

# **Scottish Court Fees 2018-2021**

## **Analysis of Consultation and Scottish Government Response**

**February 2018**



**Scottish Government**  
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## 'SCOTTISH COURT FEES 2018-2021 – ANALYSIS OF CONSULTATION AND SCOTTISH GOVERNMENT RESPONSE

1. The Scottish Government would like to thank all individuals and organisations who took the time to consider and respond to the proposals contained in the consultation paper on Court Fees.

### **Background to Consultation**

2. The consultation on '*Scottish Court Fees 2018-2021*', was published on 20 October 2017 and asked six questions on which views were specifically sought. The 12 week consultation period ended on 12 January 2018.

### **Proposals**

3. The consultation sought views on the proposals for changes to the level of fees charged by the Scottish courts with the intention of obtaining the views of the general public and court users before the finalisation of the fee instruments, which will be laid in February 2018.
4. Those fees instruments relate to the fees for the three year period from 25 April 2018 to 31 March 2021 to be charged by the Court of Session, High Court of Justiciary, Sheriff Appeal Court, Sheriff Courts including Sheriff Personal Injury Court, Justice of the Peace Courts and Office of the Public Guardian.
5. The main proposal in the consultation paper was that court fees should be increased by around 2.3% in year one, followed by 2% rises in years 2 & 3 in order to reflect inflationary pressures.
6. In addition to inflationary increases, some relatively minor amendments to existing fee narratives were proposed to ensure consistency and to simplify the fees in order to meet our objective of making fees easier to understand and administer.
7. A new permission fee was also proposed for applications to appeal against a decision of the Sheriff Appeal Court. drawing upon the experience of over two years operation of the new Court.
8. Overall the proposals reflected the Scottish Government's commitment to ensuring that the courts are funded to deliver a justice system that is affordable and which provides a high-quality service to those who have cause to use it. It is also committed to ensuring that access to justice is protected through a well-funded system of exemptions and legal aid. The proposals were also informed by the Scottish Government's consideration of the Supreme Court judgment on fees charged in the Employment Tribunal (*Unison v Lord Chancellor* [2017] UKSC 51), as well as wider developments such as the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill currently before Parliament, which is aimed at increasing the funding options for pursuers of civil actions and introducing a greater level of equality to the funding relationship between pursuers and defenders in personal injury actions

## Consultees

9. The consultation paper was published on the Scottish Government website and circulated to a number of organisations that are directly involved with the legal process such as legal professionals, organisations in the justice system and the judiciary as well as organisations with an interest in consumer legal issues.
10. Interested parties were afforded the opportunity to feed back their opinions by downloading the consultation paper from the Scottish Government website or responding online through the Scottish Government consultation hub, Citizen Space.
11. Consultation exercises like this are not numerically representative; rather they aim to elicit the views and experiences of a range of stakeholders. Owing to the quantity and relatively narrow range of respondent types, it is considered that it would not be appropriate to present the results in percentage form. The small number of responses is thought to be indicative of the specialised nature of the consultation.

## Overview of Responses

12. A total of 22 responses were received from organisations and individuals.
13. Where respondents gave permission, their responses have been published on the Scottish Government website.
14. Not all of the respondents answered all of the questions set out in the consultation questionnaire. Some respondents commented on matters that were only indirectly relevant to the consultation. Those comments have also been summarised where appropriate.
15. A table detailing the category of respondents and the number of responses received is provided below:

<b>Category</b>	<b>Number of responses received</b>
<b>Individuals</b>	6
<b>Legal organisations (including legal firms)</b>	12
<b>Insurers / insurance organisations</b>	1
<b>Campaigning organisations/NDPB</b>	3

## Findings

16. This report includes a summary of the responses for the Scottish Government Consultation. Individual responses are not repeated verbatim in the report. We have set out the questions posed in the consultation questionnaire and have provided examples of comments from respondents.

## Conclusion

17. Having fully considered the views of those who responded to the consultation, the Scottish Government has decided to implement the increases to court fees proposed in the consultation to allow for expected inflation as well as the more minor adjustments proposed. In addition the Scottish Government has listened to the consultation responses and taken forward some suggestions put forward. These are discussed in more detail in the *Next Steps* section below. The next review of court fees is scheduled to take place in 2020 with a view to further changes in 2021. In the meantime, the Scottish Government will continue to monitor the impact of changes to court fees and wider courts reform, as well as other developments such as the continued roll-out of Universal credit.

## Responses to questions

### Question 1

**Do you agree that court fees should have a general uplift of 2.3% on 1 April 2018 followed by 2% rises in the subsequent 2 years?**

18. Many respondents were clear that they did not approve of court fees *per se*, expressing the view that court fees act as a barrier to justice. These respondents felt that the burden of maintaining the civil courts should fall upon the taxpayer either entirely or to a significant degree
19. Some respondents identified the position of those of limited means (but above the level of income that would qualify for exemption) as a source of concern. Article 6 of European Convention on Human Rights which protects a right to a fair hearing was referenced in this regard as was the decision of the Supreme Court regarding Employment Tribunal Fees in *Unison v Lord Chancellor*.
20. One respondent drew an analogy with other services such as healthcare provision which is free at the point of need, suggesting that access to justice should be similarly treated. Some respondents, drawing from the Supreme Court judgement, stressed that the benefits of court judgements are felt by society at large and not just the participants in the particular case.
21. A respondent to the consultation highlighted the special position of those bringing environmental cases and the relevance in this regard of the Aarhus Convention (The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters). The Convention, of which the UK is a signatory, requires that access to justice in environmental cases is not prohibitively expensive. This respondent pointed out that court fees needed to be considered as part of the overall expense of legal action.

22. One respondent, largely supportive of the current system of fee charging, commented in reference to *Unison v Lord Chancellor*,

‘The Employment Tribunal fees considered by the Supreme Court were higher than those currently charged in Scottish civil claims and very often came close to or equalled the sum in dispute. That was particularly problematic when considered alongside the fact that expenses are only very rarely awarded by the Employment Tribunal and therefore the majority of successful claimants will not have the fees refunded by the defender at the conclusion of the claim. Furthermore, as set out in the Unison Judgment, the rate of recovery of damages for successful claimants was low and less than 50% of claimants recovered all of any sum awarded..... We do not support the contention that the current system impedes access to justice.....’

### **Question 2**

**Do you have any comments on the variations from the general uplift detailed in section 2?**

23. Some respondents considered that the complete removal of an exemption for the first 30 minutes of a hearing in the Sheriff Appeal Court was not justified or proportionate. One respondent noted that there has been a significant shift in business from the Court of Session to the Sheriff Court as a consequence of Courts Reform (Scotland) Act 2014 and believed that short hearings (lasting less than 30 minutes) in the Sheriff Appeal Court ought to continue to be exempt from fee charging. That respondent considered that it would be more appropriate to modify the wording of the exemption than to remove it.
24. Other respondents were opposed to a new fee for permission to appeal from the Sheriff Appeal Court, feeling that the fee would act as a deterrent to meritorious onward appeals to the Inner House of the Court of Session. One respondent similarly felt that the proposed fee in the Election Court would act as a deterrent to cases being heard in that forum (and that such were potentially of vital public interest).

### **Question 3**

**Do you have any comment on the changes to fee narratives detailed in section 2?**

25. Respondents almost universally did not specifically address this question and instead referred to comments given under other questions.
26. A small number of respondents did support the point made about short hearings in the Sheriff Appeal Court (covered at paragraph 21 above), holding that it would be unreasonable to charge a full day hearing fee for a short hearing.

#### **Question 4**

##### **Do you have any other comments on the paper or on the future direction of court fees?**

27. Respondents generally used this question to restate the principled opposition to court fees articulated in answer to question 1. For example, respondents put forward the view that the future direction of court fees should be a reduction in fees paid by court users and a move to a fully publically funded civil justice system, to reflect its nature as a public service and improve access to justice. One respondent did put forward the view that that fees should be maintained at current levels as there had been a recent change to fee levels and there were a number of other changes to the system, citing the possible introduction of Qualified One Way Cost Shifting; the digitalisation of the courts via the Integrated Case Management System (ICMS); the roll-out of Simple Procedure to personal injury claims; and the possible roll-out of further compulsory pre-action protocols.

28. One respondent commented,

‘In relation to OPG [Office of Public Guardian] fees, consideration should also be given to the savings made to public funds as a result of taking measures through the OPG (which trigger these fees). This is particularly so in relation to fees for powers of attorney. Encouraging use of powers of attorney has positive knock on effects generating savings for legal aid, health and social work authorities, in particular by avoiding the costs and disadvantages of delayed discharge from hospital and requirements for guardianship applications upon subsequent incapacity.’

29. Another respondent was opposed to any fee increases on fees likely to be faced by victims of domestic violence, stating opposition to

‘any attempt to put further obstacles in the way of women, children and young people experiencing domestic abuse who are seeking access to justice.’

30. Some respondents challenged the current model of charging fees on a “pay-as-you-go” basis. They preferred a model that involved fees being charged at the end of a case and paid only by the unsuccessful party. This model has been suggested as being of assistance to the cash flow of the claims management companies and trade unions that bring forward claims of behalf of individuals.

#### **Question 5**

##### **Are any of the proposals likely to have a disproportionate effect on people or communities who face discrimination or social exclusion due to personal characteristics? If so, please specify the possible impact?**

31. Most respondents did not specifically address this question.

32. Those respondents who answered this question used it to make general points such as expressing concern that those with protected characteristics, who did not qualify for legal aid or exemption would find court fees difficult to pay.

33. One respondent was concerned about,

‘any measure which may deter access to justice in general, and specifically in relation to the novel, complex and often untested cases raising equality and human rights arguments. The appeal courts play a vital role in developing this jurisprudence.’

34. Another response highlighted fees in the OPG, noting that,

‘Fees for the OPG generally arise not because of any choice to initiate or contest proceedings, but because of the fact that someone suffers, or may in future suffer, from an intellectual disability.’

### **Question 6**

#### **Do you have any views on the operation of the fee exemptions system?**

35. One responder identified a lack of support in relation to fees if the pursuer resides outside of the UK and does not therefore qualify for UK benefits. Another responder suggested that there were particular issues in relation to personal injury cases, citing ‘a shift away from Legal Aid in personal injury cases over the last two decades and fewer and fewer people are entitled to claim the state benefits which provide a passport to exemption.’

36. One responder used this question to identify the proposal to abolish the exemption from fees for the first 30 minutes at the Sheriff Appeal Court as a source of concern, indicating that it could be disproportionate to charge a daily fee for a short hearing.

37. Some responders referred again to the Supreme Court judgement and held that because the exemption scheme targets those on low income, those on higher, but still modest, incomes are unfairly impacted by court fees.

## Scottish Government Response

### Summary

38. The Scottish Government welcomes the responses to the consultation. Having carefully considered the variety of views expressed the Government has determined to press ahead with the principal changes outlined in the consultation. That is, the overwhelming majority of fees will increase but with that increase limited to the level of CPI inflation as predicted by the Office of Budget Responsibility.

39. The Scottish Government has listened to the views expressed in the consultation and in the wider debate about court fees. We have also taken account of other developments such as the decision of the Supreme Court in relation to fees in the Employment Tribunals.

40. We have therefore made a variety of amendments to our original proposals that seek to address the concerns that exist about whether access to Justice has been adequately protected. To that end we have:

- Extended the system of exemptions to encompass those who are in receipt of emergency welfare funds
- Raised the level of income that can be earned whilst still qualifying for court fee exemption via the benefit related exemptions to £18k – in line with the Scottish Living wage.
- Provided assistance to those seeking civil protective orders as a result of being a victim of domestic abuse by exempting certain orders from fees.
- Made taking court action for debts of £200 to £300 more attractive by reducing the fee for claims of that level by 80% (with effect from 1 April 2019).

41. Whilst we are confident that the court fees regime already represents an appropriate charging structure, we believe that the package of proposals outlined will strengthen that structure and improve access to justice.

42. The details of the proposals and further explanation of the Scottish Government's position is provided below.

### *Charging in Civil Courts*

43. Many respondents queried the principled basis for charging court fees, feeling that the courts should provide a fully funded public service, supported by the taxpayer and free to the user. These respondents generally referenced the Supreme Court judgement in *Unison* regarding fees in the Employment Tribunal as supporting of the proposition that increased court fees imperilled access to justice.

44. The Scottish Government does not propose to abolish court fees such that the costs of funding the courts would fall entirely on the taxpayer.

45. There are a number of policy arguments both for and against charging fees in the civil courts and any government does need to take a balanced policy approach. Good policy reasons not to charge can and do arise where public services deliver a “public good”. Clearly, these types of benefit to wider society do arise with the courts.
46. The civil courts exist for people to protect and enforce their personal rights, so it can be argued, as many respondents did, that it is inappropriate to charge for the privilege of exercising those rights. The resolution of some individual cases can also potentially contribute to the clarification of the civil law and the building of case law precedent.
47. The Government accepts that society will benefit from both those outcomes but we do not believe that they alone provide a sufficient justification for the government to completely rule out charging.
48. In addition to any “public good”, both the pursuer and the defender in each individual case will derive a “private good” from settling their dispute and the government is resolved that some form of financial contribution from end users can be justified given that a private benefit is derived. The public purse is not unlimited and taxpayers do expect their governments to make choices on their behalf between all of the competing demands on the public purse.
49. When making those choices in Scotland, the Scottish Government has chosen to fully fund the criminal courts but as there is a need to limit the demands on the public purse we will continue to look to the users of the civil courts to help fund those particular public services i.e. an affordable “user pays” model, with appropriate exemptions and legal aid available to those eligible, is considered appropriate for the civil courts Scotland.
50. The policy decisions taken by the Scottish Government, through the statutory fee charging regime, do result in a balanced approach. The end user is only asked to make a reasonable contribution towards the cost of running the civil courts (where they can afford to do so). The taxpayer will fund the remainder through:
  - a. Some costs are met through the fee exemptions regime (where the end user does not have the means to pay fees themselves); and
  - b. Some costs are treated as a subsidy in order to maintain affordability for the end user i.e. the costs that if charged might have created unreasonable barriers in access to justice.
  - c. On top of the fee exemptions regime there is a generous system of civil legal aid, that ensures that litigants who need help not only do not have to pay fees, but also receive assistance with paying for legal advice, assistance and representation.
51. The Scottish Government has also taken note of the wider context. Whilst recognising that not all meritorious cases succeed, many litigants bringing forward strong cases will have their court fees paid by the opposing party

following success. Other litigants will not face paying a fee as their claims are supported by no-win, no-fee specialists. For most litigants the court fee is only a small portion of the cost of litigation and the cost of legal advice is a far greater consideration. These considerations, taken alongside the exemptions regime, mean that it is hard to discern many situations where the court fee is a serious deterrent to proceeding with legal action.

### *Supreme Court Judgement*

52. As was pointed out in the consultation document, the Supreme Court judgement did not challenge the legitimacy of charging fees *per se*. The Court specifically commented, ‘Fees paid by litigants can, in principle, reasonably be considered to be a justifiable way of making resources available for the justice system and so securing access to justice.’ The test is, in essence, do the fees effectively prevent access to justice. The Scottish Government has seen no compelling evidence that it does.
53. As with all judgments the Supreme Court judgment applies directly to the particular facts and circumstances of that case. However, those circumstances were extreme. The costs of taking a case to the employment tribunal were raised from zero to a four figure sum in some cases. The demonstrable drop of 70% in claims being brought to the tribunal after the fee increases appeared to be directly attributable to the increases.
54. In considering the Supreme Court judgment, it is clear that very different circumstances apply in respect of court fees in Scotland:
- There has been a long history of charging fees in the Scottish Courts and it is not a situation of moving from zero fees to a very large fee.
  - There has been no evidence that charging fees (even the increases introduced in November 2016) have resulted in a substantial drop in cases.
  - There is a generous system of legal aid and exemptions in place, with the specific objective of increasing access to justice.
  - The context of actions in the courts is very different. Whilst employment tribunal cases are often of limited monetary value, the courts deal with a greater variety of private law actions in terms of value and have a specific system of lower fees for low value cases. In very many cases, the fee is a small proportion of the value of the action.

### *Cost recovery*

55. Many respondents highlighted the policy of ‘full-cost recovery’ and suggested that it is incompatible with the decision of the Supreme Court (despite the statement highlighted in paragraph 48 above). The Scottish Government is pleased to clarify its policy in this regard.
56. The Scottish Government’s consultation referred to the long-standing policy of full-cost recovery, observing that this has been the policy of successive Governments. While the term ‘full cost recovery’ has been used for some time, it

should be remembered that it is only a convenient shorthand description for a complex policy which includes elements of public subsidy for civil court costs in order to enhance access to justice, including extensive provision of legal aid and a comprehensive scheme of exemptions. Whilst it is desirable that a greater portion of the costs of the civil justice system be recovered from those who use the courts, that is entirely subordinate to the necessity that unreasonable barriers to the courts and access to justice are not erected.

57. To that end, 'full-cost recovery' has been an objective to recover the costs of the civil justice system that remain *after* very substantial support has been given to the system through legal aid and the court fee exemptions. In 2016-17 total net civil legal assistance expenditure amounted to £41m. In addition, as part of a planned subsidy to the civil courts, the taxpayer supports the fee exemption scheme (which amounted to £2.6m in 2016-17).

*Individuals with sufficient means (who do not qualify for legal aid or exemptions)*

58. Self-evidently, the clearest source of concern would be with regard to individuals who have sufficient earnings to mean that they do not qualify for either legal aid or court fee exemption. The Scottish Government has seen no evidence that court fees cannot reasonably be afforded by people in that position.

59. In contrast with the situation in the Employment Tribunal where litigants normally only have a short window of three months to bring a claim, in the courts cases can generally (with some exceptions such as judicial review) be brought for a number of years. This diminishes the argument that claimants can only afford court fees by unreasonably foregoing day-to-day expenditure. In addition, in some cases (personal injury), litigants may benefit from the support of no-win, no-fee arrangements which enable them to take forward actions.

60. Personal injury litigants may also be able to benefit from the introduction of the proposals before Parliament in the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill. The key objective of the Bill is to increase access to justice through creating a more accessible, affordable and equitable civil justice system, by:

- making the costs of court action more predictable;
- increasing the funding options for pursuers of civil actions; and
- introducing a greater level of equality to the funding relationship between claimants and defenders in personal injury actions.

Under the Bill, a client will pay nothing up front to the cost of a personal injury case under a success fee agreement, which is a no win, no fee agreement. The provider of the success fee agreement (who could be either a solicitor or a claims management company) will be liable for the outlays incurred in providing the service. The provider will be entitled to the success fee under the agreement if the case is won (which will be the subject of a cap under regulations to be made by Scottish Ministers) and any expenses recovered from the opponent. Success fee agreements are said to be popular with clients since they are simple to

understand, make the cost of the litigation more predictable and mean that the client does not have to pay anything until the case is concluded.

Further, group procedure will be a class action procedure for Scotland in terms of which a group of affected persons can bring a single claim instead of multiple individual claims each incurring separate fees.

#### *“Pay As You Go” Charging Model*

61. As noted above, some respondents challenged the current model of charging fees on a pay-as-you-go basis. They preferred a model that involved fees being charged at the end of a case and paid only by the unsuccessful party. This model has been suggested as being of assistance to the cash flow of the claims management companies and trade unions that bring forward claims of behalf of individuals.
62. The Scottish Government does not support this proposal and supports instead the current “pay as you go” model in order to promote the following outcomes:
  - i. To encourage people to resolve their disputes outside the courts
  - ii. To encourage settlement
  - iii. To ensure people value the resources of the court and use those resources wisely
  - iv. To reinforce consideration of the risks and benefits of continuing with a case
  - v. To discourage unreasonable behaviour
  - vi. To deter weak or vexatious claims
63. Using a “pay as you go” model actively supports those outcomes specifically because fees are charged in small increments as cases progress through each of the key “steps in legal process” - the effect is to make the parties at least pause to consider whether it is sensible to incur the costs of taking an action to the next stage.
64. Ultimately, under either a “pay as you go” model, or a “bill at the end of the case” model, the losing party will normally pay the fees of both parties and the winner will be reimbursed or not billed. Whilst the different models effect the timing, they do not change that eventual outcome.
65. What does change is that billing at the end of the case, does place a burden on the taxpayer to seek to recover debts and inevitably to a measure of loss through irrecoverable debt. It is also a factor that it is of some value that litigants have to consider the prospect of whether they will be able to recover their expenses from an opposing party at the end of litigation rather than leaving that risk to the taxpayer.
66. The Scottish Government remains of the view that the paying of fees on behalf of the litigant is not an unreasonable burden to place on either trade unions or legal firms that choose to do so.

### *Additional Matters raised*

67. A number of other specific suggestions were identified during the consultation.

#### *Domestic Abuse*

68. As noted above, one respondent highlighted the position of victims of domestic abuse who find that they need to turn to the courts for civil protective orders. The Scottish Government is persuaded that provision for people who find themselves in this position is necessary, not least because the circumstances may involve situations in which a victim of abuse is unable to readily access their own funds. Therefore, the Scottish Government proposes to exclude certain orders and interdicts from court fees. The Scottish Government accepts that this is only a first step and that there will need to be further work done with stakeholders to ensure that fee exemption is available for appropriate cases and to ensure that court systems are able to correctly process these exemptions.

#### *OPG Fees*

69. The Scottish Government has listened to what has been said about fees for powers of attorney. Whilst encouraging people to seek powers of attorney is important, it is also important that the costs of applications are met and that the courts are funded. The Scottish Government does not believe that current fee levels act as a significant barrier to the uptake of Powers of Attorney in Scotland. The Scottish Government will monitor the situation as it considers the future direction of fees.

#### *Exemptions*

70. As has been noted, the Scottish Government views the court fees exemptions as being absolutely fundamental to protecting access to justice. It is therefore committed to ensuring that the system is as robust as possible in ensuring that the most vulnerable members of society are protected.

71. The Scottish Government notes that there could be cases where an individual of limited means who would be financially eligible for civil legal aid or UK benefits is not in receipt of these at the relevant time, for example because they are waiting for an eligibility assessment to be completed. Such an individual experiencing hardship may make an application to the Scottish Welfare Fund<sup>1</sup> which provides a safety net in a disaster or emergency.

72. Having considered the points made in the consultation responses, the Scottish Government proposes the following changes to the exemptions regime to further enhance the protection afforded:

- An increase to £18,000 in the income cut-off for the benefit related exemptions.

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<sup>1</sup> <https://beta.gov.scot/policies/social-security/income-related-benefits/>

- An addition to the qualifying criteria of the exemptions to encompass those in receipt of emergency funds under the Welfare Reform (Scotland) Act 2015.

73. Taken together these reforms increase the coverage of the exemption scheme, reduce the chances of vulnerable people not qualifying for any exemption and thereby increase access to justice.

#### *Sheriff Appeal Court Fees*

74. Some respondents raised the new permission to appeal from the Sheriff Appeal Court fee as a source of concern. The Scottish Government has listened to these concerns. The fee proposed in the Public Consultation was £246, and that was simply benchmarked against 80% of the permission fee charged in the Court of Session (on the basis of aiming for “full cost recovery”). Reducing the number of unmeritorious appeals is by far the more important policy outcome and it could reasonably be argued that a lower fee amount would still achieve that. We therefore propose that the fee be benchmarked against the same price point as a 1<sup>st</sup> appeal to the SAC which therefore results in a lower fee of £116.

75. Other responders challenged the ending of the practice of hearings of under thirty minutes in the Sheriff Appeal Court being free. In practice the explicit references to rules of court in the fees narratives mean that the Court can only charge for substantive hearings. The court will not charge for *procedural hearings* irrespective of whether they take less than 30 minutes or not. The key point is that an (uncharged) *procedural hearing* would already have taken place only 2 to 3 weeks prior to the *substantive hearing* at which the parties would have still decided on proceeding. Their relevant papers with legal arguments will have been lodged and the issues at hand in the appeal will have been considered at some length by the judiciary prior to the substantive hearing even commencing. On the basis that the Appeal Sheriffs will have completed significant preparatory work, at the requirement of the parties, then it is appropriate that those parties do make a financial contribution towards those costs – the actual duration of the *substantive hearing* is not determinative as the majority of the judicial resources will already have been expended before the oral arguments even start on the day the appeal is heard. We remain of the view that we should proceed with removal of the 30 minute rule as it is entirely inconsistent with the working practices of the court.

#### *Low Value Claims*

76. The Scottish Government has noted the comments of the Supreme Court in *Unison v Lord Chancellor* in relation to low value claims. The court noted that access to justice could be prevented if the fees render the bringing of a claim ‘futile or irrational’ This can be the case if the court fee is such a high percentage of the value of the claim that the claim will not sensibly be brought. To that end, a low fee of £20 has been set for claims under £200. The Scottish Government now proposes to increase that level to claims under £300. This change would come into effect on 1 April 2019 to allow time for a change to be made to the rules for claiming expenses under Simple

Procedure (the Sheriff Court Simple Procedure (Limits on Award of Expenses) Order 2016) so that the figure of £300 would apply there also.

### *Initiation fees*

77. The Scottish Government has in response to the consultation made amendments aimed at enhancing the protections for the most vulnerable and ensuring that access to justice is maintained. In doing so, we also wish to ensure that the burden upon the taxpayer is not increased. Therefore small increases, over and above the planned inflation increases, will be implemented in respect of the initiation fees paid for lodging cases under ordinary cause. These changes amount to an additional £4 being added to initiation fees under ordinary cause actions over and above the proposed inflation increases.

### **Conclusion**

78. Having considered the consultation responses fully, the Scottish Government intends to increase fees generally to allow for the predicted inflation figures outlined in the consultation document.

79. Additionally the Scottish Government will create the new fees and make the changes to fee narratives that were described in the consultation apart from minor changes to terminology arising from issues that have emerged during the consultation. These will be fully described in the Policy Note for each fees instrument.

80. Having listened to the consultation responses and considered further the Scottish Government has made the following changes to the consultation proposals:

- Enhancements to the means-related exemptions
- Special provision for victims of domestic abuse (irrespective of means)
- A reduction to the permission to appeal fee
- Small increase in initiation fees (except in the case of simple procedure where a reduction is proposed from April 2019)

81. The fees in these Orders are expected to run until 31 March 2021. A further consultation to consider further changes at that point will be expected in 2020. In addition, in the interim, the Scottish Government will monitor the following factors to see if they require changes to the fees regime:

- The continued roll-out of Universal Credit
- The impact of other legislation such as the Civil Litigation (Expenses and Group Procedure) Bill currently before Parliament which contains proposals in relation to group proceedings and auditors of court.
- The impact of wider court reforms such as the completion of the introduction of simple procedure (with associated abolition of summary cause procedure) and changes to court rules



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