

# Consultation Response

## Scottish Government: Scottish court fees 2024 to 2025: Consultation

June 2024



## Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Civil Justice Committee and Access to Justice Committee welcomes the opportunity to consider and respond to the Scottish Government's Scottish court fees 2024 to 2025 consultation. The committee has the following comments to put forward for consideration.

### Question 1: Do you agree the court fees should rise by 10% commencing 1 November 2024?

We note that court fees increased by 2% in April 2024. If court fees are increased by a further 10% in November 2024, then the reality is that court fees will have increased in excess of 12% in a very short period. We note from the Consultation that this is for reasons related to a *largely unforeseen rise in inflation, budget constraints and the significantly increased costs of operating the courts system*. In the current inflationary landscape, a further 2% increase is likely to be unrealistic, but it would have been desirable to have further information in this regard to assist us in ascertaining a view as to whether we agree with the proposed increase of 10%. What is proposed seems to be significantly higher and disproportionate to the current rate of inflation, CPI and RPI<sup>1</sup>.

### Question 2: Do you agree that there should be a further targeted 10% increase on a limited number of civil court fees?

We note that the further targeted increase will affect a significant amount of court business. For example, fees to lodge an initial writ, caveats, motions, open and

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<sup>1</sup> For further discussion see Ben Christman and Malcolm Combe *Funding Civil Justice in Scotland: Full Cost Recovery, at What Cost to Justice?* (Edin. L.R. 2020, 24(1)) 49-73 (<https://pureportal.strath.ac.uk/en/publications/funding-civil-justice-in-scotland-full-cost-recovery-at-what-cost>)

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closed records under Ordinary Cause Rules, an account for taxation as well as applications for Confirmation are to be included within this increase. This increase does not appear to be related to inflationary rates, CPI or RPI. A clear justification as to why these particular areas have been targeted has not been demonstrated. It is therefore difficult to agree to such proposals without further information in that regard.

If fees are to be further increased, then it is reasonable to expect a higher level of service in general terms. Consideration should also be given as to the impact of the increase to the fees on ensuring that Scotland continues to be favourable jurisdiction to litigate.

### Question 3: Do you agree that the fees applicable to sheriff court insolvency applications under schedule 1 paragraph 13 should be brought in line with those charged by the Court of Session?

Yes, we agree that this should be updated for the reason that this appears to be to correct a previous clerical error.

### Question 4: Do you agree the proposals to introduce fees for the accountant of court in respect of administration of accounts under the Proceeds of Crime Act 2002?

We understand that fees are currently charged in terms of the rates for judicial factories. The fees proposed appear to be, in some cases significantly, less than the current judicial factory rates. Clarification is sought as to why the respective fees are to differ.

### Question 5: Do you have any other comments on the subject of this consultation paper or the future direction of policy consideration for court fees in Scotland?

The Consultation references The Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (“the 2018 Act”) and notes that “it increases access to justice by making the costs of civil action more predictable and by increasing the funding options for pursuers of civil actions.” It also goes on to say that, “the provisions also provide greater availability of “no win, no fee” success fee agreements as solicitors are now able to enter into damages based agreements.”

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These proposals will put additional pressures on solicitors' business by creating a further and significant cash flow burden as the legislation above relies on law firms to fund ongoing litigation. Certain organisations, such as public authorities, may be disproportionately disadvantaged by this. The Scottish Government should consider a more proportionate pay structure to avoid this.

A functioning court service which provides access to justice is fundamental for a functioning society. The proposals seem to be moving toward a user pays model, rather than an ability for those who need to use the Courts to be able to do so.

It would be desirable if there was a long-term policy with a clear tangible rationale applied and a regular mechanism of increase identified so that all court users have predictability. This may also avoid the need to consult on increases so regularly.

Where possible, efficiencies should be applied. For example, in Group Proceedings, where multiple actions are ongoing at the same time, if a case is not designated as a lead case then additional fees are charged. This should be able to be applied retrospectively and only one fee charged as this is ultimately using less court time and resource. Sheriffdoms are also operated individually and there may be economies of scale if efficiencies are applied across sheriffdoms.

**Question 6: Do you consider that any of the proposals in this consultation papers are likely to have a disproportionate effect on people or communities who face discrimination or social exclusion owing to race, age, gender, disability, sexual orientation or any other factor? If so, please specify your views on possible impact.**

The proposed increases will have a wide-reaching economic impact across Scotland. A sharp increase is likely to have implications for Scotland in general for wide reasons of access to justice. Parties may not litigate as they have concerns over cost. It is also possible that where parties have a choice of jurisdiction that they choose not to litigate in Scotland for the same reason.

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