

Respondent Information Form

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?

I agree that the 2 existing sets of regulations from 2002 should be consolidated, which makes it more streamlined and easier for users to access the information.

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 I agree that this change would improve transparency and simplify the process.

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?

I agree that the time unit should be fixed at 6 minute intervals, although while £5.40 has been taken from the ‘Unit of Time’ fee without witness, and hourly rate of £54 is not commensurate of a qualified sheriff officer and witness, therefore with an hourly rate applied of £200 for the 2 persons required, the monetary value should be increased to a figure closer to £20 for baseline. Most simple service fees sitting under Column B should be the starting point with a view to reviewing different types of activity that is more complex and/or time consuming.

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

Yes I agree.

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?

Please see detailed response at end

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

The unintended consequences could be that outside parties might be focused on the unit rate and therefore question the time allocation for each activity. This is another reason why the base unit fee should be altered to £20 for every £6 minutes.

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?

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I agree with this proposal, which will provide more certainty for increasing fees in line with inflation and this visibility will allow sheriff officer firms to plan and budget accurately for business planning and more importantly for investing in the business including people.

The current system has been difficult for firms to accurately plan. Our professional association has had to take the cost for appointing professionals to assist with lengthy and detailed proposals for fee applications.

The proposal will provide transparency to everyone and stop large increases applied after several years of no increase.

It will also align us to other court providers and therefore fairer and transparent.

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

The use of a combined CPI/CPIH indices is fair and has worked well in the past and should be used for forecasting inflation.

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?

I would recommend an ongoing working group on fee reform to include representatives from: SCJS's Cost and Funding Committee, SMASO, & Lord President's Office and this group is well placed to modernise, and regular joint meetings will allow effective reforms in this and other areas that need improvement in the future. Changes seem to take a while to go through and a more cohesive approach will be beneficial to effective change.

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?

There is a wide feeling in our profession that the current Table of Fees is outdated and should be simplified, therefore this is the opportunity and right time to make practical amendments that is more aligned to the type of activity that officers of court

do nowadays, as so much has radically changed since legislation and user habits gradually over the last 2 decades. Looking back at statistical information going back 15-20 years, there has been a dramatic decline of debt actions in Scotland, which means that sheriff officers are travelling throughout 6 jurisdictions with less work in post code areas, therefore the fee attributed to Column A is mostly unprofitable and having been a partner in one of the firms, we could see that this was impacting the business, during changing times, with higher demands at a time that law firms seek faster service times. To maintain excellent service lines, especially since Covid, sheriff officers have had to invest heavily in digital technology to keep up.

Firms have seen huge increases of costs as have other professional businesses and to continue investing in sheriff officers for the future and attracting the best candidates, sheriff officer salaries need to be competitive with their professional qualifications in such an invested career. There has been a reduction of sheriff officers in the marketplace by around 35% over the said period of change.

Consequently, the proposed discount for Column A threshold is not reflective of the current business situation or remotely commensurate. I know of no professional people or tradesman that would charge a fee of £60 for work to prepare an instruction, legal checks, creation of forms, travel to location, service (not always on first visit) along with witness, prepare and sign execution of service, report from information ascertained at the visit, create invoice and thereafter return and liaise with the instructing agent. The level of work involved is the same involved as the fee under Column B and as such this fee should be the basis of all service fees for sheriff officers. As such it is not fair that sheriff officers should conduct work at a loss and carry the cost to deliver these professional services, as we no longer have the volume of work to subsidise these loss-making fees. Furthermore, with 24 sheriff officer firms, most of these are small firms, with sole practitioners and for commercial reasons they no longer outsource work to other jurisdictions and some clients and contracts dictate that the work is to be carried out by that firm within short timeframes, which is challenging for these firms.

Due to the introduction of Simple Procedure and increasing solicitor costs, more party litigants have embarked on doing the work themselves. Sheriff Officers are obliged to assist and advise these individuals/small businesses, and our own business has identified the challenges to apportion time for our sheriff officers to advise them and thereafter undertake service under the Column A fee scale. A higher fee for actions under £1500 would allow sheriff officers to dedicate more time to party litigants and provide access to justice without taking a loss.

I would strongly recommend that the discount part is removed from the proposed new Table

Line item 8 for an Ejection is the most challenging diligence for sheriff officers to undertake, which is a regular activity. The current fee is not commensurate to the difficulties involved in carrying out this activity and all firms regularly experience dangerous situations, where threats and assaults have taken place, notwithstanding the level of planning and risk assessments involved. Ironically the fees for tradesman attending these evictions are greater than the sheriff officer fee and the fee involved

for this ultimate diligence should be higher. **I would suggest that consideration be given to increase the base line fee under item 8b to around 60 units.**

I agree that there should be a surcharge for service by Messenger-at-Arms, which is a higher qualified person authorised to deal with Court of Session matters, which are mostly more complex and higher value. It is important that sheriff officers are incentivised to progress to Messenger-at-Arms as there are less progressing to this level due to little financial rewards. The difference between Column B and Court of Session Fees is not commensurate to that higher office and status. **As such I would recommend the surcharge of 50% be applied to Court of Session and this figure is more reasonable.** Comparably a higher qualified Solicitor, being Solicitor Advocate would charge our far higher rates than a standard solicitor rate.

Fees in relating to Attachment, Money Attachment and Auction should be reviewed, as the additional work involved and complexity of executing attachment under the basic fee is not commensurate under the current fee scale. **I would recommend a minimum of 30-50% increase to make such diligence viable.**

The fees in respect of apprehending individuals and the uplift of children, can be extremely sensitive and challenging to execute. Much planning with risk assessments and liaison with other parties involved can involve much sheriff officer management time. **I would recommend that the base fee is increased by 50% from 18 units to 36 units and 36 units to 66 units (if using the current £5.40 per unit calculation) although I have recommended the unit fee to be set at £20.** The regulation should be amended to begin after the end of the first 30 minutes in place of the first hour.

Sheriff officers have always had to deal with **urgent matters** and accommodate this for clients anywhere in Scotland, which can have a significant impact on the operation, but we feel obliged to deal with the service. **I believe that it would be appropriate to incorporate a premium levy on the fee of 100% of the fee to accommodate such service.** I appreciate that the Regulations allow sheriff officers to negotiate a fee, but from a commercial perspective this can be a difficult conversation with the instructor and if this was incorporated in the new Table of Fees, then it will provide a uniform and fair application.

We would recommend an increase to the additional copy fee in Section 1 for Intimation and Service of a Document. Alternatively, consideration should be to align a fee of 50% of the main fee to all service types where additional copy fees are listed.

- (i) Currently set at £21.72 under Section 1. this is too low for the work required to prepare and serve. It equates to 22.5% of the £96.27 fee whereas most other additional; copy fees are a greater percentage of the fee. E.G. Inhibition is 32% and Inhibition & Service is 43.4%. (Not sure how this fee was originally calculated)
- (ii) I would recommend that a fee of 50% of the fee is reasonable remuneration for serving an additional copy at the same address. Whilst there is no

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additional travel, the sheriff officer will undertake a separate service, execution and report for each defender, as well as ensuing enquiries.

I would recommend an increase of fee associated to 'Arranging locksmith or tradesman to be in attendance' from £7.24 to £22.63.

- (i) Current fee is insufficient remuneration to make arrangements with any tradesman which involves engaging with tradesman, agreeing a date of attendance and sending confirmation to the tradesperson.
- (ii) A suggested fee of £22.63 will be aligned to other miscellaneous fees