

## POLICY NOTE

### THE COURT OF SESSION ETC. FEES ORDER 2018

#### SSI 2018/83

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 has long had a policy to move toward fees which more fully reflect the 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 court fees to ensure that the income raised reflects the costs incurred by the Scottish Courts and Tribunals Service (SCTS) in providing the civil court system. The specific fee rises in this Order are of 2.3% with effect from 25 April 2018 followed by further increases of 2% on 1 April in 2019 and 2020. These rises are intended to allow for expected inflation over the next three years, according to official forecasts. This Order is one of a suite of 6 instruments that amend court fees across the Courts and the OPG.
4. Each of the current Court Fees Orders<sup>1</sup>, and the amending 2016 Order, are repealed and replaced by the equivalent 2018 Order. In addition to the small inflationary increases, certain updates to fees narratives have been made to ensure that they are as clear and consistent as possible. These changes are:
  - Amendment to line items B16, B18, C12 and C14 to end the practice of the first half hour of a hearing being free. This is regarded as anomalous as it was never intended that substantive hearings should be free.
  - A revised lower fee at line item C6 to ensure consistency with the Sheriff Court for the provision of a similar service.
  - New fees to cover hearings & motions in the Election Court.
5. 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 legal aid, will not incur any courts fees. In light of the principles discussed in the recent Supreme Court judgement in *Unison v Lord Chancellor* [2017] UKSC 51 and responses to the Government consultation the suite of orders enhance

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<sup>1</sup> 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, all as amended by the Court Fees (Miscellaneous Amendments) Order 2016, plus the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2015.

the exemptions scheme by extending the qualifying criteria to include those in receipt of emergency welfare funds as well as removing particular fees related to civil protective orders for domestic abuse from fee charging. In addition the income that can be earned whilst still qualifying for some of the benefits related exemptions has been increased to £18k, in line with the Scottish Living Wage.

## **Consultation**

6. A public consultation on these proposals was launched on 20 October together with a draft Equality Impact Assessment and this consultation concluded on 12 January<sup>2</sup>.
7. 22 responses were received and almost all stated their opposition to increasing court fees or the charging of court fees at all. Non-confidential responses will be published shortly - a consultation analysis and Government response has been published at:

<http://www.gov.scot/Publications/2018/02/4968>

## **Financial effects**

8. As the overwhelming majority of changes to fees are only to allow for inflation, the fees to be increased are not expected to result in an increase in real terms in fee revenue to the SCTS.
9. It is expected that the fees will be introduced on 25 April 2018 followed by further increases on 1 April 2019 and 2020. A further review of court fees will be undertaken in 2020 with a view to changes from 1 April 2021. It is possible that an earlier review may be necessary to take allowance of other changes such as those contained with the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill.

## **Impact Assessments**

10. A final equalities impact assessment was undertaken as was a business and regulatory impact assessment:

<http://www.gov.scot/Publications/2018/02/3041>

<http://www.gov.scot/Publications/2018/02/5287>

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<sup>2</sup> <http://www.gov.scot/Publications/2017/10/4229/0>