
SCOTTISH STATUTORY INSTRUMENTS

2022 No. 185

The Court of Session etc. Fees Order 2022

Citation, commencement and effect

1.—(1) This Order may be cited as the Court of Session etc. Fees Order 2022 and, subject to paragraphs (2) and (3), comes into force on 1 July 2022.

(2) Article 3(2)(b) and schedule 2 come into force, and article 3(2)(a) and schedule 1 cease to have effect, on 1 April 2023.

(3) Article 3(2)(c) and schedule 3 come into force, and article 3(2)(b) and schedule 2 cease to have effect, on 1 April 2024.

Interpretation

2.—(1) In this Order—

“Office of Court” has the same meaning as in rule 3.1 of the Rules of Court,

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

“Rules of Court” means the Rules of the Court of Session 1994(1),

“Table of Fees” means the Table of Fees in schedule 1, 2 or 3 of this Order.

(2) For the purposes of any reference in this Order to a “party”—

(a) except in relation to a special case, a set of persons with the same interest, for whom one and the same first paper is or has been lodged, is to be treated as a single party, and

(b) in relation to a special case, each person or set of persons who appear as one of the separate parties to the case is to be treated as a party.

Fees payable in the Court of Session etc.

3.—(1) This Order makes provision for the fees payable in the Office of Court, the office of the Accountant of Court and the office of the Auditor of the Court of Session.

(2) Subject to paragraph (4) and articles 4 to 8—

(a) the fees payable in respect of the matters specified in column 1 of the Table of Fees in schedule 1 (table of fees payable from 1 July 2022) are the fees specified in relation to those matters in column 2 of that Table,

(b) the fees payable in respect of the matters specified in column 1 of the Table of Fees in schedule 2 (table of fees payable from 1 April 2023) are the fees specified in relation to those matters in column 2 of that Table, and

(c) the fees payable in respect of the matters specified in column 1 of the Table of Fees in schedule 3 (table of fees payable from 1 April 2024) are the fees specified in relation to those matters in column 2 of that Table.

(1) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443, last amended by S.S.I. 2022/135).

- (3) The fees payable under this Order are to be paid—
- (a) in relation to the Office of Court, to the Principal Clerk of Session or any officer acting for the Principal Clerk of Session,
 - (b) in relation to the office of the Accountant of Court, to the Accountant of Court or any officer acting for the Accountant of Court, and
 - (c) in relation to the office of the Auditor of the Court of Session, to the Auditor of the Court of Session, or any officer acting for the Auditor of the Court of Session.
- (4) 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.
- (5) No act is required of any officer or person specified in paragraph (3) 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.

Exemption of certain persons from fees: legal aid

4. 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(2) in respect of the matter in the Table of Fees in 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 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

- 5.—(1) A fee specified by this Order is not payable by a person if—
- (a) the person or the person's partner is in receipt of income support under the Social Security Contributions and Benefits Act 1992(3),
 - (b) the person is in receipt of an income-based jobseeker's allowance under the Jobseekers Act 1995(4),
 - (c) the person or the person's partner is in receipt of guarantee credit under the State Pension Credit Act 2002(5),
 - (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 person or the person's partner, or otherwise following a claim for child tax credit made jointly by the members of a couple (as

(2) 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).

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

(4) 1995 c. 18.

(5) 2002 c. 16.

- defined in section 3(5A) of the Tax Credits Act 2002(6) which includes the person or the person's partner, or
- (ii) there is a disability element or severe disability element (or both) to the tax credit received by the person or the person's partner,
- and that the gross annual income taken into account for the calculation of the working tax credit is £20,592 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(7),
- (f) the person is in receipt of universal credit under Part 1 of the 2012 Act,
- (g) the person is in receipt of either—
- (i) personal independence payment under Part 4 of the 2012 Act, or
- (ii) adult disability payment within the meaning given in regulation 2 of the Disability Assistance for Working Age People (Scotland) Regulations 2022(8) provided that the gross annual income taken into account for the calculation of the personal independence payment is £20,592 or less, or
- (h) 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(9).
- (2) In this article—
- “the 2012 Act” means the Welfare Reform Act 2012(10).

Exemptions for applicants for certain interdicts and orders

6.—(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(11) (interdict competent where spouses live together),
- (ii) a domestic interdict within the meaning of section 18A of that Act(12) (meaning of “domestic interdict”),
- (iii) a relevant interdict under section 113(2) of the Civil Partnership Act 2004(13) (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(14) (attachment of power of arrest to interdict), and

(6) 2002 c. 21. Paragraphs (a) and (b) of section 3(5A) were substituted for paragraphs (a) to (d) by paragraph 23(2) of schedule 3 of S.I. 2019/1458. Section 3(5A) was substituted for section 3(5) and (6) by paragraph 144(3) of schedule 24 of the Civil Partnership Act 2004 (c. 33). Part 1 of the Tax Credits Act 2002 was repealed by paragraph 1 of schedule 14 of the Welfare Reform Act 2012 subject to savings provisions in S.I. 2019/167.

(7) 2007 c. 5.

(8) S.S.I. 2022/54.

(9) 2015 asp 5.

(10) 2012 c. 5.

(11) 1981 c. 59. Section 14 was amended by schedule 3 of the Family Law (Scotland) Act 2006 (asp 2) and by S.S.I. 2006/384.

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

(13) 2004 c. 33. Section 113 was amended by paragraph 8 of schedule 1 and schedule 3 of the Family Law (Scotland) Act 2006 and by S.S.I. 2006/384.

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

- (b) “exclusion order” means an exclusion order under—
- (i) section 4 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981⁽¹⁵⁾ (exclusion orders), or
 - (ii) 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.

(4) The fees provided for by this Order are not payable by the applicant in any appeal in connection with proceedings in respect of which the applicant would not be required to pay fees by virtue of—

- (a) paragraph (1), or
- (b) article 12(1) of the Sheriff Court Fees Order 2022⁽¹⁶⁾ (exemptions for applicants for certain interdicts and orders).

Exemptions for certain proceedings relating to the environment

7.—(1) The fees provided for by this Order are not payable by a person in—

- (a) an appeal to the Court of Session under section 56 of the Freedom of Information (Scotland) Act 2002⁽¹⁷⁾ as modified by regulation 17 of the Environmental Information (Scotland) Regulations 2004⁽¹⁸⁾,
- (b) relevant proceedings which include a challenge to a decision, act or omission on grounds subject to the provisions of Article 6 of the Aarhus Convention,
- (c) relevant proceedings which include a challenge to an act or omission on the grounds that it contravenes the law relating to the environment.

(2) In this article—

“the Aarhus Convention” means the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark on 25 June 1998,

“relevant proceedings” means—

- (a) applications to the supervisory jurisdiction of the court, including applications under section 45(b) (specific performance of a statutory duty) of the Court of Session Act 1988⁽¹⁹⁾,
- (b) appeals under statute to the Court of Session.

Exemption of certain motions from fees

8.—(1) This article applies to motions which are enrolled in the process of the cause or made orally at the bar in accordance with rule 23.2 of the Rules of Court (enrolment of motions).

(2) The fees specified in items B21 and C16 of the Table of Fees are not payable in respect of motions which operate solely so as to activate further steps of procedure and any opposition to such motions.

⁽¹⁵⁾ Section 4 was amended by section 13(5) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73). By virtue of section 18(3) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981, section 4 applies in certain cases to cohabiting couples.

⁽¹⁶⁾ S.S.I. 2022/181.

⁽¹⁷⁾ 2002 asp 13.

⁽¹⁸⁾ S.S.I. 2004/520.

⁽¹⁹⁾ 1988 c. 36.

(3) Without prejudice to the generality of paragraph (2), a motion which is exempt from the payment of fees includes a motion under any of the following rules of the Rules of Court—

- (a) rule 19.1 (decrees in absence),
- (b) rule 22.3(5)(a) (closing record),
- (c) rule 36.13 (death, disability, retiral, etc. of Lord Ordinary),
- (d) rules 37.1(2)(b), 37.1(6) and 37.1(7) (applications for jury trial),
- (e) rule 37.10 (application of verdicts), and
- (f) rule 38.17(1) (amendment of pleadings in reclaiming motion).

Calculation of certain fees payable

9.—(1) Subject to article 8, the fees specified in items B21 and C16 of the Table of Fees are payable in addition to the fees specified in items B2, B6 and C5 of the Table of Fees.

(2) The fees specified in items B21 and C16 of the Table of Fees are not payable in addition to the fees specified in items B9, B10 and B13 and C8 of the Table of Fees.

Revocation

10. The Court of Session etc. Fees Order 2018(20) is revoked.

St Andrew's House,
Edinburgh
24th May 2022

ASH REGAN
Authorised to sign by the Scottish Ministers