



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

10th Meeting, 2018 (Session 5)

Tuesday 20 March 2018

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Decision on taking business in private:** The Committee will decide whether to take item 6 in private.

2. **Remand:** The Committee will take evidence from—

Marie Cairns, Family Visitor Centre Manager, CrossReach;

Neil Clark, Project Co-ordinator, HMP Kilmarnock Mental Health Advocacy Service, representing East Ayrshire Advocacy Services;

Elaine Stalker, Deputy Chief Executive, Families Outside;

Colin McConnell, Chief Executive, Scottish Prison Service.

3. **Subordinate legislation:** The Committee will consider the following negative instrument—

Premises Licence (Scotland) Amendment Regulations 2018 (SSI 2018/49).

4. **Subordinate legislation:** The Committee will consider the following negative instruments—

Sheriff Court Fees Order 2018 (SSI 2018/81);

Sheriff Appeal Court Fees Order 2018 (SSI 2018/82);

Court of Session etc. Fees Order 2018 (SSI 2018/83);

High Court of Justiciary Fees Order 2018 (SSI 2018/84);

Justice of the Peace Court Fees (Scotland) Order 2018 (SSI 2018/85);

Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2018 (SSI 2018/86).

5. **Justice Sub-Committee on Policing:** The Committee will consider a report back from the Sub-Committee meeting on 15 March 2018.
6. **Police and fire and rescue services:** The Committee will consider its approach to its scrutiny of the police and fire and rescue services.

Peter McGrath
Clerk to the Justice Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5195
Email: peter.mcgrath@parliament.scot

The papers for this meeting are as follows—

Agenda item 2

Paper by the clerk - remand	J/S5/18/10/1
Private paper - remand	J/S5/18/10/2 (P)

[Written submission from East Ayrshire Advocacy Services](#)

[Written submission from Families Outside](#)

[Written submission from the Scottish Prison Service](#)

[All written submissions received](#)

Agenda item 3

Paper by the clerk - Premises Licence (Scotland) Amendment Regulations 2018 SSI 2018-49	J/S5/18/10/3
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Agenda item 4

Paper by the clerk - negative instruments	J/S5/18/10/4
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Agenda item 5

Paper by the clerk - Justice Sub-Committee on Policing	J/S5/18/10/5
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Agenda item 6

Private paper - police and fire and rescue services	J/S5/18/10/6 (P)
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Justice Committee

10th Meeting, 2018 (Session 5), Tuesday 20 March 2018

Remand

Note by the clerk

Introduction

1. At its meeting on [19 December 2017](#), the Committee agreed to hold a round-table evidence session on remand, in order to explore issues around the use of remand in Scotland as well as the experience of prisoners held on remand. The round-table evidence session took place on [16 January](#). The Committee heard from the Crown Office and Procurator Fiscal Service, HM Chief Inspector of Prisons for Scotland, the Scottish Prison Service, and the Scottish Working Group on Women's Offending.
2. After that session, the Committee agreed to do further work on remand.

Justice Committee consideration

3. At its meeting on [6 February](#), the Committee heard from Community Justice Scotland, the Convention of Scottish Local Authorities (COSLA), Safeguarding Communities – Reducing Offending (Sacro), and Social Work Scotland. This evidence session explored issues around the reasons for remanding a person into custody; the information available to the court to inform its decision on remand; and the availability of alternatives to remand, such as bail supervision, across Scotland.
4. At its meeting on 13 March,¹ the Committee then took evidence from the Sheriffs' Association, the Edinburgh Bar Association, the Law Society of Scotland, and Professor Neil Hutton from the University of Strathclyde. There was further exploration of the decision-making process around bail and remand, as well as of the extent to which information and data as to the reasons for individuals not being granted bail is publicly and readily available.
5. For the session on 20 March, the Scottish Prison Service has been invited back to give evidence alongside representatives of East Ayrshire Advocacy Service (working at HMP Kilmarnock) and Families Outside, a charity working with families of prisoners. The focus will be on the experiences of prisoners held on remand.
6. All written submissions received to date can be found on the Committee's [remand webpage](#). This includes submissions from the three organisations giving evidence on 20 March.
7. The Committee will hold a further evidence session at its meeting on 27 March with third sector organisations to consider the role of such organisations in providing and supporting alternatives to remand.

¹ The Official Report for this meeting is expected to go online on the evening of 19 March: link available here: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/99796.aspx>

Justice Committee

10th Meeting, 2017 (Session 5), Tuesday 20 March 2018

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instrument:
 - [Premises Licence \(Scotland\) Amendment Regulations 2018 \(SSI 2018/49\)](#) [see page 3].
2. If the Committee agrees to report to the Parliament on the instrument it is required to do so by 29 March 2018. This is the second time this instrument has been on the Committee agenda, as discussed further below.

Procedure for negative instruments

3. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
4. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
5. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
6. Each negative instrument appears on the Justice Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
7. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

8. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>

Recommendation

9. **The Committee is invited to consider the instrument.**

**PREMISES LICENCE (SCOTLAND) AMENDMENT REGULATIONS 2018
(SSI 2018/49)**

Introduction

10. The instrument is made under sections 20(6), 146 and 147(1) of the Licensing (Scotland) Act 2005 and all other relevant enabling powers.

11. The Regulations require individuals applying for an alcohol premises or provisional premises licence for the sale of alcohol for consumption either on or off the premises to provide a Disabled Access and Facilities Statement in a form prescribed by the Scottish Ministers, along with their application.

12. Further details on the purpose of the instrument can be found in the policy note (see below).

13. The instrument comes into force on 30 March 2018.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

14. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 20 February 2018 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

JUSTICE COMMITTEE CONSIDERATION

15. The Committee first considered this instrument at its meeting on 6 March 2018. At that meeting the Committee welcomed the instrument and expressed support for it. However, a concern was raised that there appeared to be potentially contradictory information in the accompanying policy note.

16. Paragraph 3 of the policy note states:

“Section 179 of the 2010 Act amends section 20 of the 2005 Act to require individuals applying for an alcohol premises or provisional premises licence, for the sale of alcohol for consumption either on or off the premises, to provide a Disabled Access and Facilities Statement in a form prescribed by the Scottish Ministers, along with their application”.

17. The Committee noted that this suggested that the Disabled Access and Facilities Statement would form part of an individual’s application for an alcohol premises or provisional premises licence.

18. Paragraph 4 of the policy note states:

“However, the Disabled Access and Facilities Statement does not form part of the premises licence application and applicants will therefore not be required to submit a variation should the details provided in the future”.

19. The Committee agreed to write to the Scottish Government seeking clarification about the status of the Disabled Access and Facilities Statement and whether it forms part of an individual’s premises licence application, and to reconsider the instrument once a response had been received.

20. In response to the Committee's concern, the Cabinet Secretary for Justice has confirmed that section 179 of the Criminal Justice and Licensing (Scotland) Act 2010 requires an applicant for an alcohol premises or provisional premises licence to include the statement along with their application. However, the statement will not subsequently form part of the licence. The Scottish Government believes that requiring premises to pay for a costly major variation every time these details change may deter premises from seeking to improve their facilities for disabled people which is not its intention. To avoid the need for applicants to submit a major variation when the details provided in the statement change, it is not detailed at regulation 2 of the Premises Licence (Scotland) Regulations 2007 as being part of the premises licence.

21. The Scottish Government's full response to the Committee's request for clarification is attached below, together with an amended policy note.

22. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 29 March 2018.

Response from the Cabinet Secretary for Justice

Thank you for your letter of 7 March 2018 indicating the Justice Committee's support for the Premises Licence (Scotland) Amendment Regulations 2018 and seeking clarification about the status of the Disabled Access and Facilities Statement.

I am grateful for the Committee's support for the instrument and am happy to provide the clarification sought.

Regarding the status of the Disabled Access and Facilities Statement, I can confirm that section 179 of the Criminal Justice and Licensing (Scotland) Act 2010 requires an applicant for an alcohol premises or provisional premises licence to include the statement along with their application.

However, the statement will not subsequently form part of the licence. The Scottish Government believes that requiring premises to pay for a costly major variation every time these details change may deter premises from seeking to improve their facilities for disabled people which is not our intention. To avoid the need for applicants to submit a major variation when the details provided in the statement change, it is not detailed at regulation 2 of the Premises Licence (Scotland) Regulations 2007 as being part of the premises licence.

Thank you for drawing the potentially contradictory information at paragraphs 3 and 4 of the policy note to my attention. My officials have amended the policy note to clarify the position and a copy is attached to this reply.

The Committee may also wish to be aware that the status of the Disabled Access and Facilities Statement is set out in full in the [Guidance for Completing a Disabled Access and Facilities Statement](#) which was published on 8 March 2018. This Guidance is primarily to assist applicants in completing the required statement and local authorities have been encouraged to provide a link to the Guidance alongside their alcohol premises/provisional premises licence application form.

I hope the information I have provided, along with the revised policy note, is helpful and will aid the Committee's consideration of the instrument at its 20 March meeting and enable a positive outcome.

Michael Matheson
Cabinet Secretary for Justice
14 March 2018

Revised Policy Note: Premises Licence (Scotland) Amendment Regulations 2018 (SSI 2018/49)

1. The above instrument is made in exercise of the powers conferred by sections section 20(6), 146 and 147(1) of the Licensing (Scotland) Act 2005 (“the 2005 Act”) and all other relevant enabling powers. It is subject to negative parliamentary procedure.

Policy Objectives

2. This instrument amends The Premises Licence (Scotland) Regulations 2007, to specify at Schedule 6 the prescribed form required by the provisions at section 179 of the Criminal Justice and Licensing (Scotland) Act 2010 Act (the “2010 Act”). The provisions at section 179 of the 2010 Act and this instrument come into force on 30 March 2018.
3. Section 179 of the 2010 Act amends section 20 of the 2005 Act to require individuals applying for an alcohol premises or provisional premises licence, for the sale of alcohol for consumption either on or off the premises, to provide a Disabled Access and Facilities Statement in a form prescribed by the Scottish Ministers, along with their application. Section 179 also sets out that the statement is to contain information about disabled access to the premises and the facilities and any other provision available to aid the use of the premises by disabled people. These provisions cannot be fully implemented without the required prescribed form being available.
4. This means that any application for a new premises licence which is received by the Licensing Board after 30 March 2018 will need to be accompanied by the new Disabled Access and Facilities Statement as well as an operating plan, a layout plan and any certificates required. It is important that a completed Disabled Access and Facilities Statement is provided along with the alcohol premises application as failure to provide it would mean that the application was not complete and could therefore not be considered by the Licensing Board. However, the Disabled Access and Facilities Statement will not subsequently form part of the premises licence. Applicants will therefore not be required to submit a variation should the details provided change in the future.

Consultation

5. No formal consultation was carried out in relation to The Premises Licence (Scotland) Amendment Regulations 2018 (the “2018 Regulations”). However, focussed stakeholder engagement was undertaken on both the prescribed form and the non-statutory guidance developed to help those applying for an alcohol premises licence to prepare their Disabled Access and Facilities Statement and to assist Licensing Boards in assessing that statement prior to the 2018 Regulations and the guidance being finalised.

Impact Assessments and Financial Effects

6. As the regulations are required as part of the implementation of primary legislation, no impact assessment or assessment of the financial effects was undertaken. However, the impact is not thought significant as it requires one additional prescribed form to be completed on only one occasion by an applicant for an alcohol premises licence. The Licensing Board will then be required to check that the form has been completed alongside checking the prescribed forms which are already required.

Criminal Justice Reform and Licensing Unit
14 March 2018

Justice Committee**10th Meeting, 2018 (Session 5), Tuesday 20 March 2018****Subordinate legislation****Note by the clerk****Purpose**

1. This paper invites the Committee to consider the following negative instruments:

- [Sheriff Court Fees Order 2018 \(SSI 2018/81\)](#) [*see page 3*];
- [Sheriff Appeal Court Fees Order 2018 \(SSI 2018/82\)](#) [*see page 6*];
- [Court of Session etc. Fees Order 2018 \(SSI 2018/83\)](#) [*see page 8*];
- [High Court of Justiciary Fees Order 2018 \(SSI 2018/84\)](#) [*see page 10*];
- [Justice of the Peace Court Fees \(Scotland\) Order 2018 \(SSI 2018/85\)](#) [*see page 12*];
- [Adults with Incapacity \(Public Guardian's Fees\) \(Scotland\) Regulations 2018 \(SSI 2018/86\)](#) [*see page 14*].

2. The six instruments amend court fees across the courts and the Office of the Public Guardian to more fully reflect the cost of the processes involved, with a targeted system of fee exemptions to protect access to justice. Fee rises in these instruments are of 2.3% with effect from 25 April 2018 followed by further increases of 2% on 1 April in 2019 and 2020. These rises are intended to allow for expected inflation over the next three years. Further information on each of the instruments can be found below.

Procedure for negative instruments

3. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

4. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.

5. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.

6. Each negative instrument appears on the Justice Committee's agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *a/ways* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.

7. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

8. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:
<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

9. The Delegated Powers and Law Reform Committee (DPLRC) considered these instruments at its meeting on 13 March 2018.

10. In relation to SSI 2018/49, the DPLRC agreed to draw the Order to the attention of the Parliament as article 5(2) has been erroneously carried forward from the Sheriff Court Fees Order 2015 despite having no function in this Order. The Scottish Government has undertaken to revoke article 5(2) should an amending opportunity arise. An extract from the DPLRC's report is included below.

11. The DPLRC agreed that it did not need to draw the other five instruments to the attention of the Parliament on any of the grounds within its remit.

JUSTICE COMMITTEE CONSIDERATION

12. If the Committee agrees to report to the Parliament on these instruments, it is required to do so by 16 April 2018.

Recommendation

13. **The Committee is invited to consider the instruments.**

SHERIFF COURT FEES ORDER 2018 (SSI 2018/81)
<https://www.legislation.gov.uk/ssi/2017/328/contents/made>

Introduction

14. The instrument is made under section 107(1) and (2) of the Courts Reform (Scotland) Act 2014.
15. Further details on the purpose of the instrument can be found in the policy note (see below).
16. The instrument comes into force on 25 April 2018.

Policy Note: Sheriff Court Fees Order 2018 (SSI 2018/81)

Policy

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 2.3% with effect from 25 April 2018 followed by further increases of 2% on 1 April in 2019 and 2020. These rises are intended to allow for expected inflation over the next three years, according to official forecasts. This Order is one of a suite of 6 instruments that amend court fees across the Courts and the OPG.
3. Each of the current Court Fees Orders¹, and the amending 2016 Order, are repealed and replaced by the equivalent 2018 Order. 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. These changes are:
 - The fee at line item 13 has been removed as it is effectively redundant due to changes to bankruptcy legislation.
 - The fee at line item 20 (caveats) has been increased to bring it into line with the equivalent fee in the Court of Session (which has been lowered) as the administrative work involved is similar.
 - Line item 16 has been amended to increase the value of claim that will attract the minimum £19 fee from £200 to £300. This applies from 1 April 2019 and is therefore applicable to schedules 2&3.

¹ The Court of Session etc. Fees Order 2015, the High Court of Justiciary Fees Order 2015, the Sheriff Appeal Court Fees Order 2015, the Sheriff Court Fees Order 2015 and the Justice of the Peace Court Fees (Scotland) Order 2015, all as amended by the Court Fees (Miscellaneous Amendments) Order 2016, plus the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2015.

- Line items 5 & 23(a) have been increased by £4 over and above the inflationary increases to fund changes elsewhere in the system.
4. The Scottish Government is committed to ensuring a well-targeted system of fee exemptions exist. This means that those who require support, in general this means those in receipt of legal aid, will not incur any courts fees. In light of the principles discussed in the recent Supreme Court judgement in *Unison v Lord Chancellor* [2017] UKSC 51 and responses to the Government consultation the suite of orders enhance the exemptions scheme by extending the qualifying criteria to include those in receipt of emergency welfare funds as well as removing particular fees related to civil protective orders for domestic abuse from fee charging. In addition the income that can be earned whilst still qualifying for some of the benefits related exemptions has been increased to £18k, in line with the Scottish Living Wage.

Consultation

5. A public consultation on these proposals was launched on 20 October together with a draft Equality Impact Assessment and this consultation concluded on 12 January².
6. 22 responses were received and almost all stated their opposition to increasing court fees or the charging of court fees at all. Non-confidential responses will be published shortly - a consultation analysis and Government response has been published at:
<http://www.gov.scot/Publications/2018/02/4968>

Financial effects

7. As the overwhelming majority of changes to fees are only to allow for inflation, the fees to be increased are not expected to result in an increase in real terms in fee revenue to the SCTS.
8. It is expected that the fees will be introduced on 25 April 2018 followed by further increases on 1 April 2019 and 2020. A further review of court fees will be undertaken in 2020 with a view to changes from 1 April 2021. It is possible that an earlier review may be necessary to take allowance of other changes such as those contained with the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill.

Impact Assessments

9. A final equalities impact assessment was undertaken as was a business and regulatory impact assessment:
<http://www.gov.scot/Publications/2018/02/3041>
<http://www.gov.scot/Publications/2018/02/5287>

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

Extract from the Delegated Powers and Law Reform Committee's 12th Report 2018

The Sheriff Court Fees Order 2018 (SSI 2018/81) includes an erroneous reference to article 5(2), which is carried forward from the Sheriff Court Fees Order 2015.

Correspondence with the Scottish Government on this issue is reproduced in the Annexe below.

Recommendation

The Committee draws the Order to the attention of the Parliament on the general reporting ground as article 5(2) has been erroneously carried forward from the Sheriff Court Fees Order 2015 despite having no function in this Order.

The Committee welcomes the Scottish Government's undertaking to revoke article 5(2) should an amending opportunity arise.

Annexe

Sheriff Court Fees Order 2018 (SSI 2018/81)

On 5 March 2018, the Scottish Government was asked:

Article 5(2) states "[t]he matter specified in paragraph 13 of the Table of Fees in Part 1 of schedule 1, 2 or 3 includes, where appropriate, the issue of extracts and the issue of an abbreviate." Column 1 of paragraph 13 in each of schedules 1, 2 and 3 simply says "[n]o fee." but I note previously referred to applications for the approval of composition in bankruptcy actions. The Policy Note states this fee item has been removed as it is effectively redundant following changes to bankruptcy legislation.

If paragraph 13 of the Table of Fees in Part 1 of schedule 1, 2 or 3 is effectively redundant, why is it considered necessary to include article 5(2) in the Order?

The Scottish Government responded as follows:

The Scottish Government is grateful to the Delegated Powers and Law Reform Committee for highlighting this point. Article 5(2) appears in the same form in the Sheriff Court Fees Order 2015 and was erroneously carried forward into the Sheriff Court Fees Order 2018. As the Committee's legal advisers highlight, article 5(2) now has no function because paragraph 13 of the Table of Fees in Part 1 of schedules 1, 2 and 3 no longer specifies any fees for applications for the approval of composition.

The Scottish Government considers that article 5(2) has no substantive effect and does not present any practical issues in terms of the application or administration of the sheriff court fees regime.

Nonetheless, the Scottish Government undertakes to revoke article 5(2) should an amending opportunity arise, for example in the course of implementing the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill.

SHERIFF APPEAL COURT FEES ORDER 2018 (SSI 2018/82)

Introduction

17. The instrument is made under section 107(1) and (2) of the Courts Reform (Scotland) Act 2014.

18. Further details on the purpose of the instrument can be found in the policy note (see below).

19. The instrument comes into force on 25 April 2018.

Policy Note: Sheriff Appeal Court Fees Order 2018 (SSI 2018/82)

Policy

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 2.3% with effect from 25 April 2018 followed by further increases of 2% on 1 April in 2019 and 2020. These rises are intended to allow for expected inflation over the next three years, according to official forecasts. This Order is one of a suite of 6 instruments that amend court fees across the Courts and the OPG.
3. Each of the current Court Fees Orders³, and the amending 2016 Order, are repealed and replaced by the equivalent 2018 Order. 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. This is the case particularly in relation to the Sheriff Appeal Court, which only assumed its civil jurisdiction and competence in January 2016, where changes have been agreed with the Lord President's Private Office and the SCTS so that there is greater clarity on when fees are applicable and greater consistency with fees narratives for the other courts. These changes are:
 - Amendment to line items 4&5 to end the practice of the first half hour of a hearing being free. This is regarded as anomalous as it was never intended that substantive hearings should be free.

³ The Court of Session etc. Fees Order 2015, the High Court of Justiciary Fees Order 2015, the Sheriff Appeal Court Fees Order 2015, the Sheriff Court Fees Order 2015 and the Justice of the Peace Court Fees (Scotland) Order 2015, all as amended by the Court Fees (Miscellaneous Amendments) Order 2016, plus the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2015.

- A new line item 3(d) to provide for a fee for permission to appeal to the Court of Session. The fee has been reduced from the consultation proposal of £240 for 2018-19 to £116.
4. The Scottish Government is committed to ensuring a well-targeted system of fee exemptions exist. This means that those who require support, in general this means those in receipt of legal aid, will not incur any courts fees. In light of the principles discussed in the recent Supreme Court judgement in *Unison v Lord Chancellor* [2017] UKSC 51 and responses to the Government consultation the suite of orders enhance the exemptions scheme by extending the qualifying criteria to include those in receipt of emergency welfare funds as well as removing particular fees related to civil protective orders for domestic abuse from fee charging. In addition the income that can be earned whilst still qualifying for some of the benefits related exemptions has been increased to £18k, in line with the Scottish Living Wage.

Consultation

5. A public consultation on these proposals was launched on 20 October together with a draft Equality Impact Assessment and this consultation concluded on 12 January⁴.
6. 22 responses were received and almost all stated their opposition to increasing court fees or the charging of court fees at all. Non-confidential responses will be published shortly - a consultation analysis and Government response has been published at:
<http://www.gov.scot/Publications/2018/02/4968>

Financial effects

7. As the overwhelming majority of changes to fees are only to allow for inflation, the fees to be increased are not expected to result in an increase in real terms in fee revenue to the SCTS.
8. It is expected that the fees will be introduced on 25 April 2018 followed by further increases on 1 April 2019 and 2020. A further review of court fees will be undertaken in 2020 with a view to changes from 1 April 2021. It is possible that an earlier review may be necessary to take allowance of other changes such as those contained with the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill.

Impact Assessments

9. A final equalities impact assessment was undertaken as was a business and regulatory impact assessment:
<http://www.gov.scot/Publications/2018/02/3041>
<http://www.gov.scot/Publications/2018/02/5287>

⁴ <http://www.gov.scot/Publications/2017/10/4229/0>

COURT OF SESSION ETC. FEES ORDER 2018 (SSI 2018/83)

Introduction

20. The instrument is made under section 107(1) and (2) of the Courts Reform (Scotland) Act 2014.

21. Further details on the purpose of the instrument can be found in the policy note (see below).

22. The instrument comes into force on 25 April 2018.

Policy Note: Court of Session etc. Fees Order 2018 (SSI 2018/83)

Policy

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 2.3% with effect from 25 April 2018 followed by further increases of 2% on 1 April in 2019 and 2020. These rises are intended to allow for expected inflation over the next three years, according to official forecasts. This Order is one of a suite of 6 instruments that amend court fees across the Courts and the OPG.
3. Each of the current Court Fees Orders⁵, and the amending 2016 Order, are repealed and replaced by the equivalent 2018 Order. 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. These changes are:
 - Amendment to line items B16, B18, C12 and C14 to end the practice of the first half hour of a hearing being free. This is regarded as anomalous as it was never intended that substantive hearings should be free.
 - A revised lower fee at line item C6 to ensure consistency with the Sheriff Court for the provision of a similar service.
 - New fees to cover hearings & motions in the Election Court.
4. The Scottish Government is committed to ensuring a well-targeted system of fee exemptions exist. This means that those who require support, in general

⁵ The Court of Session etc. Fees Order 2015, the High Court of Justiciary Fees Order 2015, the Sheriff Appeal Court Fees Order 2015, the Sheriff Court Fees Order 2015 and the Justice of the Peace Court Fees (Scotland) Order 2015, all as amended by the Court Fees (Miscellaneous Amendments) Order 2016, plus the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2015.

this means those in receipt of legal aid, will not incur any courts fees. In light of the principles discussed in the recent Supreme Court judgement in *Unison v Lord Chancellor* [2017] UKSC 51 and responses to the Government consultation the suite of orders enhance the exemptions scheme by extending the qualifying criteria to include those in receipt of emergency welfare funds as well as removing particular fees related to civil protective orders for domestic abuse from fee charging. In addition the income that can be earned whilst still qualifying for some of the benefits related exemptions has been increased to £18k, in line with the Scottish Living Wage.

Consultation

5. A public consultation on these proposals was launched on 20 October together with a draft Equality Impact Assessment and this consultation concluded on 12 January⁶.
6. 22 responses were received and almost all stated their opposition to increasing court fees or the charging of court fees at all. Non-confidential responses will be published shortly - a consultation analysis and Government response has been published at:
<http://www.gov.scot/Publications/2018/02/4968>

Financial effects

7. As the overwhelming majority of changes to fees are only to allow for inflation, the fees to be increased are not expected to result in an increase in real terms in fee revenue to the SCTS.
8. It is expected that the fees will be introduced on 25 April 2018 followed by further increases on 1 April 2019 and 2020. A further review of court fees will be undertaken in 2020 with a view to changes from 1 April 2021. It is possible that an earlier review may be necessary to take allowance of other changes such as those contained with the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill.

Impact Assessments

9. A final equalities impact assessment was undertaken as was a business and regulatory impact assessment:
<http://www.gov.scot/Publications/2018/02/3041>
<http://www.gov.scot/Publications/2018/02/5287>

⁶ <http://www.gov.scot/Publications/2017/10/4229/0>

HIGH COURT OF JUSTICIARY FEES ORDER 2018 (SSI 2018/84)

Introduction

23. The instrument is made under section 107(1) and (2) of the Courts Reform (Scotland) Act 2014.
24. Further details on the purpose of the instrument can be found in the policy note (see below).
25. The instrument comes into force on 25 April 2018.

Policy Note: High Court of Justiciary Fees Order 2018 (SSI 2018/84)

Policy

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 2.3% with effect from 25 April 2018 followed by further increases of 2% on 1 April in 2019 and 2020. These rises are intended to allow for expected inflation over the next three years, according to official forecasts. This Order is one of a suite of 6 instruments that amend court fees across the Courts and the OPG.
3. Each of the current Court Fees Orders⁷, and the amending 2016 Order, are repealed and replaced by the equivalent 2018 Order. No changes have been made to fees narratives in the instrument.
4. The Scottish Government is committed to ensuring a well-targeted system of fee exemptions exist. This means that those who require support, in general this means those in receipt of legal aid, will not incur any courts fees. In light of the principles discussed in the recent Supreme Court judgement in *Unison v Lord Chancellor* [2017] UKSC 51 and responses to the Government consultation the suite of orders enhance the scheme by extending the qualifying criteria to include those in receipt of emergency welfare funds as well as removing particular fees related to civil protective orders for domestic abuse from fee charging. In addition the income that can be earned whilst still

⁷ The Court of Session etc. Fees Order 2015, the High Court of Justiciary Fees Order 2015, the Sheriff Appeal Court Fees Order 2015, the Sheriff Court Fees Order 2015 and the Justice of the Peace Court Fees (Scotland) Order 2015, all as amended by the Court Fees (Miscellaneous Amendments) Order 2016, plus the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2015.

qualifying for some of the benefits related exemptions has been increased to £18k, in line with the Scottish Living Wage.

Consultation

5. A public consultation on these proposals was launched on 20 October together with a draft Equality Impact Assessment and this consultation concluded on 12 January⁸.
6. 22 responses were received and almost all stated their opposition to increasing court fees or the charging of court fees at all. Non-confidential responses will be published shortly - a consultation analysis and Government response has been published at:
<http://www.gov.scot/Publications/2018/02/4968>

Financial effects

7. As the overwhelming majority of changes to fees are only to allow for inflation, the fees to be increased are not expected to result in an increase in real terms in fee revenue to the SCTS.
8. It is expected that the fees will be introduced on 25 April 2018 followed by further increases on 1 April 2019 and 2020. A further review of court fees will be undertaken in 2020 with a view to changes from 1 April 2021. It is possible that an earlier review may be necessary to take allowance of other changes such as those contained with the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill.

Impact Assessments

9. A final equalities impact assessment was undertaken as was a business and regulatory impact assessment:
<http://www.gov.scot/Publications/2018/02/3041>
<http://www.gov.scot/Publications/2018/02/5287>

⁸ <http://www.gov.scot/Publications/2017/10/4229/0>

JUSTICE OF THE PEACE COURT FEES (SCOTLAND) ORDER 2018 (SSI 2018/85)**Introduction**

26. The instrument is made under section 107(1) and (2) of the Courts Reform (Scotland) Act 2014.

27. Further details on the purpose of the instrument can be found in the policy note (see below).

28. The instrument comes into force on 25 April 2018.

Policy Note: Justice of the Peace Court Fees (Scotland) Order 2018 (SSI 2018/85)**Policy**

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 2.3% with effect from 25 April 2018 followed by further increases of 2% on 1 April in 2019 and 2020. These rises are intended to allow for expected inflation over the next three years, according to official forecasts. This Order is one of a suite of 6 instruments that amend court fees across the Courts and the OPG.
3. Each of the current Court Fees Orders⁹, and the amending 2016 Order, are repealed and replaced by the equivalent 2018 Order. No changes have been made to fees narratives in the instrument.
4. The Scottish Government is committed to ensuring a well-targeted system of fee exemptions exist. This means that those who require support, in general this means those in receipt of legal aid, will not incur any courts fees. In light of the principles discussed in the recent Supreme Court judgement in *Unison v Lord Chancellor* [2017] UKSC 51 and responses to the Government consultation the suite of orders enhance the exemptions scheme by extending the qualifying criteria to include those in receipt of emergency welfare funds as well as removing particular fees related to civil protective orders for domestic abuse from fee charging. In addition the income that can be earned whilst still

⁹ The Court of Session etc. Fees Order 2015, the High Court of Justiciary Fees Order 2015, the Sheriff Appeal Court Fees Order 2015, the Sheriff Court Fees Order 2015 and the Justice of the Peace Court Fees (Scotland) Order 2015, all as amended by the Court Fees (Miscellaneous Amendments) Order 2016, plus the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2015.

qualifying for some of the benefits related exemptions has been increased to £18k, in line with the Scottish Living Wage.

Consultation

5. A public consultation on these proposals was launched on 20 October together with a draft Equality Impact Assessment and this consultation concluded on 12 January¹⁰.
6. 22 responses were received and almost all stated their opposition to increasing court fees or the charging of court fees at all. Non-confidential responses will be published shortly - a consultation analysis and Government response has been published at:
<http://www.gov.scot/Publications/2018/02/4968>

Financial effects

7. As the overwhelming majority of changes to fees are only to allow for inflation, the fees to be increased are not expected to result in an increase in real terms in fee revenue to the SCTS.
8. It is expected that the fees will be introduced on 25 April 2018 followed by further increases on 1 April 2019 and 2020. A further review of court fees will be undertaken in 2020 with a view to changes from 1 April 2021. It is possible that an earlier review may be necessary to take allowance of other changes such as those contained with the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill.

Impact Assessments

9. A final equalities impact assessment was undertaken as was a business and regulatory impact assessment:
<http://www.gov.scot/Publications/2018/02/3041>
<http://www.gov.scot/Publications/2018/02/5287>

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

ADULTS WITH INCAPACITY (PUBLIC GUARDIAN'S FEES) (SCOTLAND) REGULATIONS 2018 (SSI 2018/86)

Introduction

29. The instrument is made under sections 7 and 86(2) of the Adults with Incapacity (Scotland) Act 2000.
30. Further details on the purpose of the instrument can be found in the policy note (see below).
31. The instrument comes into force on 25 April 2018.

Policy Note: Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2018 (SSI 2018/86)

Policy

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 instrument 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 these regulations are of 2.3% with effect from 25 April 2018 followed by further increases of 2% on 1 April in 2019 and 2020. These rises are intended to allow for expected inflation over the next three years, according to official forecasts. This instrument is one of a suite of six, that amend court fees across the Courts and the OPG.
3. Each of the current Court Fees instruments¹¹, and the amending 2016 Order, are repealed and replaced by the equivalent 2018 instrument. 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. These changes are:
 - The word “processing” has been replaced with the word “submission” at line items 5, 6, 10 & 13.
 - The word “audit” has been replaced with “review” at line item 20.
 - A revised narrative at line item 19 and a new fee at 19A to aid clarity.

¹¹ The Court of Session etc. Fees Order 2015, the High Court of Justiciary Fees Order 2015, the Sheriff Appeal Court Fees Order 2015, the Sheriff Court Fees Order 2015 and the Justice of the Peace Court Fees (Scotland) Order 2015, all as amended by the Court Fees (Miscellaneous Amendments) Order 2016, plus the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2015.

4. The Scottish Government is committed to ensuring a well-targeted system of fee exemptions exist. This means that those who require support, in general this means those in receipt of legal aid, will not incur any courts fees. In light of the principles discussed in the recent Supreme Court judgement in Unison v Lord Chancellor [2017] UKSC 51 and responses to the Government consultation the regulations enhance the exemptions scheme by extending the qualifying criteria to include those in receipt of emergency welfare funds. In addition the income that can be earned whilst still qualifying for some of the benefits related exemptions has been increased to £18k, in line with the Scottish Living Wage.

Consultation

5. A public consultation on these proposals was launched on 20 October together with a draft Equality Impact Assessment and this consultation concluded on 12 January¹².
6. 22 responses were received and almost all stated their opposition to increasing court fees or the charging of court fees at all. Non-confidential responses will be published shortly - a consultation analysis and Government response has been published at:
<http://www.gov.scot/Publications/2018/02/4968>

Financial effects

7. As the overwhelming majority of changes to fees are only to allow for inflation, the fees to be increased are not expected to result in an increase in real terms in fee revenue to the SCTS.
8. It is expected that the fees will be introduced on 25 April 2018 followed by further increases on 1 April 2019 and 2020. A further review of court fees will be undertaken in 2020 with a view to changes from 1 April 2021. It is possible that an earlier review may be necessary to take allowance of other changes such as those contained with the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill.

Impact Assessments

9. A final equalities impact assessment was undertaken as was a business and regulatory impact assessment:
<http://www.gov.scot/Publications/2018/02/3041>
<http://www.gov.scot/Publications/2018/02/5287>

¹² <http://www.gov.scot/Publications/2017/10/4229/0>

Justice Committee

10th Meeting, 2018 (Session 5), Tuesday 20 March 2018

Feedback from the Justice Sub-Committee on Policing

Note by the clerk

1. The Justice Sub-Committee on Policing met on 15 March 2018 when it took evidence on Durham Constabulary's reports on Police Scotland's Counter Corruption Unit.
2. The Sub-Committee took evidence from Deputy Chief Constable Rose Fitzpatrick, Duncan Campbell, Interim Head of Legal Services, and Superintendent Andy McDowall, Professional Standards Department, Police Scotland.
3. This was to consider issues raised by Chief Constable Michael Barton during his evidence session on 22 February. It included CC Barton's concerns about Police Scotland changing the remit from an investigation to an inquiry, Police Scotland's obstruction, in particular the views of its legal department, and that the risk-averse culture it had adopted had unnecessarily prolonged the process.
4. DCC Fitzpatrick explained the legal advice that she had received which indicated that in accordance with the Police Service of Scotland (Conduct) Regulations 2014, to ensure impartiality, the person appointed to investigate complaints cannot be the same person to investigate any conduct issues which arise from those complaints.
5. DCC Fitzpatrick assured the Sub-Committee that Police Scotland had taken on board the lessons learned included in Durham Constabulary's report.
6. The Sub-Committee also considered its forward work programme and agreed to next meet on 19 April, when it would consider Police Scotland's review of custody provision.