

Equalities, Human Rights and Civil Justice Committee

8th Meeting, 2024 (Session 6), Tuesday 12 March 2024

Subordinate legislation

Note by the Clerk

Purpose of the paper

1. This paper invites the Committee to consider the following negative instrument:
 - [Act of Sederunt \(Fees of Messengers-at-Arms and Sheriff Officers\) \(Amendment\) 2024 \(SSI 2024/41\)](#) – Policy Note and links to relevant impact assessments are at [Annexe A](#).

Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Amendment) 2024 (SSI 2024/41)

2. The purpose of this instrument is to provide court rules to implement an uplift in the fees chargeable by the Society of Messengers-at-Arms and Sheriff Officers.
3. This Act of Sederunt makes changes to the Tables of Fees regulating the fees of Messengers-at-Arms and sheriff officers.
4. The fees charged by members of the Society of Messengers-at-Arms and Sheriff Officers (SMASO) are regulated by Act of Sederunt.
5. This latest amending instrument represents an increase of 11.9% on the existing fees.

Correspondence received

6. Ahead of the Committee's consideration of this instrument a [letter](#) was received from Alan McIntosh of Advice Talks regarding concerns that the fee increases will lead to greater financial hardship on those to whom the increased fees will be passed. A copy of the letter is attached at [Annexe B](#).

Delegated Powers and Law Reform Committee Consideration

7. The Delegated Powers and Law Reform Committee (DPLR) considered the instrument at its meeting on 27 February 2024 and agreed that it did not need to draw the Parliament's attention to the instrument on any grounds within its remit. [Read the Official Report of the 7th meeting, 27 February 2024.](#)

Equalities, Human Rights and Civil Justice Committee Consideration

8. SSI 2024/41 was laid on 9 February 2024 and referred to the Equalities, Human Rights and Civil Justice Committee. The instrument is subject to the negative procedure and due to come into force on 22 March 2024.
9. **The Committee is invited to consider any issues which it wishes to raise on this instrument and is required to report to the Parliament by 25 March 2024.**

Procedure for negative instruments

10. Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. The annulment process would require a motion to be agreed in the Chamber.
11. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
12. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
13. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
14. If the Parliament resolves to annul an SSI, then what has been done under authority of the instrument remains valid, but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book). Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.

15. Each negative instrument appears on the Equalities, Human Rights and Civil Justice Committee's agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.

16. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Clerks to the Committee
March 2024

Annexe A

SSI 2024/41

Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Amendment) 2024

Scottish Government Policy Note

Introduction

This Policy Note is published to accompany the Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Amendment) 2024 made by the Court of Session on 7th February 2024. The Policy Note has been prepared by the Scottish Civil Justice Council Secretariat to set out the Council's policy behind the rules. It does not form part of the rules.

Policy objective

The objective of the Act of Sederunt is to provide court rules to implement an uplift in the fees chargeable by the Society of Messengers-at-Arms and Sheriff Officers.

Background

The fees charged by members of the Society of Messengers-at-Arms and Sheriff Officers (SMASO) are regulated by Act of Sederunt. This latest amending instrument includes an uplift of 11.9% which has been applied to each fee item listed.

The Council's policy approach is to use an evidence-based approach when assessing any proposed uplifts to regulated fees. The Council's Costs and Funding Committee assessed the evidence base provided by SMASO and undertook reasonableness tests. The Committee concluded that an uplift of 11.9% is reasonable given that:

- The cost-of-living crisis has shifted the UK well away from the low inflation environment that held prior to 2021;
- Salary costs and fuel costs dominate the business model used for the service of court orders and enforcement;
- SMASO has satisfactorily evidenced options to help offset cost increases to consumers;
- The fee items listed are proportionate to the service delivered;

- The existing fees, reflecting an evaluation period which ended in December 2020, have been in effect since 30th June 2021;
- This 11.9% fees uplift has arisen from the subsequent 21-month evaluation period from December 2020 to September 2022; and
- The comparable CPI change over that period was 13.9%.

**Scottish Civil Justice Council Secretariat
February 2024**

Useful links

Schedule 1 – Table of fees payable to Messengers-at-Arms can be accessed via the link below:

[Act of Sederunt \(Fees of Messengers-at-Arms and Sheriff Officers\) \(Amendment\) 2024 \(legislation.gov.uk\)](#)

Schedule 2 – Table of fees payable to Sheriff Officers can be accessed via the link below:

[Act of Sederunt \(Fees of Messengers-at-Arms and Sheriff Officers\) \(Amendment\) 2024 \(legislation.gov.uk\)](#)

Annexe B

Letter received from Alan McIntosh, Advice Talks

28 February 2024

The Clerk
Equalities, Human Rights and Civil Justice Committee
Scottish Parliament
EH99 1SP

Dear Sir or Madam

Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Amendment) 2024

I am writing in relation to the above Act of Sederunt that has been laid before Parliament and which the Equalities, Human Rights and Civil Justice Committee is the lead Committee for.

Although on the face of it this legislation may appear to be a routine uprating of fees that takes place every 3 years, I am concerned that these fee increases will only lead to greater hardship for some of the poorest in our society.

I would ask that this uprating of Sheriff Officer and Messenger at Arms fees should not occur until steps are brought forward to mitigate the worst effects of them. This could be done, I believe, by the Lord President laying an Act of Sederunt to amend the Act of Sederunt (Form of charge for payment) 1988.

As I explained in a recent article I wrote for the Journal of the Law Society of Scotland (Time for Due Diligence on Debt Recovery – November 2023), the system of legalised debt recovery we have in Scotland, which we call the law of diligence, is almost now wholly dependent on raising fees from the poorest in our Society for Council Tax Arrears. This Act of Sederunt and the proposed increase in fees will only make that situation worse.

To illustrate this point, I would like to draw the Committee's attention to the fact that since 2011-12 the number of diligences being executed in Scotland has increased from 481,565 to 533,690 in 2022-23 (if you include charges for payment – a formal demand for payment), which represents a 10.82% increase. However, in relation to those diligences executed for summary warrants debts for council tax, the increase has been greater, with the overall number executed rising from 351,995 in 2011-12 to 454,390 in 2022-23: representing a 29.09% increase.

This increase in relation to council tax debt recovery has largely been driven by the increased use of charges for payment, which prior to 2008 were not required for council tax debt. Charge for Payments are a 14-day formal demand for payment that Sheriff Officers must serve on someone in debt before they can take further action, like an earning or bank account arrestment.

The introduction of a requirement to serve Charge for Payments in relation to council tax debt was seen as positive step in 2008, as it provided people in debt with some advance notice before further action would be taken against them.

However, an unforeseen consequence of this change was that the number of Charge for Payments being served on people with council tax arrears, has significantly increased over the years and rose from 164,630 in 2011-12 to 213,900 in 2022-23, representing a 30% increase.

The problem with this is the cost of someone having a Charge for Payment served on them is currently £86.03 in Sheriff Officer fees, as they are required to be hand delivered by Sheriff Officers. This meant that in 2022-23 the 213,900 Charge for Payments that were served for council tax arrears led to £18.4 million in Sheriff Officer fees being added to debts. If the fee, because of the Act of Sederunt currently before the Parliament, is allowed to increase the fee to £96.27, the level of Sheriff Officer fees being added for charge for payments for council tax debt will increase to £20.6 M each year (an increase of £2.1 M).

This I believe would be unacceptable, particularly as it a direct result of a measure that was introduced by the Bankruptcy and Diligence Etc (Scotland) Act 2007, with the intentions of increasing protections for people with council tax debt and was never intended to plunge them further into debt.

However, I believe the worse effects of this proposed fee increase could be mitigated by the Lord President laying an Act of Sederunt to amend the Act of Sederunt (Form of charge for payment) 1988 requiring, at the very least, for Charge for Payments to be served using postal diligence. This would allow the Sheriff Officer fee for each charge to be reduced to £48.02 (a saving of £48.25 for everyone who has a Charge served on them). This would mean instead of £20.6 M of debt being added to those with council tax arrears each year (based on the number of Charges served in 2022-23), the amount would only be £10.2 M (a reduction of £10.4 M).

There is no reason why this should not be possible. It would not only reduce costs for Sheriff Officers but would significantly help those struggling with problem debts. There is also no reason why Charge for Payments must be hand delivered, considering it is possible for someone to be cited to court in relation to criminal matters with a letter sent by recorded delivery.

I also, for that matter, don't see any reason why it should not be possible for local authorities in relation to council tax debt from being able to use the post to serve their own Charge for Payment as a local government agency, for an even lesser fee, without having to use the services of Sheriff officers.

There also doesn't appear to be anything in section 90 of the Debtor (Scotland) Act 1987 from preventing this from happening and it should be noted that local authorities are already able to execute UK style diligences, such as Direct Earning Arrestments for overpaid benefits under the Welfare Reform Act 2012, without using the services of Sheriff Officers. This is also the case in relation to other Government Agencies such as the Department of Works and Pensions and HMRC. I also note

that the Child Maintenance Service under the Child Support Act 1995 can also execute UK style diligence, such as a Deduction from Earnings Order, without having to use the services of Sheriff Officer or Bailiffs in other parts of the UK.

There appears to be no reason why this should not be possible for Council Tax debt recovery.

However, although this may require further consultation, I cannot see any reason why measures cannot be brought forward now to allow postal service for Charge for Payments and would argue that such a change is vital before any uplifting of Sheriff Officer and Messenger at Arm fees could be palatable.

Your sincerely

Alan McIntosh
Approved Money Adviser