

Providing your response

If you have chosen to provide a separate written response, then please complete the first page of this Respondent Information Form and attach it to your response.

If you wish to include your responses within this Respondent Information Form, please insert your responses to each consultation question in the (expandable) boxes below:

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 are very disadvantaged by the current system, with sporadic, belated and retrospective cost-of-living increases on our tables of fees. The impact has acutely worsened post COVID, with rampant inflation, increases in operating and salary costs, further exacerbated by the recent employer NIC increase. Collectively, these factors have significantly, adversely impacted business sustainability.

Accordingly, we welcome this opportunity to move to a new, simplified system with one table incorporating time units instead of individual fee items. It is essential that the stated time unit value (£5.40) is recalculated, at the point of going live, using the formula proposed in section 18 of the consultation (CPI/CPIH).

We further welcome the recommendation for a forward-looking, three-year cycle, with predetermined incremental uplifts. This will provide greater certainty and greatly assist with budgeting and financial planning.

Proposal 2 – Adopting unit based charging:

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

YES

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?

YES

We note that the £5.40 baseline would be consistent with the approach taken by the Scottish Civil Justice Council in similar fee regulations i.e. solicitors and shorthand writers.

There is no obvious reason for Messengers at Arms and Sheriff Officers not to adopt a similar approach.

However, it is essential that this value is recalculated, in line with the relevant inflation indexes (CPI/CPIH) prior to enactment.

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

In principal **YES**, subject to the percentage adjustment (+/-) being fixed at an appropriate rate.

Annex 5 suggests a 28%/12% increase for certain Messenger at Arms instructions. Given that Court of Session actions are generally more complex and relatively higher values, there is certainly merit in having a provision for a higher “Court of Session” fee.

Since inhibition has become available in the Sheriff Court and other changes to jurisdiction rules, we are seeing significantly lower volumes of Court of Session instructions. We are also concerned that fewer Sheriff Officers are progressing in their career, by taking the Messenger at Arms examination. Perhaps if the financial reward was greater, then this might encourage more Sheriff Officers, to progress their qualification to Messenger at Arms status. In light of same we believe a +50% adjustment to be a more realistic value.

To help facilitate access to justice, Annex 6 suggests a -33% reduction for lower values debts (<£1,500.00).

In reality, the associated cost for Sheriff Officer firms to process such instructions, is the same as Court of Session or Ordinary actions. Indeed, Simple Procedure process is very often bulkier with a greater number of printed pages.

We accept that we do hold public office and acknowledge the need for access to justice, however, noting that Sheriff Officers receive no direct financial support from Government, and in the context of the current shrinking citation and diligence market, this represents a loss-making business obligation. Accordingly, we believe this provision should be discontinued, or to soften the financial impact on Sheriff Officer firms, restricted to a -10% reduction of the fee value.

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?

We cannot identify any specific line items which should be removed.

There are certain instructions which carry significant responsibility, where the current fee does not reflect the substance of the matter, and material benefit to the instructing party.

For example: -

- Carrying out Summary Cause eviction - £133.32
- Facilitating the return of child - £179.87
- Arrest a vessel, cargo or aircraft - £297.68

In light of same, we believe certain line items should be retained; however, the corresponding fee/unit value should be adjusted. We would recommend a minimum 50% increase in number of units allocated to such instructions.

Post COVID, our profession has seen a significant shift away from paper-based instructions to digital. Previously, instructing agents would provide a set of paper copies of all relevant service documentation. This is no longer the case as most instructions are received by way of email with a PDF attachment. This has added a new stage in the service and production process, whereby SMASO members are required to convert the electronic file into paper. This can be very time consuming with additional costs in terms of consumables. In light of same we recommend the insertion of a new line item for converting an electronic instruction into hardcopy, possibly 1 unit for every 20 pages capped at 3 units.

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

YES

The effect of Rule 15 in the currently regulations, requires to be accommodated in the new regulations, given that column A&B will no longer exist. Summary Warrant instructions are currently charged in accordance column B regardless of the value of the debt. As such it is important that the potential % reduction referenced in our response Q4 is not applicable to Summary Warrant instructions. Failure to incorporate this provision will adversely impact the sustainability of this business stream.

In the event that the provision for a % reduction for lower debts is removed (see our response to Q4), is accepted and carried forward into the new regulations, then this concern will be resolved.

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?

We very much welcome this feature of the proposed new regulations. This will provide greater certainty and assist with budgeting and financial planning.

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

We understand a blend of CPI/CPIH has been used in recent fee reviews, and in the absence of any alternative proposal, we are comfortable with this recommendation.

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?

Please see our response to Q5. We believe certain categories of instructions deserve a higher fee, which better reflects the gravitas and material benefit to the instructing party.

We would again recommend a new fee item for managing the conversion of an electronic file into a paper file. This has certainly had an adverse impact on our operating costs.

In general, we very much welcome the proposed objects of this consultation. We would further welcome regular, effective dialogue, following implementation, to ensure that the proposed changes achieve the stated objectives.