

Consultation on Scottish Court Fees

July 2016

Section 1: Background and proposals

Introduction

The purpose of this consultation is to seek views on various options which will ensure that the fees raised in our civil courts cover the cost of the civil business undertaken in those courts.

The Scottish Government is committed to ensuring that the courts are funded to deliver a civil justice system that is accessible, affordable and which provides a high-quality service to those who have cause to use it.

Beyond this overriding objective the Scottish Government believes that the fees charged to court users should recover the cost to public funds of providing those services. This means that those who make use of the services of the courts should meet, or contribute towards, the associated cost to the public purse where they can afford so to do.

The responsibility for setting court fees is a matter that is reserved to the Scottish Ministers and is put into effect by an Order laid in Parliament. Those Orders establish statutory fee-charging regimes, which the Scottish Courts and Tribunals Service (SCTS) administer.

The policy of successive governments has been to move progressively towards a position of full-cost recovery whereby 100% of the costs of the civil justice system are met by fees. However, other than regular adjustments for inflation and the addition of the occasional new fee, it continues to be the case that fees have only partially met the costs of the system.

Each year the total costs attributable to civil business in the sheriff court, Court of Session and Office of the Public Guardian are set out in the SCTS Annual Report and Accounts along with the income derived from fees. The following table shows the overall figures for the last 5 years and the recovery rate achieved:

Table 1: Recovery rate 2010-11 to 2014-15

| Year | Income (£m) | | | Costs (£m) | | | Deficit | |
|---------|------------------|----------------|------------|-----------------------|-----------------|-----------|----------------------|---------------|
| | Fee income (net) | Fee exemptions | Total fees | Total costs allocated | Planned subsidy | Net costs | Deficit/surplus (£m) | Recovery rate |
| 2010-11 | 22.8 | 2.3 | 25.1 | 41.7 | 6.5 | 35.2 | -10.1 | 71% |
| 2011-12 | 22.1 | 2.0 | 24.0 | 41.2 | 7.4 | 33.8 | -9.8 | 71% |
| 2012-13 | 21.9 | 2.2 | 24.1 | 38.8 | 6.5 | 32.2 | -8.2 | 75% |
| 2013-14 | 24.2 | 2.4 | 26.6 | 39.5 | 6.2 | 33.3 | -6.7 | 80% |
| 2014-15 | 24.7 | 2.3 | 27.0 | 38.4 | 6.1 | 32.3 | -5.4 | 83% |

Scottish Budget 2016-17

Decisions regarding court fees are taken in the wider context of the Scottish Budget and the continued challenges posed by pressure on public finances. The Deputy First Minister noted in the introduction to Scotland's Spending Plans and Draft Budget 2016-17¹:

¹ <http://www.gov.scot/Resource/0049/00491140.pdf>.

“The setting of this budget has, however, taken place against the backdrop of the toughest public expenditure conditions we have yet faced. Conditions imposed by the UK Government out of choice, not necessity.

“The UK Spending Review published last month made clear that public expenditure in Scotland will face year-on-year real term reductions until the end of this decade. This means Scotland’s budget will continue to fall and by 2020 it will be 12.5 per cent lower in real terms than when the Conservatives came to power in 2010. This is the equivalent of one pound in every eight we spend being cut by Westminster by 2020.

“This imposes acute challenges on day-to-day spending.”

Against this backdrop, the Budget reduced the operating budget for the SCTS from £79.9m to £76.5m. The vast majority of the income generated by SCTS comes from court fees.

It is therefore proposed that, in order to reduce the impact of budgetary constraint, court fees should rise in line with the stated policy of full cost recovery. Given that this is the policy of the current and previous governments, an increase in court fees is seen as the best course of action rather than reducing the budgets in other Justice areas to offset this reduction in SCTS’s budget.

Court fees review

Court fees have generally been reviewed every three years, with the last round being implemented in 2015. However, the Scottish Government has decided to accelerate the move towards full cost recovery to ensure that the courts are properly funded and able to continue to provide access to justice whilst, at the same time, contributing to the ongoing development of a more efficient, modernised court service. The wider context of pressure on public finances, brought about by significant reductions to the funding Scotland receives from the UK Government, means that the Scottish Government now considers that the time is right to take the last step towards full-cost recovery.

A review is justified both by the need to end the cost to the public purse of subsidising the civil justice system, and by the introduction of the new simple procedure which replaces the current small claims and summary cause procedures. Simple procedure is to be introduced from 28 November 2016 and it is the intention of the Scottish Government to bring in new tables of fees with effect from that date.

2015 Court fees review

Fees were last reviewed in 2015. Broadly the proposal was for fees to increase by 2% to account for inflation for each year 2015/16 to 2017/18. In addition an extra 2% increase was proposed from 2015/16 to assist with the costs of modernising the IT systems that underpin the justice system. Beyond this baseline some further minor amendments were made in order to simplify and improve consistency within the fee system.

The next review was scheduled to be undertaken in 2017-18. However, due to the reasons outlined above, the Scottish Government considers that fees should be reviewed now rather than waiting until 2018.

2018 Fee Review

Irrespective of the result of this consultation, it is still the intention for a fuller fees review to be undertaken in 2017-18. This is seen as an opportune time to re-evaluate how fees are calculated

and charged owing to the reforms that will have been implemented as a result of the Courts Reform (Scotland) Act 2014 and the introduction of a new IT system in the SCTS.

The Scottish Government does see scope for further improvements in the fee charging structure. For example, increased automation flowing from a new civil case management system and consequential digitisation of fee transactions and fee exemption transactions will result in increased transparency. This improved understanding, deriving from availability of robust information, may allow further changes to improve fairness and public confidence in the fee charging system.

Opportunities to be further explored would be to offer discounts for on-line submission of court documents and a simpler structure of single 'front-loaded' fees to replace a complex system of staged, small fees being triggered throughout a case.

Simple procedure

Background

The Courts Reform (Scotland) Act 2014 introduces a new 'simple procedure' to replace the existing small claims and summary cause procedures. It was thought that there was no longer justification for continuing two separate procedures for cases under £5,000 (summary cause) and small claims (applicable to actions up to £3,000).

Simple procedure is designed to be a speedy, inexpensive and informal civil court procedure for helping people sort out disagreements about matters of lower monetary value. The Court of Session has made the Act of Sederunt (Simple Procedure) 2016 which contains the Simple Procedure Rules drafted in a modern and accessible style.

It is intended that simple procedure should be implemented in two phases. The first phase is due to come into force on 28 November and will comprise (principally):

- proceedings for the payment of a sum of money (but not proceedings for aliment or personal injury); and
- proceedings for the recovery of moveable (but not heritable) property.

A second phase, scheduled for 2017, will deal with

- housing cases;
- personal injury cases; and
- a number of more minor procedures that are less commonly used.

Simple procedure fees

The implementation of simple procedure will require the replacement of the existing court fee arrangements for small claims and summary cause actions by a new unified structure. It is proposed that the existing fee levels for summary cause and small claims actions will be retained within the new simple procedure structure. The level of fees paid for particular actions would therefore remain unaltered. For example, proposed fees to lodge a claim up to £200 under simple procedure will be £18 and to lodge a claim up to £5,000 will be £78. If, as a result of this consultation, these fees change, the new fee for a simple procedure case will be the same as it would have been if a case had been raised under the small claim or summary cause procedures.

We believe that maintaining the existing fee levels in the new structure will assist the introduction of simple procedure, particularly in light of the phased implementation, by providing a degree of continuity as the new system beds in.

Exemptions

Whilst the Scottish Government believes that the costs of the civil courts should be borne by court users rather than by the taxpayer, we are committed to ensuring that there is protection for those who are unable to pay court fees. This protection is provided for by a generous and extensive range of exemptions that are offered to those on lower incomes. The exemptions regime ensures that civil court users with limited means are not being denied access to justice.

The majority of those who qualify for exemption do so because they qualify for legal aid. The full range of exemptions is listed below.

You may be entitled to exemption from paying court fees in the following circumstances:

You or your spouse/civil partner are in receipt of:

- income support;
- income-based employment and support allowance;
- pension credit guarantee credit;
- working tax credit, including child tax credit and gross annual income used for calculation of tax credit is £16,642 or less;
- working tax credit, including a disability element and gross annual income used for calculation of tax credit is £16,642 or less; or
- working tax credit, including a severe disability element and gross annual income used for calculation of tax credit is £16,642 or less.

You are in receipt of:

- income-based jobseeker's allowance; or
- Universal Credit (from 29 April 2013)

You may also be entitled to exemption from paying court fees if:

- you are receiving civil legal aid in respect of the matter for which the fee is payable (Section 13(2) of the Legal Aid (Scotland) Act 1986 refers);
- the fee is payable in connection with a simplified divorce or dissolution of civil partnership application and you are receiving advice and assistance from a solicitor in respect of that application (Legal Aid (Scotland) Act 1986 refers); or
- the fee is payable in connection with work being undertaken by your solicitor which qualifies for civil legal aid as matter of 'special urgency' (Section 36 of the Legal Aid (Scotland) Act 1986 refers).

The Scottish Government is not making any changes to exemptions as part of this review. However, consideration will be given as to whether the £16,642 figure noted above is still appropriate.

We also note the rolling out of the new system of Universal Credit and the powers over welfare which are being devolved to the Scottish Government. In time these developments may mean that further consideration of fee exemptions is required to ensure that they remain appropriately designed and fit-for-purpose.

Section 2: Fee proposals

The Scottish Government considers that there are two possible approaches to achieving full cost recovery. Broadly these are:

- a **flat rise**—increase all fees by the same percentage (24%); or
- **targeted increases**—increase fees across a number of key fee points.

The proposals are based on data from 2014/15 as that is the most recent SCTS Annual Report and Accounts that is available.²

The aim of the increase in fees set out in either of these options will be to raise around £5m-£6m per annum which should ensure full cost recovery. It is worth noting that given the demand led nature of the courts, future fee income is dependent on the level of business and therefore these increases may deliver a deficit or surplus in any particular year. The review in 2018, and subsequent reviews, will seek to ensure that fees remain as close as possible to full cost recovery.

In looking at the options, we consider that it is fundamental that access to justice must be protected and that fees should not be set at levels which deter individuals from pursuing legitimate actions. The Scottish Government is also conscious that, in general, for many types of action, court fees are a much smaller component of the costs of taking legal action than the cost of paying for legal advice and representation.

One of the main ways we protect access to justice is through our fee exemptions as described above. The Scottish Government is committed to ensuring that those who require support will receive it. Consequently, there will be no detrimental change to the eligibility criteria or to the fee exemptions themselves, as a result of this consultation.

These proposed increases exclude the Office of the Public Guardian as the SCTS Annual Report and Accounts show that this area of the business is already achieving full cost recovery. Therefore, the consultation relates to those fees raised in the Court of Session and the sheriff courts.

Our proposals look at the costs of the whole of the civil justice system rather than the specific fee covering the costs for that specific service. However, we have, over the previous reviews taken into account that fees should reflect the level of activity associated with that fee whenever possible. For example, a fee for a hearing with 3 judges will be a multiple of the fee for a hearing with one judge.

Financial consideration

The table below summarises the annual increase in fee income that could be expected to be generated from the options based on the SCTS Annual Reports and Accounts for 2014/15.

Table 2: Estimated increase in fee income

| | Per annum ³ |
|-----------------------------|------------------------|
| Option 1: Flat rise | £4.9m |
| Option 2: Targeted increase | £6.0m |

² <http://www.scotcourts.gov.uk/docs/default-source/SCS-Annual-Report/scs-annual-report-accounts---2014-15---final.pdf?sfvrsn=2>

³ Approx. 10% of the fees raised in the Court of Session and sheriff court are exempt so this is an estimate of the net fee income received.

We are aware that there will be a tipping point where fee increases may deter people from raising actions. We do not believe that the level of rises in either option 1 or 2 as proposed will have a deterrent effect as individual fees will still be relatively low, particularly when viewed against the total costs of taking legal action including the cost of legal advice.

Option 1: Flat rise

As noted in Table 1, there was a shortfall of £5.4m between the fee income and the costs of the civil courts in 2014/15. As already stated, the Office of the Public Guardian is already achieving full cost recovery so no increase is being proposed to those fees. Therefore, the deficit needs to be met from the fees in the Court of Session and sheriff courts.

Table 3: 2014/15 Gross fee Income

| | £m |
|--|-------------|
| Court of Session | 5.4 |
| Sheriff courts | 16.8 |
| Office of the Public Guardian | 4.8 |
| Total | 27.0 |
| Total (exc Office of the Public Guardian) | 22.2 |

As shown above, in 2014/15 the gross fees received in the Court of Session and the sheriff court was £22.2m. Therefore, to fund a deficit of £5.4m this would require an increase of those fees by around 24%.

Therefore, were this option to be preferred, then a flat rise of 24% would be applied to each fee charged in the court of Session and the sheriff court. The fees in the Sheriff Appeal Court and the Sheriff Personal Injury Court would also be increased along with those fees charged in the High Court of Justiciary and the justice of the peace courts. Table 5 below shows the effect this will have on some of the major fees charged. The full set of changes are set out in the fee charging tables in Annex A which follows section 2 of this paper.

This option is a continuation of the approach that has been taken over a number of years with incremental rises to every fee level.

Option 2: Targeted increases

This option would involve fees being raised for some of the most common services to help achieve full cost recovery without the requirement to amend all the fees. Table 5 below shows the fees that we propose would be increased as a result of this option.

This option includes:

- increasing selected fees in the Court of Session and the sheriff court, whilst avoiding impacting upon small claims and other possible access to justice barriers. It is expected that this would raise approximately £4m;
- increasing hearing fees in the Court of Session to be a more realistic reflection of the cost of one of our most scarce resources—judicial time. It is expected that this would raise approximately £1m; and
- introducing a tiered Commissary fees structure. It is expected that this would raise approximately £1.6m.

The last bullet relates to commissary proceedings which deal with a deceased person's estate. The current fee in Scotland for any estate over £10,000 is £225. Earlier this year an alternative approach was set out in a recent consultation in England and Wales proposing a structure of fees based on the value of the estate for their equivalent proceedings (probate). That proposal looked to move more lower value estates out of having to pay a fee whilst increasing the fee for the higher value estates, culminating in a maximum fee of £20,000 for estates valued above £2m.

This option proposes a similar approach for Scotland, albeit setting the fees at a much lower level. The proposal would be to increase the value of those estates that are not charged a fee from £10,000 to £50,000. The fee for estates valued between £50,000 and £250,000 would be raised to £250, and for any estates over £250,000 the fee would be £500.

Table 4: Commissary cases in Scotland 2015/16

| | | |
|------------------------|---------------|-----|
| Less than £50k | 3,540 | 14% |
| Between £50k and £250k | 14,548 | 58% |
| Between £250k and £1m | 6,282 | 25% |
| Above £1m | 524 | 2% |
| Total | 24,894 | |

Approximately 24,000 to 25,000 estates are registered each year for which commissary fees in the region of £5m per annum are collected.

Whilst the value of the estate when the inventory is registered is not held electronically by the SCTS, the manual records of inventories registered in 2015-16 were reviewed. The data from eight Sheriff Courts (Edinburgh, Glasgow, Aberdeen, Ayr, Dumbarton, Dunfermline, Greenock & Hamilton) equates to half of all inventories registered in the SCTS allowing an extrapolation of national distribution of estate values. This is shown in the table above.

Effect on key fees by each option

Table 5: Selected fees

| | 2016/17 Fee | Option 1: flat rise | Option 2: targeted |
|---|-------------|------------------------|-----------------------|
| Lodging a claim | | | |
| small claims or simple procedure (<£200) | £18 | £22 | £18 |
| small claims or simple procedure (>£200) | £78 | £97 | £100 |
| summary cause or simple procedure (>£3,000) | £78 | £97 | £100 |
| summary applications | £96 | £119 | £120 |
| Ordinary cause | | | |
| lodging a claim | £96 | £119 | £120 |
| hearing fee | £227 | £282 | £227 |
| Divorce cases | | | |
| lodging case | £150 | £187 | £150 |
| lodging simple case | £113 | £141 | £120 |
| hearing fee | £227 | £282 | £227 |
| Sheriff Appeal Court | | | |
| lodging appeal (summary) | £59 | £73 | £59 |
| lodging appeal (ordinary) | £113 | £141 | £113 |
| hearing fee (per day) bench of 1 | £227 | £282 | £227 |
| hearing fee (per day) bench of 3 | £568 | £707 | £568 |
| Sheriff Personal Injury Court | | | |
| lodging action | £214 | £266 | £214 |
| hearing fee (per half hour) | £77 | £96 | £77 |
| Court of Session | | | |
| lodging action | £214 | £266 | £300 |
| lodging motion | £96 | £67 | £100 |
| lodging record | £107 | £122 | £200 |
| lodging defences | £214 | £266 | £300 |
| hearing fee (per half hour) bench of 1 | £96 | £119 | £200 |
| hearing fee (per half hour) bench of 3 | £239 | £297 | £500 |
| Commissary proceedings (value of estate) | | | |
| less than £10k | £0 | £0 | £0 |
| between £10k and £50k | £225 | £280 | £0 |
| between £50k and £250k | £225 | £280 | £250 |
| above £250k | £225 | £280 | £500 |

Annex A

Option 1 - Proposed fees for the sheriff courts, Court of Session, High Court, and justice of the peace courts

| | Court of Session | Current fee w.e.f. 1.04.2016 £ | Proposed Fee £ |
|-----|--|---|---|
| | Signeting | | |
| A1 | Signeting of any writ or summons if attendance is necessary out with the normal office hours | 125 | 155 |
| | General Department | | |
| B1 | Appeal, application for leave to appeal, summons, or other writ or step by which any cause or proceeding, other than a family action, is originated in either the Inner or Outer House (to include signeting in normal hours) | 214 | 266 |
| B2 | Defences, answers or other writ (including a joint minute) or step in process or enrolment or opposition to a motion in a pending process by which a party other than an originating party first makes an appearance in a cause or proceeding, other than a family action | 214 | 266 |
| B3 | Writ by which a family action is originated (other than a simplified divorce or dissolution of a civil partnership application) – inclusive fee (to include signeting within normal office hours and, if applicable, issue to the pursuer of an extract in terms of item G5(a) of this Table, and to the defender, if appropriate, a duplicate extract thereof) | 166 | 206 |
| B4 | Simplified divorce or dissolution of a civil partnership application (inclusive of all procedure other than that specified in item B5 of this Table) | 125 | 155 |
| B5 | In relation to a simplified divorce or dissolution of a civil partnership application, citation of any persons under rule 16.1(1)(a)(i), (ii) or (iii), as applied by rule 49.76, of the Rules of Court, or intimation to any person or persons under rule 16.1(1)(a)(i), (ii) or (iii), as applied by rule 49.76, of those Rules, where such intimation is required | £12 plus Messenger at Arms fee to serve document | £15 plus Messenger at Arms fee to serve document |
| B6 | Defences, answers or other writ (including a joint minute) or step in process or enrolment of or opposition to a motion in a pending process by which a party other than an originating party first makes appearance in a family action | 166 | 206 |
| B7 | Initial lodging of affidavits in a family action where proof by affidavit evidence has been allowed | 71 | 88 |
| B8 | Special Case | | |
| | <ul style="list-style-type: none"> - For each party | 107 | 133 |
| | <ul style="list-style-type: none"> - Maximum fee payable (per case) | 435 | 539 |
| B9 | Application by minute or motion for variation of an order in a family action | 36 | 45 |
| B10 | Answers or opposition to an application under item B9 of this Table | 36 | 45 |

| | | | |
|----------|--|---|---|
| B11 | Letter of request to a foreign court | 54 | 67 |
| B12 | Citation of each jury, to include outlays incurred in citing and countermanding - payable on receipt of instruments for issue of precept | 298 | 370 |
| B13 | Reclaiming motion - payable by party enrolling motion | 214 | 265 |
| B14 | Closed record - payable by each party on the lodging of the closed record or, where no closed record is lodged, when mode of enquiry is determined | 107 | 133 |
| B15 | Allowing proof etc. - payable by each party on diet of proof, jury trial, procedure roll or summar roll hearing being allowed | 59 | 73 |
| B16 | Court hearing (other than motion roll or single bill) (in normal hours) before a single judge -payable by each party for every 30 minutes or part thereof | 96 | 119 |
| B17 | Court hearing (in normal hours) before 3 or more judges - payable by each party for every 30 minutes or part thereof | 239 | 296 |
| B18 | Court hearing (other than motion roll or single bill) (out of hours) before a single judge - payable by each party for every 30 minutes of part thereof | 115 | 142 |
| B19 | Court hearing (out of hours) before 3 or more judges - payable by each party for every 30 minutes or part thereof | 287 | 356 |
| B20 | Cancellation of court hearing before 3 or more judges, by a party or parties, within 28 days of court hearing date - fee payable is shared equally between the parties | 50% of fee that would have been payable under this table had the court hearing taken place as planned | 50% of fee that would have been payable under this table had the court hearing taken place as planned |
| B21 | Fee payable by any party enrolling a motion or making a motion orally at the bar and any party opposing any such motion | 54 | 67 |
| C | Petition Department | | |
| C1 | Petition of whatever nature presented to Inner or Outer House other than a petition under item C3 or C4 of this Table, whether in respect of the first or any subsequent step of process, and any application for registration or recognition of a judgment under the Civil Jurisdiction and Judgments Act 1982. | 214 | 265 |
| C2 | Additional fee payable when a petition, in terms of item C1 of this Table is presented out with normal office hours | 125 | 155 |
| C3 | Petition to be admitted as a notary public - for each applicant | 161 | 199 |
| C4 | Petition to be admitted as a solicitor - for each applicant | 161 | 199 |
| C5 | Answers, objection or other writ (including a joint minute) or step in process or enrolment or opposition to a motion in a pending process by which a party other than an originating party first makes appearance in a proceeding to which item C1 of this Table applies | 214 | 265 |
| C6 | Caveat | 48 | 60 |
| C7 | Fiat | No fee | No fee |

| | | | |
|-----|--|---|---|
| C8 | Registering official copies of orders of courts in England and Wales or Northern Ireland | 18 | 22 |
| C9 | Reclaiming motion - payable by party enrolling motion | 214 | 265 |
| C10 | Closed record - payable by each party on the lodging of the closed record or, when no closed record is lodged, when mode of enquiry is determined | 107 | 133 |
| C11 | Allowing proof etc. payable by each party on diet of proof, procedure roll, summary roll or judicial review hearing being allowed | 59 | 73 |
| C12 | Court hearing (other than motion roll or single bill) (in normal hours) before a single judge - payable by each party for every 30 minutes or part thereof | 96 | 119 |
| C13 | Court hearing (in normal hours) before 3 or more judges - payable by each party for every 30 minutes or part thereof | 239 | 297 |
| C14 | Court hearing (other than motion roll or single bill) (out of hours) before a single judge - payable by each party for every 30 minutes of part thereof | 115 | 142 |
| C15 | Court hearing (out of hours) before 3 or more judges - payable by each party for every 30 minutes or part thereof | 287 | 356 |
| C16 | Cancellation of court hearing before 3 or more judges, by a party or parties, within 28 days of court hearing date - fee payable is shared equally between parties | 50% of fee that would have been payable under this table had the court hearing taken place as planned | 50% of fee that would have been payable under this table had the court hearing taken place as planned |
| C17 | Fee payable by any party enrolling a motion or making a motion orally at the bar and any party opposing any such motion | 54 | 67 |
| C18 | Lodging of notice of appointment or intention to appoint an administrator out of court under the Insolvency Act 1986 | 214 | 265 |
| D | Court for Hearing Appeals Relating to the Registration of Electors | | |
| D1 | Appeal - inclusive fee | 214 | 265 |
| E | Election Court | | |
| E1 | Parliamentary election petition | 214 | 265 |
| E2 | Statement of matters | 18 | 22 |
| E3 | Any other petition, application, answers or objections submitted to the court | 54 | 67 |
| E4 | Certificate of judgement | 54 | 67 |
| F | Lands Valuation Appeal Court | | |
| F1 | Appeal - inclusive fee | 214 | 265 |
| F2 | Answers - inclusive fee | 214 | 265 |
| G | Extracts Department | | |
| G1 | Extract decree following upon a summons, petition or appeal, or | 59 | 73 |

| | | | |
|----|--|----|----|
| | after protestation of a note, whether in absence or otherwise | | |
| G2 | Extract of admission as a solicitor | 54 | 67 |
| G3 | Extract of protestation | 54 | 67 |
| G4 | Certificate under the Civil Jurisdiction and Judgments Act 1982 | 54 | 67 |
| G5 | Documentation evidencing divorce, nullity or dissolution of marriage or civil partnership including: | 30 | 37 |
| | (a) Extract from Consistorial Register of Decrees of decree pronounced on or after 23.9.75 if not issued at B3 or B4 of this Table | | |
| | (b) Certificate of divorce in decree pronounced prior to 23.9.75 | | |
| | (c) Certified copy interlocutor in decree pronounced prior to 23.9.75 | | |
| G6 | Extract from the Register of Acts and Decrees - per sheet or part thereof | 30 | 37 |
| G7 | Sealing and certifying any document for exhibition in a foreign jurisdiction or otherwise | 30 | 37 |
| G8 | Acknowledgement of receipt of a notice under section 19(6) or 21(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970 | 54 | 67 |

| I | Part III - Fees in the office of the Auditor of the Court of Session | Current fee w.e.f. 1.04.2016 £ | Proposed Fee £ |
|----|--|---|---|
| I1 | Taxing accounts of expenses incurred in judicial proceedings (including proceedings in the High Court of Justiciary) remitted to the Auditor of the Court of Session for taxation— | | |
| | (a) On lodging account for taxation | 43 | 53 |
| | (b) Taxing accounts for expenses etc. - | | |
| | (i) up to £400 | 20 | 25 |
| | (ii) for every additional £100 or part thereof | 5 | 6 |
| | (Note: fee to be determined by the Auditor of the Court of Session on amount of account as submitted) | | |
| I2 | Fee for assessing account remitted to the Auditor to determine whether an additional fee should be paid | 287 | 356 |
| I3 | Fee for Cancellation of diet of taxation - | | |
| | (a) where written notice of cancellation received by receiving party after 4.00 pm on the fourth working day before the day of the diet of taxation | 50% of the fee that would be payable under item I1(b) of this Table | 50% of the fee that would be payable under item I1(b) of this Table |
| | (b) where written notice of cancellation received by receiving party after 4.00 pm on the working day before or the day of the diet of taxation | 75% of the fee that would be payable under item I1(b) of this Table | 75% of the fee that would be payable under item I1(b) of this Table |

| J | Part IV - Fees common to all offices | Current fee w.e.f. 1.04.2016 £ | Proposed Fee £ |
|----------|--|---|---------------------------|
| J1 | Certified copy of proceedings for appeal to the Supreme Court | 214 | 265 |
| J2 | Certifying of any other document (plus copying charges if necessary) | 18 | 22 |
| J3 | Recording, extracting, engrossing or copying- all documents (exclusive of search fee)— | | |
| | (a) copying of each document up to 10 pages | 6 | 7 |
| | (b) for each further page or part thereof | 0.5 | 0.5 |
| | (c) copy of each document in electronic form | 6 | 7 |
| J4 | Any search of records or archives, | | |
| | • - Per 30 minutes or part thereof | 12 | 15 |
| | In addition, correspondence fee where applicable | 12 | 15 |
| J5 | Captions | | |
| | (a) Marking caption when ordered | 12 | 15 |
| | (b) Warrant for caption when issued | 12 | 15 |
| J6 | Change of party name where more than 10 cases are registered - per case | 2 | 2 |

| Sheriff Appeal Court | | Current fee w.e.f. 1.04.2016 £ | Proposed Fee £ |
|-----------------------------|--|---|---------------------------|
| 1 | Lodging or opposing a motion | 48 | 60 |
| 2 | Fixing a hearing date | 54 | 67 |
| 3 | Lodging an Appeal (from ordinary cause procedure), lodging a closed record | 113 | 141 |
| 4 | Hearing Fee per day or part thereof (bench of 1) | 227 | 282 |
| 5 | Hearing Fee per day or part thereof (bench of 3) | 568 | 705 |
| | Information Services | | |
| 6 | Copying of - | | |
| | a) Each document up to 10 pages | 6 | 7 |
| | b) Each further page or part thereof (in excess of 10 pages) | 0.50 | 0.50 |
| | c) Each document in electronic form | 6 | 7 |
| 7 | Any searches of record or archives: | | |
| | a) Per 30 minutes or part thereof | 12 | 15 |
| | b) In addition, correspondence fee where applicable | 12 | 15 |

| Sheriff court | | | |
|--------------------------------------|--|--|--|
| Part I Commissary proceedings | | Current fee w.e.f. 1.04.2016 £ | Proposed Fee £ |
| 1 | Petition for a) appointment of executor; b) restriction of caution; c) special warrant; d) sealing up of repositories or the like; e) appointment of commissary factor. (Note: fee includes issue of extract decree) | 18 | 22 |
| 2 | Sealing up repositories or the like, per hour | 30 | 37 |
| 3 | (a) Receiving and examining inventory of estate, except where sub paragraph (b) or (c) of this paragraph applies - (i) Where the amount of the estate vested in or belonging beneficially to the deceased, of which confirmation is required, or for which resealing under the Colonial Probates Act 1892 is required does not exceed - £10,000 (Note: policy position is that no charge applies on low value estates) £50,000 (ii) Where the amount of the estate exceeds £50,000 | 0 225 225 | 0 280 280 |
| | (b) Receiving and examining additional or corrective inventory of estate or inventory of estate ad non executa | 225 | 280 |
| | (c) Receiving and examining inventory of estate where it is declared that confirmation is not required (If confirmation is subsequently required, the remaining 50% of the fees specified in 3(a) or 3(b) are payable) | 50% of the fee specified under either 3(a) or 3(b) | 50% of the fee specified under either 3(a) or 3(b) |
| 4 | Commissary copying and extracting | | |
| | (1) Issuing certificate of confirmation | | |
| | (a) if ordered when lodging inventory, each certificate | 7 | 9 |
| | (b) If ordered subsequent to lodging inventory | | |
| | (i) first certificate, including search fee | 18 | 22 |
| | (ii) each subsequent certificate | 7 | 9 |
| | (2) Copy or duplicate confirmation - | | |
| | (a) if ordered when lodging inventory | 12 | 15 |
| | (b) if ordered subsequent to lodging inventory - | | |
| | (i) duplicate confirmation, including search fee | 24 | 30 |
| | (ii) each subsequent duplicate if ordered at the same time as the duplicate in head (i) | 12 | 15 |
| | (3) Certified extract confirmation and will (if any) | | |
| | (a) if ordered when lodging inventory | 24 | 30 |
| | (b) if ordered subsequent to lodging inventory - | | |
| | (i) certified extract, including search fee | 36 | 45 |
| | (ii) each subsequent certified extract if ordered at the time as the | 24 | 30 |

| | | | |
|---|---|-----|-----|
| | certified extract in head (i) | | |
| | (4) Copy will - | | |
| | (a) if ordered when lodging inventory | 7 | 9 |
| | (b) if ordered subsequent to lodging inventory - | | |
| | (i) copy will, including search fee | 18 | 22 |
| | (ii) each subsequent copy of will, if ordered at the same time as the copy will in head (i) | 7 | 9 |
| Part II Sheriff court proceedings | | | |
| 5 | Initial writ in any proceedings not being proceedings for which any other paragraph of this Table prescribes a fee (fee covers issue of extract decree) | 96 | 119 |
| 6 | European Order for payment in terms of EU Regulation 1896/2006 - application for European Order for payment | 96 | 119 |
| Divorce and dissolution of civil partners | | | |
| 7 | Initial writ in an action of divorce or dissolution of a civil partnership (other than a simplified divorce or dissolution of a civil partnership application) (Note: fee covers issue of extract decree) | 150 | 187 |
| Applications for simplified divorce and simplified dissolution of civil partnership | | | |
| 8 | Any application (inclusive of all procedures other than those specified at paragraphs 9 and 38) (Note: fee covers issue of extract decree) | 113 | 141 |
| 9 | Subsequent application upon change of circumstances by party | 30 | 37 |
| Summary warrant | | | |
| 10 | Application for summary warrant | 71 | 88 |
| Bankruptcy | | | |
| 11 | Petition for sequestration of estates or petition for recall of award of sequestration | 113 | 141 |
| 12 | Miscellaneous applications, including appeals under the Bankruptcy (Scotland) Act 1985 | 59 | 93 |
| 13 | Application for approval of composition | 36 | 45 |
| Declarator and Petitions for completion of title for the Sheriff of Chancery | | | |
| 14 | Applications for Declarator and Petitions for completion of title to the Sheriff of Chancery | 227 | 282 |
| 15 | Issue of chancery extract | 107 | 132 |
| Summary cause/simple procedure | | | |
| 16 | Summons - summary cause/simple procedure (including small claim and European small claim procedure) (Note: fee covers issue of extract decree) - | | |
| | (a) actions for payment of money of £200 or less (or 250 euros for European Small Claims) | 18 | 22 |
| | (b) other actions | 78 | 97 |
| | (c) on the marking of an appeal | 59 | 73 |
| Criminal procedure | | | |
| 17 | Complaint | 36 | 45 |
| Road Traffic Offenders Act 1988 | | | |

| | | | |
|--|--|-----|-----|
| 18 | Petition for removal of disqualification | 89 | 110 |
| Miscellaneous | | | |
| 19 | Application under section 4 of the Requirements of Writing (Scotland) Act 1995 | 18 | 22 |
| 20 | Caveat | 36 | 45 |
| 21 | Any proceedings under section 12 or 18 of the Civil Jurisdiction and Judgments Act 1982 | 24 | 30 |
| 22 | Note in a liquidation or judicial factory | 36 | 45 |
| Defender's responses | | | |
| 23 | First writ, reponing note, application for recall of decree or attendance to state a defence, or oppose an interim order | | |
| | (fee payable by each defender or compeerer) (Note: covers the issue of an extract decree) - | | |
| | (a) in proceedings to which paragraph 5 of this Table applies | 96 | 119 |
| | (b) in an action of divorce or dissolution of a civil partnership (other than a simplified divorce or dissolution of civil partnership) | 150 | 186 |
| Civil court procedure | | | |
| Payable by pursuer | | | |
| 24 | Lodging of a certified copy record under the Ordinary Cause Rules 1993 (Note: fee payable only once in respect of a cause) | 113 | 141 |
| 25 | Lodging of a certified closed record under the additional procedure of the Ordinary Cause Rules | 113 | 141 |
| 26 | Fixing, allocating or assigning of a proof, a debate or a hearing in a summary or miscellaneous application on the merits of the cause | 54 | 67 |
| 27 | For each day or part thereof of proof, debate or hearing in a summary or miscellaneous application on the merits of the cause (Note: not payable if the proof, debate or hearing does not proceed on that day) | 227 | 282 |
| 28 | Endorsing of a minute in Form F27 in terms of rule 33.29(1)(b) of the Ordinary Cause Rules (Note: fee payable once only in respect of a cause) | 66 | 81 |
| Payable by any party (including pursuer) | | | |
| 29 | Lodging of a written motion or minute and the lodging of any written opposition to any such motion or minute | 48 | 60 |
| 30 | Marking an appeal to the Sheriff Principal in any proceedings (other than as provided for in paragraph 16(c) of this Table) | 113 | 141 |
| Sheriff court books | | | |
| 31 | Recording protest of a bill or promissory note (Note: Extracts to be charged as in paragraph 36 of the Table) | 24 | 30 |
| 32 | Preservation of deeds, each deed (Note: This includes recording and engrossing. If extracts are required, a separate fee is charged as in paragraph 36 of this Table) | 12 | 15 |

| Miscellaneous office procedures | | Current fee w.e.f. 1.04.2016 £ | Proposed Fee £ |
|--|--|---|-------------------------------|
| 33 | Lodging each set of plans or other Parliamentary deposit | 71 | 88 |
| 34 | Inspection of report of auction and the auditor of court's report | 18 | 22 |
| 35 | Search and report service as instructed by a trade protection society, licensed credit reference agency or trade publication of protests of relevant court records as allowed as appropriately included in the Ordinary Cause Rules with the fees below payable in advance - | | |
| | weekly for 12 months | 346 | 429 |
| 36 | Recording, engrossing, extracting, printing or copying of all documents, except as provided for at paragraph 4 of this Table (if a search is required an additional fee will be charged as per paragraph 37 of this Table) - | | |
| | (a) by photocopying or otherwise producing a printed or typed copy - | | |
| | (i) Up to 10 pages | 6 | 7 |
| | (ii) Each page or part thereof in excess of 10 pages | 0.50 | 0.50 |
| | (b) for a copy of a document in electronic form | 6 | 7 |
| | (Note: Recording in Sheriff Court Register of Deeds to be charged as in paragraph 31) | | |
| 37 | Any search of records or archives, except as provided for at paragraph 4 of this Table - | | |
| | • - per 30 minutes or part thereof | 12 | 15 |
| | In addition, correspondence fee where applicable | 12 | 15 |
| 38 | Citation of or intimation to any person or persons by sheriff officer as instructed by the sheriff clerk | 12 plus sheriff officer's fee | 15 plus sheriff officer's fee |

| Part III Auditor of court | | Current fee w.e.f. 1.04.2016 £ | Proposed Fee £ |
|----------------------------------|--|---|---|
| 39 | Taxing accounts of expenses incurred in judicial proceedings remitted to the auditor of court for taxation - | | |
| | (a) lodging account for taxation | 43 | 53 |
| | (b) taxing accounts of expenses etc. - | | |
| | (i) up to £400 | 20 | 25 |
| | (ii) for every additional £100 or part thereof | 5 | 6 |
| | (Note: Fee to be determined by auditor of court on amount of the account as submitted) | | |
| | (c) cancellation of diet of taxation - | | |
| | (i) where written notice of cancellation received by receiving party within 3 working days of diet | 50% of fee that would have been payable under | 50% of fee that would have been payable under |

| | | | |
|--|--|---|---|
| | | sub paragraph (b) of this paragraph | sub paragraph (b) of this paragraph |
| | (ii) where written notice of cancellation received by receiving party on the working day before or the day of the diet | 75% of fee that would have been payable under sub paragraph (b) of this paragraph | 75% of fee that would have been payable under sub paragraph (b) of this paragraph |

| Sheriff Personal Injury Court | | Current fee w.e.f. 1.04.2016 £ | Proposed Fee £ |
|--------------------------------------|--|---------------------------------------|-----------------------|
| 1 | Lodging a motion | 54 | 67 |
| 2 | Fixing a hearing date | 59 | 73 |
| 3 | Hearing Fee: per 30 minutes or part thereof | 77 | 96 |
| 4 | Lodging closed record | 107 | 133 |
| 5 | Initial Writ | 214 | 266 |
| 6 | Lodging an Action, Lodging a Defence | 214 | 266 |
| 7 | Citation of a Civil Jury: - includes outlays incurred in citing and countermanding - payable on receipt of instruments for issue of precept | 298 | 370 |
| 8 | Certified copy of a document | 18 | 23 |
| Information Services | | | |

| High Court of Justiciary | | Current fee w.e.f. 1.04.2016 £ | Proposed Fee £ |
|---------------------------------|--|---------------------------------------|-----------------------|
| 1 | Petitions to the Nobile Officium and applications for criminal letters (inclusive fee covering all steps in procedure) | 107 | 133 |
| 2 | Certified copy of any other document | 18 | 22 |
| 3 | Copying - | | |
| | (a) of each document up to 10 pages | 6 | 7 |
| | (b) each further page or part thereof | 0.50 | 0.50 |
| | (c) of each document in electronic form | 6 | 7 |
| 4 | Any searches of records or archives - | | |
| | • - per 30 minutes or part thereof | 12 | 15 |
| | In addition, correspondence fee where applicable | 12 | 15 |
| 5 | Petition for Removal of Disqualification from Driving | 89 | 110 |

| Justice of the peace courts | | Current fee w.e.f. 1.04.2016 £ | Proposed Fee £ |
|------------------------------------|---|---|---------------------------|
| 1 | Application for utility warrants | 11 | 14 |
| 2 | Copying of - | | |
| | (a) of each document up to 10 pages | 6 | 7 |
| | (b) each further page or part thereof (in excess of 10 pages) | 0.50 | 0.50 |
| | (c) of each document in electronic form | 6 | 7 |
| 3 | Any searches of records or archives - | | |
| | • - per 30 minutes or part thereof | 12 | 15 |
| | In addition, correspondence fee where applicable | 12 | 15 |
| | | | |
| 4 | Petition for Removal of Disqualification from Driving | 89 | 110 |

Section 3: How to respond

Where to send your response

The closing date for comments is 12 October 2016. Please email your response to courtfecconsultation@gov.scot. **We regret that it will not be possible to grant any extensions.**

Respondent information form

Please complete the attached Respondent Information Form at Annex B which contains the consultation questions and sets out how your response will be handled.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us to reach a decision on the way forward. We will issue a report on this consultation process and this will be made available on our website.

Court Fees Consultation Paper



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (anonymous)
 Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No

Questions:

- 1. Should simple procedure fees be set at the same level as the fees for small claims and summary cause proceedings?**

- 2. Which option to achieve full cost recovery, as set out in this paper, should be implemented?**

- 3. In relation to option 1: Should any particular fees be exempt from increase, even if that necessitates additional increases to other fees?**

4. **In relation to option 2: Should the fees that have been identified be increased? If not, what other fees should be increased instead?**

5. **Are there any alternative options to achieve full cost recovery that should be considered?**

6. **Are any of the proposals likely to have a disproportionate effect on a particular group? If so, please specify the possible impact?**



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