JUSTICE 1 COMMITTEE
AGENDA

48th Meeting, 2006 (Session 2)

Wednesday 6 December 2006

The Committee will meet at 9.45 am in Committee Room 6.

1. **Rights of Relatives to Damages (Mesothelioma) (Scotland) Bill:** The Committee will take evidence at Stage 1 of the Bill from—

   Phyllis Craig, Clydeside Action on Asbestos;

   Tommy Gorman, Clydebank Asbestos Group; and

   Ian Babbs, Asbestos Action Tayside

   and then from

   Frank Maguire, Thompsons Solicitors; and

   Ronald Conway, Bonar and Co. Solicitors

   and then from

   Lisa Marie Williams, Association of British Insurers;

   David Taylor, Forum of Insurance Lawyers; and

   Ian Johnston, Forum of Scottish Claims Managers.

2. **Subordinate Legislation:** The Committee will consider the following negative instrument—

   the Act of Sederunt (Fees of Sheriff Officers) 2006 (SSI 2006/539).

Callum Thomson
Clerk to the Committee
Papers for the meeting—

**Agenda item 1**

Note by SPICe (PRIVATE PAPER)  
J1/S2/06/48/1

All submissions received in relation to the Bill are published on the Committee’s website, at:  

**Agenda item 2**

Note by the Clerk on SSI 2006/539  
J1/S2/06/48/2

**Document for information—**

The following document is circulated for information:

- Correspondence from Minister for Justice on Subordinate Legislation - Criminal Legal Aid;

**Documents not circulated—**

Copies of the following documents have been supplied to the Clerk:

- Scottish Executive, Costs, Sentencing Profiles and the Scottish Criminal Justice System, 2004/05;
- Scottish Executive, Strengthening Streamlining: The Way Forward for the Enforcement of Environmental Law in Scotland; and
- Scottish Executive Social Research, Evaluation of the Airdrie and Hamilton Youth Court Pilots.

These documents are available for consultation in Room T3.60. Additional copies may also be obtainable on request from the Parliament’s Document Supply Centre.

**Forthcoming meetings—**

Wednesday 13 December, Committee Room 4; and
Tuesday 19 December, Committee Room 1
SSI Cover Note For Committee Meeting

SSI title and number: The Act of Sederunt (Fees of Sheriff Officers) 2006 (SSI 2006/539)

Type of Instrument: Negative

Meeting: 48th Meeting, Wednesday 6 December 2006

Date circulated to members: Friday 1 December 2006

Justice 1 Committee deadline to consider SSI: 11 December 2006

Motion for annulment lodged: No

SSI drawn to Parliament’s attention by Sub Leg Committee: No

1. Correspondence has been received from the Lord President’s Private Office on the instrument. This is attached as an annexe to this paper.

2. If members have any queries or points of clarification on the instrument which they wish to have raised with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk to the Committee as soon as possible, to allow sufficient time for a response to be received in advance of the Committee meeting.
By email only
Lewis McNaughton,
Justice 1 Committee,
Scottish Parliament,
Edinburgh.  
EH99 1SP

28 November 2006

Dear Lewis,

ACT OF SEDERUNT (FEES OF SHERIFF OFFICERS) 2006 (S.S.I. 2006/539)

I refer to our telephone conversation last week regarding the above.

The instrument increases the fees of sheriff officers by 3.6% with effect from 1 January 2007. The figure of 3.6% represents the mid-point between the level of inflation for the period July 2005 to July 2006 (3.3%) and the increase in average earnings for the same period (3.9%). The application for an increase in fees with effect from 1 January 2006 was calculated on the same basis (the result in that case was an increase of 3.45%).

I am attaching an electronic copy of my letter of 24 December 2004 to Pauline McNeill MSP which sets out some of the background to this annual increase. If you would prefer a hard copy of the signed letter for the Committee’s papers, this can be arranged.

Please do not hesitate to contact me if you require any further information.

With best wishes,

Yours sincerely,

Ruaraidh

Ruaraidh Macniven
Legal Secretary to the Lord President
ACT OF SEDERUNT (FEES OF SHERIFF OFFICERS) 2004

The Lord President has asked me to respond to your letter of 23 December 2004 regarding the above instrument.

In answer to the specific points which have been raised:-

- The percentage increase applies to fees and not outlays. The amendment which has been made to the General Regulations (set out in S.S.I. 2002/567) by paragraph 2(2) of the Act of Sederunt will mean that the cost of postage will be charged as an outlay. Currently, the only costs which are payable as an outlay are recorded delivery charges. This means that the costs of first class postage are taken to be included within the fee payable. However, the Lord President has received representations from the Society of Messengers-at-Arms and Sheriff Officers to the effect that in certain categories of service (in particular, service of a Small Claim or Summary Cause summons), the amount of paper which is regularly being served means that the ordinary postage costs are more than originally envisaged because the weight of the documentation exceeds 60g (the maximum weight of an ordinary first class letter). The solution which was proposed and which is set out in the instrument you are considering is that all postage costs are to be treated as an outlay. To take account of the fact that postage will no longer being included within the fees by virtue of the amendment referred to above, the fees for postal service and postal diligence are each being reduced by twenty-eight pence, representing the notional postage costs which are currently included. For example, the fee for postal service in a Band 1 Summary Cause case is currently £11.60. If the annual
increase had been applied to that figure, the fee payable would have been £12.05 (the fees are rounded up to the nearest 5 pence). However, because the notional postage costs of 28 pence are now not to be regarded as being included within the fee, the annual increase is applied to the reduced figure of £11.32, giving an increased fee of £11.75.

- The figure of 3.7% was suggested by the Society of Messengers-at-arms and Sheriff Officers and is based on the movement in the Inflation and Average Earnings Indices over the twelve-month period from July 2003 to July 2004, calculated as follows:-

<table>
<thead>
<tr>
<th>Inflation percentage change</th>
<th>= 3.0%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average earnings change</td>
<td>= 4.4%</td>
</tr>
<tr>
<td>Mid-point (3.0%+4.4% divided by 2)</td>
<td>= 3.7%</td>
</tr>
</tbody>
</table>

The inflation percentage is based on the headline annual percentage figure in the Consumer Prices Index for July 2004. The average earnings percentage is based on the percentage figure for the increase in average earnings as calculated by the Office for National Statistics. Increases in the fees payable in respect of work done by sheriff officers have been calculated on this basis since at least 1990, subject to minor amendments to reflect changes in the rules of court and so forth.

- The table of fees on which the current fees are based was devised in 1986 following a detailed review which was carried out by a firm of accountants. The figures which resulted from that review are understood to have been calculated on the basis of the overall costs of running a firm of sheriff officers. It is understood that the allocation of fees payable to particular types of work was related approximately to the cost to the firm of sheriff officers in carrying out the work. Clearly, however, the relationship between a particular fee and the work carried out in any particular case can differ depending on the firm carrying out the work and many other factors. It is understood that the effect of legislative developments such as the Debt Arrangement and Attachment (Scotland) Act 2002 may be that the table of fees is in need of review (for instance, the number of pointings and warrant sales previously carried out does not equate to the number of attachments etc. under the new legislation). Anecdotal evidence suggests that some firms of sheriff officers are finding some types of court work uneconomical or at least marginal in terms of profitability. In any event, given the length of time since the last review, there is perhaps some need for updating beyond the annual increase. However, in view of the draft bill and consultation which was issued by the Scottish Executive earlier this year: “Bankruptcy and Diligence in Scotland”, it would seem sensible to await developments before carrying out such a time-consuming and costly review. The draft bill proposes the establishment of “court enforcement officers” who would, in broad terms, perform the current functions of messengers-at-arms and sheriff officers. In the meantime, no particular concerns have been expressed to the Lord President beyond the occasional comment that it might be time for a further review. Although the most recent review of fees was funded by the Society of Messengers-at-arms and Sheriff Officers itself, I am told that such an exercise would not currently be within the means of the Society and that financial assistance would therefore require to be sought from the Scottish Executive.
The table of fees relates only to court proceedings; the service of planning notices is not part of court proceedings. In any event, the rules of court do not generally provide for service by electronic means. Accordingly, there is no provision for fees for such service in the table of fees. It is understood that the Sheriff Court Rules Council is currently undertaking a consultation exercise on the use of information technology in the sheriff court.

You will appreciate that I have not yet had the benefit of reading the transcript of the Committee’s proceedings on 22 December 2004 but I hope that this information is of use to the Committee. If you require clarification, please let me know.

Ruairaidh Macniven
Legal Secretary to the Lord President
Dear Pauline,

Subordinate legislation - Criminal Legal Aid

Thank you for your letter of 15 November 2006 regarding The Criminal Legal Aid (Scotland) (Fees) Amendment Regulations.

The Justice 1 Committee considered The Criminal Legal Aid (Scotland) (Fees) Amendment (No. 3) Regulations 2005 on 1 February 2006 in which full reference was made to the case of Shelagh McCall against Scottish Ministers. A draft of these regulations had been fully discussed with the Faculty of Advocates prior to that date.

I agree that the Committee should be advised if any regulations are found subsequently by a court to be ultra vires. I will seek to ensure that this is always the case in future.

In respect of The Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2005 that were under consideration at the Committee on 15 November 2006, I can advise that these regulations were retrospective in order to ensure that an increase in solemn fees given to solicitors was backdated to 1 December 2006. As these regulations sought to bring in force an increase, and were not to the detriment of those receiving the amended fees, the issues discussed in the McCall case were not relevant on that occasion.

I hope this is helpful.

Best wishes

CATHY JAMIESON