Scottish Civil Justice Council

BUSINESS & REGULATORY IMPACT ASSESSMENT:

For the:
Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) 2026

PREPARED BY: The Secretariat to the Scottish Civil Justice Council (SCJC)

REGARDING: the charges made by "officers of court", as fixed by the SCJC as the regulator of the fees that providers can charge in this small niche market.

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Step 1 – POLICY BACKGROUND

The regulation of fees by the SCJC provides but one component of the wider *'regulatory framework'* established by the courts (refer Annex 1)

In doing so the objective is to provide the public with assurance that appropriate *consumer protection* is provided within this regulated market. That requirement arises because the end consumer is the unwilling recipient of a service they did not choose to receive, from a provider they did not select, and at a price they could not negotiate.

The power to regulate the profession

The statutory *'power to regulate'* the profession is held under Part V of the Debtors (Scotland) Act 1987:

PART V - MESSENGERS-AT-ARMS AND SHERIFF OFFICERS
Sec 75 - Regulation of organisation, training, conduct and procedure.
Sec 76 - Advisory Council.
Sec 77 - Appointment of messenger-at-arms.
Sec 78 -………………
Sec 79 - Investigation of alleged misconduct.
Sec 80 - Courts' powers in relation to offences or misconduct.
Sec 81 - Provisions supplementary to section 80.
Sec 82 - Appeals from decisions under sections 77, 79 and 80.
Sec 83 - ……………..
Sec 84 - Collection of statistics from officers of court.
Sec 85 - Measure of damages payable by officer of court for negligence or other fault.
Sec 86 - Official identity card.
Sec 86A Electronic communications

The power to regulate the fees charged by the profession

The power of the SCJC (as the regulator) to fix the fees charged is held under section 2 (1) (c) (ia) of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013.

The power for the Court of Session to then enact the *draft fees rules* proposed by the SCJC is held under s105 (1) and s106 (1) of the Courts Reform (Scotland) Act 2014.

The reasons to regulate *officers of court* are that:

- They have a statutory monopoly when providing services related to diligence (enforcement) in Scotland
- When providing those service's they are exercising a '*coercive enforcement function'* on behalf of the state.

Given that context the state requires that profession to operate within a regulated market as:

- There is a high potential for market failure given the small size and specialist nature of this market; and
- Each licensed provider is required to deliver their services under 'judicial supervision' and their primary *'duty of care'* is to the court (not the consumer).

The rationale for this intervention

The draft rules consolidate the 2 existing sets of regulations from 2002 and change the pricing methodology to *unit-based charging* to provide a more transparent method for regulating the fees charged. In doing so the policy objectives are:

- *To provide improved transparency* – as breaking the 'fee amount' into its two component parts *(units of work x monetary charge)* improves the ability for both consumers and providers to assess comparability between line items.

- *To better evidence the need for change* – as explicitly stating values as *units of work* can help to identify whether a particular service should be amended or withdrawn. In addition, it can provide fair and reasonable benchmarks for those pricing a new service, or those making comparisons to services provided in other markets.

- *To provide comparable rules* – as the *unit-based charging* methodology has been working as intended for the recovery of judicial expenses[1] since 2019.

- *To adjust for inflation* – by updating the monetary charge to align with the published inflation indices (in August 2025).

- *To facilitate more timely future updates* – as this change in methodology significantly reduces the level of legal and policy input previously required to generate an updated statutory instrument whenever a straightforward request for a fees uplift is made.

[1] *Act of Sederunt (Taxation of Judicial Expenses Rules) 2019 (SSI 2019/75)*

The change in Pricing Methodology

In practice this change to *unit-based charging* means the amount charged for each line item is now narrated in 2 component parts:

- *Schedule 1* – records the baseline *'units'* of work *(in 6-minute periods)* that the Council considers to be reasonable to deliver each service*;* and
- *Section 2* – conveys the *'monetary charge'* considered to be reasonable per *'unit'*.

The formula for the fee amount to be charged is calculated as:

> *"Fee amount" = "units"" x "monetary charge".*

To provide sufficient granularity for billing consumers, and to eliminate adverse effects from rounding, each 60-minute period does need to be divisible by the "unit" as a whole number. Hence the selection of a 6-minute unit. That approach enables the hourly rate to be easily calculated when multiplying that unit by 10 and additionally provides consistency with the approach taken to billing by most law firms.

Public Participation

In May 2025 the Cost and Funding Committee published a Public Consultation on its intention to use *unit-based charging*. The positive feedback received was set out in the Consultation Analysis *(Sep 2025, SCJC)* and the decision to proceed was published in the Consultation Response *(Nov 2025 SCJC)*. The content provided within this Act of Sederunt implements the policy decisions taken.

Sectors and groups affected

The instructing party – will find this change in pricing methodology cost neutral (as the same amount is charged under *unit-based charging* as under the previous pricing methodology).

The recipient of enforcement – will continue to carry the same risk that the amount charged may be added onto their total debt liability under either methodology *(where the law supports an instructing party passing on the costs incurred).*

The following groups do need to be informed of this change in methodology:

- *Messengers-at-Arms and Sheriff Officers.*
- *Judicial Office Holders & Court Officials*.
- *Solicitors & Advocates.*
- *Tax Accountants.*

Benefits

IMPROVED TRANSPARENCY – as specifying the "units" of work for a service better supports both consumers and providers in assessing comparability between line items

IMPROVED EFFICIENCY – as inflation uplifts can be proposed and enacted using a single sentence in a 1-page SSI to amend the "monetary charge" *(avoiding the need to draft a multi-page SSI to achieve the same result).*

Costs

FAMILIARISATION COSTS – as officers of court, legal practitioners, paralegals, and tax accountants etc. will need time to familiarise themselves with the consolidation of the rules within one generic set of general regulations and then update their own guidance materials.

Step 2 – ASSESSMENT OF LIKELY IMPACTS – ON BUSINESS

What feedback has arisen from business engagement?

Prior to making any proposals the secretariat held meetings with SMASO as the representative body for the profession. The subsequent policy decisions taken by the SCJC have been welcomed by SMASO.

Step 3 – ASSESSMENT OF LIKELY IMPACTS – ON COMPETITION

This is a small and specialist niche market with 23 firms employing an estimated 200+ staff.

The full range of services they provide includes *debt collection* and *private investigation* services for private clients, in parallel with the *enforcement* services provided to the courts. At the time of writing 134 of those 200+ employees were licensed to provide *enforcement services* under a commission issued by the judiciary.

Those low numbers represent a high potential for 'market failure' if any one of those 23 firms was to attempt to achieve market dominance by undercharging for its services in the short-term *(until it has driven the key competitors out of the market)* to get to a longer-term position of overcharging *(once they had gained market dominance)*. To counter such a high potential for market failure the state has recognised the need for a regulator.

To support wider screening for competition impacts - the Council uses the checklist of 4 questions recommended by the Competition and Markets Authority (CMA):

> *Will the measure directly or indirectly limit the number or range of suppliers?*
>
> YES – given the high potential for market failure the granting of *'commissions'* is a form of licensing that provides consumer protection, reinforces the requirement to work under judicial supervision, and reinforces that the providers duty of care is to the court.
>
> *Will the measure limit the ability of suppliers to compete?*
>
> NO – the issuing of *'commissions'* provides 1 element of the consumer protection expected within this market without restricting the ability to compete on other aspects.
>
> *Will the measure limit suppliers' incentives to compete vigorously?*

NO – the fixing of *'regulated fees'* provides 1 element of the consumer protection expected within this market without restricting the ability to compete on other aspects.

W*ill the measure limit the choices and information available to consumers?*

NO – adopting '*unit-based charging'* will help to protect consumers as it provides an enhanced ability to challenge comparability between the services provided.

Step 4 – ASSESSMENT OF LIKELY IMPACTS – ON CONSUMERS

In practice there are 2 different consumer groups within this regulated market:
- the instructing party *(as the 'intermediate consumer' that pays the fee charged)*
- the unwilling recipient of enforcement *(as the 'end consumer' if that fee is passed on)*

To provide the required level of consumer protection the current *regulatory framework* (refer Annex 1) has evolved over several centuries and 1 element within that framework is the regulation of the fees a service provider (*officer of court)* can charge for:
- Serving a court document.
- Enforcing a court order *(apprehension, ejection, uplift etc).*
- Enforcing a diligence arising from civil proceedings *(attachment / arrestment)*.

To support wider screening for consumer impacts - the Council mirrors the best practice[2] guidance from Scottish Government via these 6 questions:

Does the policy affect the quality, availability or price of any goods or services in a market?

YES – This Act of Sederunt includes a 13% price increase to adjust for inflation and adopts a cost neutral change in pricing methodology *(as the same fee amount would be charged under either pricing methodology)*,

Does the policy affect the essential services market, such as energy or water?

NOT APPLICABLE

Does the policy involve storage or increased use of consumer data?

NO

Does the policy increase opportunities for unscrupulous suppliers to target consumers?

NO – as this is a regulated service only those holding a commission from the judiciary can provide enforcement services.

Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

YES – adopting *unit-based charging* provides consumers with an enhanced ability to challenge the comparability of fees (between each service provided).

[2] https://www.gov.scot/publications/business-regulatory-impact-assessment-bria-toolkit/

Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

NO – the existing SMASO complaints procedure will continue to apply.

Test run of business forms

Does this proposal introduce new legal Forms that are materially different in style and content to the existing legal forms in general use?

NO

Step 5 – ASSESSMENT OF LIKELY IMPACTS – DIGITAL

Digital Impact Test

To test for relevant digital opportunities - the Council uses these 5 questions from the Scottish Governments best practice[3] guidance:

Does the measure take account of changing digital technologies and markets?

YES – using 6-minute units may facilitate some of the firms in this market reusing software developed for law firms *(for time recording / case management / billing).*

Will the measure be applicable in a digital/online context?

POSSIBLY – whilst some firms may use off the shelf financial software (like Quick Books or Sage) only the larger firms might invest in more complex billing software.

Is there a possibility the measures could be circumvented by digital / online transactions?

NO

Alternatively, will the measure only be applicable in a digital context and therefore may have an adverse impact on traditional or offline businesses?

NO

If the measure can be applied in an offline and online environment will this in itself have any adverse impact on incumbent operators?

NO

Step 6 – ASSESSMENT OF LIKELY IMPACTS – ON REGULATIONS

This Act of Sederunt provides a *"statutory charging instrument"*. In practice that means each of the 23 firms providing enforcement services on behalf of the court:

[3] https://www.gov.scot/publications/business-regulatory-impact-assessment-bria-toolkit/

- Can only charge for a line item if it has been specified within this Act of Sederunt.
- Has no discretion to vary or waive the charges to be made under schedule 1.
- Has no discretion to charge for something not yet listed under schedule 1.
- Must interpret any ambiguity in a charge made under schedule 1 in favour of the consumer *(rather than themselves as the provider).*

*Will the proposal require changes in the **court fee orders**?*

NO

*Will the proposal require changes in the **civil legal aid regulations**?*

NO

*Will the proposal require changes in the **taxation of judicial expenses rules**?*

NO

Enforcement and/or sanctions

Will compliance be enforced and, if so, how?

YES – the SMASO *complaints procedure* and *disciplinary procedure* continue to apply.

Are there sanctions for non-compliance?

YES – the Lord Lyon or a sheriff principal can remove the commission held.

Step 7 – ASSESSMENT OF LIKELY IMPACTS – WITH IMPLEMENTATION

Implementation Plan

These changes will come into effect after the Scottish Election, on the commencement date fixed within the Act of Sederunt when made.

Monitoring

Will the resultant changes be monitored and, if so, how?

YES – the secretariat will monitor for media coverage and requests for amendments.

Will a post implementation review need to be undertaken and, if so, when?

POSSIBLY - if monitoring was toevidence a material level of user dissatisfaction with the changes made, then the secretariat would initiate a Rules Review exercise.

BIBLIOGRAPHY

Legislation – for regulating the market:

Debtors (Scotland) Act 1987
PART VI– Messengers at arms and sheriff officers (s75 to s86A)
https://www.legislation.gov.uk/ukpga/1987/18/contents

Bankruptcy and Diligence etc. (Scotland) Act 2007
PART 3 – Officers of Court (s50–s78)
https://www.legislation.gov.uk/asp/2007/3/contents

Legislation – for regulating the profession

Public Services Reform (Scotland) Act 2010
Schedule 4 – Regulation of Officers of Court – Modification of enactments
https://www.legislation.gov.uk/asp/2010/8/contents

Existing rules for the profession:

Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1991 *(23 pages)*
https://www.legislation.gov.uk/uksi/1991/1397/contents/made

The last "amending order" enacted reduced the training periods required for qualification:

- *Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) (Amendment) 2024* *(3 pages)*
  https://www.legislation.gov.uk/ssi/2024/157/contents/made

Officers of Court's Professional Association (Scotland) Regulations 2011 *(5 pages)*
https://www.legislation.gov.uk/ssi/2011/90/contents/made

Legislation – for regulating fees

Courts Reform (Scotland) Act 2014
Sections 105-106 – regulation of fees
https://www.legislation.gov.uk/asp/2014/18/contents

Existing Fees Rules:

Act of Sederunt (Fees of Messengers-at-Arms) (No. 2) 2002 *(13 pages)*
https://www.legislation.gov.uk/ssi/2002/566/contents/made

Act of Sederunt (Fees of Sheriff Officers) (No. 2) 2002 *(15 pages)*
https://www.legislation.gov.uk/ssi/2002/567/contents/made

The last "amending order" enacted was the:

- *Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Amendment) 2024* *(10 pages)*
  https://www.legislation.gov.uk/ssi/2024/41/contents/made

BIBLIOGRAPHY…*continued*

Consultations – on regulating fees:

Public Consultation: on a simplified Table of Fees *(May 2025, SCJC)*
+ Business and Regulatory Impact Assessment (BRIA)
+ Equality Impact Assessment (EQIA
https://www.scottishciviljusticecouncil.gov.uk/consultations/scjc-consultations/simplified-table-of-fees

Consultation Analysis: regarding a simplified Table of Fees *(Sep 2025, SCJC)*
https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/consultations/scjc-consultations/simplified-table-of-fees/consultation-analysis---simplified-fees.pdf?sfvrsn=6126154a_1

Consultation Response: on implementing a simplified Table of Fees
(Nov 2025, SCJC)
https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/consultations/scjc-consultations/extending-the-availability-of-peos/consultation-response---simplified-fees.pdf?sfvrsn=944f3f9b_1

ANNEX 1 – THE "REGULATORY FRAMEWORK"

The regulation of fees by the SCJC provides one element of a wider "regulatory framework" that has evolved over several centuries:

REGULATING THE MARKET		
Deliverable	Organisation	What is the scope of their role?
MARKET OVERSIGHT	SCJC	Role is to: - regulate the fees charged *(Refer - s105 (1) & 106 (1) of the Courts Reform (S) Act 2014)*
Notes: *1 - SCJC - Acronym for the Scottish Civil Justice Council*		

REGULATING SERVICE DELIVERY		
Deliverable	Organisation	What is the scope of their role?
JUDICIAL OVERSIGHT	ACMASO	Role is to: - Regulate organisation - Regulate procedure - Regulate conduct & discipline - Regulate appointments, training & qualifications - Keep under review all matters relating to officers of court
	Sheriffs Principal	Role is to grant commissions – sufficient to cover the demand for civil enforcement across the sheriff courts *(Refer - s75 (1) (g) of the Debtors (S) Act 1987 & s8 of the 1991 Rules)*
	Lord Lyon	Role is to grant commissions – sufficient to cover the demand for civil enforcement in the Court of Session *(Refer - s77 of the Debtors (S) Act 1987 & s7 of the 1991 Rules)*
Complaints & Discipline	Sheriffs Principal	Role is to: - hear disciplinary appeals - withdraw a commission *(as the ultimate sanction)*
Official Statistics	AiB	Role is to: - receive data returns from commission holders - compile and publish the Scottish Diligence Statistics
Notes: *1 - ACMASO - Acronym for the Advisory Council of Messengers-at-Arms & Sheriff Officers* *2 - AiB - Acronym for the Accountant in Bankruptcy*		

REGULATING THE PROFESSION		
Deliverable	Organisation	What is the scope of their role?
OVERSIGHT *(of the profession)*	SMASO	Provide a representative professional body, with membership having been mandatory for all commission holders since 2011. It has responsibility for - Setting performance standards through a Code of Practice - Managing qualifications, training and CPD - Maintaining an 'online register' of all officers of court *(Refer - Officers of Court's Professional Association (S) Regulations 2011)*
PROCEDURES *(of the profession)*	SMASO	Role is to: - Provide procedures for the profession *(the 1991 rules)* *(Refer - Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1991)*
Complaints & Discipline	SMASO	Role is to: - provide a complaints procedure - undertake the initial investigation of complaints - provide a disciplinary procedure - undertake disciplinary actions
Notes: *1 - SMASO - Acronym for the Society of Messengers-at-Arms & Sheriff Officers*		