Court of Session rate to reflect the fact that a PI specialist sheriff is on the bench (rather than a Lord Ordinary had the case been heard in the Court of Session).

PI cases heard in local sheriff courts will be subject to sheriff civil court fees which are lower than the proposals for the fees in the Sheriff Personal Injury Court. Cases will be subject to specialist PI procedure. (Where cases are subject to simple procedure that is not to commence until Spring 2016 - a separate court fees instrument will be laid later in 2015 including those tables of court fees). Until such times as simple procedure is commenced, the courts will continue to operate on the basis of small claims and summary cause at this level.

In terms of Judicial Review, courts reform introduces a new permission stage into the process, as well as a time bar within which to bring applications. Provision needs to be made to ensure that the fees structures reflect the new permission stage. The SCJC have agreed the court rules for the new procedure and a one stage approach has been adopted i.e. the “permission” stage will be rolled into the existing

petition. On that basis one inclusive fee on lodging of first papers will be charged – C1 in the Court of Session table (£210 in 2015). Fee C9 (£210 in 2015) in the same table would be applied to any subsequent Reclaiming Motion lodged within that Judicial Review.

The Scope of the EQIA

The Scottish Government has examined a variety of data sources in order to ascertain the impact of the policy on the protected characteristics, and on equality matters in general. Responses to the consultation as well as an EQIA framing workshop were also drawn on during the EQIA process.

A screening assessment for the new Child Rights and Wellbeing Impact Assessment (CRWIA) has been carried out. The Scottish Government is committed to considering the need for a CRWIA in the context of policy as part of its duties to promote and safeguard Children’s Rights under Part 1 of the Children and Young People (Scotland) Act 2014. This gives further effect to the requirements of the United Nations Convention on the Rights of the Child (UNCRC). The CRWIA also refers to Getting it right for Every Child (GIRFEC) and SHANARRI⁴ indicators. The need for a full CRWIA has not been identified in this instance. However, impacts on children have been considered as part of this assessment under the “age” characteristic.

The purpose of carrying out an EQIA is to aid the Scottish Government in discharging its Public Sector Equality Duty under section 149 of the Equality Act 2010. The protected characteristics that must be profiled against the policies are:

- Age
- Sex
- Pregnancy and maternity
- Disability
- Race
- Religion or belief
- Gender Reassignment
- Sexual Orientation

⁴ SHANARRI indicators are, “safe, healthy, achieving, nurtured, active, respected, responsible, included”. The Getting it Right For Every Child webpage is <http://www.gov.scot/Topics/People/Young-People/gettingitright/background>

The consultation on court fees proposals included a short section on assessing impact of the proposals and asked the question whether any of the fee proposals would be likely to have a disproportionate effect on a particular group and what the impact would be. (Question 3 of the consultation paper). Three respondents indicated that there would be no disproportionate impacts on any particular group. One respondent thought that it was important that only inflationary rises should be applied. One individual thought that the proposals would have a positive effect. (The rate of inflation increases of 2% are applied evenly across the courts from 2016-17).

Some consultees thought that court fees in the Sheriff Personal Injury Court should not be at the same level as those in the Court of Session, but should be above those in the sheriff court and that the fees might dissuade litigants from using the Sheriff Personal Injury Court. For those court users who choose to raise their PI case in the Sheriff Personal Injury Court from 22 September 2015, the fees costs will be the same had they raised their case in the Court of Session previously, with a reduced hearing fee as discussed above. There is likely to be a reduction in the absolute cost of raising the case in the sheriff court or the Sheriff Personal Injury Court compared to the Court of Session with the sheriff court being cheaper than the Sheriff Personal Injury Court.

Litigants have the choice to be able to take PI cases to their local sheriff court, the Sheriff Personal Injury Court above £5,000 (apart from in workplace PI cases above £1,000 or below £1,000 where these are allowed to be transferred there), or in cases above £100,000 the Court of Session additionally to the other fora. Court fees will be one of several factors that litigants will weigh up as they make this decision. A Ministry of Justice Study in 2007⁵ set out that of those that know something about court fees, 7 in 10 say that they are not/not much of a factor in their decision to progress to court. We consider that the many benefits of the Sheriff Personal Injury Court as listed in the background section will far outweigh the initial outlays on court fees.

The framing exercise considered each of the main policy proposals against the key characteristics and looked for evidence of impacts:

- Proposals to move closer towards full cost recovery (including an increase to take account of inflation).

⁵ Ministry of Justice, "Court Fees: Proposals for reform" (December 2013), "Court Fees: Proposals for reform Part one consultation response: Cost Recovery" (April 2014)
<http://www.justice.gov.uk/courts/fees/consultation-and-research>

- Proposals to adjust/align/clarify specific fees referenced in the consultation paper.
- Proposals to provide for specific fees as a consequence of the implementation of certain measures from the Courts Reform (Scotland) Act 2014.

The exercise also took into account the equality impact assessment published for the Courts Reform (Scotland) Bill.⁶ This is pertinent to the fees orders relating to the new courts and the consultation made reference to it:

“Overall, the Equality Impact Assessment on the Courts Reform (Scotland) Bill found that none of the groups with protected characteristics would suffer disproportionately as a result of the interaction of the measures in the Bill with their protected characteristic.”⁷

Key findings

The fee proposals will have an impact on all litigants and Office of the Public Guardian (“OPG”) users not in receipt of exemptions. Currently, those persons in receipt of civil legal aid, passported benefits and Working Tax Credit (including child tax credit, or the disability element, or the severe disability element) with gross annual of £16,642 or less are exempt from paying court fees. The proposal is to preserve the existing exemption in relation to Universal Credit – those previously exempt from paying court fees because they were in receipt of a passporting benefit should continue to be exempt under Universal Credit. The court users that would be most affected by an increase to court fees would be those who do not have legal representation and those pursuing a money claim. All court users should benefit to the adjustment to the small claims expenses threshold. The proposal is to lift the threshold at which the fee increases to £73 to align with £200, the point at which expenses can start to be claimed. This is to address the problem where those with a claim worth £200 have had to pay a fee but have been unable to claim expenses.

The Scottish Government fully considered access to justice issues such as affordability for court users when developing proposals to increase fees. Affordability and the level of the fee in relation to the size of the claim have been taken into account in the setting of fees in relation to

⁶ Now the Courts Reform (Scotland) Act 2014. The EQIA can be found at <http://www.gov.scot/Resource/0044/00446222.pdf>

⁷ See paragraph 57.

the value of the claim. For example, even with an inflationary increase applied, the increase for the small claims fee has been maintained at a low level. Excepting summary cause and small claims actions, the court fees in most cases form a very small proportion of the cost of legal proceedings.

Age (incl. children)

Children

There are a significant number of family cases proceeding through the civil courts each year (sheriff court and Court of Session). There will be a clarification to the “minute for decree” (undefended family actions) fees in the sheriff court which should not generate significant impacts in these cases. There will be clarifications in the sheriff court fees Order to ensure that the fees orders refer to the most recent legislation relevant to children including the Children’s Hearings Scotland Act (2011).

The families of those incurring sheriff court fees for the receiving and examining of an inventory of estate should benefit from the adjustment to raise the threshold for this from an amount of estate belonging to the deceased from £5,000 to £10,000. This figure has not been updated since 1996. Beneficiaries should be able to retain enough money to cover the average costs of a funeral and retain something for themselves before the state looks to take court fees of £200 or more.

Working age adults

People of working age will be likely to constitute the bulk of those initiating accident at work cases, 911 of which were disposed in the Court of Session in 2012-13, 397 of which were disposed under ordinary cause in the sheriff courts and 262 of which were disposed under summary cause in the sheriff courts in the same year. Where an accident at work case is being heard in a local sheriff court the court fees will be less than in the Sheriff Personal Injury Court. However, the fees will be the same for those cases that, prior to the package of courts reform were raised in the Court of Session and will now be raised in the Sheriff Personal Injury Court. Therefore there will be no difference to this group. There are likely to be financial benefits where litigants decide to raise cases locally although that is judged to be only one of a number of factors in the decision making process about whether to raise a case locally or in the Sheriff Personal Injury Court.

The relatives of people of working age may be more likely to benefit from changes in relation to fees for inventories of estates where there have

been deaths on active service. The policy is to extend the existing exemption from inheritance tax by virtue of section 154 of the Inheritance Tax Act 1984 from those on active service who do not have to pay a fee in respect of an inventory of estate additionally to those who work in the emergency services, armed forces, constables and service personnel (by means of section 75 of the Finance Act 2015).

Those in receipt of a passporting benefit will continue to be exempt from paying court fees and this will continue to be the case under Universal Credit.

The elderly

There will be clarifications to ensure that the Office for the Public Guardian fees refer to the most up to legislation in terms of exemptions.

All ages

People of all ages can be affected by civil law issues and therefore will be affected by the rate of inflation increases. We consider the increases to be proportionate.

Overall, there are judged to be no disproportionate impacts in relation to this protected characteristic.

Sex (incl. pregnancy and maternity)

Since more men than women are involved in accident at work cases, more men than women are likely to benefit in terms of reduced fees where they decide to take accident at work claims to local courts instead of the Sheriff Personal Injury Court or Court of Session as appropriate to the case but only to the extent to which men make up the population of those involved in PI claims.

People of either sex can be affected by civil law issues and therefore will be affected by the rate of inflation increases. We consider the increases to be proportionate.

Those in receipt of a passporting benefit will continue to be exempt from paying court fees and this will continue to be the case under Universal Credit.

Overall, there are judged to be no disproportionate impacts in relation to this protected characteristic.

Disability

The prevalence of civil legal problems is statistically higher for disabled people at 32% as opposed to 23% in the general population. They should benefit from the projected benefits of courts reform and be impacted by the rate of inflation increases to the extent which they make up the population of those involved in civil cases (including PI cases). We consider the increases to be proportionate.

Those in receipt of a passporing benefit will continue to be exempt from paying court fees and this will continue to be the case under Universal Credit.

Overall, there are judged to be no disproportionate impacts in relation to this protected characteristic.

Religion or belief

People of any religion or belief can be affected by civil law issues and therefore will be affected by the rate of inflation increases. We consider the increases to be proportionate.

Overall, there are judged to be no disproportionate impacts in relation to this protected characteristic.

Race

During their lifetime, 33% of people classified as belonging to ethnic minorities are involved in civil legal disputes in Scotland as opposed to 25% of the general population. Those belonging to ethnic minorities could benefit from the projected benefits of court reform or be negatively impacted e.g. by rate of inflation increases to the extent to which they make up the population of those involved in civil cases (including PI cases). We consider the increases to be proportionate.

The SCJC have agreed the court rules for the new Judicial Review procedure and a one stage approach has been adopted i.e. the "permission" stage will be rolled into the existing petition.

Overall, there are judged to be no disproportionate impacts in relation to this protected characteristic.

Gender reassignment

People within this protected characteristic can be affected by civil law issues and therefore will be affected by the rate of inflation increases. We consider the increases to be proportionate.

Overall, there are judged to be no disproportionate impacts in relation to this protected characteristic.

Sexual orientation; marriage and civil partnership

There will be a clarification to the narratives in the tables of fees for divorce and simplified divorce to clarify that these also apply to dissolution of a civil partnership which should benefit this group.

Those in receipt of a passporting benefit will continue to be exempt from paying court fees and this will continue to be the case under Universal Credit.

People within this protected characteristic can be affected by civil law issues and therefore will be affected by the rate of inflation increases. We consider the increases to be proportionate.

Overall, there are judged to be no disproportionate impacts in relation to this protected characteristic.

Recommendations and conclusion

The EQIA process did not identify any issues which would have a detrimental impact on protected groups. We have therefore taken this policy to its conclusion by laying the court fees instruments in 2015.

The SCTS will continually monitor cost recovery from the courts and the OPG. The next review of court fees will take place in 2017-18 in anticipation of the next round of court fees instruments in 2018-21.

Approved by Neil Rennick
Title Director, Justice
Date 9 June 2015