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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 81**

**The Sheriff Court Fees Order 2018**

**Citation, commencement and effect**

1.—(1) This Order may be cited as the Sheriff Court Fees Order 2018 and, subject to paragraphs (2) and (3), comes into force on 25th April 2018.

(2) Article 3(1)(b) and schedule 2 come into force, and article 3(1)(a) and schedule 1 cease to have effect, on 1st April 2019.

(3) Article 3(1)(c) and schedule 3 come into force, and article 3(1)(b) and schedule 2 cease to have effect, on 1st April 2020.

**Interpretation**

2. In this Order—

“extract decree” includes any duly authenticated extract of an order made by the sheriff in respect of any licence, appointment, discharge or like matter;

“minute” means a minute in terms of rule 14.2 of the Ordinary Cause Rules;

“motion” means—

- (a) a written motion to which Chapter 15 of the Ordinary Cause Rules applies;
- (b) a written motion to which Chapter 15A of those Rules applies; or
- (c) a written motion made in an undefended family action in terms of Chapter 33 of those Rules in which no notice of intention to defend has been lodged;

“Ordinary Cause Rules” means the Ordinary Cause Rules 1993(1);

“partner” means a person to whom a person is married or with whom the person is in a civil partnership;

“sheriff clerk” includes the Sheriff Clerk of Chancery, the Commissary Clerk of Edinburgh and sheriff clerk depute;

“summary cause” has the meaning assigned to it by section 35(1) of the Sheriff Courts (Scotland) Act 1971(2); and

“writ” means any document containing written pleadings relating to proceedings in the sheriff court and includes an inventory of estate, a precept of arrestment on a liquid document of debt, a notice of intention to defend and a notice of appearance lodged in an action of multiplepounding under rule 35.8 of the Ordinary Cause Rules.

**Fees payable in sheriff courts**

3.—(1) Subject to paragraph (3) and articles 4 to 13—

- (a) the fees payable in a sheriff court—

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(1) The Ordinary Cause Rules 1993 are in schedule 1 of the Sheriff Courts (Scotland) Act 1907 (c.51). Schedule 1 was substituted by S.I. 1993/1956 and was last amended by S.S.I. 2017/186.

(2) 1971 c.58.

- (i) in respect of the matters specified in column 1 of the Table of Fees in Part 1 of schedule 1 (table of fees payable from 25th April 2018) are the fees specified in relation to those matters in column 2 of that Table; and
  - (ii) in respect of the matters specified in column 1 of the Table of Fees in Part 2 of that schedule (table of fees payable from 25th April 2018) are the fees specified in relation to those matters in column 2 of that Table;
- (b) the fees payable in a sheriff court—
- (i) in respect of the matters specified in column 1 of the Table of Fees in Part 1 of schedule 2 (table of fees payable from 1st April 2019) are the fees specified in relation to those matters in column 2 of that Table; and
  - (ii) in respect of the matters specified in column 1 of the Table of Fees in Part 2 (table of fees payable from 1st April 2019) of that schedule are the fees specified in relation to those matters in column 2 of that Table; and
- (c) the fees payable in a sheriff court—
- (i) in respect of the matters specified in column 1 of the Table of Fees in Part 1 of schedule 3 (table of fees payable from 1st April 2020) are the fees specified in relation to those matters in column 2 of that Table; and
  - (ii) in respect of the matters specified in column 1 of the Table of Fees in Part 2 of that schedule (table of fees payable from 1st April 2020) are the fees specified in relation to those matters in column 2 of that Table.
- (2) The fees payable under this Order are to be paid to the sheriff clerk or the auditor of court.
- (3) The fees provided for by this Order are not payable by the Crown in the enforcement of the criminal law or in the exercise of powers or the performance of duties arising out of or relating to that enforcement.
- (4) No act is required of the sheriff clerk or the auditor of court in connection with a matter specified in relation to any fee prior to—
- (a) the payment of that fee; or
  - (b) an arrangement being entered into for payment of that fee.

**Certain fees payable only once**

4. The fees payable in respect of the following matters are payable on one occasion only in respect of a cause—
- (a) the matters specified in paragraphs 5, 24, 25 and 28 of the Table of Fees in Part 1 of schedule 1, 2 or 3; and
  - (b) the matters specified in paragraphs 4 and 5 of the Table of Fees in Part 2 of schedule 1, 2 or 3.

**Matters included in certain fees**

- 5.—(1) The following matters include, where appropriate, issue of an extract decree—
- (a) the matters specified in paragraphs 1, 5 to 8, 16 and 23 of the Table of Fees in Part 1 of schedule 1, 2 or 3; and
  - (b) the matters specified in paragraphs 5 and 6 of the Table of Fees in Part 2 of schedule 1, 2 or 3.
- (2) The matter specified in paragraph 13 of the Table of Fees in Part 1 of schedule 1, 2 or 3 includes, where appropriate, the issue of extracts and the issue of an abbreviate.

(3) The matter specified in paragraph 5 of the Table of Fees in Part 1 of schedule 1, 2 or 3 does not include, in the case of an application for registration or renewal of registration of a club or miners' welfare institute under the Gambling Act 2005(3), the registration or renewal of registration upon such application.

### **Fees payable in the Sheriff Personal Injury Court**

6.—(1) The fees specified in the Table of Fees in Part 2 of schedule 1, 2 or 3 apply only in relation to proceedings in the Sheriff Personal Injury Court(4).

(2) Paragraph (3) applies where a matter is specified both in the Table of Fees in Part 1 of schedule 1, 2 or 3 (sheriff court) and in the Table of Fees in Part 2 of that schedule (Sheriff Personal Injury Court).

(3) The fee specified in the Table of Fees in Part 2 shall apply, and the corresponding fee in Part 1 shall not be payable in relation to proceedings in the Sheriff Personal Injury Court.

### **Cases in which an extra fee is payable**

7.—(1) When a summary cause or simple procedure case(5) is remitted to the ordinary cause roll, the fees payable in paragraphs 5 and 23 of the Table of Fees in Part 1 of schedule 1, 2 or 3 become payable in respect of the cause by the persons who would have been required to pay them if the cause had been from its commencement an ordinary cause, less the amount of any fee previously paid by the person concerned in respect of the cause.

(2) When any commissary proceedings, bankruptcy proceedings or proceedings under section 4 of the Requirements of Writing (Scotland) Act 1995(6) are opposed, the fees specified in paragraphs 5 and 23 of the Table of Fees in Part 1 of schedule 1, 2 or 3 become payable in respect of the proceedings by the persons who would have been required to pay them if the proceedings had been from their commencement proceedings to which those paragraphs applied, less the amount of any fee previously paid by the person concerned in respect of the proceedings.

### **Exemption of certain persons from fees: legal aid**

8. A fee specified by this Order is not payable by a person if—

- (a) the person is in receipt of civil legal aid within the meaning of section 13(2) of the Legal Aid (Scotland) Act 1986(7) in respect of the matter in the Table of Fees in Part 1 or Part 2 of schedule 1, 2 or 3 in connection with which the fee is payable;
- (b) the fee is payable in connection with a simplified divorce or dissolution of a civil partnership application and the person is in receipt of advice and assistance from a solicitor under the Legal Aid (Scotland) Act 1986 in respect of that application; or
- (c) the person's solicitor is undertaking work in relation to the matter in the Table of Fees in Part 1 or Part 2 of schedule 1, 2 or 3 in connection with which the fee is payable on the basis of any regulations made under section 36(1) of the Legal Aid (Scotland) Act 1986 providing for legal aid in a matter of special urgency.

### **Exemption of certain persons from fees: social security**

9.—(1) A fee specified by this Order is not payable by a person if—

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(3) 2005 c.19.

(4) See article 2 of the All-Scotland Sheriff Court (Sheriff Personal Injury Court) Order 2015 (S.S.I. 2015/213).

(5) "simple procedure case" is defined in section 72(9) of the Courts Reform (Scotland) Act 2014.

(6) 1995 c.7.

(7) 1986 c.47. Section 13(2) was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), section 74 and schedule 8, paragraph 36(3).

- (a) the person or the person's partner is in receipt of income support under the Social Security Contributions and Benefits Act 1992<sup>(8)</sup>;
- (b) the person is in receipt of an income-based jobseeker's allowance under the Jobseekers Act 1995<sup>(9)</sup>;
- (c) the person or the person's partner is in receipt of guarantee credit under the State Pension Credit Act 2002<sup>(10)</sup>;
- (d) the person or the person's partner is in receipt of working tax credit, provided that—
  - (i) child tax credit is being paid to the party, or otherwise following a claim for child tax credit made jointly by the members of a couple (as defined in section 3(5A) of the Tax Credits Act 2002<sup>(11)</sup>) which includes the party; or
  - (ii) there is a disability element or severe disability element (or both) to the tax credit received by the party;
 and that the gross annual income taken into account for the calculation of the working tax credit is £18,000 or less;
- (e) the person or the person's partner is in receipt of income-related employment and support allowance under the Welfare Reform Act 2007<sup>(12)</sup>;
- (f) the person is in receipt of universal credit under Part 1 of the Welfare Reform Act 2012<sup>(13)</sup>; or
- (g) the person or the person's partner has, within the period of 3 months prior to the date the specified fee would be payable but for this exemption, received financial or other assistance under the Welfare Funds (Scotland) Act 2015<sup>(14)</sup>.

### **Exemption in connection with estate exempt from inheritance tax**

**10.** Where the estate of a deceased person is exempt from inheritance tax by virtue of section 153A (death of emergency service personnel etc.), 154 (death on active service etc.) or 155A (death of constables and service personnel targeted because of their status) of the Inheritance Tax Act 1984<sup>(15)</sup>, there will be no fee payable in respect of the inventory of that estate under paragraph 3(a), (b) or (c) of the Table of Fees in Part 1 of schedule 1, 2 or 3.

### **Exemptions relating to particular proceedings**

**11.—**(1) The fees provided for by this Order do not apply to—

- (a) any application under—
  - (i) section 129 of the Consumer Credit Act 1974<sup>(16)</sup> (time orders);
  - (ii) the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(17)</sup>; or

<sup>(8)</sup> 1992 c.4. Section 124, which provides for income support, was amended by the Jobseekers Act 1995 (c.18), section 41 and schedules 2 and 3; the Welfare Reform and Pensions Act 1999 (c.30), section 70 and schedule 8, Part IV, paragraph 28; the State Pension Credit Act 2002 (c.16), schedules 2 and 3; the Civil Partnership Act 2004 (c.33), schedule 24; the Welfare Reform Act 2007 (c.5), schedules 3 and 8; the Welfare Reform Act 2009 (c.24), section 3; and the Welfare Reform Act 2012 (c.5), schedule 14.

<sup>(9)</sup> 1995 c.18.

<sup>(10)</sup> 2002 c.16.

<sup>(11)</sup> 2002 c.21. Section 3(5A) was substituted for section 3(5) to (6) by the Civil Partnership Act 2004, schedule 24, paragraph 144(3).

<sup>(12)</sup> 2007 c.5.

<sup>(13)</sup> 2012 c.5.

<sup>(14)</sup> 2015 asp 5.

<sup>(15)</sup> 1984 c.51. Sections 153A and 155A were inserted by, and section 154 was last amended by, section 75 of the Finance Act 2015 (c.11).

<sup>(16)</sup> 1974 c.39. Section 129 was amended by the Debtors (Scotland) Act 1987 (c. 18) and the Consumer Credit Act 2006 (c.14).

<sup>(17)</sup> 2003 asp 13.

- (iii) any enactment relating to registration of births, marriages or civil partnerships; or
- (b) any application or appeal under the Children’s Hearings (Scotland) Act 2011(18).

(2) Except in relation to the fee specified in paragraph 34 of the Table of Fees in Part 1 of schedule 1, 2 or 3, the fees otherwise payable by a debtor or creditor in terms of this Order do not apply to any proceedings under the Debtors (Scotland) Act 1987(27) or the Debt Arrangement and Attachment (Scotland) Act 2002(19).

### **Exemptions for applicants for certain interdicts and orders**

**12.**—(1) The fees provided for by this Order are not payable by a person applying for a specified interdict or for an exclusion order.

(2) In this article—

- (a) “specified interdict” means an interdict or interim interdict that is—
  - (i) a matrimonial interdict within the meaning of section 14(2) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981(20) (interdict competent where spouses live together);
  - (ii) a domestic interdict within the meaning of section 18A of that Act(21) (meaning of “domestic interdict”);
  - (iii) a relevant interdict under section 113(2) of the Civil Partnership Act 2004(22) (civil partners: competency of interdict); or
  - (iv) otherwise an interdict in respect of which there is an application for a power of arrest to be attached under section 1 of the Protection from Abuse (Scotland) Act 2001(23) (attachment of power of arrest to interdict); and
- (b) “exclusion order” means an exclusion order under—
  - (i) section 4 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981(24) (exclusion orders);
  - (ii) section 76 of the Children (Scotland) Act 1995(25) (exclusion orders etc.); or
  - (iii) section 104 of the Civil Partnership Act 2004 (exclusion orders).

(3) The exemption in paragraph (1) does not apply to a person applying for a principal remedy other than a specified interdict or exclusion order.

### **Exemption of certain motions from fees: jury trials in the Sheriff Personal Injury Court**

**13.** The fees specified in paragraph 29 of the Table of Fees in Part 1 of schedule 1, 2 or 3 and in paragraph 1 of the Table of Fees in Part 2 of schedule 1, 2 or 3 are not payable in respect of motions under the following rules of the Ordinary Cause Rules—

- (a) rule 36B.2(2)(b) (motion for a proof);

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(18) 2011 asp 1.

(27) 1987 c.18.

(19) 2002 asp 17.

(20) 1981 c.59. Section 14 was amended by the Family Law (Scotland) Act 2006 (asp 2), section 10(2) and (3) and schedule 3 and by S.S.I. 2006/384, article 6.

(21) Section 18A was inserted by the Family Law (Scotland) Act 2006 (asp 2), section 31(3).

(22) 2004 c. 33. Section 113 was amended by the Family Law (Scotland) Act 2006, schedule 1, paragraph 8 and schedule 3 and by S.S.I. 2006/384, article 10.

(23) 2001 asp 14. Section 1 was amended by the Family Law (Scotland) Act 2006, section 32(2) and (3).

(24) Section 4 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), section 13(5). By virtue of section 18(3) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981, section 4 applies in certain cases to cohabiting couples.

(25) 1995 c.36. There are amendments to section 76 not relevant to this Order.

- (b) rule 36B.2(6) (motion for approval of proposed issue);
- (c) rule 36B.2(7) (motion for approval of proposed counter-issue); and
- (d) rule 36B.10 (motion for application of verdict).

**Revocation**

- 14.** The Sheriff Court Fees Order 2015(26) is revoked.

St Andrew's House,  
Edinburgh  
23rd February 2018

*ANNABELLE EWING*  
Authorised to sign by the Scottish Ministers