



Briefing for the Public Petitions Committee

Petition Number: [PE1784](#)

Main Petitioner: Gordon Edwards

Subject: Review of the Sheriff Court Fees Order 2018

Calls on the Parliament to urge the Scottish Government to conduct a review of the Sheriff Court Fees Order 2018 to make self-litigation more accessible to disabled people.

Introduction

The Petitioner argues that court hearing fees in Scotland prevent people on low incomes from carrying out litigation themselves. Where someone makes their own representations to the court, rather than being represented by a solicitor, they are known as a “party litigant”.

The Petitioner notes that, although there are fee exemption rules in Scotland for those in receipt of employment and support allowance (ESA) or universal credit, there are no exemptions for those who are on a low income or who receive personal independence payment (PIP).

The Petitioner contrasts this with the position in England and Wales and Northern Ireland where he indicates that there are low-income tests for those who are not on benefits and, in the case of England and Wales, a fee exemption for those who receive PIP.

The Petitioner questions whether the Scottish rules comply with Article 6 of the European Convention on Human Rights on the right to a fair trial.

Scottish court fees

The Scottish Ministers have the responsibility for setting court fees. The rules follow from a consultation process and are put into effect by an Order laid in Parliament (i.e. a statutory instrument subject to the [negative procedure](#)¹). The Scottish Courts and Tribunals Service (SCTS) administers the regime.

In recent times the policy of the Scottish Government (and the previous Scottish Executive) has been to move further towards “full cost recovery” for

¹ I.e. the relevant order comes into force unless a motion to annul it is agreed in the Parliament no later than 40 days from when the instrument was laid. The Justice Committee considers these instruments and can recommend that the instrument be annulled.

court fees (see paragraph 10 of the [last Scottish Government consultation on court fees in 2018](#)). The general principle is that court fees should aim to cover the cost of the civil court system so that it is not subsidised from the public purse. Overall fee increases are, however, sometimes introduced in conjunction with reductions/exemptions aimed at access to justice concerns.

In addition, there are rules which exempt certain people on low incomes from paying fees. These are focused on those who receive benefits such as: income support, income-based ESA, pension credit guarantee credit, income-based jobseeker's allowance, working tax credit and universal credit.

There are also fee exemptions for those in receipt of civil legal aid – i.e. the scheme which pays for legal representation and advice in the civil courts. Those on certain benefits qualify automatically for legal aid and it is also available to those who meet income and capital requirements. According to the [Scottish Government's 2018 consultation on court fees](#), “in practice, .. the majority of those who qualify for exemption do so because they qualify for legal aid.”

Fee exemptions also exist where exclusion orders or interdicts are sought in a family law setting (e.g. in relation to domestic abuse).

More details can be found on the [website of the SCTS](#).

Rules in other UK jurisdictions

England and Wales also have [fee exemption rules](#). The main difference with the Scottish system is that, in England and Wales, fee exemptions exist for those on low incomes as well as those on benefits.

Legal aid also exists in England and Wales. However, it targets only a few types of civil court action (such as protection from domestic abuse). This means that many people taking civil court action in England and Wales will not qualify. As far as SPICe is aware, no specific fee exemption exists in England and Wales for those in receipt of PIP. Instead, based on [the guide to fee exemptions](#), PIP appears to be a benefit that should not be included when calculating monthly income for the purposes of determining eligibility for a reduction in fees.

PIP is awarded to people who face certain additional costs as a result of being disabled. It is not related to the income of the person who receives it. Thus, the approach of discounting it, but not using it as a passport to low income benefits, could be argued to make sense.

The Northern Ireland system is outlined in the Northern Ireland Courts and Tribunal Service document “[do I have to pay court fees?](#)” which explains that, in some situations, help may be available for paying fees when a person receives legal aid or a specified benefit, or is experiencing hardship.

Party litigants

It is possible to represent oneself in court in Scotland – i.e. as a “party litigant”. Certain procedures, for example the [Simple Procedure for claims with a value of less than £5,000](#), are designed for self-representation. Others are less suited to it. Court rules exist which allow party litigants to ask the court for someone who is not a solicitor to speak on their behalf or to have someone accompany them for moral support and advice (see the [website of the SCTS](#).)

Unless party litigants are eligible for a fee exemption, court fees may have to be paid. Where legal aid is available this can be an additional reason why it may make more sense to instruct a solicitor as fee exemptions may apply.

Article 6 of the European Convention on Human Rights

Article 6 of the European Convention on Human Rights (Convention) protects the right to fair court proceedings. It applies directly in UK law through the Human Rights Act 1998 and in Scotland through the Scotland Act 1998 (for details see [this SPICe Briefing](#)).

The Council of Europe has published [guidance on Article 6 of the Convention](#). It indicates that the right of access to a court must be “practical and effective” and that court fees can breach Article 6 when they are excessive and have the effect of hindering access to a court (see page 24). The right is not absolute though and courts have to weigh up whether any limitations are “proportionate” to the aim sought.

Unison case

The UK Supreme Court recently examined the impact of employment tribunal fees on access to justice in [the Unison case](#). The Supreme Court held that, in that particular situation, the fees were unlawful under EU and domestic law as they bore no relation to the amount sought and could be expected to act as a deterrent to claims for modest amounts or non-monetary remedies.

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