

POLICY NOTE

THE HIGH COURT OF JUSTICIARY FEES ORDER 2015

SSI 2015/262

The above instrument is made in exercise of the powers conferred by section 107(1) and (2) of the Courts Reform (Scotland) Act 2014. The instrument is subject to the negative procedure.

Policy

Court fees and fees for services offered by the High Court of Justiciary (“the High Court”), the Court of Session, sheriff courts including the Sheriff Personal Injury Court, justice of the peace courts and the Office of the Public Guardian ensure that those who make use of the courts or the Office of the Public Guardian meet or contribute towards the associated costs to the public purse where they can afford so to do.

The Scottish Government’s policy is to move toward fees which reflect the full cost of the processes involved with a well-targeted system of fee exemptions to protect access to justice. In the case of the fees for the High Court, the Court of Session, sheriff courts, justice of the peace courts, and the Office of the Public Guardian, the Scottish Government’s policy is to make a small initial increase of 2% and provision for inflationary increases in each of the three years covered by the Order.

In terms of judicial review, section 89 of the Courts Reform (Scotland) Act 2014 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 Scottish Civil Justice Council has 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. Fee C9 in the same table would be applied to any subsequent Reclaiming Motion lodged within that judicial review.

The Sheriff Personal Injury Court is a new feature of the civil justice landscape. The initial 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. Most of the business in the new court will be that which would previously have been heard in the Court of Session. The service levels at the Sheriff Personal Injury Court for personal injury cases will be established in line with those in the Court of Session. The fees are to be subject to a 2% increase for inflation in years two and three.

Further Orders will follow later in 2015 for the Sheriff Appeal Court (civil) and for simple procedure.

Consultation

There has been a public consultation on these proposals. More detailed information is given in the associated Business and Regulatory Impact Assessment.

Financial effects

The package of fee instruments makes provision for inflation increases of 2% per year on 22 September 2015, and the same date in 2016 and 2017 as part of the Scottish Government's policy of a gradual move towards full-cost recovery. The consumer price index (CPI) has been used to calculate the inflation increase. In addition, there is an initial 2% increase above the inflationary increase fees for some court fees in year one. The changes will result in an increase in real terms in fee revenue to the SCTS of approximately £1.5m over the three year period.

Business and Regulatory Impact Assessment

There are five instruments being made at the same time relative to fees. A composite business and regulatory impact assessment for the instruments relating to the Scottish courts and the set of fee regulations relating to the Office of the Public Guardian has been prepared and will be published shortly.

Equalities Impact Assessment & Child Rights and Wellbeing Impact Assessment

An equalities impact assessment for the instruments relating to the Scottish courts and the set of fee regulations relating to the Office of the Public Guardian has been prepared and will be published shortly. Screening for a Child Rights and Wellbeing Impact Assessment resulted in the decision not to undertake such an assessment, however impacts on children were considered within the equalities impact assessment.

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