

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	The Sheriff Appeal Court Fees Order 2015
Summary of aims and desired outcomes of Policy	The policy is to introduce fees structures for the Sheriff Appeal Court (Civil) enabled under the provisions of the Courts Reform (Scotland) Act 2014 and commenced 1 January 2016. The Order will contribute to the Scottish Government's policy which is, broadly speaking, to increase court fees to take account of inflation and further improve cost recovery and to make provision for implementation of the Sheriff Appeal Court (Civil).
Directorate: Division: team	Justice Directorate Civil Law and Legal System Division Courts Team

Executive summary

The Sheriff Appeal Court Fees Order 2015 relates to fees charged in the Sheriff Appeal Court (Civil). The changes will take effect from 1 January 2016 when the court is established. The Order also makes provision for slight inflationary increases in 2016 and 2017.

The fees in the order will impact on all litigants 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 income of £16,642 or less are exempt from paying court fees. 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. (For a full list of exemptions, see the Order).

The opportunity has been taken in the Sheriff Appeal Court (Civil) in 2016 to mirror the existing fees in appeals to sheriffs principal as much as possible (the 2015 sheriff court fees were updated slightly on the 2014 fees). Those appeals previously heard in the Court of Session that will now be heard in the Sheriff Appeal Court (Civil) will experience an initial reduction in court fees compared to the previous Court of Session fees. All users of the Sheriff Appeal Court (Civil) will be subject to a 2% inflationary increase in the second and third years covered by the order.

The court users that would be most affected by a slight increase to court fees would be those who do not have legal representation (party litigants). In these cases there is an issue about affordability and the level of the fee in relation to the size of the claim and this is taken into account in the setting of fees in relation to the value of the claim.

In considering the impact of the fees increases on specific groups, we consider that affordability would be the main issue. If some groups typically earn less than average, we consider that assistance from legal aid and the other

exemptions ensure that these groups would be protected and so we consider that they would not be discriminated against as a result of court fee increases. Even with an inflationary increase applied, the fee for marking an appeal in summary cause proceedings has been maintained at a low level at £58 in early 2016. In most cases, court fees form a very small proportion of the overall cost of legal proceedings.

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; and
- We live our lives safe from crime, disorder and danger.

Background

The level of fees charged by the courts are prescribed by Scottish Ministers in instruments including this instrument made under section 107 of the Courts Reform (Scotland) Act 2014. ("the 2014 Act") The general policy principle applied is that as civil actions are generally about resolving disputes between two parties then the parties rather than the state should bear the cost of civil actions.

The main proposals within the [consultation](#) on the 2015 fees orders including this instrument were:

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

In June 2015, several court fees instruments were laid and came into force in September 2015:

- The Court of Session etc. Fees Order 2015
- <http://www.legislation.gov.uk/ssi/2015/261/contents/made>
- The Justice of the Peace Court Fees (Scotland) Order 2015
- <http://www.legislation.gov.uk/ssi/2015/263/contents/made>
- The High Court of Justiciary Fees Order 2015
- <http://www.legislation.gov.uk/ssi/2015/262/contents/made>
- The Sheriff Court Fees Order 2015
- <http://www.legislation.gov.uk/ssi/2015/264/contents/made>
- The Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2015
- <http://www.legislation.gov.uk/ssi/2015/260/contents/made>

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 overall package of fee proposals in 2015 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.

There has been ongoing consultation with the SCTS and a public consultation on all the fees instruments in 2015 including this order was published on 23 February 2015 with a closing date of 15 May 2015. The consultation paper, entitled "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" can be viewed at www.gov.scot/Publications/2015/02/2080.

It was circulated to 140 consultees, including those directly involved with the legal process such as legal professionals, organisations in the justice system and the judiciary as well as local authorities and organisations with an interest in legal

issues (through their concern for the welfare of the public in general or their concern for specific groups of people). 17 responses were received; 8 from individuals and 9 from organisations from a range of stakeholders including the judiciary, the legal sector, and local government. Where permission was given, responses are published on the Scottish Government website at: www.gov.scot/Publications/2015/06/8835.

Also published is the Scottish Government's analysis of the responses at: www.gov.scot/Publications/2015/06/9760/downloads.

The Sheriff Appeal Court (Civil) will ensure that cases are heard at a proportionate level, ensuring proportionate costs and reducing unnecessary delays for litigants. The court will deal with most civil appeals from the sheriff court. It will be a national court whose decisions will be binding on all sheriffs and summary sheriffs. Its decisions will create a consistent and coherent nationally applicable body of case law at the first level of appeal from the initial decision. As a consequence, the appellate function of sheriffs principal will cease in civil appeals as will the right to take an appeal directly from the sheriff court to the Inner House. Many claims under the Equality Act 2010 (for example those alleging contravention of Part 3 of the Act (services and public functions) are heard by sheriffs and such claims will be affected by the changes to appeal routes and fees¹.

For the majority of civil appeals (simple procedure appeals or in the meantime small claims and summary cause appeals, and some ordinary cause appeals), it is expected that the Sheriff Appeal Court (Civil) will sit as a bench of one. This will replicate many of the benefits that are realised from the current situation of appeals being heard by a sheriff principal. However, there will be the flexibility for a larger bench to be used for appeals that are novel or complex. Particularly complex appeals can be remitted by the Sheriff Appeal Court to the Court of Session.

¹ Other types of Equality Act 2010 claim are heard by the Employment Tribunals or by the Court of Session, and are unaffected by the Sheriff Appeal Court Fees Order 2015.

With all this in mind, the fees for the Sheriff Appeal Court (Civil) have been set, in the main, at a similar level to the those formerly applying in civil appeals to the sheriff principal. The fees set out in the Order also take account of the possibility of a case being heard by a bench of more than one judge.

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 SHANARRI 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; and
- sexual orientation.

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.) Respondents did not have strong views about the fee lines or fee values proposed for the Sheriff Appeal Court (Civil).

The first year's fees proposed for the Sheriff Appeal Court (Civil) in 2016 are the same fee as those that would previously have been charged in the sheriff court for an appeal to be heard by a sheriff principal which were updated slightly in 2015 on the 2014 fees. The fee for marking an appeal in a summary cause is £58 (previously £56). The fee for lodging an appeal in a cause other than a summary cause is £111 (previously £107). Those appeals previously heard in the Court of Session that will now be heard in the Sheriff Appeal Court (Civil) will experience an initial reduction in the court fees (From £210 for lodging an appeal in the Court of Session in 2015 to £111 in the Sheriff Appeal Court (Civil) in 2016 as the Court of Session fees are higher than the sheriff court fees for an appeal to the sheriff principal. The users of the Sheriff Appeal Court (Civil) will also be subject to a 2% increase for inflation in the second and third years covered by this order. (See the Scottish Government's BRIA for more information).

The EQIA framing exercise considered each of the main policy proposals against the key characteristics and looked for evidence of impacts in the proposals as outlined above.

The exercise also took into account the equality impact assessment published for the Courts Reform (Scotland) Bill. 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.”

Key findings

The Fees Order does not directly impact on any group. The slight increase in fees will generate income to maintain service levels and finance future improvement, and an effective and accessible civil justice system benefits, either directly or indirectly, all sections of society. If some groups identified by race, religion or belief, disability, age, caring responsibilities, gender or sexual orientation typically earn less than average, we consider that assistance from legal aid and the available exemptions ensure that these groups would be protected and so we consider that they would not be discriminated against as a result of court fee increases.

The order ensures that where applications or appeals in particular proceedings under the Children’s Hearings (Scotland) Act 2011 that used to be heard by sheriffs principal and were exempted from fees, this will continue to be the case in the Sheriff Appeal Court (Civil). The Order also replicates similar exemption arrangements for debtors or creditors in appeal proceedings under the Debtors (Scotland) Act 1987 or the Debt Arrangement and Attachment (Scotland) Act 2002.

The policy is neither directly nor indirectly discriminatory under the Equality Act 2010.

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). Where appeals in such cases are heard in the Sheriff Appeal Court (Civil), they 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.

The order ensures that where applications or appeals in particular proceedings under the Children's Hearings (Scotland) Act 2011 that used to be heard by sheriffs principal and were exempted from fees, this will continue to be the case in the Sheriff Appeal Court (Civil).

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

The elderly

People of all ages can be affected by civil law issues and therefore will be affected by the rate of inflation increases for appeals in the Sheriff Appeal Court (Civil). 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.

Working age adults (incl. marriage and civil partnership)

People of working age will be likely to constitute the bulk of those initiating accident at work cases. A greater proportion of such cases must now be heard in the sheriff court, including the Sheriff Personal Injury Court, rather than the Court of Session where the costs will be slightly cheaper in the first instance,

notwithstanding the rate of inflation rises to fees in all courts. 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.

Sex (incl. pregnancy and maternity)

People of both sexes can be affected by civil law issues and therefore will be affected by the rate of inflation increases for appeals in the Sheriff Appeal Court (Civil). 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.

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 appeals in such cases will be heard in the Sheriff Appeal Court (Civil) where they would previously have been heard in the Court of Session where appeal fees are higher (notwithstanding the slight inflationary increases to all fees in the Sheriff Appeal Court (Civil) in years two and three of the fees order).

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 will be impacted by the

rate of inflation increases to the extent which they make up the population of those involved in civil appeals. 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.

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 for appeals in the Sheriff Appeal Court (Civil). 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. They will be impacted by the rate of inflation increases to the extent which they make up the population of those involved in appeals in the Sheriff Appeal Court (Civil). 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.

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 for appeals in the Sheriff Appeal Court (Civil). 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.

Sexual orientation

People within this protected characteristic can be affected by civil law issues and therefore will be affected by the rate of inflation increases for appeals in the Sheriff Appeal Court (Civil). 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.

Recommendations and conclusion

The overall purpose of the package of Fees Orders (of which this Order is one) is to ensure that the court fees keep pace with inflation and to increase most fees in line with the Scottish Government's policy of moving towards full-cost recovery (see the consultation paper on the court fees orders (already referred to the Executive Summary) at www.gov.scot/Publications/2015/02/2080).

The Scottish Government has concluded that no changes to the policy are necessary as a result of the EQIA, as slight inflationary increases to fees are

intended to apply to all court users and have no significant differential effect of the basis of the protected characteristics. There could be a positive effect for all users where the cost of taking an appeal to the Sheriff Appeal Court (Civil) that would previously have been taken to the Court of Session is cheaper (notwithstanding the slight inflationary increases already mentioned).

It is recommended that the Scottish Government and the SCTS continue to monitor the policy and provide evidence to assess future changes.

Approved by Jan Marshall

Title Deputy Director, Civil Law & Legal System Division

Date 3 November 2015