Policy Note

The Sheriff Appeal Court Fees Order 2022

SSI 2022/183

1. 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.

Policy

2. 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.

3. 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 2% with effect from 1 July 2022 followed by further increases of 2% on 1 April 2023 and 1 April 2024. These rises are intended to allow for a modest increase in SCTS revenue over the next three years, though it is noted that official forecasts for inflation are for much higher rates, the Bank of England forecasting in May 2022 that the inflation rate will reach 10% by the end of the year before falling back close to its 2% target over the next two years[1]. This Order is one of a suite of 6 instruments that amend court fees across the Courts and the OPG.

4. The Sheriff Appeal Court Fees Order 2018 is repealed and replaced by the Sheriff Appeal Court Fees Order 2022. In addition to the small inflationary increases, certain updates to fees narratives have been made to ensure that they are as clear and consistent as possible. In addition, this Order makes other changes to the court fee charging regime. These changes are:

- in article 4(1)(d), the gross annual income threshold for exemption for certain persons in receipt of working tax credit has been raised from £18,000 to £20,592; and
- article 4(1)(g) introduces an exemption for those in receipt of the personal independence payment or adult disability payment with a gross annual income of £20,592 or less.

5. 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. In light of the responses to the Government consultation, the suite of orders enhance the exemptions scheme by extending the qualifying criteria. The income that can be earned whilst still qualifying for some of the benefits related exemptions has been increased to £20,592, in line with the Scottish Living

[1] https://www.bankofengland.co.uk/monetary-policy-report/2022/may-2022

Wage. Further, an exemption from court fees has been introduced for those in receipt in of the personal independence payment or adult disability payment with a gross income of £20,592 or less.

Consultation

6. A public consultation on these proposals was launched on 10 December 2021 which concluded on 4 March 2022[2].

7. 15 responses were received and almost all stated their opposition to increasing court fees or the charging of court fees at all. Non-confidential responses have be published at https://consult.gov.scot/justice/copy-of-new-consultation-clone-template/consultation/published_select_respondent. A consultation analysis and Government response will be published on http://www.gov.scot/publications.

Financial effects

8. As the overwhelming majority of changes to fees are only to allow for 2% inflation, the fees to be increased are not expected to result in an increase in real terms in fee revenue to the SCTS, rather the opposite as official predictions are for much higher inflation rates.

9. It is expected that the fees will be introduced on 1 July 2022 followed by further increases on 1 April 2023 and 1 April 2024. A further review of court fees will be undertaken in 2024 with a view to changes from 1 April 2025.

Impact Assessments

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

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2 http://www.gov.scot/Publications/2017/10/4229/0