

Equalities, Human Rights and Civil Justice Committee

21st Meeting, 2021 (Session 6), Tuesday 28 June 2022

Subordinate legislation

Note by the clerk

Purpose of the paper

1. This paper invites the Committee to consider the following negative instruments:

- [The Justice of the Peace Court Fees \(Scotland\) Order 2022 \(SSI 2022/179\)](#) – Policy Note and links to relevant impact assessments¹ are at [Annexe A](#).
- [The Sheriff Court Fees Order 2022 \(SSI 2022/181\)](#) - Policy Note and links to relevant impact assessments are at [Annexe B](#).
- [The High Court of Justiciary Fees Order 2022 \(SSI 2022/182\)](#) - Policy Note and links to relevant impact assessments are at [Annexe C](#).
- [The Sheriff Appeal Court Fees Order 2022 \(SSI 2022/183\)](#) - Policy Note and links to relevant impact assessments are at [Annexe D](#).
- [The Adults with Incapacity \(Public Guardian's Fees\) \(Scotland\) Regulations 2022 \(SSI 2022/184\)](#) - Policy Note and links to relevant impact assessments are at [Annexe E](#).
- [The Court of Session etc. Fees Order 2022 \(SSI 2022/185\)](#) - Policy Note and links to relevant impact assessments are at [Annexe F](#).

2. The instruments are a suite of six that amend court fees across the Courts and the Office of the Public Guardian to ensure that the income raised reflects the costs incurred by the Scottish Courts and Tribunal Service (SCTS).

¹ To note: the impact assessments completed for each instrument are the same or similar in nature. However, for the sake of completeness, they are linked at the end of each relevant policy note.

3. The specific fee rises in each instrument are with effect from 1 July 2022 followed by further increases of 2% on 1 April 2023 and 1 April 2024. These rises are intended to allow for a modest increase in SCTS revenue over the next three years, though it is noted that official forecasts for inflation are for much higher rates. A further review of court fees will be undertaken in 2024 with a view to changes from 1 April 2025.
4. The suite of instruments also enhances the system of fee exemptions. This means that those who require support, and in general this means those in receipt of legal aid, will not incur any court fees. In line with the Scottish Living Wage, the income that can be earned whilst still qualifying for some of the benefits related exemptions has been increased from £18,000 to £20,592. Further, an exemption from court fees has been introduced for those in receipt of the personal independence payment or adult disability payment with a gross annual income of £20,592 or less.

Procedure for negative instruments

5. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. The annulment process would require a motion to be agreed in the Chamber.
6. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
7. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
8. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
9. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book). Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.
10. Each negative instrument appears on the Equalities, Human Rights and Civil Justice Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or

to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.

11. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Recommendation

12. The Committee is invited to consider any issues which it wishes to raise on these instruments.

Delegated Powers and Law Reform Committee Consideration

13. The Delegated Powers and Law Reform Committee (DPLR) considered the instruments at its meeting on 14 June 2022. The DPLR Committee agreed that it did not need to draw the Parliament's attention to any of the instruments on any grounds within its remit. A copy of correspondence between the Committee and the Scottish Government in relation to the above six instruments, can be found at [Annexe G](#). A letter was issued to the Presiding Officer from the Minister for Community Safety on 21 June regarding a further negative instrument which has been made in order to correct errors in fee amounts noted in SSI 2022/181 (which is part of the suite of six to be considered at today's meeting). This additional letter is also included at Annexe G.

Equalities, Human Rights and Civil Justice Committee Consideration

14. The suite of above instruments was laid on 26 May 2022 and referred to the Equalities, Human Rights and Civil Justice Committee. They are all subject to negative procedure and are due to come into force on 1 July 2022.
15. **The Committee is required to report to the Parliament by 5 September 2022 on all six instruments.**

**Clerks to the Committee
June 2022**

Annexe A

SSI 2022/179

The Justice of the Peace Court Fees (Scotland) Order 2022

Policy Note

The above instrument is made in exercise of the powers conferred by section 107(1) and (2) of the Courts Reform (Scotland) Act 2014. The instrument is subject to the negative procedure.

Policy

Court fees and fees for services offered by the High Court of Justiciary, the Court of Session, Sheriff Appeal Court, sheriff courts including the Sheriff Personal Injury Court, justice of the peace courts and the Office of the Public Guardian (OPG) ensure that those who make use of the courts or the OPG meet or contribute towards the associated costs to the public purse where they can afford so to do.

The Scottish Government has long had a policy to move toward fees which more fully reflect the cost of the processes involved, with a well-targeted system of fee exemptions to protect access to justice. This Order puts into effect that policy by raising court fees to ensure that the income raised reflects the costs incurred by the Scottish Courts and Tribunals Service (SCTS) in providing the civil court system. The specific fee rises in this Order are of 2% with effect from 1 July 2022 followed by further increases of 2% on 1 April 2023 and 1 April 2024. These rises are intended to allow for a modest increase in SCTS revenue over the next three years, though it is noted that official forecasts for inflation are for much higher rates, the Bank of England forecasting in May 2022 that the inflation rate will reach 10% by the end of the year before falling back close to its 2% target over the next two years². This Order is one of a suite of 6 instruments that amend court fees across the Courts and the OPG.

The Justice of the Peace Court Fees Order 2018 (the 2018 Order) is repealed and replaced by the Justice of the Peace Court Fees Order 2022 (the 2022 Order). In addition to the 2% inflationary increases, certain updates to fees narratives have been made to ensure that they are as clear and consistent as possible. Further, this Order makes other changes to the court fee charging regime.

² <https://www.bankofengland.co.uk/monetary-policy-report/2022/may-2022>

These changes are:

- in article 4(1)(d), the gross annual income threshold for exemption for certain persons in receipt of working tax credit has been raised from £18,000 to £20,592; and
- article 4(1)(g) introduces an exemption for those in receipt of the personal independence payment or adult disability payment with a gross annual income of £20,592 or less.

The Scottish Government is committed to ensuring a well-targeted system of fee exemptions exist. This means that those who require support, and in general this means those in receipt of legal aid, will not incur any court fees. In light of the responses to the Government consultation, the suite of orders enhance the exemptions scheme by extending the qualifying criteria. The income that can be earned whilst still qualifying for some of the benefits related exemptions has been increased to £20,592, in line with the Scottish Living Wage. Further, an exemption from court fees has been introduced for those in receipt of the personal independence payment or adult disability payment with a gross annual income of £20,592 or less.

Consultation

A public consultation on these proposals was launched on 10 December 2021 which concluded on 4 March 2022³.

Fifteen responses were received and almost all stated their opposition to increasing court fees or the charging of court fees at all. Non-confidential responses have been published at https://consult.gov.scot/justice/copy-of-new-consultation-clone/template/consultation/published_select_respondent. A consultation analysis and Scottish Government response will be published on <http://www.gov.scot/publications>.

Financial effects

As the overwhelming majority of changes to fees are only to allow for 2% inflation, the fees to be increased are not expected to result in an increase in real terms in fee revenue to the SCTS, rather the opposite as official predictions are for much higher inflation rates.

It is expected that the fees will be introduced on 1 July 2022 followed by further increases on 1 April 2023 and 1 April 2024. A further review of court fees will be undertaken in 2024 with a view to changes from 1 April 2025.

³ <http://www.gov.scot/Publications/2017/10/4229/0>

Impact assessments

The following impact assessments have been undertaken and are available via the following links:

- [Equality Impact Assessment](#)
- [Business and Regulatory Impact Assessment](#)

Annexe B

SSI 2022/181

The Sheriff Court Fees Order 2022

Policy Note

The above instrument is made in exercise of the powers conferred by section 107(1) and (2) of the Courts Reform (Scotland) Act 2014. The instrument is subject to the negative procedure.

Policy

Court fees and fees for services offered by the High Court of Justiciary, the Court of Session, Sheriff Appeal Court, sheriff courts including the Sheriff Personal Injury Court, justice of the peace courts and the Office of the Public Guardian (OPG) ensure that those who make use of the courts or the OPG meet or contribute towards the associated costs to the public purse where they can afford so to do.

The Scottish Government has long had a policy to move toward fees which more fully reflect the cost of the processes involved, with a well-targeted system of fee exemptions to protect access to justice. This Order puts into effect that policy by raising court fees to ensure that the income raised reflects the costs incurred by the Scottish Courts and Tribunals Service (SCTS) in providing the civil court system. The specific fee rises in this Order are of 2% with effect from 1 July 2022 followed by further increases of 2% on 1 April 2023 and 1 April 2024. These rises are intended to allow for a modest increase in SCTS revenue over the next three years, though it is noted that official forecasts for inflation are for much higher rates, the Bank of England forecasting in May 2022 that the inflation rate will reach 10% by the end of the year before falling back close to its 2% target over the next two years⁴. This Order is one of a suite of 6 instruments that amend court fees across the Courts and the OPG.

The Sheriff Court Fees Order 2018 (the 2018 Order) is repealed and replaced by the Sheriff Court Fees Order 2022. In addition to the 2% inflationary increases, certain updates to fees narratives have been made to ensure that they are as clear and consistent as possible. Further, this Order makes other changes to the court fee charging regime. These changes are:

- article 5(3) of the 2018 Order in relation to the application for registration or renewal of registration of a club or miners' welfare institute under the Gambling Act 2005 has been removed as it is no longer competent;

⁴ <https://www.bankofengland.co.uk/monetary-policy-report/2022/may-2022>

- in article 9(1)(d), the gross annual income threshold for exemption for certain persons in receipt of working tax credit has been raised from £18,000 to £20,592;
- article 9(1)(g) introduces an exemption for those in receipt of the personal independence payment or adult disability payment with a gross annual income of £20,592 or less;
- a new a court fee is introduced at entry 13 in Part 1 of the schedules for the lodging of notice of appointment or intention to appoint an administrator out of court under the Insolvency Act 1986 and where a moratorium is sought; and
- entry 29 in part 1 of the schedules is amended to provide that the court fees are payable by any party ensuring that court fees are always paid for lodging of a written motion or minute.

The Scottish Government is committed to ensuring a well-targeted system of fee exemptions exist. This means that those who require support, and in general this means those in receipt of legal aid, will not incur any court fees. In light of the responses to the Government consultation, the suite of orders enhance the exemptions scheme by extending the qualifying criteria. The income that can be earned whilst still qualifying for some of the benefits related exemptions has been increased to £20,592, in line with the Scottish Living Wage. Further, an exemption from court fees has been introduced for those in receipt in of the personal independence payment or adult disability payment with a gross annual income of £20,592 or less.

Consultation

A public consultation on these proposals was launched on 10 December 2021 which concluded on 4 March 2022⁵

Fifteen responses were received and almost all stated their opposition to increasing court fees or the charging of court fees at all. Non-confidential responses have been published at https://consult.gov.scot/justice/copy-of-new-consultation-clone-template/consultation/published_select_respondent. A consultation analysis and Scottish Government response will be published on <http://www.gov.scot/publications>.

Financial effects

As the overwhelming majority of changes to fees are only to allow for 2% inflation, the fees to be increased are not expected to result in an increase in real terms in fee revenue to the SCTS, rather the opposite as official predictions are for much higher inflation rates.

⁵ <http://www.gov.scot/Publications/2017/10/4229/0>

It is expected that the fees will be introduced on 1 July 2022 followed by further increases on 1 April 2023 and 1 April 2024. A further review of court fees will be undertaken in 2024 with a view to changes from 1 April 2025.

Impact assessments

The following impact assessments have been undertaken and are available via the following links:

- [Equality Impact Assessment](#)
- [Business and Regulatory Impact Assessment](#)

Annexe C

SSI 2022/182

The High Court of Justiciary Fees Order 2022

Policy Note

The above instrument is made in exercise of the powers conferred by section 107(1) and (2) of the Courts Reform (Scotland) Act 2014. The instrument is subject to the negative procedure.

Policy

Court fees and fees for services offered by the High Court of Justiciary, the Court of Session, Sheriff Appeal Court, sheriff courts including the Sheriff Personal Injury Court, justice of the peace courts and the Office of the Public Guardian (OPG) ensure that those who make use of the courts or the OPG meet or contribute towards the associated costs to the public purse where they can afford so to do.

The Scottish Government has long had a policy to move toward fees which more fully reflect the cost of the processes involved, with a well-targeted system of fee exemptions to protect access to justice. This Order puts into effect that policy by raising court fees to ensure that the income raised reflects the costs incurred by the Scottish Courts and Tribunals Service (SCTS) in providing the civil court system. The specific fee rises in this Order are of 2% with effect from 1 July 2022 followed by further increases of 2% on 1 April 2023 and 1 April 2024. These rises are intended to allow for a modest increase in SCTS revenue over the next three years, though it is noted that official forecasts for inflation are for much higher rates, the Bank of England forecasting in May 2022 that the inflation rate will reach 10% by the end of the year before falling back close to its 2% target over the next two years⁶. This Order is one of a suite of 6 instruments that amend court fees across the Courts and the OPG.

The High Court of Justiciary Fees Order 2018 is repealed and replaced by High Court of Justiciary Fees Order 2022. In addition to the 2% inflationary increases, certain updates to fees narratives have been made to ensure that they are as clear and consistent as possible. Further, this Order makes other changes to the court fee charging regime. These changes are:

- in article 4(1)(d), the gross annual income threshold for exemption for certain persons in receipt of working tax credit has been raised from £18,000 to £20,592; and

⁶ <https://www.bankofengland.co.uk/monetary-policy-report/2022/may-2022>

- article 4(1)(g) introduces an exemption for those in receipt of the personal independence payment or adult disability payment with a gross income of £20,592 or less.

The Scottish Government is committed to ensuring a well-targeted system of fee exemptions exist. This means that those who require support, and in general this means those in receipt of legal aid, will not incur any court fees. In light of the responses to the Government consultation, the suite of orders enhance the exemptions scheme by extending the qualifying criteria. The income that can be earned whilst still qualifying for some of the benefits related exemptions has been increased to £20,592, in line with the Scottish Living Wage. Further, an exemption from court fees has been introduced for those in receipt in of the personal independence payment or adult disability payment with a gross income of £20,592 or less.

Consultation

A public consultation on these proposals was launched on 10 December 2021 which concluded on 4 March 2022⁷.

Fifteen responses were received and almost all stated their opposition to increasing court fees or the charging of court fees at all. Non-confidential responses have been published at https://consult.gov.scot/justice/copy-of-new-consultation-clone-template/consultation/published_select_respondent. A consultation analysis and Scottish Government response will be published on <http://www.gov.scot/publications>.

Financial effects

As the overwhelming majority of changes to fees are only to allow for 2% inflation, the fees to be increased are not expected to result in an increase in real terms in fee revenue to the SCTS, rather the opposite as official predictions are for much higher inflation rates.

It is expected that the fees will be introduced on 1 July 2022 followed by further increases on 1 April 2023 and 1 April 2024. A further review of court fees will be undertaken in 2024 with a view to changes from 1 April 2025.

Impact assessments

The following impact assessments have been undertaken and are available via the following links:

- [Equality Impact Assessment](#)
- [Business and Regulatory Impact Assessment](#)

⁷ <http://www.gov.scot/Publications/2017/10/4229/0>

Annexe D

SSI 2022/183

The Sheriff Appeal Court Fees Order 2022

Policy Note

The above instrument is made in exercise of the powers conferred by section 107(1) and (2) of the Courts Reform (Scotland) Act 2014. The instrument is subject to the negative procedure.

Policy

Court fees and fees for services offered by the High Court of Justiciary, the Court of Session, Sheriff Appeal Court, sheriff courts including the Sheriff Personal Injury Court, justice of the peace courts and the Office of the Public Guardian (OPG) ensure that those who make use of the courts or the OPG meet or contribute towards the associated costs to the public purse where they can afford so to do.

The Scottish Government has long had a policy to move toward fees which more fully reflect the cost of the processes involved, with a well-targeted system of fee exemptions to protect access to justice. This Order puts into effect that policy by raising court fees to ensure that the income raised reflects the costs incurred by the Scottish Courts and Tribunals Service (SCTS) in providing the civil court system. The specific fee rises in this Order are of 2% with effect from 1 July 2022 followed by further increases of 2% on 1 April 2023 and 1 April 2024. These rises are intended to allow for a modest increase in SCTS revenue over the next three years, though it is noted that official forecasts for inflation are for much higher rates, the Bank of England forecasting in May 2022 that the inflation rate will reach 10% by the end of the year before falling back close to its 2% target over the next two years⁸. This Order is one of a suite of 6 instruments that amend court fees across the Courts and the OPG.

The Sheriff Appeal Court Fees Order 2018 is repealed and replaced by the Sheriff Appeal Court Fees Order 2022. In addition to the small inflationary increases, certain updates to fees narratives have been made to ensure that they are as clear and consistent as possible. In addition, this Order makes other changes to the court fee charging regime. These changes are:

- in article 4(1)(d), the gross annual income threshold for exemption for certain persons in receipt of working tax credit has been raised from £18,000 to £20,592; and

⁸ <https://www.bankofengland.co.uk/monetary-policy-report/2022/may-2022>

- article 4(1)(g) introduces an exemption for those in receipt of the personal independence payment or adult disability payment with a gross annual income of £20,592 or less.

The Scottish Government is committed to ensuring a well-targeted system of fee exemptions exist. This means that those who require support, and in general this means those in receipt of legal aid, will not incur any court fees. In light of the responses to the Government consultation, the suite of orders enhance the exemptions scheme by extending the qualifying criteria. The income that can be earned whilst still qualifying for some of the benefits related exemptions has been increased to £20,592, in line with the Scottish Living Wage. Further, an exemption from court fees has been introduced for those in receipt in of the personal independence payment or adult disability payment with a gross income of £20,592 or less.

Consultation

A public consultation on these proposals was launched on 10 December 2021 which concluded on 4 March 2022⁹.

Fifteen responses were received and almost all stated their opposition to increasing court fees or the charging of court fees at all. Non-confidential responses have been published at https://consult.gov.scot/justice/copy-of-new-consultation-clone-template/consultation/published_select_respondent. A consultation analysis and Government response will be published on <http://www.gov.scot/publications>.

Financial effects

As the overwhelming majority of changes to fees are only to allow for 2% inflation, the fees to be increased are not expected to result in an increase in real terms in fee revenue to the SCTS, rather the opposite as official predictions are for much higher inflation rates.

It is expected that the fees will be introduced on 1 July 2022 followed by further increases on 1 April 2023 and 1 April 2024. A further review of court fees will be undertaken in 2024 with a view to changes from 1 April 2025.

Impact assessments

The following impact assessments have been undertaken and are available via the following links:

- [Equality Impact Assessment](#)
- [Business and Regulatory Impact Assessment](#)

⁹ <http://www.gov.scot/Publications/2017/10/4229/0>

Annexe E

SSI 2022/184

The Adults With Incapacity (Public Guardian's Fees) (Scotland) Regulations 2022

Policy Note

The above instrument is made in exercise of the powers conferred by sections 7(2) and 86(2) of the Adults with Incapacity (Scotland) Act 2000. The instrument is subject to the negative procedure.

Policy

Court fees and fees for services offered by the High Court of Justiciary, the Court of Session, Sheriff Appeal Court, sheriff courts including the Sheriff Personal Injury Court, justice of the peace courts and the Office of the Public Guardian (OPG) ensure that those who make use of the courts or the OPG meet or contribute towards the associated costs to the public purse where they can afford so to do.

The Scottish Government has long had a policy to move toward fees which more fully reflect the cost of the processes involved, with a well-targeted system of fee exemptions to protect access to justice. This instrument puts into effect that policy by raising court fees to ensure that the income raised reflects the costs incurred by the Scottish Courts and Tribunals Service (SCTS) in providing the civil court system. The specific fee rises in these regulations are of 2% with effect from 1 July 2022 followed by further increases of 2% on 1 April 2023 and 1 April 2024. These rises are intended to allow for a modest increase in SCTS revenue over the next three years, though it is noted that official forecasts for inflation are for much higher rates, the Bank of England forecasting in May 2022 that the inflation rate will reach 10% by the end of the year before falling back close to its 2% target over the next two years¹⁰. This instrument is one of a suite of six, that amend court fees across the Courts and the OPG.

The Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2018 (the 2018 Regulations) is repealed and replaced by the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2022 (the 2022 Regulations). In addition to the updating of the fees by 2% per annum, the 2022 Regulations make other

¹⁰ <https://www.bankofengland.co.uk/monetary-policy-report/2022/may-2022>

changes to the court fee charging regime as follows:

- in article 4(1)(d), the gross annual income threshold for exemption for certain persons in receipt of working tax credit has been raised from £18,000 to £20,592;
- article 4(1)(g) introduces an exemption for those in receipt of the personal independence payment or adult disability payment with a gross annual income of £20,592 or less;
- the fees entries for submission of documents relating to powers of attorney at entry 1(a), (b), and (c) of schedule 3 of the 2018 Regulations have been amalgamated in entry 1 in schedules 1 to 3 of the 2022 Regulations; and
- the fees entries 8 to 11 for the submission and provision of connected documents in the schedule of the 2018 Regulations have been amalgamated into the single entry 8 in schedules 1 to 3 of the 2022 Regulations.

The Scottish Government is committed to ensuring a well-targeted system of fee exemptions exist. This means that those who require support, and in general this means those in receipt of legal aid, will not incur any court fees. In light of the responses to the Government consultation, the suite of orders enhance the exemptions scheme by extending the qualifying criteria. The income that can be earned whilst still qualifying for some of the benefits related exemptions has been increased to £20,592, in line with the Scottish Living Wage. Further, an exemption from court fees has been introduced for those in receipt in of the personal independence payment or adult disability payment with a gross income of £20,592 or less.

Consultation

A public consultation on these proposals was launched on 10 December 2021 which concluded on 4 March 2022¹¹.

Fifteen responses were received and almost all stated their opposition to increasing court fees or the charging of court fees at all. Non-confidential responses have been published at https://consult.gov.scot/justice/copy-of-new-consultation-clone-template/consultation/published_select_respondent. A consultation analysis and Scottish Government response will be published on <http://www.gov.scot/publications>.

Financial effects

As the overwhelming majority of changes to fees are only to allow for 2% inflation, the fees to be increased are not expected to result in an increase in real terms in fee

¹¹ <http://www.gov.scot/Publications/2017/10/4229/0>

revenue to the SCTS, rather the opposite as official predictions are for much higher inflation rates.

It is expected that the fees will be introduced on 1 July 2022 followed by further increases on 1 April 2023 and 1 April 2024. A further review of court fees will be undertaken in 2024 with a view to changes from 1 April 2025.

Impact assessments

The following impact assessments have been undertaken and are available via the following links:

- [Equality Impact Assessment](#)
- [Business and Regulatory Impact Assessment](#)

Annexe F

SSI 2022/185

The Court of Session etc. Fees Order 2022

Policy Note

The above instrument is made in exercise of the powers conferred by section 107(1) and (2) of the Courts Reform (Scotland) Act 2014. The instrument is subject to the negative procedure.

Policy

Court fees and fees for services offered by the High Court of Justiciary, the Court of Session, Sheriff Appeal Court, sheriff courts including the Sheriff Personal Injury Court, justice of the peace courts and the Office of the Public Guardian (OPG) ensure that those who make use of the courts or the OPG meet or contribute towards the associated costs to the public purse where they can afford so to do.

The Scottish Government has long had a policy to move toward fees which more fully reflect the cost of the processes involved, with a well-targeted system of fee exemptions to protect access to justice. This Order puts into effect that policy by raising court fees to ensure that the income raised reflects the costs incurred by the Scottish Courts and Tribunals Service (SCTS) in providing the civil court system. The specific fee rises in this Order are of 2% with effect from 1 July 2022 followed by further increases of 2% on 1 April 2023 and 1 April 2024. These rises are intended to allow for a modest increase in SCTS revenue over the next three years, though it is noted that official forecasts for inflation are for much higher rates, the Bank of England forecasting in May 2022 that the inflation rate will reach 10% by the end of the year before falling back close to its 2% target over the next two years¹². This Order is one of a suite of 6 instruments that amend court fees across the Courts and the OPG.

The Court of Session etc. Fees Order 2018 is repealed and replaced by the Court of Session etc. Fees Order 2022. In addition to the 2% inflationary increases, certain updates to fees narratives have been made to ensure that they are as clear and consistent as possible. Further, this Order makes other changes to the court fee charging regime. These changes are:

- in article 5(1)(d), the gross annual income threshold for exemption for certain persons in receipt of working tax credit has been raised from £18,000 to £20,592;

¹² <https://www.bankofengland.co.uk/monetary-policy-report/2022/may-2022>

- article 5(1)(g) introduces an exemption for those in receipt of the personal independence payment or adult disability payment with a gross annual income of £20,592 or less; and
- article 7 introduces an exemption for environmental cases brought before the Court of Session under section 56 of the Freedom of Information (Scotland) Act 2002, or which include a challenge to a decision, act or omission on grounds subject to the provisions of Article 6 of the Aarhus Convention or on grounds it contravenes the law relating to the environment.

The Scottish Government is committed to ensuring a well-targeted system of fee exemptions exist. This means that those who require support, and in general this means those in receipt of legal aid, will not incur any court fees. In light of the responses to the Government consultation, the suite of orders enhance the exemptions scheme by extending the qualifying criteria. The income that can be earned whilst still qualifying for some of the benefits related exemptions has been increased to £20,592, in line with the Scottish Living Wage. Further, an exemption from court fees has been introduced for those in receipt in of the personal independence payment or adult disability payment with a gross annual income of £20,592 or less.

Consultation

A public consultation on these proposals was launched on 10 December 2021 which concluded on 4 March 2022¹³.

Fifteen responses were received and almost all stated their opposition to increasing court fees or the charging of court fees at all. Non-confidential responses have been published at https://consult.gov.scot/justice/copy-of-new-consultation-clone-template/consultation/published_select_respondent. A consultation analysis and Scottish Government response will be published on <http://www.gov.scot/publications>.

Financial effects

As the overwhelming majority of changes to fees are only to allow for 2% inflation, the fees to be increased are not expected to result in an increase in real terms in fee revenue to the SCTS, rather the opposite as official predictions are for much higher inflation rates.

It is expected that the fees will be introduced on 1 July 2022 followed by further increases on 1 April 2023 and 1 April 2024. A further review of court fees will be undertaken in 2024 with a view to changes from 1 April 2025.

¹³ <http://www.gov.scot/Publications/2017/10/4229/0>

Impact assessments

The following impact assessments have been undertaken and are available via the following links:

- [Equality Impact Assessment](#)
- [Business and Regulatory Impact Assessment](#)

Annexe G

Correspondence between the Delegated Powers and Law Reform Committee and the Scottish Government

SSI 2022/179 The Justice of the Peace Court Fees (Scotland) Order 2022 – regulation 4(1)(d)(i)

SSI 2022/181 The Sheriff Court Fees Order 2022 – article 9(1)(d)(i)

SSI 2022/182 The High Court of Justiciary Fees Order 2022 – article 4(1)(d)(i)

SSI 2022/183 The Sheriff Appeal Court Fees Order 2022 – article 4(1)(d)(i)

SSI 2022/184 The Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2022 – regulation 4(1)(d)(i)

SSI 2022/185 The Court of Session etc. Fees Order 2022 – article 5(1)(d)(i)

On 31 May 2022 the Scottish Government was asked:

Each instrument contains a regulation/article headed “Exemption of certain persons from fees: social security” (the provision number in each is noted above). It provides, in each case, that a fee is not payable by a person if they or their partner is in receipt of working tax credit, provided that child tax credit is being paid to the person or their partner, 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)” which includes the person or their partner.

Section 3(5A) of the 2002 Act defines “couple” in such a way that it does not include people who are in a same sex marriage or an opposite sex civil partnership.

Please explain, including with reference to Convention rights if applicable, why it is not necessary also to exempt persons who would otherwise qualify for an exemption under the provision but who are in a same sex marriage or an opposite sex civil partnership?

Please confirm whether any corrective action is proposed, and if so, what action and when.

On 7 June 2022 the Scottish Government responded:

Section 3(5A) of the Tax Credits Act 2002 has been amended by paragraph 23(2) of schedule 3 of the Civil Partnership (Opposite-sex Couples) Regulations 2019 (“the 2019 Regulations”) so that “couple” means-

- (a) two people who are married to, or civil partners of, each other and are neither—
 - (i) separated under a court order, nor
 - (ii) separated in circumstances in which the separation is likely to be permanent, or
- (b) two people who are not married to, or civil partners of, each other but are living together as if they were a married couple or civil partners.

That amendment extends to Scotland by virtue of regulation 2(4), read in conjunction with section 69 of the Tax Credits Act 2002. The footnote relating to the Tax Credits Act 2002 each of the 6 instruments will be updated by correction slip to include reference to the 2019 Regulations.

We note that the Westlaw version of section 3(5A) of the Tax Credits Act 2002 is showing an out of date version of the provision that does not include people who are in a same sex marriage or in opposite sex civil partnership.

Letter from Ash Regan, Minister for Community Safety to the Presiding Officers, 21 June 2022

The Sheriff Court Fees Amendment Order 2022

The Sheriff Court Fees Amendment Order 2022, SSI 2022/214 was made by the Scottish Ministers under section 107(1) and (2) of the Courts Reform (Scotland) Act 2014(1). The instrument is subject to negative procedure. The Order is being laid before Parliament today, 21st June and comes into force on 1 July 2022.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, this has not been complied with and to meet the requirements of section 31(3) that Act, this letter explains why.

The Order is required to correct errors in the fee amounts in the Sheriff Court Fees Order 2022 (SSI 2022/181) which were not identified by Scottish Courts and Tribunals Service (SCTS) until after the Order had been laid.

The error which has the most financial impact is in respect of the fee relating to a summons for summary cause or claim form for simple procedure case for actions of a certain value or less.

If the Order is not amended, those seeking a summons for summary cause or a claim form for a simple procedure case with a value of £200.01 to £300 will have to pay a fee of over £100 rather than £19. The £200 in this entry will be amended to £300 so that the fee does not act as a significant disincentive to bringing an action and these court users are not disadvantaged. The other errors have less financial consequences for court users but also require to be corrected. It is important that the changes made by the Sheriff Court Fees Amendment Order 2022 comes into force

at the same time as the Sheriff Court Fees Order 2022 thereby ensuring that the correct sheriff court fees apply as from the 1st July. Given the short time frame from now until the 1st July, it has not been possible to meet the 28 day requirement on this occasion.

I am copying this letter to Joe FitzPatrick, Convener of the Equalities, Human Rights and Civil Justice Committee and Stuart McMillan, Convener of the Delegated Powers and Law Reform Committee.

Ash Regan

cc. Joe FitzPatrick, Convener of the Equalities, Human Rights and Civil Justice Committee

Stuart McMillan, Convener of the Delegated Powers and Law Reform Committee