

POLICY NOTE

THE SHERIFF COURT FEES AMENDMENT ORDER 2018

SSI 2018/194

1. 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

2. 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 (OPG) ensure that those who make use of the courts or the OPG meet or contribute towards the associated costs to the public purse where they can afford so to do.
3. The Scottish Government made a package of instruments¹ amending court fees for financial years 2018/19 to 2020/21 which came into effect on 25 April 2018. Regrettably an error has come to light in the Sheriff Court Fees Order 2018 and this Order seeks to rectify the situation by amending that earlier instrument.
4. The Scottish Government is committed to ensuring a well-targeted system of fee exemptions exist. This means that those who require support will not incur any courts fees. The instruments, in force since April, enhanced the system of exemptions including by removing the court fee for certain civil interdicts commonly used by those who have suffered domestic abuse. Fuller details are set out in the Policy Note for the Sheriff Court Fees Order⁽²⁾.
5. Policy, and the practice reflected in the Sheriff Court Fees Order 2015 and previous court fees instruments, is that court fee exemptions do not apply to commissary business, which is the process for examining and taking inventory of estate following a death. They also do not apply to petitions for removal of disqualification from driving. This is because access to justice issues do not apply in respect of these cases in the same way as they arise in other court actions that are disputes between two parties. Accordingly, fees exemptions in the High Court of Justiciary Fees Order 2018 and in the Justice of the Peace Court Fees (Scotland) Order 2018 do not apply to petitions for removal of disqualification from driving. Additionally, in respect of commissary business there is no court fee for estates valued at under £50,000 so by definition anyone liable to a court fee is dealing with an estate of some value.
6. Unfortunately the Sheriff Court Fees Order 2018, in extending the court fee exemptions with the aim of enhancing access to justice for potentially vulnerable court users, inadvertently applied exemptions to the special classes of business

¹ The Court of Session etc. Fees Order 2018, the High Court of Justiciary Fees Order 2018, the Sheriff Appeal Court Fees Order 2018, the Sheriff Court Fees Order 2018, the Justice of the Peace Court Fees (Scotland) Order 2018 and the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2018.

⁽²⁾ http://www.legislation.gov.uk/ssi/2018/81/pdfs/ssipn_20180081_en.pdf

referred to paragraph 5. This is against policy and previous practice and causes some financial and administrative consequences for Scottish Courts and Tribunals Service (SCTS).

7. Additionally, a redundant provision was identified by the Delegated Powers and Legal Reform Committee in their consideration of the Sheriff Court Fees Order 2018 and the opportunity is taken to remove it.

Consultation

8. A public consultation on these proposals was conducted on the original fees proposals. This amending order has been discussed with SCTS and the Lord President's Private Office.

Financial effects

9. The financial effects of the error are hard to quantify. There are a large number of commissary cases dealt with by SCTS each year. Court fee exemptions also have a fairly wide coverage. There will undoubtedly be people who therefore gain an exemption for the commissary fee that was unintended. It is therefore prudent to bring forward a rectifying instrument as quickly as possible. Additionally it is administratively difficult for SCTS staff to deal with a class of cases that does not accord with previous practice, training and operating procedures.

Impact Assessments

10. No impact assessments were conducted.