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CIVIL COURT FEES IN THE COURT OF SESSION AND THE SHERIFF COURT: A CONSULTATION PAPER

The enclosed consultation paper invites views from interested parties, which Ministers will consider before they put proposals to the Scottish Parliament about the level of Court fees to be charged in the Court of Session and the Sheriff Court. All Fees Orders are made by Scottish Statutory Instruments that require the approval of Parliament before implementation. Also enclosed is a list of Consultees.

Comments on the proposals in this paper should be sent in hard copy to [REDACTED] Scottish Executive Justice Department, Hayweight House, 23 Lauriston Street, Edinburgh EH3 9DQ, or by e-mail to: CourtFees@scotland.gsi.gov.uk.

The closing date for receipt of comments is 30 November 2001.

Your comments will be placed on file and made available for inspection unless you specifically indicate that you wish confidentiality.

Yours sincerely

[REDACTED]

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LIST OF CONSULTEES

Action of Churches Together in Scotland

Catholic Church in Scotland

Evangelical Alliance (Scotland)

Faculty of Advocates

The General Assembly

The Law Society of Scotland

Part-Time Sheriffs' Association

Scottish Association of Citizens Advice Scotland

Scottish Consumer Council

Scottish Inter Faith Council

Scottish Legal Aid Board

Scottish Parliament Justice Committees

Scottish Sheriff Court Users Group

The Sheriffs' Association

St Columbas Episcopal Church

CIVIL COURT FEES IN THE COURT OF SESSION AND THE SHERIFF COURTS

Background

1. Since devolution the fixing of fee levels for the Court of Session and the Sheriff Courts has been wholly devolved to Scottish Ministers. Prior to devolution, the policy of the UK Government was that fees for civil business should be increased progressively to a point where full cost recovery, including Judicial costs, would be achieved. In short, those who used the Courts to settle disputes would meet the cost without subsidy from the general taxpayer.

2. Scottish Ministers have reviewed the policy that was inherited from their predecessors. Their view is that there should continue to be a move in the direction of full cost recovery. This should be tempered by the need to ensure that access to justice is not denied to those who cannot easily afford the cost of going to Court. This latter point is discussed more fully in paragraph 9 below.

Fees in the Court of Session

3. Currently, the level of fees charged in the Court of Session covers only about 40% of the real cost of operating the Courts, including the cost of Judges time. The most recent Fees Order made in 1999 set the charge for a hearing before a single Judge at £13 per half hour payable by each party in a case; and the equivalent fee for a hearing before Judges of the Inner House (normally 3 Judges) at £26 per half hour payable by each party.

4. These figures fall a long way short of the real cost of employing Judges to hear cases. The daily salary costs of Outer and Inner House Judges are some £600 and £680 respectively. Ministers consider it appropriate that hearing fees should be increased significantly to bring fees closer to realistic levels. **The proposal therefore is that the fee per half hour in the Outer House should increase from £13 to £32.50 for each party; and the equivalent fee for the Inner House should rise from £26 to £65 for each party.**

Other fees in the Court of Session

5. All other fees for Court of Session procedures would be **increased by the rate of inflation for each year since the last Fees Order.**

6. Views are invited on both of these proposals.

Sheriff Court Fees

7. Taken overall, fees at current levels have been sufficient to cover the cost of civil business in the Sheriff Courts, including Judicial costs. **For the Sheriff Courts therefore, Ministers propose that fees should rise by no more than the rate of inflation for each year since the last increase in 1999.**

8. Views are invited on this proposal.

Exemptions from fees for people in receipt of means tested State benefits

9. Scottish Ministers hold strongly to the view that access to justice should not be denied to those who cannot afford to go to Court. It has been represented that Court fees, payable in advance at certain points, can be a deterrent to people raising actions. Clearly many of those on low incomes will qualify for legal aid, including the payment of Court fees. But not all litigants qualify for legal aid and not all Court processes, in particular small claims actions, attract legal aid in any circumstances. **Ministers therefore propose that all litigants who are in receipt of means tested State benefits should be exempt from payment of Court fees for civil actions in which they are parties.** The benefits referred to are:

Income Support
Working Families Tax Credit
Disabled Person's Tax Credit
Income Based Jobseekers Allowance.

The cost of this policy would not be passed on to other Court users and would be absorbed by the Scottish Executive.

10. Views on this proposal are invited.

Other matters

The Auditor of the Court of Session

11. Fees payable to the Auditor of the Court of Session are contained in the Court of Session Fees Order. Currently the Auditor may charge a fee of £12 for the lodging of accounts for taxation. This fee has been unchanged for many years and it is proposed to alter the arrangements to reflect modern circumstances. **One proposal is that the fee should be on a sliding scale reflecting the amount of preliminary work that the Auditor has to undertake in different types of case. This would be on the following basis.**

Account with value up to £5000 - fee payable £30.00.
Account with value between £5000 and £12000 - fee payable £50.00.
Account with value in excess of £12000 - fee payable £75.00.

12. Another approach would be to have a fixed fee for each action, irrespective of the value of the account. This would reflect the fact that the origin of the fee was simply to cover the initial receipt of the account by the Auditor and the fixing and intimating of the diet of taxation. **On this basis the proposal is that the fee would be changed from a flat rate of £12 to £30.**

13. Views are invited on these alternative propositions.

Fee for deciding when additional fees may be payable to successful litigants

14. There is currently no provision for the Auditor to charge a fee for his services in situations where a Judge remits to the Auditor the task of deciding whether an additional fee should be payable to the successful party in an action. (Rules of the Court of Session 1994, rule 42.14). Ministers consider it appropriate that the Auditor should be able to charge a fee in such circumstances. **The proposal is that the fee should be a flat rate of £300 in each case.**

15. Views on this proposal.

Cancellation fees

16. There is no provision at present for the Auditor to charge a cancellation fee where parties to a taxation decide not to proceed with the diet at a late stage. Under present rules the Auditor cannot claim a fee for abortive work undertaken. Ministers consider that, in preparation for the diet of taxation, the Auditor should be able to levy a cancellation fee on the following basis:

16.1 If written intimation of settlement is received from both parties within 7 working days of the diet, a fee of 1% of the account so submitted.

16.2 If written intimation from both parties is received within 3 working days, a fee of 2% of the account so submitted.

16.3 If settlement is intimated by both parties either on the day prior to the taxation or on the day of the taxation, a fee of 3% of the account so submitted.

17. Views are invited on these propositions. These proposals on lodging dues and cancellation fees relating to the Auditor of the Court of Session apply equally to the Auditor of the Sheriff Court and Ministers will consider this further in the light of comments received.

Summary

18. The views of interested parties are invited on the following propositions:

18.1 The fee for a hearing before a single Judge in the Outer House should rise from £13 to £32.50 per half hour for each party; the equivalent fee for a hearing before Judges of the Inner House should rise from £26 to £65 for each party. (para 4)

18.2 Other fees set out in the Fees Order for the Court of Session should rise by the rate of inflation since the current Fees Order was made in 1999. (para 5)

18.3 Fees for all procedures in the Sheriff Court should rise by the rate of inflation since the current Fees Order was made in 1999. (para 7)

18.4 Litigants who are in receipt of means tested State benefits should be exempt from the payment of Court fees. (para 9)

18.5 The lodging fee payable to the Auditor of the Court of Session should rise on a sliding scale to the value of the account; or that flat rate £12 should increase to £30. (paras 11 & 12)

18.6 A new fee should be introduced which would allow the Auditor to charge for his services when a Judge remits the task of deciding whether an additional fee should be payable to the successful party in an action. A flat rate fee of £300 is proposed. (para 14)

18.7 The Auditor should be entitled to charge a cancellation fee in specified circumstances. (para 16)