

The Court Fees (Miscellaneous Amendments) (Scotland) Order 2016

Equality Impact Assessment Record

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Equality Impact Assessment Record

Title of policy/practice/ strategy/legislation etc	The Court Fees (Miscellaneous Amendments) (Scotland) Order 2016	
Minister	Annabelle Ewing	
Lead official	Walter Drummond-Murray	
Officials involved in the EQIA	Name	Team
	Cameron Stewart Walter Drummond Murray Michael Green	Courts Team
Directorate: Division: team	Justice: Civil Law and Legal System Division Courts Team	
Is this new or revision to an existing policy?	Revision to existing policy	

Screening

Policy Aim

The Scottish Government published a Consultation on Court Fees on 20 July 2016.¹ The proposals consulted on were, broadly speaking, options for the increase of court fees resulting in full cost recovery. In addition it sets out the proposals for fees for the new simple procedure which will be introduced on 28 November 2016 to replace the small claims and summary cause procedures.

The policy contributes to the Scottish Government's Wealthier and Fairer and Safer and Stronger objectives, through the following national outcomes.

- Our public services are high quality, continually improving, efficient and responsive to local people's needs;
- We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others; and
- We live our lives safe from crime, disorder and danger.

Whom will it affect?

The fee proposals will have an impact on all court users not in receipt of exemptions. Currently, those persons in receipt of civil legal aid, passported benefits and Working Tax Credit (including child tax credit, or the disability element, or the severe disability element) with gross annual income of £16,642 or less are exempt from paying court fees.

The proposals will not affect those making claims in the Sheriff Personal Injury Court as those fees were frozen, reflecting concerns raised in the responses to the consultation.

In considering the impact of the fee increases on specific groups, the Scottish Government considers that affordability would be the main issue. If some groups identified by race, religion or belief, disability, age, caring responsibilities, gender or sexual orientation typically earn less than average, the Scottish Government considers that assistance from legal aid and the available exemptions ensure that these groups would be protected and so the Scottish Government consider that they would not be discriminated against as a result of higher court fee increases.

Environmental

There is nothing to suggest that there would be an environmental impact from these proposals.

¹ The consultation can be viewed at <http://www.gov.scot/Publications/2016/07/1547>.

Rural Impact

The proposals increase fees that would be charged by court services across Scotland and so do not impact adversely on rural communities.

Enforcement/Sanctions/Monitoring

Nearly all fees are paid for in advance of the service so the sanction for non-payment is that the service will not be performed. The proceedings may be struck out if the fee is not paid.

What might prevent the desired outcomes being achieved?

No factors that might prevent the desired outcomes being achieved have been identified. However, the projected income generated by the proposals is based on assumptions regarding case levels. If numbers and cases decrease this would affect the levels of cost recovery.

Stage 1: Framing

Results of framing exercise

There was no specific pre-consultation impact assessment accompanied the proposals on which consultation took place. However, the consultation did take into account the equality impact assessments published for the Courts Reform (Scotland) Bill and the assessment conducted for the Courts Fee Orders in 2015.² This is pertinent to the fees orders relating to the new courts and the consultation made reference to it:

“In relation to the civil court reforms (e.g. national personal injury court; Sheriff Appeal Court) these issues were considered when the Courts Reform Act was being developed. Overall, the Equality Impact Assessment on the Courts Reform (Scotland) Bill found that none of the groups with protected characteristics would suffer disproportionately as a result of the interaction of the measures in the Bill with their protected characteristic.”³

The Scottish Government fully considered access to justice issues such as affordability for court users when developing proposals to increase fees. Factors such as affordability and the level of fee in relation to the value of claim have historically been taken into account when setting fees. For example, even with an inflationary increase applied, the increase for the small claims fee has been maintained at a low level.

Environmental

There is nothing to suggest that there would be an environmental impact from these proposals.

Rural Impact

As the proposals are to increase fees charged by court services across all of Scotland, both those living in urban and rural areas will be affected in the same way. There will be, therefore, no particular impact on rural communities.

Enforcement/Sanctions/Monitoring

Nearly all fees are paid for in advance of the service so the sanction for non-payment is that the service will not be performed. The proceedings may be struck out if the fee is not paid.

Extent/Level of EQIA required

The consultation was sent to a range of consultees. These included those who are directly involved with the legal process such as legal professionals,

² Now the Courts Reform (Scotland) Act 2014.

³ See paragraph 57.

organisations in the justice system and the judiciary. The consultation paper was also circulated to organisations with an interest in legal issues through their concern for the welfare of the public in general or specific groups of people and to individuals who responded to the previous consultation on court fee and Office of the Public Guardian fee (OPG) increases in 2015.⁴ Interested parties who were not directly consulted also had a chance to respond to the consultation, which was publicly available on the Scottish Government website.

The consultation (which included the Scottish Government's pre-consultation assessment) asked:

Are any of the proposals likely to have a disproportionate effect on a particular group? If so, please specify the possible impact?

The Scottish Government is better informed on equality issues as a result of the consultation which concluded on 12 October 2016. In particular, a helpful response was received from the Equality and Human Rights Commission which highlighted the potential for decline in number of equality and human rights legal challenges as a result of higher court fees. Based on the responses to the recent consultation, the previous fee consultation entitled "Review of Fees Charged by the Court of Session, Accountant of Court, Sheriff & Justice of the Peace Courts, High Court, and the Office of the Public Guardian", which ran from 9 May 2012 to 25 July 2012, and the "Consultation on Proposals for Fees Charged by the Court of Session, Accountant of Court, Sheriff & Justice of the Peace Courts, High Court, Office of the Public Guardian, Personal Injury Court and the Sheriff Appeal Court", which ran from 23 February 2015 to 15 May 2015, the group that is most likely to be affected by the proposals is that of those on incomes just above the level that would qualify for exemption. There is no data to suggest that any of the protected groups would appear to be disproportionately affected.

However, the issue of court fees as part of the cost of court actions needs to be taken in context. In most cases the court fees form a small proportion of the cost of legal proceedings.

No further impact assessment is considered necessary. However, the Scottish Courts and Tribunals Service (SCTS) will continually monitor cost recovery from the courts. In addition, there will require to be a comprehensive review of court fees in 2017.

⁴ This can be viewed at: <http://www.gov.scot/Publications/2015/02/2080>.

Stage 2: Data and evidence gathering, involvement and consultation

Characteristic	Evidence gathered and strength/quality of evidence	Source	Gaps identified and action taken
<p>Age</p>	<p>Neither the Scottish Government nor the SCTS collect specific information about the age profile of people who make use of the civil courts. However, results from the Scottish Crime and Justice Survey (SCJS) suggest that 21% of adults said that they had experienced at least one civil law problem in the last three years. The SCJS gives a breakdown of these adults experiencing a civil law problem by age band: 16-24 (18%), 25-44 (29%), 45-59 (24%), and 60+(11%). This is a reflection of the numbers in each age band taking such action.</p> <p>In addition, there are a significant number of cases proceeding through the civil courts each year involving families and children, giving some insight into the number of children which might be affected by civil law issues.</p> <p>Age evidence The following statistics are from the Scottish Government Civil Justice Statistics in Scotland, 2014-15 and are the most recent available. They give a breakdown for the sheriff courts and the Court of Session.</p> <p>Sheriff courts</p> <ul style="list-style-type: none"> • there were 13,457 ordinary cause family procedure cases initiated, the majority (75.6%) of which were for divorce or the dissolution of a civil partnership; • over three-quarters (78.5%) of the remaining family cases related to parental responsibilities and rights, with 2,582 such cases initiated. Within this category, the 1,281 contact cases were the most common, with residence and other parental responsibilities and rights making up most of the remainder; 	<p>Scottish Crime and Justice Survey 2014-15 (section 9.3, p.93) is the main section relating to civil law in the main findings report)⁵</p> <p>The Scottish Government Civil Justice Statistics in Scotland, 2014-15⁶</p>	<p>Persons of any age can be affected by civil law issues and people of all ages benefit either directly or indirectly from efficient and fair access to the civil courts.</p> <p>No specific gaps have been identified.</p>

⁵ <http://www.gov.scot/Resource/0049/00496532.pdf>

⁶ <http://www.gov.scot/Resource/0049/00497242.pdf>

Characteristic	Evidence gathered and strength/quality of evidence	Source	Gaps identified and action taken
	<ul style="list-style-type: none"> there were 3,276 applications for a referral to the sheriff where the result of a Children's Hearing is not understood or denied by the child or relevant person involved; and there were 425 Adoption Petitions and 346 applications for Permanence Orders with Authority to Adopt. <p>Court of Session</p> <ul style="list-style-type: none"> in 2014-15 there were 148 family cases initiated in the General Department of the Court of Session. Of those, 132 related to divorce and dissolution of a civil partnership. 	<p>The Scottish Government Civil Justice Statistics in Scotland, 2014-15</p>	

<p>Disability</p>	<p>The Scottish Household Survey 2014⁷ shows that about one-third (39%) of households in Scotland contain at least one person with a physical or mental health condition or illness lasting or expected to last 12 months or more. This figure covers all members of the household including children. As would be expected, households comprised of older people are more likely to contain someone with a long-term condition (59% of 'single pensioner' households and 57% of 'older smaller' households) compared to other types of households.</p> <p>The Scottish Government does not hold information on the proportion of people involved in civil litigation who have disabilities. The Scottish Court and Tribunals Service (SCTS) Court User Satisfaction Survey 2015⁸, indicated that only 2% of court users self-reported as having a long-term illness or disability. However, prevalence of civil legal problems and disputes is higher for disabled people at 30% as opposed to 21% in the general population. In addition, only 39% of disabled people had solved their most important/only problem whereas 52% without a disability had succeeded in resolving their most important/only problem.</p> <p>The report "Is Scotland Fairer"⁹ produced by the Equality and Human Rights Commission in 2015 stated that "some groups – including children, disabled people and ethnic minorities – were significantly more likely to live in relative poverty AHC [after housing costs] than others". 'Relative poverty' was defined as "households who are living on less than 60% of the median income for Scotland, after housing costs".</p> <p>An effective and accessible civil justice system benefits, either directly or indirectly, all sections of society.</p>	<p>Scottish Household Survey 2014</p> <p>The Scottish Courts and Tribunals Service Court User Satisfaction Survey 2015</p> <p>Scottish Crime and Justice Survey 2014-15</p>	<p>In 2012, the Welfare Reform Act and the Welfare Reform (Further Provision) (Scotland) Act 2012 gave the Scottish Ministers powers to manage some of the changes arising out of the UK Government's legislative changes, such as preserving Scots' entitlements to "passport benefits" such as legal aid and court fee exemptions.</p> <p>UK benefits are widely used in Scotland to inform decisions about exemptions from court fees and to passport people onto eligibility for free legal aid. For example, if a person is in receipt of income support then they are automatically eligible to be exempt from paying court fees.</p> <p>The introduction of Universal Credit - the key feature of the UK Government's welfare reform - will see the abolition of all the UK benefits currently used to passport people onto other Scottish benefits.</p> <p>Universal Credit is a new single benefit will replace a range of existing means-tested benefits and tax credits for working age people and bring together different forms of income-related support to provide a simple, integrated, benefit for people in or out of work. It will consist of a basic personal amount with additional amounts dependent on personal circumstances.</p>
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⁷ [Http://www.gov.scot/Resource/0048/00484186.pdf](http://www.gov.scot/Resource/0048/00484186.pdf)

⁸ http://www.scotcourts.gov.uk/docs/default-source/scs---court-users/20151203_court-satisfaction-survey-report_final-report.pdf?sfvrsn=2

⁹ <https://www.equalityhumanrights.com/en/britain-fairer/scotland-fairer-introduction/scotland-fairer-report>, p43

			<p>Universal Credit started in one area in the North of England on 29 April 2013 and is being rolled out gradually to the rest of the United Kingdom and it is expected that Universal Credit will cover all benefit claims by 2021.</p> <p>Scottish Ministers recognise the importance of entitlements for those persons receiving benefits such as Court Fee exemptions and are seeking to maintain similar access to them under the new arrangements. It is not our policy intention to restrict access by narrowing the eligibility criteria.</p> <p>Many local services in Scotland including both Court Fee exemptions and legal aid are affected by the forthcoming changes to “passporting” benefits and the Scottish Government is considering its options in the longer term for determining eligibility for help and support.</p>
Sex	The SCJS indicates that 21% of males and 21% of females had experienced at least one civil law problem in the last three years.		The statistics relating to the sex of those experiencing a civil law problem suggest that gender is not an issue.
Gender reassignment	The Scottish Government does not hold this information in relation to the proposals.		Although there is no information available on either of these categories, all types of person can be affected by problems which would require resolution in the courts. It may be the case that people in these categories may be more likely to face the type of discrimination that would require litigation.
Sexual orientation	The Scottish Government does not hold this information in relation to the proposals.		

Race	Respondents to the Scottish Courts and Tribunals Service 2015 Court User Satisfaction Survey identified their ethnicity as below:			Scottish Courts and Tribunals Service 2015 Court User Satisfaction Survey	Persons of any race or ethnicity can be affected by civil law issues and, similarly, benefit either directly or indirectly from efficient and fair access to the civil courts.
Ethnicity of Respondents			Number		
White					
Scottish			2401	85	
Other British			259	9	
Irish			14	<1	
Gypsy/ Traveller			-	-	
Polish			46	2	
Other			26	1	
Mixed or Multiple Ethnic Groups					
Any mixed or multiple ethnic groups			2	<1	
Asian, Asian Scottish or Asian British					
Pakistani, Pakistani Scottish/British			26	1	
Indian, Indian Scottish/British			4	<1	
Bangladeshi, Bangladeshi Scottish/British			3	<1	
Chinese, Chinese Scottish/British			4	<1	
Other			3	<1	
African					
African, African Scottish/British			4	<1	
Caribbean or Black					
Caribbean, Caribbean Scottish/British			1	<1	
Black, Black Scottish/British			1	<1	
Other Ethnic Group					
Arab			1	<1	
Other			2	<1	
Not Disclosed			44	2	
Total			2,841	100	

Religion or belief	The Scottish Government is not aware of any specific information on the faith or religious belief of users in relation to the proposals.		Although there is no information available on this category, all types of person can be affected by problems which would require resolution in the courts.
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Stage 3: Assessing the impacts and identifying opportunities to promote equality

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	In considering the impact of the fees increases on specific groups, the Scottish Government considers that affordability would be the main issue. If some groups identified by age typically earn less than average, the Scottish Government considers that assistance from legal aid and the available exemptions ensure that these groups would be protected from the proposed fee increase.
Advancing equality of opportunity			X	
Promoting good relations among and between different age groups			X	

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	In considering the impact of the fees increases on specific groups, the Scottish Government considers that affordability would be the main issue. If some groups identified by disability typically earn less than average, the Scottish Government considers that assistance from legal aid and the available exemptions ensure that these groups would be protected from the proposed fee increase.
Advancing equality of opportunity			X	
Promoting good relations among and between disabled and able bodied people			X	

Do you think that the policy impacts on men and women in different ways?

Gender	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	In considering the impact of the fees increases on specific groups, the Scottish Government considers that affordability

Advancing equality of opportunity			X	would be the main issue. If some groups identified by gender typically earn less than average, the Scottish Government considers that assistance from legal aid and the available exemptions ensure that these groups would be protected from the proposed fee increase. The Scottish Government's preferred option does largely protect fees for divorce from increases. Evidence suggests that divorce fees are more often paid by women and fees can be particularly onerous for women who are leaving abusive relationships.
Promoting good relations between men and women			X	

Do you think your policy impacts on transsexual people?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	In considering the impact of the fees increases on specific groups the Scottish Government considers that affordability would be the main issue. If some groups identified by gender typically earn less than average, the Scottish Government considers that assistance from legal aid and the available exemptions ensure that these groups would be protected from the proposed fee increase.
Advancing equality of opportunity			X	
Promoting good relations			X	

Do you think that the policy impacts on people because if they are lesbian, gay or bisexual?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	In considering the impact of the fees increases on specific groups, the Scottish Government considers that affordability would be the main issue. If some groups identified by sexual orientation typically earn less than average, the Scottish Government considers that assistance from legal aid and the available exemptions ensure that these groups would be protected from the proposed fee increase.
Advancing equality of opportunity			X	
Promoting good relations			X	

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	In considering the impact of the fees increases on specific groups, the Scottish Government considers that affordability would be the main issue. If some groups identified by race typically earn less than average, the Scottish Government considers that assistance from legal aid and the available exemptions ensure that these groups would be protected from the proposed fee increase.
Advancing equality of opportunity			X	
Promoting good race relations			X	

Do you think the policy impacts on people because of their religion or belief?

Religion and Belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	In considering the impact of the fees increases on specific groups, the Scottish Government considers that affordability would be the main issue. If some groups identified by religion or belief typically earn less than average, the Scottish Government considers that assistance from legal aid and the available exemptions ensure that these groups would be protected from the proposed fee increase.
Advancing equality of opportunity			X	
Promoting good relations			X	

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

Have positive or negative impacts been identified for any of the equality groups?	No. However, the increase in fees will generate income to maintain service levels and finance future improvement, and an effective and accessible civil justice system benefits, either directly or indirectly, all sections of society.
Is the policy directly or indirectly discriminatory under the Equality Act 2010¹⁰?	No
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	N/A
If not justified, what mitigating action will be undertaken?	N/A

Describing how Equality Impact analysis has shaped the policy making process

Careful consideration has been given to any potential impact on different equality groups arising from the fee proposals. No negative impacts have been identified in relation to these proposals. Therefore, no changes were made to the policy as a result of the EQIA.

Monitoring and Review

The SCTS will continually monitor cost recovery from the courts and the OPG. In addition, the adoption of any new court structures arising from the forthcoming programme of civil courts reform may result in a further review of fee levels. A further equality impact assessment will be completed as part of any fee review.

¹⁰ See EQIA – Setting the Scene for further information on the legislation.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes No

- ◆ Opportunities to promote equality in respect of age, disability, gender, gender identity/transgender, sexual orientation, race and religion and belief have been considered, i.e:
 - Eliminating unlawful discrimination, harassment, victimisation;
 - Removing or minimising any barriers and/or disadvantages;
 - Taking steps which assist with promoting equality and meeting people's different needs;
 - Encouraging participation (e.g. in public life)
 - Fostering good relations, tackling prejudice and promoting understanding.

Yes No

Declaration

I am satisfied with the equality impact assessment that has been undertaken for the Consultation on Scottish Court Fees and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: **Jan Marshall**
Position: Deputy Director, Civil Law and Legal System
Authorisation date: 4 November 2016



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