



Scottish
Civil Justice
Council

BUSINESS & REGULATORY IMPACT ASSESSMENT:

PROVIDING AMENDED COURT RULES TO SUPPORT:

A simplified Table of Fees (*for officers of court*)

PREPARED BY: The Secretariat to the Scottish Civil Justice Council (SCJC).

REGARDING: the introduction of 'unit based charging' for use when determining the regulated fees that can be charged by messengers at arms and sheriff officers.

LAST UPDATED: 28 May 2025

Step 1 – POLICY BACKGROUND

What is the purpose of this policy?

Historically the columns within the Fee Tables have specified an individual fee amount for each line item. In turn all of the amounts specified needed to be individually varied in order to implement a straightforward % fees uplift.

To reduce the resource input required the preferred solution is to adopt the 'unit based charging' methodology that has been successfully used in the comparable Fee Tables used for the recovery of costs through an award of expenses.

Why is this policy being developed or revised now?

For the recovery of judicial expenses; the change made in 2019 to using a "unit based charging" methodology has achieved the policy objective of simplifying the update process. The policy aim is to replicate that approach when updating the regulated fees of messengers at arms and sheriff officers.

Consultation

Whilst the regulated fees may be paid directly to an officer of court by the instructing party, they will ultimately be recovered in an award of expenses or by being added to a party's outstanding debt. Given the range of people impacted a public consultation is appropriate.

How are staff and / or customers affected by this policy?

The amount charged is the same: as the fee amount is just being broken into its 2 component parts (*the fee amount = the 'units of work' x the 'monetary value' per unit*).

Service Users

- *The instructing party* - this change in methodology is “cost neutral” as the same amount will be charged.
- *The party liable in expenses* - this change in methodology is “cost neutral” - the same amount will have been incurred and it will be recoverable in an award of expenses.
- *Tax Accountants* - require awareness of the change in methodology.

Service Providers

- *Messengers at Arms* – require awareness of the change in methodology.
- *Sheriff Officers* – require awareness of the change in methodology.

The Court

- *Judicial Office Holders* - require awareness of the change in methodology.
- *Court Officials* - require awareness of the change in methodology.

Options

The proposed changes are:

- To consolidate the 2 x 2002 regulations into 1 new statutory instrument;
- To adopt the use of ‘unit based charging’ within both the fee tables and the general regulations; and
- To estimate inflation uplifts in advance, on a 3 yearly cycle.

Option 1 - Do Nothing

Retains the status quo whereby individual fee amounts are calculated for each line item. That option was rejected as each fees uplift cycle would generate a 10 to 15 page amending statutory instrument which could be avoided.

Option 2 – New Rules

Under this option the ‘units of work’ for each line item can remain constant over time and for the amending instrument only a 1 line change to the monetary value is required. That significantly reduces the workload to support fee uplifts being made more timeously.

Benefits

Benefits - Option 1 - Do Nothing

The individual fee amounts will be seen within the Fee Tables – although the downside is that does make it difficult for users to pick up any inconsistencies between the charges set.

Benefits - Option 2 – New Rules

The fees fixed will be more transparent - as publishing the underpinning data as 'units of work' does facilitate users, and service providers, assessing the reasonableness of each fee.

There will be reduced delay - as in future any % uplift can be delivered as a simple 1 line adjustment of the 'monetary value' for a unit.

Costs

Costs - Option 1 - Do Nothing

Nil

Costs - Option 2 – New Rules

Nil – as this is a change in methodology only.

Step 2 – ASSESSMENT OF LIKELY IMPACTS – ON BUSINESS

What feedback has arisen from business engagement?

The secretariat has met with members of the SMASO Fees Committee and they are supportive of a public consultation being undertaken on these proposals.

How has that feedback fed into the development of this proposal?

The development of a Fees Review framework to support inflation adjustments being made in advance will allow firms in this market to better plan the way in which they deliver their services.

Step 3 – ASSESSMENT OF LIKELY IMPACTS – ON COMPETITION

To support initial screening for competition impacts, the Council uses the checklist of four questions recommended by the Competition and Markets Authority (CMA):

Will the measure directly or indirectly limit the number or range of suppliers?

NO

Will the measure limit the ability of suppliers to compete?

NO

Will the measure limit suppliers' incentives to compete vigorously?

NO

Will the measure limit the choices and information available to consumers?

NO – the breakdown of each fee amount charged into its two component parts (price x volume) will improve the level of information provided to consumers.

Step 4 – ASSESSMENT OF LIKELY IMPACTS – ON CONSUMERS

To support initial screening for consumer impacts, the Council mirrors the best practice¹ guidance from Scottish Government which uses the following six questions:

Does the policy affect the quality, availability or price of any goods or services in a market?

NO – the amount payable remains the same under either approach.

Does the policy affect the essential services market, such as energy or water?

NOT APPLICABLE

Does the policy involve storage or increased use of consumer data?

NO

Does the policy increase opportunities for unscrupulous suppliers to target consumers?

NO

Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

YES – breaking the fee amount charged into its two component parts (price x volume) will improve the level of information provided to consumers.

Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

NO

Test run of business forms

Does this proposal introduce new legal Forms that are materially different in style and content to the existing legal forms in general use?

NO

¹ <https://www.gov.scot/publications/business-regulatory-impact-assessment-bria-toolkit/>

Step 5 – ASSESSMENT OF LIKELY IMPACTS – DIGITAL

Digital Impact Test

Public services are increasingly being delivered online. To test for relevant opportunities the Council mirrors the best practice² guidance from Scottish Government and uses the following five questions:

Does the measure take account of changing digital technologies and markets?

YES – fixing the 1 monetary value (rather than multiple fee amounts) does simplify and future proof the available digital options for a) any firm in this market that may be considering a new billing or fees accounting system and b) any tax accountants or solicitor firms considering automating the way their staff select the relevant fees incurred for inclusion within an account of expenses.

Will the measure be applicable in a digital/online context?

BILLING SOFTWARE – the working assumption is that only the 3 larger firms in this market are likely to have invested in software for invoicing customers and then accounting for the fees income raised.

PROCESS MANAGEMENT – the working assumption is that this change will assist those tax accountants and solicitor firms already looking to use bar coding etc. to help automate the way in which these regulated fees would be included within an account of expenses.

LEGAL DATABASES – the working assumption is that only the 3 larger firms in this market are likely to pay the subscription fees needed to access a legal data base such as Westlaw. Smaller firms would access www.legislation.gov.uk to view each relevant instrument.

Is there a possibility the measures could be circumvented by digital / online transactions?

NO

Alternatively will the measure only be applicable in a digital context and therefore may have an adverse impact on traditional or offline businesses?

NO

If the measure can be applied in an offline and online environment will this in itself have any adverse impact on incumbent operators?

NO

Step 6 – ASSESSMENT OF LIKELY IMPACTS – ON REGULATIONS

² <https://www.gov.scot/publications/business-regulatory-impact-assessment-bria-toolkit/>

Court Fees

Will the proposal require changes in *court fee* regulations?

NO

Legal Aid

Will the proposal require changes in *legal aid* regulations?

NO

Recovery of Costs Awarded

Will the proposal require changes in *judicial taxation* regulations?

NO – the successful party in an action can include the fee amounts paid within their Account of Expenses regardless of this proposed change in methodology.

Enforcement and/or sanctions

Will compliance be enforced, and if so how?

YES – as each commission holder is subject to judicial supervision, any sheriff officer or a messenger at arms can be subject to sanction by the relevant sheriff principal (or the Lord Lyon).

Are there sanctions for non-compliance?

YES – as each commission holder is subject to judicial supervision their commission can be removed.

Step 7 – ASSESSMENT OF LIKELY IMPACTS – WITH IMPLEMENTATION

Implementation Plan

What is the timescale for this proposal to be implemented?

Estimated at 10 months from the opening date for this consultation:

- 3 months – to consult;
- 1 month – to analyse responses;
- 2 months - to prepare the draft instrument;
- 1 month – to seek Councils approval of that instrument;
- 1 month – for the rules to be approved & enacted by the Court of Session; and
- 2 months – for familiarisation by users, and parliamentary scrutiny by the DPLRC.

How will this proposal be implemented?

The change will be enacted by Act of Sederunt and take legal effect from the commencement date set within that Scottish Statutory Instrument (SSI). The % fees uplift when made will reflect the latest CPIH/CPI data published prior to that instrument being laid.

Monitoring

Will the resultant changes be monitored, and if so how?

YES - Qualitative Monitoring – for user feedback on the rules in use.

Will the resultant changes be evaluated, and if so how?

NO – unit based charging already operates as intended for the recovery of judicial expenses and this proposal would be taking the same approach with these regulated fees.