

## Proposal 1 – Consolidation

### **Question 1 – Do you agree that the 2 existing sets of regulations from 2002 should be replaced with 1 new consolidated instrument? If not why not?**

Yes, we do agree. As matters stand there is the Act of Sederunt (Fees of Messengers-at-Arms)(No2) 2002 SSI 2002 No 566 and the Act of Sederunt (Fees of Sheriff Officers)(No2) 2002 SSI 2002 No 567. In addition, the latter is split so that different charges are levied as between summary causes/simple procedure and all other sheriff court and Sheriff Appeal Court work.

We do not agree that the new set of regulations should be named “Fees of Officers of Court” as proposed at Section 3, 20 of the Consultation Paper. The reason is that while Messengers-at-Arms and Sheriff Officers are Officers of Court not all Officers of Court are either Messengers-at-Arms or Sheriff Officers. For example, solicitors are officers of court.

Instead, the heading should simply read “Fees of Messengers-at-Arms and Sheriff Officers”.

## Proposal 2 – Adopting unit based charging:

### **Question 2 – Do you agree that a change to “unit based charging” will provide improved transparency on the level of fee being charged? If not why not?**

No, there would be no more transparency than already exists. Indeed, it would be more complicated for a layperson. By way of example, take the fee for postal service. At the moment, this is as transparent as possible; the table says £31.95. It is less straightforward obvious to have to multiple units (6 in this case) by a unit value of, say, £5.40.

We support a unit based system for reasons of convenience, not transparency.

The Fees of Solicitors 2019 provides that the Unit is £18 and that, for instance, lodging an Inventory of Productions attracts a fee of 5 Units, ie. £90. So, when it becomes appropriate to increase the fee in light of inflation, all that is required is to increase the Unit to, say, £21, rather than having to change each item individually by raising it by just over 10%, which in the case of an Inventory of Productions would be an increase to £105. The use of units provides convenience when increasing fees.

However, although this process is “unit based” it has nothing to do with the time spent. It could take 5 minutes or an hour to compile an Inventory of Productions, but the charge would be the same, i.e £90.

### **Question 3 – Do you agree that the baseline “monetary value” should start at £5.40 and that 1 unit of time should be fixed at 6 minutes? If not why not?**

£5.40 as a unit value is reasonable, insofar as it produces costs not dissimilar to the existing figures. We do not see the relevance of “6 minutes” or any other time; for example, with regard to Annex 4, whether postal service attracts a fee of £31.95 or 6 units each of £5.40

(£32.40) the question of time actually spend is neither here nor then in that it has no bearing on the fee payable. See Answer 2 above for an analogy in relation to the Fees of Solicitors.

**Question 4 – Do you agree that the proposed changes to the general regulations will support the adoption of unit based charging?**

They would make it easier, although the unit based system could already be adopted in relation to both the existing sets of regulations.

**Question 5 – With regard to annex 4, do you have a view on whether any of the current 60 line items shown are no longer required, or whether any of the baseline unit of work should be amended? If so why?**

Some of the entries (e.g. uplifting children) are extremely rarely used, but in our view none of them is obsolete, so we would recommend retaining all of the entries.

**Question 6 – Do you have a view on any unintended consequences that might arise from implementing a change to unit based charging?**

No, we believe that a similar change was made in relation to solicitors' fees and that there were no unintended consequences there.

Proposal 3 - Adjusting for inflation in advance:

**Question 7 – Do you have a view on the proposed change to the Council progressing inflation adjustments in advance?**

Yes, in our view inflationary changes should be made in arrears, as at present. If we could predict inflation we would be able to make our fortunes in the government bond market. This is a notoriously difficult area in which to make any predictions. There is no great harm in retaining the existing system as regards increases. There should obviously be as little delay as possible in changing the unit value to reflect inflation. We have commented before on why the judicial interest rate (8%) is far too high and ought to be decreased to mirror actual interest rates on borrowing.

**Question 8 – Do you have a view on which indices (CPI, CPIH or a combination of both) should be used when forecasting inflation?**

We do not believe that predicting inflation is a task that should be adopted at all in the setting of these fees, and have no view on which index is better than another.

Other

**Question 9 – Are you aware of any other opportunities to modernise how these regulated fees are set by the courts and charged to end users?**

It would be useful if Scottish Courts and Tribunals Service emphasised on its Website and elsewhere that obtaining a court decree is not the end of the process of debt recovery and that the end user may have to spend a considerable amount of money taking enforcement action which might well be a futile exercise. Giving some of the actual costs in the table/s would make the point even clearer.