

## IMPLEMENTING A SIMPLIFIED TABLE OF FEES

### Purpose

1. To approve the Consultation Response report (**Paper 3.1A**) for publication.

### Timing

2. **PRIORITY** – running a Public Consultation on regulating the fees of *court officer's* through the use of “*unit-based charging*” is an agreed priority item within the 2025-26 Work Programme.

### Background

#### *The experience gained to date*

3. In 2019 the use of *unit-based charging* was successfully introduced to regulate the recovery of *judicial expenses*. The benefits derived from that change is that a) it has delivered a major improvement in transparency for providers, consumers and the Council when scrutinising those tables of charges; and b) it significantly reduced the legal and policy input previously required when making a straightforward % uplift for inflation.

#### *Replicating that success*

4. The policy aim in proceeding with this change is to replicate that more simplified approach when regulating the fees that sheriff officers and messengers at arms can legally charge for their services. The Committee approved that *direction of travel* as its preferred policy position when it issued the 3 month Public Consultation exercise that ran from June to August this year.
5. The subsequent *Consultation Analysis (Sep 2025, SCJC)* documents the positive feedback received and confirmed there is strong public and provider support for implementing this change. The content of the attached *Consultation Response report (Paper 3.1A)* records the feedback received along with those amendments that have been taken forward within the finalised *drafting instructions* which are:

*CONSOLIDATION* – the 1 new consolidating instrument headed “*Fees of Messengers at Arms and Sheriff Officers*” will be prepared, including a section revoking the 2 existing sets of regulations from 2002 along with the 32 subsequent amending orders made (*refer Annex 2*).

*ESTABLISHING THE REGULATORY FRAMEWORK* – to adopt the new charging model a generic set of *general regulations* will be prepared to replace the 2 existing sets of *general regulations* (*refer annex 3*). Each of the new *general regulations* will be worded so that;

- The content is made generic and equally applicable to both messengers at arms and sheriff officers (*where practicable*);
- The regulations are reorganised and renumbered under logical headings;
- Reference is made to the existing and new % *surcharges* and the rates thereof as specified within this paper;

- Reference is made to the existing and new % *reductions* and the rates thereof as specified within this paper;
- Regulation 9 - is amended to reflect time now being charged in 6 minute *units* and the status quo remaining for the 30 minute and 1 hour thresholds;
- Regulation 15 - is amended to reaffirm the exclusion of local authority *summary warrants* from *reductions*; and
- Appropriate legal definitions<sup>1</sup> are added to cover the key elements of the new charging model.

**ESTABLISHING THE CHARGING MODEL** – the consolidating instrument will reflect the use of *unit-based charging* within the sections used, the generic regulations and the fee tables. In that regard:

- For comparability with the taxation rules the definition of a *unit* is to read as:
  - “References to a “unit” are to a measure of monetary charge with a value of £6.10<sup>2</sup>”;
- The previous fee amounts used for each existing line item within the 1 column that remains are to be replaced by the baseline values for the *units of work* as specified in annex 2 of this paper;
- The baseline for all % *reductions* are to be fixed in line with paragraphs 10 to 13 of this paper; and
- The baseline for all % *surcharges* are to be fixed in line with paragraph 14 of this paper.

**INFLATION ADJUSTMENTS** – the consolidating instrument will include an inflation uplift of 13.0% to cover the evaluation period from September 2022 to August 2025 (*refer annex5*), and in addition the inflation forecasts for the subsequent two years at the Bank of England's target rate of 2% per annum. To deliver that change the relevant paragraph within the *draft rules* will fix the following *monetary values*:

- Year 1 - £6.10 with effect from 01 April 2026;
- Year 2 - £6.22 with effect from 01 April 2027; and
- Year 3 - £6.35 with effect from 01 April 2028.

6. The key matters for consideration by members are set out below.

### Subsidising ‘access to justice’

7. Court officers are entirely private business concerns that generate their fee income through the fee tables regulated by this Council. They do not receive any funding from the public purse. That regulatory model raises an entirely valid policy question around whether the firms in this market should continue to be asked to subsidise *access to justice* on behalf of the Scottish Ministers.
8. In theory that policy position may have been viable some decades ago when these reductions for low value claims were brought in; as at that time the market size was considerably higher. In practice the ongoing decline in the number of commission holder's since then means this subsidy may now place too high a burden on the viability of the firms that do remain within this market.
9. As there is some merit in that argument the draft Consultation Response report includes an amendment that acknowledges that contraction in the size of this market. That change has been put into effect by:

<sup>1</sup> In a manner comparable to the *Taxation of Judicial Expenses Rules 2019*.

<sup>2</sup> The September 2022 baseline ‘monetary value’ of £5.40 (as consulted on) with a 13.0% uplift for inflation (which reflects the CPI and CPIH indices as listed within annex 5 of this paper)

- Decreasing the % reductions for the “*service or intimation*” of court documents from the 33% figure as consulted on to 20%; and
- Withdrawing the % reductions related to “enforcement” as those reductions can be seen as denying access to justice for the successful party (*rather than promoting more cases being lodged*).

**10. Members may wish to consider:**

- **Whether a partial decrease in the % reductions (*from 33% to 20%*) applicable to the *service and intimation* workload is sufficient?**
- **Whether the complete withdrawal of the % reductions from the ‘*enforcement*’ workload is appropriate?**
- **Whether it remains reasonable to ask the providers within this declining market to subsidise access to justice at all?**

Other adjustments made (*post consultation*)

11. To keep this change cost neutral almost all *units of work* remain fixed at the figures as consulted on. The 2 adjustments made were at:

- Line item 13c – the existing line item for arranging a locksmith was lifted from 1 to 3 units of work; and
- Line item 15i – adds a new fee at 20 units of work to recover the rework costs that will arise if an instructing party does seek an urgent same day service.

**12. Members may wish to discuss whether the two adjustments made to the finalised ‘*units of work*’ are reasonable?**

Suggestions not being taken forward

13. For completeness Annex 1 of the Consultation Response lists the reasons why some of the other suggestions made by respondents are not being taken forward.

**14. Members may wish to discuss whether they agree with the decisions as stated or would prefer to take an alternate view?**

**Recommendation**

**15. It is recommended that the Committee:**

- **Considers the content of the draft Consultation Response (*Paper 3.1A*);**
- **Approves its publication (*subject to any agreed amendments*); and**
- **Instructs the preparation of *draft rules* for consideration and approval.**

**Secretariat to the Scottish Civil Justice Council  
October 2025**