

Equalities, Human Rights and Civil Justice Committee

23rd Meeting, 2022 (Session 6), Tuesday 20 September 2022

Subordinate legislation

Note by the clerk

Purpose of the paper

1. This paper invites the Committee to consider the following negative instrument:

- [SSI 2022/214: The Sheriff Court Fees Amendment Order 2022](#)

2022/214: The Sheriff Court Fees Amendment Order 2022

2. This Order corrects errors in the fee amounts in the [Sheriff Court Fees Order 2022 \(SSI 2022/181\)](#) (“the principal Order”) which makes provision for the fees payable in the sheriff court, to the sheriff clerk or the auditor of court (as appropriate)
3. The amendments made to the fee amounts by this Order will have effect at the same time as the relevant schedule of the principal Order which is amended by this Order.
4. No separate Business and Regulatory Impact Assessment has been prepared for this Order. A Business and Regulatory Impact Assessment was prepared in relation to the principal Order.
5. A copy of the Scottish Government Policy Note is included at [Annexe B](#) together with links to other associated documents

Delegated Powers and Law Reform Committee Consideration

6. Delegated Powers and Law Reform Committee (DPLR) considered the instrument at its meeting on 28 June 2022. In its [report of 29 June 2022](#), the

DPLR Committee drew the Parliament's attention to the instrument under reporting ground (j) for failure to comply with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. That Committee also agreed to write to the Scottish Government to seek further information on why initial errors which led to the breach of laying requirements were not identified at the time.

Equalities, Human Rights and Civil Justice Committee Consideration

7. The Order was laid on 21 June 2022 and referred to the Equalities, Human Rights and Civil Justice Committee. The Order is subject to negative procedure and came into force on 1 July 2022, therefore breaching the 28 day laying requirement, as reported by the DPLR Committee.
8. The Minister for Community Safety wrote to the Presiding Officer on 21 June 2022 to explain the reasons for the breach and a copy of the letter is at [Annexe A](#).
9. **The Committee is invited to consider any issues which it wishes to raise on the Order and report to the Parliament by 26 September 2022.**

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
September 2022

Annexe A

Correspondence between the Scottish Government and the Presiding Officer

21 June 2022

The Sheriff Court Fees Amendment Order 2022

The Sheriff Court Fees Amendment Order 2022, SSI 2022/214 was made by the Scottish Ministers under section 107(1) and (2) of the Courts Reform (Scotland) Act 2014(1). The instrument is subject to negative procedure. The Order is being laid before Parliament today, 21st June and comes into force on 1 July 2022.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, this has not been complied with and to meet the requirements of section 31(3) that Act, this letter explains why.

The Order is required to correct errors in the fee amounts in the Sheriff Court Fees Order 2022 (SSI 2022/181) which were not identified by Scottish Courts and Tribunals Service (SCTS) until after the Order had been laid.

The error which has the most financial impact is in respect of the fee relating to a summons for summary cause or claim form for simple procedure case for actions of a certain value or less.

If the Order is not amended, those seeking a summons for summary cause or a claim form for a simple procedure case with a value of £200.01 to £300 will have to pay a fee of over £100 rather than £19. The £200 in this entry will be amended to £300 so that the fee does not act as a significant disincentive to bringing an action and these court users are not disadvantaged. The other errors have less financial consequences for court users but also require to be corrected. It is important that the changes made by the Sheriff Court Fees Amendment Order 2022 comes into force at the same time as the Sheriff Court Fees Order 2022 thereby ensuring that the correct sheriff court fees apply as from the 1st July. Given the short time frame from now until the 1st July, it has not been possible to meet the 28 day requirement on this occasion.

I am copying this letter to Joe FitzPatrick, Convener of the Equalities, Human Rights and Civil Justice Committee and Stuart McMillan, Convener of the Delegated Powers and Law Reform Committee.

Ash Regan

Annexe B

Scottish Government Policy Note

The Sheriff Court Fees Amendment Order 2022

The above instrument is made in exercise of the powers conferred by section 107(1) and (2) of the Courts Reform (Scotland) Act 2014. The instrument is subject to the negative procedure.

Purpose of the instrument

The Sheriff Court Fees Amendment Order 2022 corrects errors in the Sheriff Court Fees Order 2022 (SSI 2022/181).

Policy objectives

A small number of errors were discovered in the Sheriff Court Fees Order 2022. In particular, an error was found in one of the fee narratives which would result in some court users bringing a low value claim being charged a fee considerably higher than it should be. The policy objective is to correct this error.

The opportunity has been taken to correct other minor errors in fee values.

Consultation

Discussions have taken place with the Scottish Courts and Tribunals Service concerning these errors.

Impact Assessments

An Equality Impact Assessment has been undertaken for the Sheriff Court Fees Order 2022. This has been published at [Scottish court fees 2022 to 2025: equality impact assessment - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-court-fees-2022-to-2025-equality-impact-assessment/gov.scot/). It is not considered necessary to undertake a separate EQIA for this instrument.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed for the Sheriff Court Fees Order 2022. This has been published at [Scottish court fees 2022 to 2025: business and regulatory impact assessment - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-court-fees-2022-to-2025-business-and-regulatory-impact-assessment/gov.scot/). It is not considered necessary to undertake a separate BRIA for this instrument.