

# Business and Regulatory Impact Assessment

## Title of Proposal

- The High Court of Justiciary Fees Order 2015
- The Justice of the Peace Court Fees (Scotland) Order 2015
- The Sheriff Court Fees Order 2015
- The Court of Session etc. Fees Order 2015
- The Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2015

## Purpose and intended effect

### • Background

The long standing policy position on court fees is that, where a dispute is between two private individuals, the majority of the benefits of resolving that dispute are expected to flow to the parties rather than to the state. Therefore, it is unreasonable to ask taxpayers to pay for this. Consequently, fees are charged rather than the costs being funded from general taxation which is reserved for other services, for example criminal prosecutions. Of course, the state already provides most of the funding for the administration of the courts through the Scottish Courts and Tribunals Service<sup>1</sup> ("SCTS").

In terms of the cost to individuals of pursuing a legal action, court fees comprise a relatively small proportion of the total cost by comparison with the cost of legal representation. Individuals may apply to the Scottish Legal Aid Board ("SLAB") for Legal Aid in civil actions to supplement their costs if they are eligible. Also, they may qualify for direct exemption from the payment of court fees and Office of the Public Guardian ("OPG") fees under the Fee Exemptions regime administered by the SCTS.

Whereas full cost recovery is the eventual target for the Scottish Government, it is considered that a gradual approach of moving towards this is preferred. There will continue to be a focus on charging fees for those who make use of the civil courts and the services of the OPG where they can afford to pay them, but with systems in place to protect access to justice for those who cannot. Therefore the main proposals within the consultation<sup>2</sup> on the current round of fees orders were:

- proposals to move closer towards full cost recovery;
- proposals to adjust/align/clarify specific fees referenced in the consultation paper; and
- proposals to provide for specific fees as a consequence of the

<sup>1</sup> The Scottish Court Service was renamed the Scottish Courts and Tribunals Service on its merger with the Scottish Tribunals Service on 1 April 2015. This impact assessment uses the new name throughout in order to avoid confusion.

<sup>2</sup> "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" - [www.gov.scot/Resource/0047/00471895.pdf](http://www.gov.scot/Resource/0047/00471895.pdf)

- implementation of certain measures from the Courts Reform (Scotland) Act 2014.

The fees charged by the Court of Session, Accountant of Court, sheriff & justice of the peace courts, the High Court of the Justiciary ("the High Court"), and the Office of the Public Guardian were consulted<sup>3</sup> on from May to July 2012 and came into force on 10 December 2012.

In that last review, all fees were increased above the level of inflation in order to move cost recovery levels<sup>4</sup> closer to full-cost pricing. Cost recovery in the financial year 2013-14 was 80% for both court and OPG fees with a deficit of £6.7m. The proposed fee increases are expected to maintain or make a modest improvement in the level of cost recovery over the next three years.

The 2008 consultation was concluded ahead of the publication in September 2009 of the Report of the Scottish Civil Courts Review ("SCCR") which was prepared at the Scottish Ministers' request by the then Lord Justice Clerk, Lord Gill. Lord Gill's landmark Review recommended substantial changes to modernise and improve the structure and operation of Scotland's civil courts. The aim of the recommendations was to ensure that cases are dealt with promptly and efficiently, by courts appropriate to the case, and at a proportionate cost to those litigating.

In November 2010, the Scottish Ministers published their response to the SCCR, accepting the vast majority of its recommendations including, changes to jurisdiction limits between courts; simplified court procedures; and a new judicial tier. Whilst some of the recommendations were implemented prior to 2015, the main recommendations required primary legislation. The Courts Reform (Scotland) Act 2014<sup>5</sup> ("the 2014 Act") provided for many of these recommendations. The merger of the Scottish Court Service and the Scottish Tribunals Service to form the SCTS on 1 April 2015 marked the first key stage for implementation of the reforms in the 2014 Act. Other measures in the Act that will be implemented in 2015-2016 include the establishment of the new Sheriff Appeal Court and the Sheriff Personal Injury Court.

- As the Sheriff Personal Injury Court will be established in September 2015 it will require a new table of court fees.
- 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.
- The Sheriff Appeal Court (civil) will be established in early 2016. The consultation paper in 2015 set out the proposals for these fees and an Order will be laid later in 2015.
- Simple procedure will be commenced in Spring 2016. It will require new court fees tables. The fees proposals for that procedure will be the subject of a further Order once the new rules are approved. The simple procedure will be

<sup>3</sup> "Review of Fees Charged by the Court of Session, Accountant of Court, Sheriff & Justice of the Peace Courts, High Court, Office of the Public Guardian: A Consultation Paper"  
[www.gov.scot/Publications/2012/05/7547](http://www.gov.scot/Publications/2012/05/7547).

<sup>4</sup> In 2008 these were at 64%. By March 2011 they had risen to 79%, for both court and OPG fees.

<sup>5</sup> A copy of the Bill for the 2014 Act including accompanying documents can be found here -  
[www.scottish.parliament.uk/parliamentarybusiness/Bills/72771.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/Bills/72771.aspx).

the subject of consultation later in 2015 by the Scottish Civil Justice Council ("SCJC").

The fees instruments in 2015 are made under the revised powers in section 107 in the 2014 Act apart from the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2015 which is made under powers in the 2000 Public Guardian Act.

- **Objective**

The Scottish Government's and SCTS's 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 the financial year 2013-14, the most recent year for which statistics are available. 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. This will include investment in a new civil IT system. The funds will also contribute towards the cost of the SCJC and the development of simplified and more effective rules for civil court procedures.

Full implementation of the proposed civil court reforms will take a number of years to complete as the reforms involve a major restructuring of the courts. It is therefore appropriate that the court fee structure should be monitored and carefully reviewed during the next few years to ensure that it continues to be fit for purpose.

- **Rationale for Government intervention**

Both the Scottish Government and the SCTS are committed to delivering efficiencies and ensuring best value. In recognising the significant financial constraints being faced by all public bodies and the expectation of significant reform to the justice system, the SCTS has set out a clear vision to "build a stronger court service".

Court fees were last increased over a three-year period commencing in 2012 and ending in September 2015. The current set of fee proposals, which will result in a moderate increase the level of cost recovery of £250k. p.a. represent a relatively modest increase and court fees will continue to be subsidised for the present. The policy contributes to the Scottish Government's Wealthier and Fairer and Safer and Stronger objectives, through the following national outcomes.

- Our public services are high quality, continually improving, efficient and responsive to local people's needs.
- We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.
- We live our lives safe from crime, disorder and danger.

**Consultation**

- **Within Government**

The Scottish Government worked closely with officials at the SCTS in drawing up the proposals. The SCTS is a non-ministerial public body providing the people, buildings, technology and administrative services to support the work of Scotland's courts and the judiciary and the OPG. The SCTS is led by a governing Board, chaired by the Lord President, with members drawn from the judiciary, the legal profession, and from outside the justice system. The SCTS, SLAB, and the Scottish Government participate in the Making Justice Work Programme Board for Project 1: Efficient and Effective Court Structures. Progress on implementing the measures in the 2014 Act is regularly discussed at this forum.

- **Public Consultation**

In 23 February 2015, the Scottish Government issued a consultation paper entitled *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*. This publication was widely circulated including to members of the legal profession, judicial bodies, the SCJC including relevant sub committees, and consumer groups. It closed on 15 May 2015.

- **Business**

The Scottish Government considers that the public consultation will afford the opportunity for business stakeholders (bodies within the legal profession, legal advice suppliers), local authorities, insurance organisations, consumer groups and union representatives) to make their views known.

## Options relating to the package of fees instruments

As discussed previously, the main policy proposals and their impact under consideration in this BRIA are:

- proposals to move closer towards full cost recovery;
- proposals to adjust/align/clarify specific fees referenced in the consultation paper; and
- proposals to provide for specific fees as a consequence of the implementation of certain measures from the 2014 Act.

A number of proposals to adjust specific fees lines were made in the consultation paper which are too lengthy to list individually although impacts for each have been taken into account. Broadly speaking, the proposals gave consideration to simplifying and aligning the current fees structure across the courts, for example in relation to “information services” including copying fees. Other changes were made to correct textual anomalies in the narrative in the fees tables for example clarifying references in the instruments to the most up-to-date legislation elsewhere. Most of the individual proposals maintain the status quo in terms of pricing, and some extend exemptions to new categories of litigants. Rationale supporting specific adjustments was provided in the consultation paper, available here:

[www.gov.scot/Resource/0047/00471895.pdf](http://www.gov.scot/Resource/0047/00471895.pdf)

When considering the BRIA options, it is necessary to be aware that the court structure will be undergoing change in the period under consideration, 2015-2018.

- Commencement of section 39 (exclusive competence) of the 2014 Act on 22 September 2015 will result in approximately 70% of the workload of the Court of Session no longer being raised there but being raised in the Sheriff Personal Injury Court and the sheriff court instead. This will result in a reduction of the fees paid by litigants who raise cases in the Sheriff Personal Injury Court/sheriff court instead of the Court of Session.
- The establishment of the Sheriff Appeal Court by commencement of Part 2 of the 2014 Act on 22 September 2015 for criminal appeals and early 2016 for civil appeals will result in some of the workload of both the High Court (appeals from summary criminal cases in the sheriff and justice of the peace courts and bail appeals from the sheriff court) and the Court of Session (appeals from civil cases in the sheriff court) being raised in the new court. No new fees tables require to be created for the Sheriff Appeal Court (criminal) and fees tables for the Sheriff Appeal Court (civil) have been consulted on as part of the recent consultation on the current fees instruments but an ad hoc fees instrument will be laid later this year before that court opens.
- The establishment of the Sheriff Personal Injury Court by means of provisions in the 2014 Act and the All-Scotland Sheriff Court (Sheriff Personal Injury Court) Order 2015 (see link at - [www.legislation.gov.uk/ssi/2015/213/contents/made](http://www.legislation.gov.uk/ssi/2015/213/contents/made) ) on 22 September 2015 will result in people being able to choose whether to raise a personal injury (“PI”) case above £5,000 and below £100,000 (with an exception for workplace-related PI cases of above £1,000) in the Sheriff Personal Injury Court or in their local court, or where PI cases are above £100,000 in either

their local court, the Sheriff Personal Injury Court or the Court of Session.

The redistribution of PI cases including to new courts means that it will not be possible for a direct comparison to be made between the statistics for fee income from each of the courts in 2014/15, 2015/16, and 2016/17. This consideration of the options takes an overall view of the changes.

- **This BRIA firstly considers the options to improve cost recovery as well as making specific adjustments in the tables of fees below** (options 1, 2 and 3).
- **It then assesses options in relation to the implementation of the measures in the 2014 Act on 22 September 2015** (options 1A and 1B as these are part of the overall package but it is judged to be easier to split them out for ease of reference).

Options have been classified as follows:

- option 1 – do nothing (cost recovery, specific changes);
- option 2 – considered change to the level of increase (cost recovery, specific changes);
- option 3 – 100% cost recovery;
- option 1A – do nothing, i.e. do not implement the measures in the 2014 Act; and
- option 1B – implementation of the measures in the 2014 Act.

***Option 1: do nothing – cost recovery, specific changes to fees tables (all courts and OPG)***

#### Sectors and groups affected

- This affects court users and the SCTS.
- In terms of not improving cost recovery, there is the potential for service quality to be reduced.
- In terms of not making specific adjustments some litigants could lose out on beneficial adjustments to specific fees amounts.

#### Benefits

There is no benefit to the SCTS in these options. The only benefit for court users of all types is that the fees would be reduced in real terms by the rate of inflation. Some beneficial changes such as simplifying, standardising and/or clarifying existing fees would not be made. Some beneficial changes such as reducing fees in some areas (or extending specific fees exemptions to some litigants) would not be made.

#### Costs

There is no cost to the Scottish Government in this option (unless it undertakes to make up the shortfall to the SCTS. This is unlikely to happen). However, there are costs to the SCTS and thus to the public purse as, taking into account inflation, there is a reduction in fee income. This means that there will be a reduction in funds for the maintaining and development of the Scottish courts. There could be costs to litigants if certain changes such as reducing fees or extending exemptions are not made.

***Option 2: considered change to the level of increase, specific changes (all***

## ***courts and OPG)***

### Sectors and groups affected

These orders make provision for inflation increases of 2% for each year over the three year period commencing September 2015 and ending in 2018. We consider that this is a reasonable approach to improving cost recovery. Some consultees thought that above inflation increases were too high however several said that these were reasonable with one saying that the increases are not significant enough to have a tangible impact on those using the court system and another saying that the increases to OPG fees were minimal and should not deter people.

The consumer price index (CPI) has been used to calculate the inflation increase.<sup>6</sup> A further 2% increase over the notional rate of inflation in 2015-16 has also been applied to fees in the Court of Session and sheriff courts to provide funding for civil court reform at the commencement of the 3-year period. It is not considered that the proposals will affect access to justice. Where monetary claims are being considered, the Scottish Government believes that the level of the fees in relation to the size of the claim is proportionate and affordable.

In terms of making specific adjustments some litigants could benefit from adjustments to specific fees amounts. (Some examples are provided in the “benefits” section below).

### Benefits

The effect for SCTS in terms of cost recovery is shown in table 1 below showing net fee income over the 3-year period.

**Table 1: SCTS net fee income over a three year period.**

	Opening figure	% increase	No of months applicable	£ value (£M)	Forecast (£M)	Financial year
					24.7	Baseline
2015-16	24.7	4.04%	6	0.5	25.2	2012-13
2016-17 <sup>1</sup>	25.7	2%	12	0.5	26.2	2013-14
2017-18	26.2	2%	12	0.5	26.7	2014-15

<sup>1</sup> Opening figure includes remaining months of the split year increase (from 2015-16)

The benefit for SCTS, and thus to the public purse, is that it is anticipated that the

<sup>6</sup> HM Treasury CPI forecast for the UK economy in November 2014 is shown in table 2 below.

**Table 2**

	2014	2015	2016	2017	2018
Highest	2	2.2	2.5	2.5	2.5
Lowest	1.5	1	1.7	1.9	1.9

inflationary increase will generate an additional fee income of £500k in each year of the 3-year period. The 2% additional increase will enable SCTS to offer the current level of quality and service to court users and to secure additional funding for implementing the civil court reforms. If fees are not increased, SCTS would need to reduce spending over and above the level that has already been set to cope with reduced funding. This would inevitably affect court performance and service to court users.

In terms of specific proposals, it is the intention for example 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.

Other adjustments that should bring benefits to litigants include such proposals as:

- Small claims – lifting 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 current situation where those with a claim worth £200 have had to pay a fee but have been unable to claim expenses.
- Deaths on active service – extending 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 to those who work in the emergency services, armed forces, and constables and service personnel (by means of section 75 of the Finance Act 2015).
- Commissary – adjusting the sheriff court fees for receiving and examining an inventory of estate where the amount of the estate belonging to the deceased does not exceed £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.

### Costs

The only cost to the Scottish Government in this option are those associated with producing these orders to make the changes to the courts fee regimes.

There is no cost to the SCTS.

### ***Option 3: 100% Cost Recovery***

#### Sectors and groups affected

This option would set fees at a level designed to recover the full cost of providing these services. This would mean that the Scottish Government's policy objective will have been achieved more quickly than planned. Any changes to fees thereafter would be likely to cover inflationary increases only, apart from those which could be introduced as a result of the reform of the civil courts. This increase would enable SCTS to offer improved levels of quality and service to court users and to secure additional funding for implementing the civil court reforms.

This would result in an additional financial burden for court users with a much greater impact on the cost of proceeding with court actions. SCTS has estimated that a 25%

increase in fee income (£6.7m) would be required to achieve 100% cost recovery. Whereas full cost recovery is the eventual target for the Scottish Government, it is considered that a gradual approach is to be preferred.

#### Benefits

This option would set fees at a level designed to recover the full cost of providing these services. This would mean that the Scottish Government's policy objective will have been achieved, quicker than it anticipated. This increase would enable SCTS to offer improved levels of quality and service to court users and to secure additional funding for implementing the civil court reforms.

#### Costs

The only cost to the Scottish Government in this option are those associated with producing these orders to make the changes to the courts fee regimes.

There is no cost to the SCTS.

#### ***Option 1A: do nothing, implementation of the measures in the 2014 Act***

#### Costs and benefits

Doing nothing is not an option. As this relates to the establishment of a new court, the SPIC, a new fees order is required.

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.

#### Sectors and groups affected

Doing nothing is not an option. Legal firms, counsel and litigants will require to know what the court fees are in the new court.

#### ***Option 1B: implementation of the measures in the Act 2014 Act***

Sheriff Personal Injury Court fees have been set so as to mirror the comparable fees that will be charged in the Court of Session as a result of the Court of Session etc. Fees Order 2015. This is illustrated in table 3 below.

**Table 3: PI jurisdictions - the proposed fees**

Fee Type	Trigger Event	Local sheriff court	National personal injury court	Court of Session General Department
<b>Initiation fee</b>	Lodging a civil action	£94	£210	£210
<b>Defence fee</b>	Lodging a defence	£94	£210	£210
<b>Motion fee</b>	Lodging / opposing a motion	£47	£53	£53
<b>Record fee</b>	Lodging a closed record	£111	£105	£105
<b>Booking fee</b>	Fixing a hearing date	£53	£58	£58
<b>Hearing fee</b>	Case called in court - bench of one	£223 (per day)	£75 (per ½ hour, per party)	£94 (per ½ hour, per party)
<b>Civil jury fee</b>		£292	£292	£292

Notes: This table uses the proposed 2015 prices for comparability

### Sectors and groups affected

Court users will be affected. Those who choose to raise their PI case in the Sheriff Personal Injury Court will experience the same 2% for inflation increases as those in the other courts from 2016-17. In that sense cost increases will be the same for these cases had they previously been raised in the Court of Session. A number of consultees thought that court fees should not be at the same level as those in the Court of Session, above those in the sheriff court and that the fees might dissuade litigants from using the Sheriff Personal Injury Court. Where PI cases are heard in the local sheriff court or the Sheriff Personal Injury Court that would previously have been heard in the Court of Session those cases will experience the same cost increases in terms of the inflation and additional costs to court fees had they remained in the Court of Session. However fees will be lower in the sheriff court than the Sheriff Personal Injury Court and in the Sheriff Personal Injury Court (only the hearing fee) in relation to the Court of Session. There is expected to be a reduction in the absolute cost of raising the case in the sheriff court or Sheriff Personal Injury Court compared to the Court of Session.

### Benefits

The Sheriff Personal Injury Court will offer the same service levels as previously experienced by cases above £5,000 being heard in the Court of Session. Indeed the creation of the Sheriff Personal Injury Court and the ability to raise these cases there is designed to provide a step change improvement on the current situation where high numbers of PI cases of relatively low financial value are impacting on the Court of Session being able to process higher value cases (including complex PI cases) efficiently.

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; and

- 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 PI cases being processed swiftly and efficiently resulting in fewer continuations and less unnecessary expenditure for litigants.

An Act of Sederunt of relevance to court rules to be followed in the SPIC has now been published – Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (no. 2) (Personal Injury and Remits) 2015.<sup>7</sup>

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.

### Costs

Litigants have the choice to be able to take PI cases to their local sheriff court, the Sheriff Personal Injury Court for claims of more than £5,000 (apart from in workplace-related PI cases above £1,000 (or £1,000 or below where these are allowed to be transferred to the Sheriff Personal Injury Court ), 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 2007<sup>8</sup> 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. Litigants will also seek advice from their legal representatives as to which court to take their cases. It is clear that the current practice of many law firms is, where possible, to take PI cases to the Court of Session. We consider that the many benefits of the Sheriff Personal Injury Court as listed above will far outweigh the outlays on court fees.

### **Scottish Firms Impact Test**

The consultation questions in the 2015 consultation paper on court fees were as follows.

- Do you have any comments on any of the miscellaneous amended fees as set out in paragraphs 30 to 39?
- Do you have any comments on any of the fees related to the civil court reforms as set out in paragraphs 40 to 52?
- Are any of the fee proposals likely to have a disproportionate effect on a particular group? If so, please specify the group and the impact.
- Do you have any other comments on any of the proposals in the consultation?

<sup>7</sup> [www.legislation.gov.uk/ssi/2015/227/contents/made](http://www.legislation.gov.uk/ssi/2015/227/contents/made).

<sup>8</sup> Ministry of Justice, “Court Fees: Proposals for reform” (December 2013), “Court Fees: Proposals for reform Part one consultation response: Cost Recovery” (April 2014) [www.justice.gov.uk/courts/fees/consultation-and-research](http://www.justice.gov.uk/courts/fees/consultation-and-research).

The paper was widely distributed to legal organisations and firms, judicial organisations, public sector bodies, insurers and consumer groups. It was also sent to the SCJC for circulation to relevant committees. 17 responses were received in total, 8 from organisations and 9 from individuals. Table 4 below details the category of respondents and the number of responses:

The following organisations responded to the consultation:

Shoosmiths	The Law Society of Scotland (LSS)
Simpson & Marwick	Thompsons Solicitors
Equality and Human Rights Commission	Forum of Insurance Lawyers (FOIL)
Association of Personal Injury Lawyers (APIL)	
East Ayrshire Council	

**Table 4: Breakdown of consultation responses to the 2015 consultation on court fees proposals**

<b>Category</b>	<b>Number of responses received</b>
Individuals	9
Legal Organisations (including legal firms)	5
Independent Organisations	1
Local Authorities	1
Insurers / Insurance Organisations	1

A BRIA questionnaire was also circulated to a number of contacts including companies and organisations responding to the consultation.

The main sectors affected by the proposed fees are small business, solicitors, solicitor-advocates, counsel, and litigants. These areas are not dominated by a small number of large firms and are not characterised by rapid technological change. The proposed fees would affect existing and newer potential business/individuals in the same way. As such the proposed fees are not expected to have an impact on competition. The Scottish Government considers that the proposals are unlikely to have a negative impact upon competition in any market. It is unlikely that there would be any markets that would face a disproportionately large impact and a detailed competition assessment is not deemed necessary.

### **Competition Assessment**

Having reviewed the four competition filter questions provided within the Office of Fair Trading guidelines for policy makers on competition assessment<sup>9</sup>, the Scottish Government is satisfied that the proposed changes will not impact on competition within the market place.

### **Test run of business forms**

Not applicable

<sup>9</sup> Will the proposed orders:

- directly limit the number or range of suppliers?
- indirectly limit the number or range of suppliers?
- limit the ability of suppliers to compete: or
- reduce suppliers' incentives to compete vigorously?

**Legal Aid Impact Test**

The proposals will not result in a rise in the number of applications for legal aid. Provision is being made elsewhere in other secondary legislation in 2015 to enable legal aid to be available for cases/appeals raised in the new courts.

**Enforcement, sanctions and monitoring**

Enforcement and sanction issues are not applicable. The SCTS will monitor the effect of the fee changes.

**Implementation and delivery plan**

The fees instruments will be commenced on 22 September 2015.

- **Post-implementation review**

The fees instruments cover the next 3 years and so will be reviewed by SCTS and the Scottish Government in 2017-2018 ahead of the next round of fees orders.

## Summary and recommendation

- **Summary costs and benefits table**

### Options relating to the package of fees instruments

The options considered were as follows:

- option 1 – do nothing (cost recovery, specific changes);
- option 2 – considered change to the level of increase (cost recovery, specific changes);
- option 3 – 100% cost recovery;
- option 1A – do nothing, i.e. do not implement the measures in the 2014 Act; and
- option 1B – implementation of the measures in the 2014 Act.

Option 2 and Option 1B are recommended. Option 1 would mean that fee income to the SCTS will reduce in real terms and option 3 would result in a large increase (c.25%) in court fees to litigants. Option 2 is a proportionate step towards the aim of full cost recovery which places a relatively small burden on court users (2.02%) in real terms. Option 1B ensures that provision is made for the Sheriff Personal Injury Court and judicial review procedures being implemented on 22 September 2015.

It is not possible to tabulate the costs and benefits for individual court users or court user groups as this will depend on the action within the court. This table compares the effect of fee income for the SCTS, solicitors and litigants in making the orders rather than doing nothing. It does not include figures for 100% fee recovery. That would have no cost to the SCTS, but would require increases in gross fee income of 25% (£6.7m) which would have to be borne by court users.

(See options table overleaf)

Option	Total benefit per annum:	Total cost per annum:
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	- economic	- economic - policy and administrative
1. Do nothing (cost recovery, specific changes)	Reduction in real terms in fee costs for court users Reduction in real terms in fee costs (solicitors' outlays)	Reduction in real terms in fee income to SCTS Reduction in quality of service by SCTS Specific changes that should benefit some litigants will not be made
2. Considered change to the level of increase (cost recovery, specific changes)	Small increase in real terms in fee revenue to SCTS £1,5m over the 3-year period in order to maintain and improve service levels and implement courts reform Specific changes that should benefit some litigants will be made	Small increase in fee costs to court users Small increase in solicitors' outlays
3. 100% cost recovery	Moderate increase in gross fee income of £6.7m	Large increase in fees costs for court users Large increase in solicitors' outlays
1A. Do nothing, implementation of the measures in the 2014 Act	None	There would be no fee provision for the new court Fee provision for new Judicial Review procedures would be unclear – this would be unclear for counsel.
1B. Implementation of the measures in the 2014 Act	Fee provision enabled for the new court, the SPIC Clarity provided for fee structures for new judicial review procedures – this will provide clarity for counsel. Costs the same for cases raised in the Sheriff Personal Injury Court as raised previously in the Court of Session Service levels will be maintained and improved (Hearing fees in the Sheriff Personal Injury Court are lower to reflect the judicial officer on the bench) Solicitors' outlays will be the same or less where cases are heard in local sheriff courts.	Litigants have the choice to raise PI cases of lower monetary value in the Sheriff Personal Injury Court or their local sheriff court, although SCTS modelling shows that the majority of cases previously raised in the Court of Session will be raised in the Sheriff Personal Injury Court.

**Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**

**Date:** 16 June 2015

**Minister's name:** Michael Matheson

**Minister's title:** Cabinet Secretary for Justice

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