POLICY NOTE

THE ADULTS WITH INCAPACITY (PUBLIC GUARDIAN'S FEES) (SCOTLAND) REGULATIONS 2024

SSI 2024/240

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

Summary Box

An instrument to increase the fees payable to the Office of the Public Guardian

Policy Objectives

1. Court fees and fees for services offered by the High Court of Justiciary, the Court of Session, Sheriff Appeal Court, sheriff courts including the Sheriff Personal Injury Court, Justice of the Peace Courts and the Office of the Public Guardian (OPG) ensure that those who make use of the courts or the OPG meet or contribute towards the associated costs to the public purse where they can afford so to do.
2. The Scottish Government has long had a policy to move toward fees which more fully reflect the cost of the processes involved, with a well-targeted system of fee exemptions to protect access to justice. This Order puts into effect that policy by raising court fees to ensure that the income raised reflects the costs incurred by the Scottish Courts and Tribunals Service (SCTS) in providing the civil court system. The specific fee rises in this Order are of 10% with effect from 1 November 2024.
3. These increases reflect the sharp, unprecedented rise in inflation over the past few years. These rises have negatively impacted the SCTS budget which was already under significant pressure following on from the Covid 19 pandemic.
4. This Order is one of a suite of 6 instruments that amend court fees across the Courts and the OPG.
5. The Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2022 (the 2022 Order) is repealed and replaced by the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2024.
6. The Scottish Government is committed to ensuring a well-targeted system of fee exemptions exist. This means that those who require support, and in general this means those in receipt of legal aid, will not incur any court fees.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

7. In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2024 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

8. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

9. A public consultation on these proposals was launched on 18th March 2024 which concluded on 10th June 2024.
10. 23 responses were received and almost all stated their opposition to increasing court fees or the charging of court fees at all.
11. A full list of those consulted and who agreed to the release of this information is attached to the consultation report which will be published on the Scottish Government publications website.
12. 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 the unexpected rise in inflation as well as the more minor adjustments proposed.
13. The policy reflects 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.

Financial effects

14. A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is considered to be minimal. All litigants other than those exempted will bear the increase based on the type of action and the level of court which they use. Lawyers may bear the increase unless and until they are paid by clients or recover fees from the losing party.
15. The fee increases are expected to raise an additional £5 million in revenue for the SCTS. This will cover the significant budgetary shortfall experienced due to the unforeseen rise in inflation and will allow SCTS to continue to operate effectively during a time of significant financial pressure on public money.
16. It is expected that the fees will be introduced on 1 November 2024. A further more comprehensive review of court fees will be undertaken in 2025 with a view to changes from 1 April 2026.

Impact Assessments

17. An equalities impact assessment has been undertaken as has a business and regulatory impact assessment and a child rights and wellbeing impact assessment. These will be published on http://www.gov.scot/publications.

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