Scottish Civil Justice Council

Scottish Civil Justice Council
Parliament House
Edinburgh
EH1 1RQ
Tel: 0131 240 6778
Email: scjc@scotcourts.gov.uk

Ms Katie Hagmann MSP
Convener
Equalities, Human Rights and Civil Justice Committee

By email

23 September 2026

Dear Convener,

Act of Sederunt (Fees of Messengers-At-Arms and Sheriff Officers) 2026 (SSI 2026/208) and Act of Sederunt (Fees of Messengers-At-Arms and Sheriff Officers) (Amendment) 2026 (SSI 2026/252) - Evidence session 24 September 2026

I refer to the above statutory instruments which the Equalities, Human Rights and Civil Justice Committee (the EHRCJ Committee) has sought further evidence on.

In advance of giving evidence on behalf of the Scottish Civil Justice Council (the Council) in my capacity as a member of its secretariat, I thought it would be helpful to provide some background on the Council and its role as policy holder for the principal instrument (SSI 2026/208), and the steps it took to consult, finalise and report on that policy and its decision in particular.

I understand that some Committee members raised queries regarding the policy behind some aspects of the instruments at its meeting on 17 September and/or its potential impact. I have therefore taken the opportunity to address in so far as possible these matters. For ease these comments are identified under the headings (i) Application of inflation to Officer of Court Fees within the instrument; (ii) The reduction applied to fees for court actions valued at £1,500 or less; and (iii) Surcharge percentage for remote rural areas.

I look forward to providing any further clarity needed.

Background - the Council and its role in relation to fees for Messengers-at-Arms and Sheriff Officers (Officers of Court)

The Council is an independent advisory body established under the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (the 2013 Act). Its key functions include: keeping the civil justice system under review and making recommendations to the Lord President on the development of, and changes to, the civil justice system; keeping practice and procedure under review, and preparing draft civil procedure rules, draft fees rules and draft inquiry procedure rules for consideration, approval and enactment by the Court of Session; and providing advice on any matter relating to the civil justice system that may be requested by the Lord President.

Since 01 April 2015 (under section 2(1)(c) of the 2013 Act the Council has held the statutory function of proposing draft fees rules for Officers of Court for consideration and approval by the Court of Session. Under sections 105(1)(b) (for Messengers-at-Arms) and 106(1)(b) (for Sheriff Officers) of the Courts Reform (Scotland) Act 2014, the Court of Session holds the power to enact the draft fees rules proposed by the Council. As a consequence of these provisions the Council is effectively the policy holder for the instruments before the Committee.

These are the provisions that provide the abasis for and have been utilised to introduce the statutory instruments before the Committee.

Policy formation and approach

The use of unit based charging was successfully introduced by the Council in 2019 for the recovery of judicial expenses. That has delivered improved transparency for those recoverable fees and simplified the process for updating them. In 2025 the Council therefore sought to replicate that approach to the processes used for the fees of Officers of Court. Over and above providing comparable rules, the objectives it sought to achieve in doing this included:

- *improved transparency* – as breaking the ‘amount charged’ into its 2 component parts *(monetary amount x units of work)* would improve the ability for consumers, the Council, and service providers to assess comparability between each line item;

- *to better evidence the need for change* – as explicitly stating the *units of work* required will in turn help to identify services that need to be amended or withdrawn, and provide benchmarks for use when pricing new services; and

- *to facilitate more timely updates* – by reducing the level of legal and policy input previously required to generate an updated statutory instrument whenever a straightforward request for a fees change was made.

The Council delegated this work in accordance with its Governance structures to its Costs and Funding Committee (more details of the Committee can be accessed here).

Given the significance of this proposed change and to ensure an informed approach to the final policy decisions and approach to be taken on the matter, a 3 month public consultation was launched in May 2025. A copy of the Consultation paper is accessible here but is also enclosed. Alongside the consultation paper the Costs and Funding Committee of the Council also produced and published at the same time an Equality Impact Assessment (accessible here) and a Business Regulatory Impact Assessment (BRIA) (accessible here).

The Consultation paper set out the key considerations and steps required to effect what would be a detailed consolidation of the existing approach. Those steps included the creation of a defined unit based system; allocation of a financial figure to that unit; consideration on how to consolidate applicable deductions or surcharges through an 'averaged' percentage rates approach; and the application of inflation in advance.

As can be seen the Consultation paper sought views on 9 specific questions. This included views on whether the two existing sets of regulations from 2002 should be replaced with one new consolidated instrument; if adopting unit based charging whether that baseline "monetary value" should start at £5.40 and if that 1 unit of time should be fixed at 6 minutes; views on any unintended consequences that might arise from implementing a change to unit based charging; views on the proposed change to the Council progressing inflation adjustments in advance; views on which indices (CPI, CPIH or a combination of both) should be used when forecasting inflation; and if consultees were aware of any other opportunities to modernise how these regulated fees are set by the courts and charged to end users.

The consultation closed in August 2025 and 26 responses were received. The disclosable responses are available here. A summary of the feedback received, and initial policy response was set out in the Consultation Analysis report published in September 2025, accessible here.

Based on the responses received, the Costs and Funding Committee of the Council concluded that it was appropriate to advance its proposed change to simplify the fee approach by means of a unit-based charging system which included an adjustment for inflation in advance.

To support transparency and understanding of its approach the Costs and Funding Committee of the Council produced a Consultation Response document dated October 2025 in which it narrated the policy decision taken to implement the approach. As was practice at the time the paper narrates those decisions and the steps to be taken as 'drafting instructions'. The latter reflects the fact that the next step would be drafting by the Council's legal advisers. That document was published alongside a news release advising of the Council's decision on the Council's website on 02 December 2025, a copy of the response and the article is here and a copy of the Consultation response is enclosed.

A draft fees instrument was accordingly prepared, with Council considering it alongside an updated BRIA (enclosed) and approving the instrument's submission to the Court of Session on 15 June 2026. That process was completed and the instrument was laid on 18 June 2026. The EHRCJ Committee is aware of the process that followed that.

3 year Fees Review process

It is important to note, and as narrated more fully within the Consultation response paper (at page 9), that the principal fees instrument is not the end of the matter. As part of implementing this new policy approach the Council committed to the creation of a 3 year Fees Review Process. That process is, subject to the coming into force of the instruments, to include (i) proportionate monitoring and review, so that the monetary amount and units of work are kept under review. That review is to be based on proportionate research being undertaken on behalf of the Council, and separately the Society of Messengers-at- Arms and Sheriff Officers' Fees Committee; and (ii) external forecasts so that monetary amounts fixed by the Council remain accurate based on the target inflation rates as published by the Bank of England and/or the forecasts as published by the Office of Budget Responsibility.

The Council believed this to be a positive vehicle to support the continued review of fee matters. While the secretariat is in the early stages of considering how the process will work, given the Committee's interest we are happy to keep them, and the public more widely, briefed on the matter.

I now take each of the expressed areas of concern in turn.

Application of inflation to Officer of Court Officer fees within the instrument

It is important to note that in considering and proposing changes to fees in this area the Council required to reach a balance between two policy objectives, which can often conflict. Those objectives are:

(i) Supporting service availability – namely ensuring that there are a sufficient number of viable service providers available within the market for parties to instruct; and
(ii) Proportionality of fees – the need to set fees at a reasonable level that would be considered affordable for most paying parties.

The decision was made by Council to adjust for inflation and to do so in advance.

In determining to adjust for inflation Council used 'indexation' to ensure the level of regulated fees achieved the right balance between the level of fees considered affordable for most paying parties, compared to the level of fees needed to maintain a reasonable number of viable service providers in this market. Maintaining that balance, in this instance, required a comparison to be made between existing fees, as previously set by the Council, the inflation indices published by the Office of National Statistics, and the inflation forecasts provided by the Office of Budget responsibility.

The existing fees were most recently set via the Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Amendment) 2024 (SSI2024/21). That instrument applied an increase of 11.9%. That increase took effect from March 2024.

The Council therefore sought to adjust for inflation for the 35 month valuation period that followed on from that last SSI: from September 2022 to the end of the Consultation period, namely August 2025. The Council considered the published indices for that near full 3 year period. The detail was published within the Council's consultation response however it is produced for ease at annex 1.

In summary, for that near 3 year period the movement in the relevant indices were noted by Council to be as follows (extracted from page 30):

Year	Month	CPI INDEX	CPIH INDEX
2022	Sep	123.8	122.3
2025	Aug	139.3	138.9
Multiplier		*1.125*	*1.135*
% change		*12.5%*	*13.5%*

The average of the two figures equated to 13%.

Given the movement in those two indices over that period the Council considered it reasonable and appropriate to apply an uplift of 13% to the defined unit price. This equated to an increase in the individual unit price from £5.40, the figure consulted upon reflecting what would be the equivalent 2022 rate, to £6.10.

As noted by Council in its Consultation paper (at page 7), an applicable comparator could be the 8.5% uplift made by the Scottish Government for devolved social security assistance, particularly as that uplift had been made for a shorter 2 year period evaluation period ending September 2024.

To bring effect to the requirement to adjust for inflation in advance as consulted upon, the Council has applied the inflation forecasts for the subsequent two financial years' namely April 2027 and April 2028. The forecasted rate applied is the Bank of England's target rate of 2% per annum.

Crucially, and as noted above, as part of this reform Council intends for the creation and publication of a 3 year Fees Review Process for this area of work to ensure the monetary amount and units of work are kept under review and remain appropriate based on the target inflation rates as published by the Bank of England and/or the forecasts as published by the Office of Budget Responsibility.

The reduction applied to fees for court actions valued at £1,500 or less

Under the existing fees legislative framework, (Regulations 1A to 1B), provision is made for reduced fee amounts to be applied in lower value actions of £1,500 or less. Column A sets out the amounts to be applied in lieu of the normal fee charged under column B. It applies to 18 specific items or services. The percentage reduction varies with reference to the specific service item with percentage reductions ranging from 45% to 25.9%.

A key aspect of the Council's policy in moving to unit based charging, and consolidating the legislation, involved the need to standardise in so far as possible the use of reductions, and to do so via the introduction of a standardised percentage reduction figure to be applied for the applicable items or services. A calculation undertaken in relation to the 18 items in question confirmed that the average percentage reduction rate equated to 33.4%.

Council accordingly consulted on the adoption of an average reduction percentage in its Consultation paper. The rate of 33% was used for illustrative purposes within the consultation. More detail on how this would apply to the existing rates was contained within Annex 6 to that paper.

As detailed in the Council's Consultation Analysis, most respondents to the consultation exercise agreed that adopting a standardised percentage reduction for such items was preferable to maintaining a separate column, as currently exists. Council therefore agreed to adopt such an approach.

As noted in the Consultation Analysis, some respondents, however, suggested in their response that the average 33% figure suggested should be reduced further to reflect the ongoing contraction in the size of this service market.

The Council in reviewing the suggestions, ultimately adopted a policy position that the standardised reduction percentage rate for certain items should be 20% rather than the average 33%. In reaching that conclusion the Council noted that as at 31 January 2025 there was a total of 134 Officers of Court holding commissions, compared to 157 as at 31 August 2019. This equated to a 15% drop in the availability of commission holders. That evidenced a fundamental contraction in the size of this important market, the nature of the profession and the business models that can be used. To respond to that contraction the Council concluded that it would therefore be appropriate to adopt a percentage reduction rate of 20%.

Rather than applying the 20% reduction rate to all 18 items the Council gave further consideration to the underlying policy relating to percentage reductions for cases of a value £1,500 or less. The reductions were seen as a method or balance to support those contemplating litigating to determine whether to progress. They supported access to justice. The Council was, however, of the view that there was a 'tipping point' in respect of the 18 items. That tipping point was where a court order is issued for enforcement (rather than service or intimation). That applied to 10 of those 18 items. Such an approach was discussed its Consultation and Analysis reports. The Council's view was that there was a necessity to shift the policy focus here. To provide 'procedural fairness' the Council therefore concluded that those items or services relating to "enforcement" of court orders should no longer receive that automatic reduction. The reduction in those items has been withdrawn.

A standard percentage reduction rate of 20% was therefore applied to the remaining 8 items. The specific items and detail of reductions as narrated in the Council's October Consultation response are produced below for ease.

Items in which a 20% reduction rate is to apply: extract from page 6 of the Consultation Response:

SERVICE PROVIDED *(Where a reduction in the amount of the fee has been applied)*	COUNT	FEE ITEM	*HISTORIC REDUCTION*	*SUGGESTED REDUCTION*	*FINALISED REDUCTION*
SERVICE OR INTIMATION OF A DOCUMENT					
- personal service - each person at a different address	1	1a(i)	*35.9%*	*33%*	*20%*
- personal service - each additional person at that address	1	1a(ii)	*38.1%*	*33%*	*20%*
- postal service	1	1b	*41.0%*	*33%*	*20%*
- postal diligence	1	1c	*39.0%*	*33%*	*20%*
INHIBITIONS					
- Inhibitions - each person at a different address	1	2a(i)	*35.4%*	*33%*	*20%*
- Inhibitions - each additional person at that address	1	2a(ii)	*35.3%*	*33%*	*20%*
- Inhibitions & service - each person at a different address	1	2b(i)	*35.3%*	*33%*	*20%*
- Inhibitions & service - each additional person at that address	1	2b(ii)	*35.3%*	*33%*	*20%*

Items in which the percentage reduction has been withdrawn are as follows (extracted from page 7 of the Consultation):

SERVICE PROVIDED *(Where a reduction in the fee had previously been applied)*	COUNT	FEE ITEM	*PREVIOUS REDUCTION*	*FINALISED REDUCTION*
ATTACHMENTS				
- service notice of entry	1	4a	*35.2%*	WITHDRAWN
- arranging attachment - but unable to execute	1	4b	*31.7%*	WITHDRAWN
MONEY ATTACHMENTS				
- arranging attachment - but unable to execute	1	6a	*31.7%*	WITHDRAWN
AUCTIONS				
- officer & witness attending - auction doesn't proceed	1	7c	*33.4%*	WITHDRAWN
EJECTIONS				
- arranging ejection	1	6a	*33.4%*	WITHDRAWN
- arranging & executing ejection	1	8b	*11.8%*	WITHDRAWN
TAKING POSSESSION OF EFFECTS				
- arranging possession	1	9a	*33.4%*	WITHDRAWN
- arranging & executing possession	1	9b	*25.9%*	WITHDRAWN
ARRESTING VEHICLES, AIRCRAFT & CARGO				
- arranging to arrest	1	12a	*33.4%*	WITHDRAWN
- arranging & executing arrestment	1	12b	*45.0%*	WITHDRAWN
TOTALS	**10**			

Surcharge percentage for remote rural areas

It is acknowledged that concerns have been raised regarding the implications of surcharges in remote rural areas. The use of surcharges (percentage fee increases) in certain circumstances, e.g. when service is occurring in remote or rural areas, is long-standing within the existing statutory fee landscape. In 2012, via SSI2011/432, a 30% fee surcharge when executing diligence (service of a document; an inhibition; and an inhibition and service of it) in a remote rural area was put in place.

Such a surcharge is recognised as a means by which the fees that can be recovered align more closely with the actual costs and logistical implications of executing in such areas.

As set out in its Consultation response, the Council's Costs and Funding Committee interpreted the absence of any specific requests for change to any of the 3 stipulated surcharges available during the Consultation process, as implying that the surcharge for remote areas was working as intended. No further review was therefore undertaken by the Council on the removal or otherwise adaption of that approach at that time. As part of its decision-making process the Council did increase the current applicable rate of 30% to 33%.

It would of course be open to the Council and other interested parties to raise the applicability of a continuing remote rural surcharge and/or applicable rate as a specific area for review.

I hope the EHRCJ Committee find this letter of assistance and look forward to providing any additional policy clarification that may be needed at the evidence session.

Yours sincerely

Danielle McLaughlin
Interim Director
Scottish Civil Justice Council Secretariat

Annex 1- Extract from page 30 of the Consultation Response

Consultation Response – on implementing a simplified table of fees

ANNEX 6 – INFLATION INDICES

The previous fees uplift (SSI 2024/21) took effect from March 2024, with that % increase covering an evaluation period up to September 2022. The consolidating instrument will adjust for the rate of inflation in the subsequent 35 month evaluation period to August 2025. For that year 3 period the published indices were:

Year	*Month*	*CPI INDEX*	*CPIH INDEX*
2022	Oct	126.2	124.3
	Nov	126.7	124.8
	Dec	127.2	125.3
2023	Jan	126.4	124.8
	Feb	127.9	126.0
	Mar	128.9	126.8
	Apr	130.4	128.3
	May	131.3	129.1
	Jun	131.5	129.4
	Jul	130.9	129.0
	Aug	131.3	129.4
	Sep	132.0	130.1
	Oct	132.0	130.2
	Nov	131.7	130.0
	Dec	132.2	130.5
2024	Jan	131.5	130.0
	Feb	132.3	130.8
	Mar	133.0	131.6
	Apr	133.5	132.2
	May	133.9	132.7
	Jun	134.1	133.0
	Jul	133.8	132.9
	Aug	134.3	133.4
	Sep	134.2	133.5
	Oct	135.0	134.3
	Nov	135.1	134.6
	Dec	136.6	135.1
2025	Jan	135.4	135.1
	Feb	136.0	135.6
	Mar	136.5	136.1
	Apr	138.2	137.7
	May	138.4	138.0
	Jun	138.9	138.4
	Jul	139.0	138.5
	Aug	139.3	138.9

These indices for CPIH and CPI are publicly available via the Office for National Statistics (ONS) at:
https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7bt/mm23
https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/l522/mm23

The % movement in those two indices over that 3 year period was:

Year	Month	CPI INDEX	CPIH INDEX
2022	Sep	123.8	122.3
2025	Aug	139.3	138.9
Multiplier		*1.125*	*1.135*
% change		*12.5%*	*13.5%*