

2009 No. 88

COURT OF SESSION

The Court of Session etc. Fees Amendment Order 2009

Made - - - - *5th March 2009*

Laid before the Scottish Parliament *6th March 2009*

Coming into force in accordance with article 1

The Scottish Ministers make the following Order in exercise of the powers conferred by section 2 of the Courts of Law Fees (Scotland) Act 1895(a) and all other powers enabling them to do so.

Citation and commencement

1.—(1) This Order may be cited as the Court of Session etc. Fees Amendment Order 2009 and, subject to paragraph (2), comes into force on 1st April 2009.

(2) Article 2(2)(b) comes into force on 6th April 2009.

Amendment of the Court of Session etc. Fees Order 1997

2.—(1) The Court of Session etc. Fees Order 1997(b) is amended in accordance with the following paragraphs.

(2) Article 5 (exemption of certain persons from fees)(c) is amended as follows—

(a) at the end of paragraph (f), omit “or”;

(b) in paragraph (g), for “£16,017” substitute “£16,642”(d); and

(c) after paragraph (g), insert—

“; or

(h) the person or his or her partner is in receipt of income-related employment and support allowance under the Welfare Reform Act 2007(e).”.

(3) In Article 5A(2) (exemption of certain motions from fees)(f) for “B23 and C22” substitute “B26 and C24”.

(a) 1895 c.14; section 2 was substituted by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c.12), section 4, and by the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), articles 2(1), 4, Schedule 2 Part 1, paragraph 9, and Part IV. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.I. 1997/688 as amended by S.I. 1999/755, S.S.I. 2002/270, S.S.I. 2007/319 and S.S.I. 2008/236.

(c) Article 5 was substituted by S.S.I. 2007/319, article 2(3).

(d) The original threshold for exemption from court fees for those in receipt of working tax credit was an annual gross income of £16,017 which was inserted into the Court of Session etc. Fees Order 1997 by S.S.I. 2007/319, article 2(3).

(e) 2007 c.5. Section 1 of that Act which introduced the new benefit, the income-related employment and support allowance, was brought into force on 27th October 2008 by the Welfare Reform Act 2007 (Commencement No. 6 and Consequential Provisions) Order 2008 (S.I. 2008/787), article 2(4)(a).

(f) Article 5A was inserted by S.I. 1999/755, article 2(3).

- (4) Article 5B (calculation of fees payable)(a) is amended as follows—
- (a) in paragraph (1) for “B23 and C22” substitute “B26 and C24”; and
 - (b) in paragraph (2)—
 - (i) for “B23 and C22” substitute “B26 and C24”; and
 - (ii) omit “, C13 and C14”.

Amendment of the Court of Session etc. Fees Amendment Order 2008

3.—(1) Part I (Fees in the Central Office of the Court) of the Table of Fees in Schedule 2 to the Court of Session etc. Fees Amendment Order 2008(b) (“the 2008 Order”) is amended in accordance with the following paragraphs.

- (2) Under the heading “B. GENERAL DEPARTMENT”—
- (a) at paragraph 5, in columns 2 and 3, for “Charge of the sheriff officer to serve document plus £10” substitute “£10 plus Messengers at Arms’ fee”;
 - (b) at paragraph 16, in column 1, for “For the items in B17 to B25 the fee is payable by each party appearing at the hearing after first 30 minutes or part thereof- For every 30 minutes or part thereof” substitute—

“For the items in B17 to B25, except B22 and B23 where there is no fee for the first 30 minutes, the fee is payable by each party appearing at the hearing—
For every 30 minutes or part thereof”; and
 - (c) at paragraph 18, in column 2, for “45” substitute “95”.
- (3) Under the heading “C. PETITION DEPARTMENT”—
- (a) omit paragraph 9;
 - (b) omit paragraph 13;
 - (c) at paragraph 14, in column 1, for “For the items in C15 to C23 the fee is payable by each party appearing at the hearing after first 30 minutes or part thereof- For every 30 minutes or part thereof” substitute—

“For the items in C15 to C23, except C20 and C21 where there is no fee for the first 30 minutes, the fee is payable by each party appearing at the hearing—
For every 30 minutes or part thereof”;
 - (d) at paragraph 15, in column 1, for “Proof or Procedure Roll” substitute “Proof, Procedure Roll or other Hearing”;
 - (e) at paragraph 16, in column 2, for “45” substitute “95”;
 - (f) omit paragraph 17;
 - (g) at paragraph 18, in column 1, omit “(other than Proof or Procedure Roll, Jury Trial, Motion Roll hearing or hearings or out of hours)”; and
 - (h) at paragraph 20, in column 2, for “55” substitute “45”.
- (4) Under the heading “G. Extracts Department”, omit paragraph 9.

4.—(1) Part 1 (Fees in the Central Office of the Court) in the Table of Fees in Schedule 3(c) to the 2008 Order is amended in accordance with the following paragraphs.

- (2) Under the heading “B. GENERAL DEPARTMENT”—
- (a) at paragraph 5, in columns 2 and 3, for “Charge of the sheriff officer to serve document plus £10” substitute “£10 plus Messengers at Arms’ fee”;

(a) Article 5B was inserted by S.I. 1999/755, article 2(3).

(b) S.S.I. 2008/236. No amendment is required to Schedule 1 to that Order as it ceases to have effect on 1st April 2009. Schedule 2 to that Order comes into force on 1st April 2009.

(c) Schedule 3 to the 2008 Order comes into force, and Schedule 2 to that Order ceases to have effect, on 1st April 2010.

- (b) at paragraph 16, in column 1, for “For the items in B17 to B25 the fee is payable by each party appearing at the hearing after first 30 minutes or part thereof- For every 30 minutes or part thereof” substitute–
 - “For the items in B17 to B25, except B22 and B23 where there is no fee for the first 30 minutes, the fee is payable by each party appearing at the hearing–
 - For every 30 minutes or part thereof”;
 - (c) at paragraph 18, in column 2, for “45” substitute “100”; and
 - (d) at paragraph 18, in column 3, for “45” substitute “95”.
- (3) Under the heading “C. PETITION DEPARTMENT”–
- (a) omit paragraph 9;
 - (b) omit paragraph 13;
 - (c) at paragraph 14, in column 1, for “For the items in C15 to C23 the fee is payable by each party appearing at the hearing after first 30 minutes or part thereof- For every 30 minutes or part thereof” substitute–
 - “For the items in C15 to C23, except C20 and C21 where there is no fee for the first 30 minutes, the fee is payable by each party appearing at the hearing–
 - For every 30 minutes or part thereof”;
 - (d) at paragraph 15, in column 1, for “Proof or Procedure Roll” substitute “Proof, Procedure Roll or other Hearing”;
 - (e) at paragraph 16, in column 2, for “45” substitute “100”;
 - (f) at paragraph 16, in column 3, for “45” substitute “95”;
 - (g) omit paragraph 17;
 - (h) at paragraph 18, in column 1, omit “(other than Proof or Procedure Roll, Jury Trial, Motion Roll hearing or hearings or out of hours)”;
 - (i) at paragraph 20, in column 2, for “55” substitute “45”; and
 - (j) at paragraph 20, in column 3, for “55” substitute “45”.
- (4) Under the heading “G. EXTRACTS DEPARTMENT”, omit paragraph 9.

FERGUS EWING
 Authorised to sign by the Scottish Ministers

St Andrew’s House,
 Edinburgh
 5th March 2009

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Court of Session etc. Fees Order 1997 (“the 1997 Order”) and the Court of Session etc. Fees Amendment Order 2008 (“the 2008 Order”). This Order comes into force on 1st April 2009, except for article 2(2)(b) which comes into force on 6th April 2009.

Article 2(2)(b) amends the financial limit in article 5 of the 1997 Order in relation to the annual gross income taken into account for the calculation of the working tax credit for the purposes of exemption from court fees, increasing it from £16,017 to £16,642.

Article 2(2)(c) further amends article 5 of the 1997 Order by extending the exemption from fees to those persons in receipt of income-related employment and support allowance. This amendment takes account of the coming into force of section 1 of the Welfare Reform Act 2007 which introduced this new benefit.

Articles 2(3) and 2(4) correct cross-references in articles 5A and 5B, respectively, of the 1997 Order.

Article 3 makes various amendments to the Table of Fees in Schedule 2 to the 2008 Order. Schedule 2 to the 2008 Order comes into force on 1st April 2009. Article 3(2) makes amendments to fees in the General Department of the Central Office of the Court in the Table of Fees in that schedule. Article 3(2)(a) makes a minor adjustment in text in relation to sheriff officer fees. Article 3(2)(b) clarifies the charging policy with respect to different types of hearings. Article 3(2)(c) substitutes the fee for the summar roll.

Article 3(3) makes amendments to fees in the Petition Department of the Central Office of the Court in the Table of Fee in Schedule 2 to the 2008 Order. Article 3(3)(a), (b) and (f) remove fees which are no longer applicable. Article 3(3)(c), (d) and (g) clarifies the charging policy with respect to different types of hearings. Article 3(3)(e) substitutes the fee for the summar roll. Article 3(3)(h) substitutes the fee for the motion roll hearing.

Article 3(4) removes a fee in the Extracts Department of the Central Office of the Court in the Table of Fees in Schedule 2 to the 2008 Order.

Article 4 makes similar amendments to the Table of Fees in Schedule 3 to the 2008 Order as has been made to the Table of Fees in Schedule 2 to the 2008 Order in article 3 of this Order. Schedule 3 to the 2008 Order comes into force, and Schedule 2 to the 2008 Order ceases to have effect, on 1st April 2010.

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