

POLICY NOTE

THE COURT FEES (MISCELLANEOUS AMENDMENTS) (SCOTLAND) ORDER 2016

SSI 2016/332

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 Court of Session, Sheriff Appeal Court, 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 has long had a policy 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. This Order puts into effect that policy by raising certain fees in the sheriff court and Court of Session (only) to ensure that the income raised meets the costs incurred by the Scottish Courts and Tribunals Service (SCTS) in providing the civil court system.

In each of the current Court Fees Orders¹, the existing Tables of Fees in schedule 3 are replaced by substituted Tables of Fees from the schedules of this Order. Some fees are to be increased beyond the figures in existing schedule 3 whereas in other cases the fees are to remain as they have been from 1st April 2016. The table below identified those fees that are being increased. In relation to the sheriff court the increased fees relate to the initial lodging of claims. These increases do not affect the fees in the Sheriff Appeal Court or the Sheriff Personal Injury Court where the fees are staying at the same level as introduced in April 2016.

The amendment order also introduces a tiering of fees for commissary cases. Currently estates valued under £10,000 are not charged a fee with all other estates charged £225 (which was due to increase to £230 in April 2017). This new fee structure ensures any estate valued at less than £50,000 will not incur a fee; estates valued between £50,000 and £250,000 will be charged a fee of £250; and estates valued over £250,000 will be charged £500.

In the Court of Session the fees relate to more stages of the case and there has also been a larger increase to the hearing fee for cases in the Court of Session. This ensures that those who require more of the court's time are charged accordingly.

The Scottish Government is committed to ensuring a well-targeted system of fee exemptions exist. This means that those who require support, in general this means those in receipt of

¹ The Court of Session etc. Fees Order 2015, the High Court of Justiciary Fees Order 2015, the Sheriff Appeal Court Fees Order 2015, the Sheriff Court Fees Order 2015 and the Justice of the Peace Court Fees (Scotland) Order 2015. No change is made to the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2015.

legal aid, will not incur any courts fees. It is also important to note that fees will be recovered from the losing side in any action.

In addition to increasing some fees the Order also updates some of the fee narratives in light of simple procedure which is introduced on 28 November 2016.

Other updates to narratives have been made to ensure that they are as clear and consistent as possible. This is the case particularly in relation to the Sheriff Appeal Court (Civil), which was established in January 2016, where changes have been agreed with the Lord President's Private Office and the SCTS so that there is greater clarity on when fees are applicable and greater consistency with fees narratives for the other courts. For full details of changes to narratives see Annex B.

Consultation

A public consultation on these proposals was launched on 12 July and ended on 12 October 2016². The consultation offered two options to achieve the Scottish Government's policy of full-cost recovery: Option 1 – Flat rise; and Option 2 – Targeted increase.

36 responses were received and almost all stated their opposition to increasing court fees or the charging of court fees at all. Of those that identified a preferred option the clear preference was for a targeted increase as set out in option 2. Non-confidential responses will be published shortly, as will a consultation analysis.

Financial effects

The fees identified to be increased are expected to result in an increase in real terms in fee revenue to the SCTS of approximately £6m per annum. This will cover the shortfall in the cost of the system that has averaged £6.2m per annum across the last three years (2013/14 = £6.7m; 2014/15 = £5.4m; 2015/16 = £6.6m).

It is expected that the fees will be introduced on 28 November 2016 and will remain at that level until a further review of court fees is undertaken in 2017/18. The current expectation is that any change to fees as a result of that subsequent review would take effect from April 2018.

Business and Regulatory Impact Assessment

A business and regulatory impact assessment was undertaken in 2015 as a result of the previous increases and this has been updated to reflect the further increases made by this Order and will be published shortly.

Equalities Impact Assessment & Child Rights and Wellbeing Impact Assessment

An equalities impact assessment was undertaken in 2015 as a result of the previous increases and this has been updated to reflect the further increases made by this Order and will be published shortly. Screening for a Child Rights and Wellbeing Impact Assessment in 2015 resulted in the decision not to undertake such an assessment and this is still relevant in

² add link to consultation

relation to this Order, however impacts on children were considered within the equalities impact assessment.

Civil Law & Legal System | Justice Directorate | Scottish Government
October 2016

Annex A

Court Fees 2016 - Proposals

	2016/17 Fee	Proposed Fees
Lodging a claim		
small claims or simple procedure (<£200)	£18	£18
small claims or simple procedure (>£200)	£78	£100
summary cause or simple procedure (>£3,000)	£78	£100
summary applications	£96	£120
Ordinary cause		
lodging a claim	£96	£120
hearing fee	£227	£227
Divorce cases		
lodging case	£150	£150
lodging simple case	£113	£120
hearing fee	£227	£227
Sheriff Appeal Court		
lodging appeal (summary)	£59	£59
lodging appeal (ordinary)	£113	£113
hearing fee (per day) bench of 1	£227	£227
hearing fee (per day) bench of 3	£568	£568
Sheriff Personal Injury Court		
lodging action	£214	£214
hearing fee (per half hour)	£77	£77
Court of Session		
lodging action	£214	£300
lodging motion	£54	£100
lodging record	£107	£200
lodging defences	£214	£300
hearing fee (per half hour) bench of 1	£96	£200
hearing fee (per half hour) bench of 3	£239	£500
Commissary proceedings (value of estate)		
less than £10k	£0	£0
between £10k and £50k	£225	£0
between £50k and £250k	£225	£250
above £250k	£225	£500

Annex B

Updates to fees narratives

Court of Session	
Item B.1	“leave to appeal” updated to “leave or permission to appeal” in line with e.g. section 31A of the Court of Session Act 1988
Item H.7	Clarification of fees narratives (b) and (d)
Item J.3	Narrative aligned with item 36 for Sheriff Court
High Court of Justiciary	
Item 3	Narrative for copying fees aligned with item 36 for Sheriff Court
Sheriff Appeal Court	
Item 1	Narrative aligned with item 29 for Sheriff Court and item 1 for Sheriff Personal Injury Court
Item 2	Narrative expanded to reference relevant rules of court
Item 3	Narrative updated to reference simple procedure and expanded to clarify position of cross-appeals
Item 4	Narrative updated as per item 1 with NOTES expanded to clarify position of cross-appeals
Item 5	Narrative updated as per items 1 and 4 with NOTES expanded to clarify position of cross-appeals
Item 6	Narrative aligned with item 36 for Sheriff Court

Sheriff Court	
Item 3	Fee structure revised
Item 12	Reference added to Bankruptcy (Scotland) Act 2016 which commences 30 November 2016. It is necessary to maintain reference to Bankruptcy (Scotland) Act 1985 for transitional cases
Item 16	Narrative updated for simple procedure cases. It is necessary to maintain reference to summary causes since simple procedure has not been fully implemented
Item 29	NOTE has been added clarifying position of minutes and motions. The same NOTE has been added to all equivalent fees narratives
Item 36	Narrative has been slightly updated to align with other narratives
Sheriff Personal Injury Court	
Item 1	Clarifying NOTE added as per item 29 for Sheriff Court
Justice of the Peace Court	
Item 2	Narrative aligned with item 36 for Sheriff Court