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Equalities, Human Rights and Civil Justice Committee

Subordinate Legislation considered by the Equalities, Human Rights and Civil Justice Committee on 8 October 2024



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Equalities, Human Rights and Civil Justice Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- a. matters relating to equal opportunities, and upon the observance of equal opportunities within the Parliament; and
- b. matters relating to human rights.
- c. matters relating to civil justice within the responsibility of the Cabinet Secretary for Justice and Home Affairs.

2. In these Rules

(a) “equal opportunities” includes the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds or on grounds of disability, age, sexual orientation, language or social origin or of other personal attributes, including beliefs or opinions such as religious beliefs or political opinions; and

(b) “human rights” includes Convention rights (within the meaning of section 1 of the Human Rights Act 1998) and other human rights as for example contained in any international convention, treaty or other international instrument ratified by the United Kingdom.

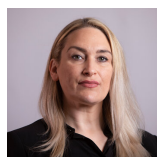


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Committee Membership



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Deputy Convener
Maggie Chapman
Scottish Green Party



Meghan Gallacher
Scottish Conservative
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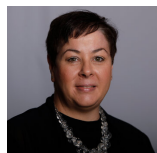
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Scottish Labour



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Scottish Conservative
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Overview of instruments

1. This report concerns the undernoted instruments, all laid before the Parliament by the Scottish Government on 9 September 2024. The instruments are subject to the negative procedure – which means that any can be annulled by resolution of the Parliament during a 40-day period ending on 3 November 2024.
 - 2024/235 The Sheriff Court Fees Order 2024
 - 2024/236 The Sheriff Appeal Court Fees Order 2024
 - 2024/237 The High Court of Justiciary Fees Order 2024
 - 2024/238 The Court of Session etc. Fees Order 2024
 - 2024/239 The Justice of the Peace Court Fees (Scotland) Order 2024
 - 2024/240 The Adults with Incapacity (Public Guardian’s Fees) (Scotland) Regulations 2024.
2. It is expected that the fees will be introduced on 1 November 2024. A further, more comprehensive, review of court fees will be undertaken in 2025 with a view to changes from 1 April 2026.
3. Instruments 2024/235 to 2024/239 are laid under the [Courts Reform \(Scotland\) Act 2014](#). Instrument 2024/240 is laid under the [Adults with Incapacity \(Scotland\) Act 2000](#).
4. 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 to do so.
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. This applies to all six SSIs.
6. Motions recommending annulment of all six SSIs were lodged by Maggie Chapman MSP on 3 October 2024. It is for the Equalities, Human Rights and Civil Justice Committee, as lead committee, to decide whether or not to agree any or all of the motions.

Consideration by the Delegated Powers and Law Reform Committee

7. The Delegated Powers and Law Reform (DPLR) Committee is required to consider every instrument laid before the Parliament and decide whether to draw it to the attention of the Parliament on any of the “reporting grounds” set out in Rule 10.3 of the Parliament’s standing orders.
8. The DPLR considered, and reported on, instruments 2024/236 to 2024/240 in its

[53rd Report, 2024](#). The DPLR Committee delayed consideration of instrument 2024/235, The Sheriff Court Fees Order 2024, in order to write to the Scottish Government with issues raised by their legal advisers. This correspondence is included in full at Annexe A. The DPLR Committee subsequently considered and reported on instrument 2024/235 in its [56th Report, 2024](#).

9. The DPLR Committee made no recommendations in relation to any of the suite of six instruments but agreed to highlight to the Equalities, Human Rights and Civil Justice Committee the correspondence with the Scottish Government and the level of the fee uplift in relation to SSI 2024/235 of around 10% or 20%.

Consideration by the Equalities, Human Rights and Civil Justice Committee

10. At its meeting on 8 October 2024, the Equalities, Human Rights and Civil Justice Committee took evidence on the suite of instruments from the Minister for Victims and Community Safety and Walter Drummond-Murray, Head of Civil Courts and Inquiries, Justice Directorate, Scottish Government.

The Sheriff Court Fees Order 2024 (SSI 2024/235)

Purpose of the instrument

11. This instrument raises the current court fees payable in the Sheriff Court by around 10% with effect from 1 November 2024, with an additional 10% increase being applied to a limited number of targeted fees.
12. The gross annual income threshold below which people on low incomes are exempt from the requirement to pay fees is £20,592. Additional exemptions for people in receipt of certain social security benefits are provided for in this instrument.
13. Following the oral evidence, Maggie Chapman moved motion S6M-14789—

That the Equalities, Human Rights and Civil Justice Committee recommends that the Sheriff Court Fees Order 2024 (2024/235) be annulled.
14. After debate, the motion was disagreed to by division (For 1, Against 5, Abstentions 0).

Recommendation

15. Accordingly, the Committee recommends to the Parliament that the Sheriff Court Fees Order 2024 (2024/235) not be annulled.

The Sheriff Appeal Court Fees Order 2024 (SSI 2024/236)

Purpose of the instrument

16. This instrument raises the current court fees payable in the Sheriff Appeal Court by 10% with effect from 1 November 2024.
 17. The gross annual income threshold below which people on low incomes are exempt from the requirement to pay fees is £20,592. Additional exemptions for people in receipt of certain social security benefits are provided for in this instrument.
 18. Following the oral evidence, Maggie Chapman moved motion S6M-14790—

That the Equalities, Human Rights and Civil Justice Committee recommends that the Sheriff Appeal Court Fees Order 2024 (2024/236) be annulled.
 19. After debate, the motion was disagreed to by division (For 1, Against 6, Abstentions 0).
20. Accordingly, the Committee recommends to the Parliament that the Sheriff Appeal Court Fees Order 2024 (2024/236) not be annulled.

The High Court of Justiciary Fees Order 2024 (SSI 2024/237)

Purpose of the instrument

21. This instrument raises the current court fees payable in the High Court of Justiciary to the Principal Clerk of Justiciary or any other officer acting for the Principal Clerk by 10% with effect from 1 November 2024.
 22. The gross annual income threshold below which people on low incomes are exempt from the requirement to pay fees is £20,592. Additional exemptions for people in receipt of certain social security benefits are provided for in this instrument.
 23. Following the oral evidence, Maggie Chapman moved motion S6M-14791—

That the Equalities, Human Rights and Civil Justice Committee recommends that the High Court of Justiciary Fees Order 2024 (2024/237) be annulled.
 24. After debate, the motion was disagreed to by division (For 1, Against 6, Abstentions 0).
25. Accordingly, the Committee recommends to the Parliament that the High Court of Justiciary Fees Order (2024/237) not be annulled.

The Court of Session etc. Fees Order 2024 (SSI 2024/238)

Purpose of the instrument

26. This instrument raises the current court fees payable in the Court of Session to the Principal Clerk of Session, the Accountant of Court, the Auditor of the Court of Session or any other officer acting for one of those officers by 10% with effect from 1 November 2024.
27. The gross annual income threshold below which people on low incomes are exempt from the requirement to pay fees is £20,592. Additional exemptions for people in receipt of certain social security benefits are provided for in this instrument. This particular instrument also provides for exemptions from payment of fees in certain types of environmental court cases. Court fees continue to be disapplied in applications for specified protective interdicts and exclusion orders in relation to domestic abuse. No court fees are payable by the Crown in relation to enforcement of the criminal law.
28. Following the oral evidence, Maggie Chapman moved motion S6M-14792—

That the Equalities, Human Rights and Civil Justice Committee recommends that the Court of Session etc. Fees Order 2024 (2024/238) be annulled.
29. After debate, the motion was disagreed to by division (For 1, Against 6, Abstentions 0).
30. Accordingly, the Committee recommends to the Parliament that the Court of Session etc. Fees Order (2024/238) not be annulled.

The Justice of the Peace Court Fees (Scotland) Order 2024 (SSI 2024/239)

Purpose of the instrument

31. This instrument raises the current court fees payable in the Justice of the Peace courts in Scotland to the clerk of the Justice of the Peace Court by 10% with effect from 1 November 2024.
 32. The gross annual income threshold below which people on low incomes are exempt from the requirement to pay fees is £20,592. Additional exemptions for people in receipt of certain social security benefits are provided for in this instrument.
 33. Following the oral evidence, Maggie Chapman moved motion S6M-14793—

That the Equalities, Human Rights and Civil Justice Committee recommends that the Justice of the Peace Court Fees (Scotland) Order 2024 (2024/239) be annulled.
 34. After debate, the motion was disagreed to by division (For 1, Against 6, Abstentions 0).
35. Accordingly, the Committee recommends to the Parliament that the Justice of the Peace Court Fees (Scotland) Order 2024 (2024/239) not be annulled.

The Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2024 (SSI 2024/240)

Purpose of the instrument

36. This instrument raises the current fees payable to the OPG in Adults with Incapacity proceedings in Scotland by 10% with effect from 1 November 2024. Adults with incapacity includes those who lack capacity due to mental illness, learning disability, dementia or a related condition, or an inability to communicate. The OPG may charge fees in relation to powers of attorney and guardianship orders.
37. The gross annual income threshold below which people on low incomes are exempt from the requirement to pay fees is £20,592. Additional exemptions for people in receipt of certain social security benefits are provided for in this instrument.
38. Following the oral evidence, Maggie Chapman moved motion S6M-14794—

That the Equalities, Human Rights and Civil Justice Committee recommends that the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2024 (2024/240) be annulled.
39. After debate, the motion was disagreed to by division (For 1, Against 6, Abstentions 0).
40. Accordingly, the Committee recommends to the Parliament that the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2024 (2024/240) not be annulled.

Annexe A: correspondence between the DPLR Committee and the Scottish Government

On Wednesday 11 September 2024, the Committee asked the Scottish Government:

41. We understand that since the laying of this instrument there has been a change in lead solicitor.
42. The policy note states that the policy intention of the instrument is to uplift sheriff court fees by either 10% or 20%. In the following instances, the fees provided for in part 1 of the schedule, it appears that the fees have not been uplifted in increments of 10% or 20%:

Column 1 (Matters)	Column 2 (Fee payable) £
3(a)(i): Receiving and examining inventory of estate, except where sub-paragraph (b) or (c) of this paragraph applies— where the amount of the estate vested in or belonging beneficially to the deceased, of which confirmation is required, or for which resealing under the Colonial Probates Act 1892 is required does not exceed— £250,000.	341
3(a)(ii): Receiving and examining inventory of estate, except where sub-paragraph (b) or (c) of this paragraph applies— where the amount of the estate exceeds £250,000.	684
5: Initial writ in any proceedings not being proceedings for which any other paragraph of this Table specifies a fee.	171
13: Lodging of notice of appointment or intention to appoint an administrator out of court under the Insolvency Act 1986 or filing documents with the court to obtain a moratorium under section A3 of Part A1 of that Act.	171
24: Lodging of a certified copy record under the Ordinary Cause Rules.	153
25: Lodging of a certified closed record under the additional procedure of the Ordinary Cause Rules.	153

43. Can you confirm whether the uplifted fees above are in line with the policy intention?
44. Please confirm whether any corrective action is proposed, and if so, what action and when.

On 17 September 2024, the Scottish Government responded:

45. The Scottish Government can confirm that the uplifted fees in the table above (i.e. those that are increased by a figure more than 10%) are in line with the policy intention although we would acknowledge that the policy note could have been more specific about this.
46. The consultation document [Scottish Court Fees 2024-2025: A consultation \(www.gov.scot\)](http://www.gov.scot) set out the policy intention more fully. It is clear from paragraph 7 that in addition to a 10% increase to all court fees, a targeted further 10% increase on a limited number of court fees is proposed. It's also evident that although inflation was one of the drivers for the fee increases across the courts system as a whole, it was not the only factor. The cost of operating a courts system (which showed a rate of cost recovery of 57% on 2023/34) was also a consideration. Therefore, some fees were increased by larger amounts where that could be done without imperilling access to justice and the fees selected for the larger increases

were identified with that in mind.

47. In addition, the policy intention was to enhance simplicity and consistency in the fee tables where that can be achieved. For example, fee 13 (lodging of appointment or intention to appoint an administrator out of court under Insolvency legislation) was brought into line with fee 5 (lodging an initial writ) in the table above (and this change featured within the consultation).

