

# **Scottish Court Fees 2022-2025**

**Court of Session  
High Court of Justiciary  
Sheriff Appeal Court  
Sheriff Courts  
(including Sheriff Personal Injury Court)  
Justice of the Peace Courts  
Office of the Public Guardian**

**A consultation**

**Closing date: 4 March 2022**

## Acronyms and abbreviations

CPI	Consumer Price Index
EU	European Union (EU)
JP court	Justice of the peace court
MPC	The Bank of England Monetary Policy Committee
OBR	Office for Budget Responsibility
Party litigant	A person representing themselves in court
PIP	Personal Independence Payment
QOCS	Qualified one-way cost shifting
RPI	Retail Price Index
SCTS	The Scottish Courts and Tribunals Service
UNECE	United Nations Economic Commission for Europe
1986 Act	Insolvency Act 1986
2018 Act	Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018
2020 Act	Corporate Insolvency and Governance Act 2020

## Section 1: Background and proposals

### Background to this consultation

1. The Scottish Government, in consultation with the Scottish Courts and Tribunals Service (SCTS), usually undertakes a review of the court fees raised in the majority of Scotland's courts every 3 years and, as a result, new court fees are set for the following 3 years. The courts involved in such reviews are the High Court of Justiciary, the Court of Session, the Sheriff Appeal Court, the Sheriff Court including the Sheriff Personal Injury Court, the Justice of the Peace Court and the Office of the Public Guardian.
2. Following the previous review in October 2017, when new court fees were set for the period 2018 - 2021, there should have been a fee review in 2020. This was postponed owing to the pandemic. As the Scottish Government is now in a position to consider the level of court fees, this consultation sets out the proposed fees for a three-year cycle commencing April 2022.
3. The Scottish Government considers that consultation on the proposed changes to court fees and the level of fees set is important. We will take consultation responses into consideration when drawing up the Scottish Statutory Instruments that will provide for court fees in the financial years from 2022 to 2025.
4. The Scottish Government is committed to ensuring that the Scottish 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 the court system.
5. It is also committed to continuing to ensure that access to justice<sup>1</sup> is protected through a well-funded system of exemptions from the requirement to pay court fees and the provision of legal aid.
6. Despite significant financial pressures, the legal aid system in Scotland maintains a wide scope of access to legal aid for both criminal and civil cases. Legal aid in Scotland is a demand-led system and all those who are entitled will receive it.
7. The Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 ("the 2018 Act") increases access to justice by making the costs of civil action more predictable and by increasing the funding options for pursuers of civil actions. Part 1 of the 2018 Act has now been implemented and imposes caps on the amount service providers can charge in success fee agreements. Further, the provisions implemented also provide greater availability of "no win, no fee" success fee agreements as solicitors are now able to enter into damages based agreements.

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<sup>1</sup> Cf. the UK Supreme Court Judgment in *Unison v Lord Chancellor* [2017] UKSC 51 which concluded, that although the particular fees charged to access Employment Tribunals in that case were an unlawful barrier to access to justice, that fees were in principle a permissible method of funding and operating the system of courts and tribunals.

8. When fully implemented, the 2018 Act will also protect pursuers from the risk of having to pay their opponents' costs in personal injury cases if the case is lost, provided they have acted properly.

9. Beyond this overriding objective of ensuring access to justice, the Scottish Government believes that those who make use of the services of the courts should meet, or contribute towards, the associated cost to the public purse where they can afford so to do, thus reducing the burden upon the taxpayer.

10. The responsibility for setting court fees is a matter that lies with the Scottish Ministers and is put into effect by statutory instruments laid before the Scottish Parliament. As these instruments establish statutory fee-charging regimes, which the Scottish Courts and Tribunals Service (SCTS) administer, the Scottish Government works closely with SCTS on its fees policy. The current statutory instruments (to be referred to collectively as "the court fee Orders") are as follows:

- The Court of Session etc. Fees Order 2018
- The High Court of Justiciary Fees Order 2018
- The Sheriff Appeal Court Fees Order 2018
- The Sheriff Court Fees Order 2018
- The Justice of the Peace Court Fees (Scotland) Order 2018
- The Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2018

11. In each of these instruments, schedule 3 remains in force as no court fee Orders were made in 2020. The instruments can be found on the website of the SCTS at <https://www.scotcourts.gov.uk/taking-action/court-fees>.

## **Overview of the consultation proposals**

12. The purpose of this consultation is to seek views on proposals to revise court fees in Scotland so that the fees raised in our courts continue to contribute appropriately to the cost of the business undertaken in those courts. We are also seeking views on a range of potential changes to Scottish court fees, including:

- a 2% annual increase to court fees in each April of 2022, 2023, and 2024;
- exemptions in certain circumstances from the need to pay court fees;
- whether environmental cases within the meaning of the Aarhus Convention should be exempt;
- group proceedings changes;
- expansion of the types of motions to which court fees will apply;
- new court fees for insolvency matters and annoying creature applications;
- reduction in court fees for some family actions in the Court of Session;

- amalgamation of fee narratives resulting in some court fees changes; and
- various minor amendments to shorten court fee tables following anomalies identified by SCTS in the court fee system.

Comments on all aspects of this consultation are invited from interested parties and a full list of questions is set out at the end of this consultation paper.

13. The Scottish Government considers it vital that the extensive system of exemptions is maintained and special consideration is given to the parts of the court system that might give rise to particular concerns about access to justice for vulnerable people.

## Section 2: Consultation – substantive proposals

14. In this section, we discuss:

- increases which the Scottish Government considers should be applied to court fees during the three-year cycle 2022 to 2025 and the reasons why it considers these increases to be appropriate;
- exemptions from court fees;
- fees relating to some environmental cases; and
- fees for the newly introduced group proceedings.

### Increase in Court Fees - Adjusting for inflation

15. Court fees in Scotland have generally been reviewed by Scottish Ministers every three years. The last full round was implemented in 2018.

16. The COVID-19 pandemic has resulted in extraordinary measures being taken by the Scottish Government and by SCTS. During the lock-down periods, some sheriff courts were temporarily closed and business transferred to ten hub courts with non-essential civil court business being delayed. However, SCTS has re-opened these sheriff courts and has resumed as much civil business as possible within the current Covid restrictions and guidelines. As the courts recover from the pandemic measures, they may look somewhat different from how they did previously and a greater reliance on technology in conducting court business may be expected to continue. The Scottish Government has recently consulted on proposals for public services and justice system reform, and proposals to respond to the impact of Covid in the justice system specifically, where backlogs have unavoidably built up. That consultation sought views on the 3 civil business related provisions included in temporary Covid legislation which have not already been made permanent. The provisions allow for the online publication of certain court documents; electronic transmission of documents and measures to allow people to attend court by electronic means such as video conferencing.<sup>2</sup>

17. Given the difficulties experienced by SCTS and court users during the last 18 months, the Scottish Government concluded that it would be inappropriate to conduct the normal three-year cycle court fees review. This has resulted in there being no increase in court fees in the financial year 2021-2 with schedule 3 of each of the court fees Orders continuing to apply during this period.

18. However, the Scottish Government considers that as fees were not raised in 2021, it is now necessary to resume the three-year cycle and introduce statutory instruments into the Scottish Parliament to provide for court fees covering the financial years 2022-2025. In this consultation, it is proposing that these will be court fee Orders that, in the main, will only provide for increases in line with inflation.

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<sup>2</sup> This consultation can be viewed at: <https://consult.gov.scot/constitution-and-cabinet/covid-recovery/>.

19. The Office for Budget Responsibility (OBR) inflation forecasts for 2022 are set out in the following table. It also shows the OBR Retail Price Index (RPI) and Consumer Price Index (CPI) forecasts as at October 2021.

<b>November</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
<b>RPI</b>	3.6	5	3.4	2.8
<b>CPI</b>	2.3	4	2.6	2.1

20. The rate of inflation appears to be rising more quickly than was expected earlier this year with the Office for National Statistics CPI inflation figure for August 2021 being 3%, up from 2.1% in July 2021. The target set for inflation by the UK Government is 2%. The Bank of England's Monetary Policy Committee (MPC) expects to achieve a rate close to the 2% Government target in the medium term stating in its report for November 2021:

"Twelve-month CPI inflation fell slightly from 3.2% in August to 3.1% in September. Bank staff expect inflation to rise to just under 4% in October, accounted for predominantly by the impact on utility bills of past strength in wholesale gas prices. CPI inflation is then expected to rise to 4½% in November and remain around that level through the winter, accounted for by further increases in core goods and food price inflation.

...CPI inflation is projected to be a little above the 2% target in two years' time and just below the target at the end of the forecast period."<sup>3</sup>

21. Having considered these factors, the Scottish Government proposes that there should be a 2% annual increase in court fee levels with effect from 1 April 2022 to reflect inflationary pressures as well as the financial pressures on SCTS in operating the courts during the COVID-19 pandemic. Similar increases are also proposed for the two subsequent years, taking effect on 1 April 2023 and 1 April 2024.

### **Question 1**

**Do you agree that court fees should rise by 2% in the financial year commencing 1 April 2022 and by a further 2% in each of the following two financial years commencing 1 April 2023 and 1 April 2024?**

### **Court fee exemptions**

22. Whilst the Scottish Government believes that the costs of the civil courts should be borne by court users rather than by the taxpayer, it is committed to ensuring that there is protection for those who are unable to pay court fees. This

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<sup>3</sup> <https://www.bankofengland.co.uk/-/media/boe/files/monetary-policy-report/2021/november/monetary-policy-report-november-2021.pdf?la=en&hash=72336FA2809F28D79CA9C1274ED3851261C61CA9> pp4-5.

protection is provided for by a generous, extensive and easy to access range of exemptions that are offered to those on lower incomes. The exemptions regime ensures that court users with limited means are not being denied access to justice.

23. In respect of those ineligible for exemption, a successful party in court litigation will normally be entitled to recover their outlays including all court fees paid from the outset. In other words, if they win their case, they will be entitled to have court fees paid back to them by the other party. In some cases a pursuer (claimant) will not be required directly to pay court fees, even if they lose their case, because their law firm, or a funding company, or a trade union is in a financial position to pay court fees for them. As already mentioned above, the Scottish Government has built on these protections in personal injury actions in the 2018 Act so that a pursuer entering into a success fee agreement (broadly, a “no win no fee” agreement) will not have to pay court fees themselves, and should they lose their case, they will have the benefit of qualified one way cost shifting (QOCS), which means they will not have to pay the defender’s court fees.

24. In the main, the majority of those who qualify for exemption do so because they qualify for legal aid. The current range of exemptions is listed below.

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

- The litigant or their spouse/civil partner are in receipt of:
  - income support;
  - income-related employment and support allowance;
  - pension credit guarantee credit;
  - working tax credit, including child tax credit; or
  - working tax credit, including a disability or severe disability element and gross annual income used for calculation of tax credit is £18,000 or less.
- The litigant or their spouse/civil partner have, within the period of 3 months prior to the date the specified fee would be payable but for this exemption, received financial or other assistance under the Welfare Funds (Scotland) Act 2015.<sup>4</sup>
- The litigant is in receipt of:
  - income-based jobseeker's allowance; or
  - Universal Credit
- The litigant may also be entitled to exemption from paying court fees if:
  - they are receiving civil legal aid in respect of the matter for which the fee is payable (Section 13(2) of the Legal Aid (Scotland) Act 1986<sup>5</sup> refers);

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<sup>4</sup> 2015 asp 5

<sup>5</sup> 1986 c. 47

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

25. Scottish Parliamentary petition PEO1784 (lodged on 05 February 2020), raised a question about access to justice for those who are disabled and wished to conduct their case as a party litigant.<sup>6</sup> The petition argued that court fees were a real barrier for the disabled who wished to take this course of action. It proposed that those receiving Personal Independence Payment (PIP) should be exempt from court fees.

26. In July 2021, there were 292,231 people entitled to PIP in Scotland. PIP can help with extra living costs if a person has both a long-term physical or mental health condition or disability, and difficulty doing certain everyday tasks or getting around because of their condition, whether they are working or not.

27. PIP is not used as a benefit which exempts a person from court fees in any other jurisdiction in the United Kingdom (though it is not counted as income in England and Wales). It is not an income related benefit and, as such, is not in itself, an indicator of low income. It does not, therefore, meet the policy criterion used by the Scottish Government to ensure that those on a definable low income are protected by exemption from court fees. Consequently, the Scottish Government is not minded to make PIP a criterion for exemption from court fees.

28. However, this will not mean that all those receiving PIP will be liable for court fees. Only some of those on PIP will not be exempted, as many others on low incomes will be eligible for civil legal aid, or will be in receipt of passported benefits, or Working Tax Credit (including child tax credit, or the disability element, or the severe disability element) with gross annual incomes of £18,000 or less, and will consequently be exempt from paying court fees by way of exemptions which are already in place

29. In considering the impact of court fees on specific groups, the Scottish Government considers that affordability of the courts fees by specific groups is the main issue. However, the Scottish Government is committed to access to justice and would welcome views on how that may be enhanced for party litigants with a disability.

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<sup>6</sup> A party litigant is a pursuer or defender in a case who represents themselves, without legal advice or representation from a solicitor.

## Question 2

**Do you have any views on the operation of the fee exemptions system? In particular, we would welcome comments on the impact of fees in relation to access to justice for party litigants with a disability.**

### Environmental cases

30. The European Union (EU) and the United Kingdom are parties to the UNECE (United Nations Economic Commission for Europe) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention). The Aarhus Convention arrangements are not affected by the UK's exit from the EU and the Scottish Government is committed to this Convention.

31. The Aarhus Convention stands on three "pillars": access to information, public participation and access to justice, provided for under its articles 4 to 9<sup>7</sup>. The third pillar, relating to access to justice, requires state parties to ensure there is a public right to challenge environmental decisions made in breach of the first two pillars or in breach of other environmental legislation. Aarhus Convention article 9 requires that judicial procedures to challenge environmental decisions are "timely and not prohibitively expensive". Environmental non-governmental organisations argue that court fees are a contributory factor to prohibitive costs for many in environmental cases in Scotland and are thus a barrier to environmental justice.

32. An "Aarhus Convention case" refers to a case brought by the public to make legal challenges to decisions from a public authority which may affect the environment. More specifically, such cases involve one or more members of the public, or an environmental non-governmental organisation, bringing forward litigation which is within the scope of the Aarhus Convention:

- to assert the public's right to access environmental information (under article 9(1) of the Convention);
- to assert the public's right to participate in environmental decision-making and procedure (article 9(2)); or
- to challenge the legality of any decision, act or omission by a private person or a public authority which contravenes any other environmental law (article 9(3)).

33. The Scottish Government would welcome views on whether environmental cases which should be exempt from court fees. Were Aarhus Convention cases to be exempt from court fees then this would enhance access to justice by making justice more affordable. The main question, if such an exemption were created for Aarhus Convention cases, is how to distinguish between Aarhus Convention cases and other environmental cases, or any other types of action, so that any exemption is appropriately targeted.

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<sup>7</sup> The Aarhus Articles can be viewed at: <https://unece.org/DAM/env/pp/documents/cep43e.pdf>.

34. It is acknowledged that there are many other types of action in addition to Aarhus Convention cases that could be regarded as “public interest litigation”, that is, the use of the law to advance human rights and equality or raise issues of broad public concern, rather the narrow concerns of individual litigants. To that extent, any movement towards exempting fees on the basis of the subject matter of the action (e.g. the environment) may be seen as a first step.

35. However, there are difficulties in identifying actions that might be appropriately considered for a reduction in fees. It might be said that we “know public interest litigation when we see it” and therefore exemptions should be made available to apply when appropriate litigation comes to light, but that does not mean it is readily identifiable in terms of a fairly rigid statutory scheme of fee exemption. We would welcome views on how a broader system of exemption might work. The Scottish Government is also mindful that widening the types of cases that are exempt from court fees increases the burden on the taxpayer.

### **Question 3**

**The Scottish Government is seeking views on whether to exempt environmental cases within the meaning of the Aarhus Convention. Do you consider that such cases should be court fee exempt? If so, how would you define an Aarhus case? Views on fees for public interest litigation more broadly would also be welcomed.**

### **Fees for group proceedings**

36. Part 4 of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 introduces “group proceedings” which will only be available in the Court of Session. They are similar to what is known as “multi-party actions” or “class actions” in other jurisdictions. The 2018 Act specified that group proceedings could be on an opt-in or an opt-out basis. Opt-in proceedings were implemented in 2020.

37. The Scottish Government considers that these proceedings are likely to require special court fee arrangements to be put in place. However, it has been agreed with SCTS that, to date, there have been too few group proceedings cases under this new legislation which would allow conclusions to be drawn as to how any new court fee arrangements should look. Consequently, for the time being, group proceedings will continue to attract court fees under the Court of Session etc. Fees Order 2018. We would, however, welcome views on court fees for group proceedings going forward.

38. Consideration will be given as to what is required as regards amendment to the Court of Session etc. Fees Order in order to take account of group proceedings. In a group proceeding, a single representative case on behalf of the whole group is brought before the Court of Session. There is a question as to whether that representative case should pay the same court fees as an individual case might pay for court fees; or whether group proceedings should instead pay different, specific court fees relating only to group proceedings? This is the first opportunity in the three-year cycles of court fee reviews that the Scottish Government to take account of group proceedings.

39. In addition, there is also the question of how fee exemptions might be applied to group proceedings. For example, if one or more of the parties in a group proceeding (but not all such parties) would have been entitled to a fee exemption had they raised their own individual proceedings, should the group proceeding case to which they are a party be entitled to similar exemption to court fees? Alternatively, should court fee exemption be unavailable in group proceedings, or perhaps only available if all parties in the group proceeding are entitled to such an exemption? Could partial court fee exemption be an option and, if so, how might this work?

40. The Scottish Government is still considering how best to approach court fees and exemptions in respect of group proceedings and we would welcome any views relating to court fees payable in group proceedings.

#### **Question 4**

**Do you have any views on fees and exemptions which you would like to share relating to group proceedings as discussed in section 2 of this consultation paper?**

### **Section 3: Consultation – technical changes to court fee narratives**

41. In light of experience of the operation of the present system, the SCTS has suggested certain changes to the fees narratives. The Scottish Government agrees that these changes should be made in order to simplify or clarify the narratives, remedy omissions, or delete otiose entries.

#### **Motion fees**

42. The Scottish Government proposes amending the definition of the word 'motion' in article 2 the Sheriff Court Fees Order 2018 by removing reference to specific rules. The SCTS has indicated that the current definition has caused difficulties for some time and this proposal is intended to put beyond doubt that a fee is payable for a motion in other types of procedure.

43. The proposal is that motion could be defined as any written motion lodged with the sheriff clerk in any proceedings. This will enable fees for motions to be payable in cases which do not proceed under the Ordinary Cause Rules, for example, adoption and bankruptcy cases.

#### **New court fee for Annoying Creature applications**

44. The Scottish Government is considering whether a new court fee should be introduced in respect of applications to the justice of the peace court (JP court) under section 49 of the Civic Government (Scotland) Act 1982<sup>8</sup> regarding annoying creatures.

45. Although relatively infrequent, these applications to the JP court involve administrative work to register such an application, prepare the order for service and assignment of the hearing, the cost of the hearing itself, the preparation of the minute and order following the hearing, and the cost to serve the order by recorded delivery. All of these costs are currently incurred by SCTS without any court fee being payable.

46. SCTS considers that the work involved in dealing with annoying creature applications is similar to that involved in a summary application in the sheriff court (currently subject to a court fee of £132). Consideration has been given to the difference between applications in the JP court and applications in the sheriff court in that the costs incurred in the sheriff court are higher than those involved in the JP court.

47. The closest type of application in the JP court to an annoying creature application is an utility warrant application. These utility warrant applications are currently subject to a court fee of £12 by virtue of paragraphs 1 of the Table of Fees in schedules 1, 2, and 3 of the Justice of the Peace Court Fees (Scotland) Order 2018.

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<sup>8</sup> 1982 c. 45

48. As annoying creature applications involve more work and time than utility warrant applications, the Scottish Government proposes that it is appropriate for a court fee to be payable by applicants somewhere between the two figures of £12 and £132. We would welcome views on the proposal of a fee and the level at which it should most appropriately be set.

## **Insolvency**

49. The commencement of the Corporate Insolvency and Governance Act 2020<sup>9</sup> has highlighted that, there is no separate entry in the Sheriff Court Fees Order 2018 providing for a court fee for “the lodging of notice of appointment or intention to appoint an administrator out of court under the Insolvency Act 1986” (“the 1986 Act”). Instead, the initial writ fee is charged. However, there is a fee entry in the Court of Session Fees Order 2018. This is an anomaly as the procedure is more or less the same in both the sheriff court and the Court of Session. In order to address this, the Scottish Government is considering adding an entry in the Sheriff Court Fees Order indicating a court fee equivalent to that of an initial writ.

50. Section 1 of the 2020 Act introduces provisions for applications to obtain a moratorium under Part A1 of the 1986 Act. Where the moratorium is sought by directors of an eligible company which is not subject to an outstanding winding up petition and is not an overseas company, documents can be lodged at court. The process is similar to the lodging of a notice of appointment or intention to appoint an administrator as set out in the paragraph above. However, there is currently no fee payable in either the sheriff court or Court of Session in these circumstances. The SCTS has flagged this as being an anomaly that should be addressed. In order to do so, the Scottish Government is considering whether a court fee equivalent to that of an initial writ should be payable in the sheriff court and whether paragraph 18 of the Table of Fees in the schedules of the Court of Session etc. Fees Order 2018 should be amended to include reference to obtaining a moratorium.

## **Multiplepoundings/counterclaims**

51. The Sheriff Court Fees Order 2018 specifies a number of court fees that are payable by the pursuer in an action. In actions of multiplepounding there can be occasions where the pursuer is no longer a party to the action. If, for example, where they are the holder of the fund *in medio* and they are exonerated from the claim. Where this happens, there are a number of fees which cannot be charged, e.g., the fee for fixing, allocating or assigning a proof.

52. In addition, in actions where a counterclaim is made, there can be instances where, for example, the pursuer no longer proceeds with their claim, meaning that only the defender’s counterclaim remains before the court. In these circumstances it may be considered that liability for payment of these fees, in the first instance, should fall to the defender instead.

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<sup>9</sup> 2020 c. 12

53. In an effort to account for these circumstances, the Scottish Government is considering implementing one of the following two options.

- i. Firstly, it could define the “pursuer” in article 2 of the Sheriff Court Fees Order 2018 to include a defender or third party when the pursuer is no longer a party to the action. The addition of this definition would shift liability for the payment of court fees to those added parties in the event the pursuer was no longer part of the proceedings, but where the pursuer remained party to the action then the defender or third party’s position in relation to court fees would remain unchanged. This option does not seek to increase the court fees payable, but the intention is to ensure that they are paid by one party or another in all circumstances.
- ii. Secondly, it could amend the Sheriff Court Fees Order 2018 to provide that the court fees are payable by each party. This would result in all parties to the action having to pay court fees.

### **Court of Session motions**

54. Article 7 of the Court of Session etc. Fees Order 2018 applies to motions which are enrolled in the process of the cause or made orally at the bar in accordance with rule 23.2 of the Rules of the Court of Session 1994<sup>10</sup> (enrolment of motions). Article 7(3) provides that certain motions under certain Rules of Court are exempt from the payment of fees, and includes a list of those Rules of Court. The SCTS considers that rule 49.8A(2)(a) (warrant and forms for intimation to a child and for seeking a child’s views) of the Rules of the Court of Session 1994 should be added to that list. Consequently, the Scottish Government proposes to amend article 7(3) to include a reference to rule 49.8A(2)(a). Doing so will ensure that a fee is not payable for such a motion in a family action.

### **Consideration and addition of matters listed in certain court fee Orders**

55. The list of fees for certain matters in the Table of Fees listed in the schedules to certain court fee Orders is considered extensive and the Scottish Government is considering amalgamating these lists.

56. The Scottish Government is considering the following amendments:.

- i. Sheriff Court Fees Order 2018:

Table of Fees in Part I of schedule 1 - Commissary proceedings.

- The Scottish Government is considering amalgamating the entries under paragraph 1(a) to (e) so that there is one entry for all such petitions. This is on the basis that the fee for each is £19.00 and to list each petition individually is unnecessary. This amalgamation will also have the effect of ensuring that petitions for recall of a decree in a dative petition will also now be subject

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<sup>10</sup> The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 as amended (S.S.I. 1994/1443).

to a £19.00 court fee, which is not currently provided for in the current Table of Fees.

- Alternatively, if the Scottish Government decides not to take the amalgamation action above, the proposal is that petitions for recall of a decree in a dative petition should still be added as a new paragraph 1(f) in the Table of Fees. Petitions for recall of dative petitions require input by the judiciary and often result in the appointment of a new, or a replacement, or an additional executor dative (before Confirmation is granted). SCTS considers it to be an anomaly that a petition for a dative petition attracts a fee but a recall does not.

ii. Court of Session etc. Fees Order 2018:

Table of Fees in Part I of schedule 1 - Fees in the central office of the court. These proposed changes are not intended to affect the court fees paid.

- The Scottish Government is considering amalgamating paragraphs B9 and B10 on the basis that the fees are the same and that they both pertain to family actions. The intention is that the new paragraph will sufficiently reflect that a fee is payable for the lodging of answers or an opposition to a motion or minute for variation in a family action as well as application for such variation itself.
- The Scottish Government is considering amalgamating paragraphs C3 and C4. The intention is that the wording is to ensure that it is clear that where a person seeks to be admitted as both a notary public and a solicitor simultaneously, that both fees are payable (as is the case currently).

iii. The Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2018

Table of Fees in Part I of schedule 1. These proposed changes are intended as a tidying up exercise which are not intended to affect the court fees paid.

- The Scottish Government is considering amalgamating paragraph 1(a), (b) and (c) on the basis that the fees are the same for each type of power of attorney. The suggested combined wording is: "Submission of a continuing power of attorney; a welfare power of attorney; or a combined continuing and welfare power of attorney, under section 19 of the Act."
- The Scottish Government is considering amalgamating paragraphs 7 and 8 on the basis that the fees for each entry are the same. The suggested combined wording is: "Submission of an application for appointment under sections 26B and 26D of the Act."

- The Scottish Government is considering amalgamating paragraphs 9 to 11 on the basis that the fees for each entry are the same. The suggested combined wording is: “Submission of an application for provision of a certificate, or duplicate certificate of authority, under sections 26E, 26F, and 26G of the Act.”
- The Scottish Government is considering amalgamating paragraphs 15(a) to (e) on the basis that the fee for each entry is the same. The suggested combined wording is: “Registration of guardianship orders or intervention orders or variations thereto; or registration of the renewal of a guardianship order, made under Part 6 of the Act (including, where appropriate, checking caution or other security and issuing relevant certificates).”

### **Fee for complaint in Sheriff Court Fees Order 2018**

57. The Scottish Government is considering amending paragraph 17 of the Table of Fees in Part I of schedule 1, 2 and 3 of the Sheriff Court Fees Order 2018 to make clear the circumstances in which such a fee should apply. This is purely on a point of clarity that has been raised by SCTS operational staff. There are regular misunderstandings as to what the appropriate fee to charge is. There have been some instances where this fee has been incorrectly applied where a mere copy of a complaint has been requested with the result of a refund having to be issued. It is proposing that a fee for a complaint should only be payable in circumstances where a summary complaint is lodged and the prosecutor is not the procurator fiscal. This amendment will make it clear to both SCTS staff and court users what is being charged for and will have no negative impact on the actual fee charged.

### **Registration of clubs**

58. The registration of a club or miners' welfare institute under the Gambling Act 2005<sup>11</sup> is no longer competent and has not been for over 10 years. The Scottish Government recommends that Article 5(3) be removed from the Sheriff Court Fees Order 2018.

### **Bankruptcy**

59. Paragraph 13 of the Table of Fees in Part I of schedules 1, 2, and 3 of the Sheriff Court Fees Order 2018 lists an entry “no fee”. Previously, by virtue of the Sheriff Court Fees Order 2015 (amended by the Sheriff Court Fees Order 2016), this entry referred to a court fee payable for applications for the approval of composition. As such an application is no longer listed in the Table of Fees in any of the schedules of the Sheriff Court Fees Order 2018, the Scottish Government proposes that this entry should simply be removed on the basis that it is no longer relevant. This is not

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<sup>11</sup> 2005 c. 19

intended to impact the court fees for litigants; but it is rather an exercise to clarify the current position.

#### **Question 5**

**Do you have any comment on the proposed technical changes to court fee narratives detailed in this section?**

## Consultation questions

1. Do you agree that court fees should rise by 2% in the financial year commencing 1 April 2022 and by a further 2% in each of the following two financial years commencing 1 April 2023 and 1 April 2024?

Yes

No

Please give reasons for your view.

2. Do you have any views on the operation of the fee exemptions system? In particular, we would welcome comments on the impact of fees in relation to access to justice for party litigants with a disability.

3. The Scottish Government is seeking views on whether to exempt environmental cases within the meaning of the Aarhus Convention. Do you consider that such cases should be court fee exempt? If so, how would you define an Aarhus case? Views on fees for public interest litigation more broadly would also be welcomed.

Yes

No

Please give reasons for your view.

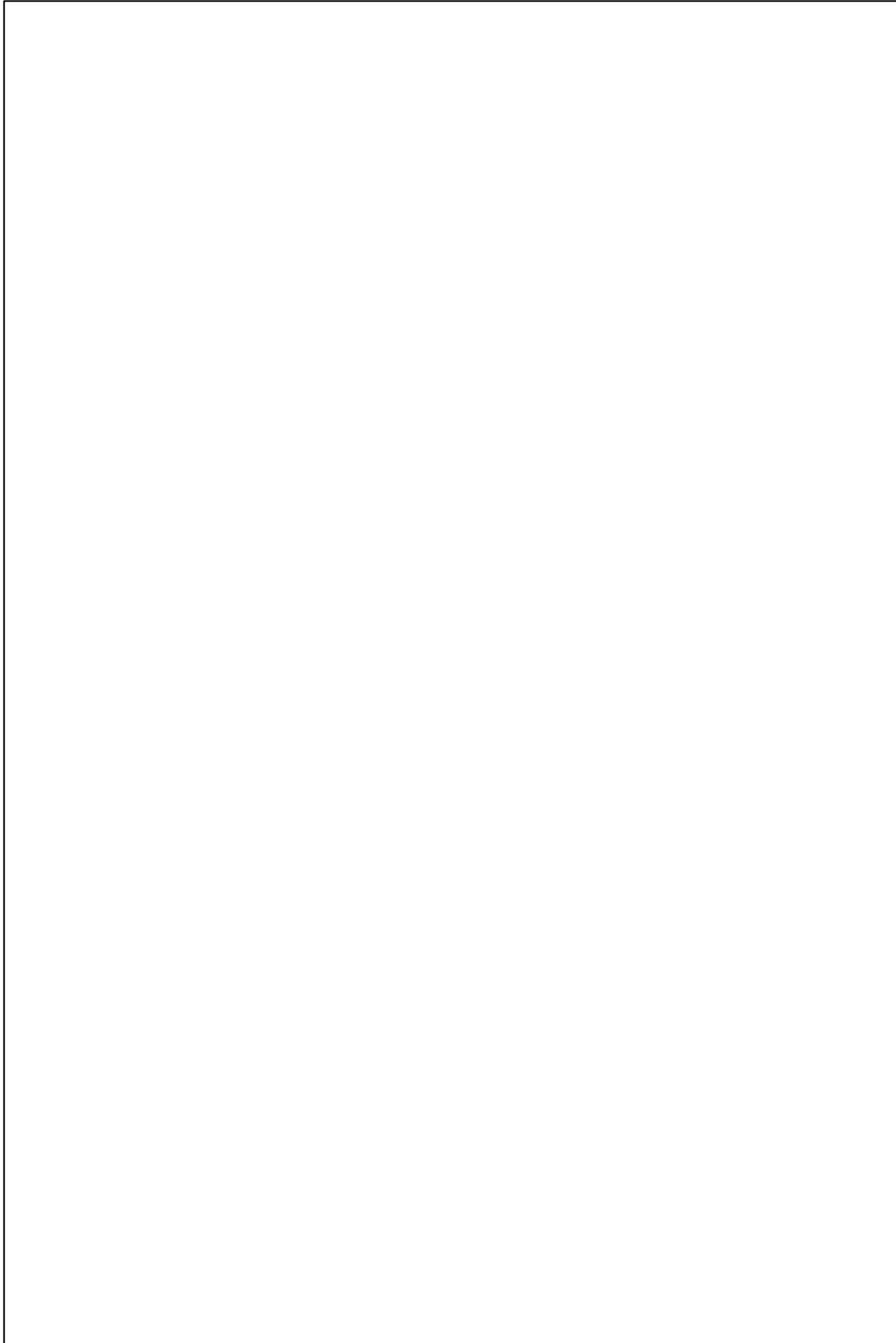
4. Do you have any views on fees and exemptions which you would like to share relating to group proceedings as discussed in section 2 of this consultation paper?

5. Do you have any comment on the proposed technical changes to court fee narratives detailed in section 3?

A large, empty rectangular box with a thin black border, intended for the user to provide comments on the proposed technical changes to court fee narratives.

6. Do you have any other comments on the subject of this consultation paper or on the future direction of policy considerations for court fees in Scotland?

7. Do you consider that any of the proposals in this consultation paper are likely to have a disproportionate effect on people or communities who face discrimination or social exclusion owing to race, age, gender, disability, sexual orientation, or any other factor? If so, please specify your views on the possible impact.

A large, empty rectangular box with a thin black border, intended for the respondent to provide their views on the possible impact of the proposals on disadvantaged groups.

# Consultation on Scottish Court Fees



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## Respondent information form

**Please note:** this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:  
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email Address

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

- Publish response with name  
 Publish response only (without name)  
 Do not publish response

### Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

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

- Yes  
 No

## **Section 3: How to respond**

### **Where to send your response**

The closing date for comments is 4 March 2022. Please email your response to [courtfeeconsultation@gov.scot](mailto:courtfeeconsultation@gov.scot).



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