

Policy Note

The Courts Reform (Scotland) Act 2014 (Regulation of Fees) (Specified Persons) Order 2018

SSI 2018/158

1. The above instrument is made in exercise conferred by section 105(1)(f) and 106(1)(f) of the Courts Reform (Scotland) Act 2014. The instrument is subject to the negative procedure.

Policy

2. The power to regulate fees is set out in the Courts Reform (Scotland) Act 2014. Sections 105 and 106 provides a power for the Court of Session to make provision for fees for solicitors, messengers-at-arms, witnesses, shorthand writers and persons executing diligence.
3. This Order expands the list above and specifies additional persons in respect of whom the Court may exercise its powers to make Acts of Sederunt (rules of court) concerning the fees, including the fees recoverable in an award of judicial expenses, of various persons in relation to proceedings in the Court of Session, the Sheriff Appeal Court and the sheriff court. Articles 2 and 3 specify that the additional persons are persons who have the right to conduct litigation, or have rights of audience, by virtue of the granting of an application made under section 25 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (at present, commercial attorneys); and persons preparing transcripts of evidence.
4. The fees of commercial attorneys were already regulated by previous legislation (the Sheriff Courts (Scotland) Act 1907, as amended). Similarly, shorthand writers were already regulated but modern practice involving digital recording means that the broader term of 'transcribing evidence' is required.

Consultation

5. The Order follows discussions with the Lord President's Private Office. In line with the statutory requirement in sections 105(4) and 106(4) of the Courts Reform (Scotland) Act 2014, the Lord President has been formally consulted. Targeted consultation was undertaken with the Association of Commercial Attorney's and no comments were offered on the fees provisions.

Financial effects

6. There are no obvious financial effects of this Order which merely confers powers upon the Court of Session to make Acts of Sederunt.

Impact Assessments

7. No impact assessments were considered necessary for this Order.

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