

Consultation on Allowance Rates **for** **Justices of the Peace in Scotland**

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The Scottish Government
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Edinburgh
EH1 3DG

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Dear Consultee

CONSULTATION ON ALLOWANCE RATES FOR JUSTICES OF THE PEACE IN SCOTLAND

Responding to this consultation paper

We are inviting written responses to this consultation paper by **Friday 19 December 2008**.

Please send your response to:

JPAllowancesconsultation@scotland.gsi.gov.uk

Or

Katrina McNeill
Criminal Procedure Division,
Scottish Government Justice Directorate,
Room GW.14, St Andrew's House,
Regent Road,
Edinburgh, EH1 3DG

We would be grateful if you could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 771 234 to find out where your nearest public internet access point is.

The Scottish Government has an email alert system for consultations (**SEconsult**: <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholders, individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** attached to this letter as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly. All respondents should be aware that the Scottish Executive are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public these will be made available to the public in the Scottish Government Library and on the Scottish Government consultation web pages by 30 January 2009. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the SE Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next ?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a view on standards of control room resilience. We aim to issue a report on this consultation process by 30 January 2009, following which we will meet with key stakeholders to agree a process for taking this work forward.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to me at the address above.

Yours faithfully

Miss Katrina McNeill

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for
Justices of the Peace in Scotland

September 2008

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Introduction

1. *Purpose*

1.1 The purpose of this consultation paper is to obtain views on whether changes should be made to the allowances and travel and subsistence expenses that can be claimed by JPs. These allowances and expenses have not been revised since 2000.

1.2 Justices of the peace are currently paid allowances in respect of:

- Travel;
- Subsistence; and
- Financial loss.

1.3 Respondents are asked for views on the basis upon which certain rates are calculated, and the criteria which should be applied in making any adjustment to the rates – for example whether we should seek to achieve consistency with the rates payable to magistrates in England and Wales, the professional judiciary in Scotland, or whether a different basis should be used for calculating allowances. The professional judiciary are paid expenses at the same rates as Scottish Government staff. The rates payable to employees of the Scottish Court Service (SCS) are similar to those paid to Scottish Government employees and the professional judiciary. Details of the SCS rates are not, in the main, included in this consultation paper as the variance is very slight, and it was deemed the rates payable to Scottish Government staff and the professional judiciary would prove a more appropriate comparison.

2. *Background*

2.1 The unification of the summary courts under the administration of SCS is currently being rolled out on a sheriffdom-by-sheriffdom basis under the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (“the 2007 Act”). The first two stages of unification are now complete. District courts managed by local authorities were replaced by justice of the peace courts (“JP Courts”) managed by SCS in the sheriffdoms of Lothian and Borders on 10 March 2008 and Grampian, Highland and Islands on 2 June 2008.

2.2 In sheriffdoms in which JP courts are not yet managed by SCS, allowances are paid to JPs by local authorities under section 17 of the District Courts (Scotland) Act 1975 (“the 1975 Act”). Upon unification in each sheriffdom, SCS will become responsible for the payment of allowances to JPs in those sheriffdoms under section 68 of the 2007 Act, which specifies that the “Scottish Ministers are, in accordance with a scheme devised by them, to pay allowances to JPs.”

2.3 The schemes for the payment of allowances in Lothian and Borders, and Grampian, Highland and Islands retain the rates paid to JPs across Scotland in order to ensure there is no discrepancy between the rates paid to JPs in different parts of the country.

2.4 Details of the current rates for allowance payments to all JPs are provided in the annex at page 15.

2.5 In devising the schemes for Lothian and Borders and Grampian, Highland and Islands, a number of issues became apparent:

- the current allowance rates have remained unaltered since 1 April 2000;
- allowance payments for JPs differ from the office of magistrate in England and Wales; and
- JP allowances also differ from allowances which are paid to the professional judiciary and Scottish Government staff.

2.6 In addition, recent reforms to the system of lay justice formalise significant demands and expectations which will apply to all of those who hold the office of JP, including the requirement to undergo regular training and appraisal. A key aim of the reforms is to make it clear that lay justices are a skilled and well trained branch of the judiciary who are equipped to play a full part in the reformed summary justice system. There is now an even greater expectation than before that JPs will adopt a professional approach towards their judicial duties, and it could be argued that the current allowance rates do not adequately reflect this expectation.

2.7 Given there has been no alteration of the allowance rates since April 2000, the Scottish Government is sympathetic to proposals to adjust the rates. Nevertheless, it will be important to consider the affordability of any proposal, both for the Scottish Government and also for the local authorities that would be affected by any change which is implemented prior to the completion of court unification. For that reason, local authorities, as well as SCS, are being asked for views as part of this consultation.

3. *England and Wales - Magistrates' Allowance Rates*

3.1 Allowances rates for magistrates are set by Her Majesty's Court Service (HMCS). The allowance rates for magistrates detailed in this consultation paper took effect on 1 August 2008, following a review in April 2008 and subsequent amendments following representations by the Magistrates Association and National Bench Chairmen's Forum in light of recent increases to petrol prices. To aid consultees in responding to this paper, a brief summary of the methodology employed by HMCS when reviewing the rates payable to magistrates in England and Wales has been provided.¹

¹ Her Majesty's Courts Service Justices Travel & Subsistence Allowances Review Methodology is available at http://www.magistrates-association.org.uk/about_magistrates/magistrates-allowances.htm

4. *Consultation Period*

4.1 The phased programme of court unification is scheduled for completion in late 2009. Local authorities will retain responsibility for the payment of allowances in their district until unification takes place in the area. This consultation is therefore concluding on **19 December 2008** in order for the new rates to be announced in January 2009. This should enable those local authorities that will be affected to accommodate the changes in their budgets for the 2009/10 financial year.

Travel

5. Mileage Rates

5.1 Justices of the peace are currently reimbursed for costs of travel by motor vehicle, bicycle and public transport.

TRAVELLING ALLOWANCE (PENCE PER MILE)											
MAGISTRATES (in England & Wales)				SG STAFF		PROFESSIONAL JUDICIARY		JUSTICES OF THE PEACE			
Description	Up to 1100 cc	1101-1549 cc	over 1550 cc	Description	Rate	Description	Rate	Description	Up to 1100 cc	1100-1400 cc	over 1400 cc
MVA (flat rate)	38	45	60	MVA (flat rate)	40	MVA up to 10,000 miles	40	MVA up to 5,000 miles	27.4	36.8	44.7
						MVA after 10,000 miles	25	MVA after 5,000 miles	23.6	23.6	23.6
Hybrid/ LPG/ gas/ electric/ Dual Fuel cars	60			Motorcycle	24	n/a		n/a			
Passenger allowance	6			5		5		1			
Bicycle	30			20		20		6.9			

*MVA – Motor Vehicle Allowance

6. Her Majesty's Revenue and Customs (HMRC) Guidance

6.1 The professional judiciary are paid mileage of 40p per mile up to 10,000 miles, and 25p per mile thereafter. Mileage rates for Scottish Government staff are paid at a flat rate of 40p per mile. This is influenced by the fact that employees must declare mileage rates of above 40p per mile for tax purposes.

6.2 Paying a flat rate of 40p per mile to JPs would have some attractions: it would be slightly simpler (and arguably more environmentally friendly) than the current system which is linked to the size of the car's engine; it would mean that staff only ever deal with one mileage rate when processing expenses; and it would make JPs mileage rates consistent with those of the professional judiciary.

6.3 However, it is worth noting that JPs do not hold paid office, and so their mileage rates are not subject to taxation even in cases where they exceed 40p per mile. In relation to travelling and subsistence payments, HMRC guidance states:

“[b]efore tax can be charged under the provisions relating to employment income there must be: either an office or an employment **and** earnings from that office or employment.”

...

Unpaid office holders [include]...people who undertake unpaid work within normal commercial organisations, or within areas such as the health service, governing bodies of Further Education Colleges, or the courts...Such people may well hold an office. But they will not have any taxable earnings unless it can be shown that the office holders are being remunerated for their services.”²

7. *Her Majesty’s Court Service (HMCS) Methodology*

7.1 The motor mileage payments for magistrates in England and Wales are based on:

- Engine size;
- Running costs;
- Standing Charges; and
- Petrol Price.

7.2 The calculations are based upon statistics collated by the AA, which is considered the most appropriate provider of motoring and petrol statistics, in line with other government departments.

- **Engine size:** AA statistics are based on the motor vehicle values of below £10,000, between £10,000 and £13,000 and above £13,000. HMCS MVA rates are based on the equivalent vehicle engine sizes of 1100cc, 1101 to 1549cc and 1550cc and above, respectively.
- **Running costs:** HMCS reimburses the running costs of petrol, tyres, service, labour parts and replacement parts (including oil) on a pence per mile basis.
- **Standing charges:** HMCS reimburses only the essential standing charges of road tax, insurance and depreciation, at a rate based on the approximation that a JP’s total average mileage is 8,770 miles.
- **Petrol price:** HMCS calculates the petrol price rate using the AA petrol price spot rate adjusted by the percentage change in the average petrol running cost per mile, as quoted on the AA website.³

² HMRC website, helpsheet *EIM71100 – Voluntary organisations: unpaid office holders*, available at: <http://www.hmrc.gov.uk/manuals/eimanual/EIM71100.htm>

³ Available at:

- **Additional rates:**

- **Passenger rates:** are paid at a rate of 10% of the largest engine size.
- **Bicycle rates:** are paid at a rate of 50% of the largest car engine size.
- **Hybrid, LPG, gas, Electric and Dual Fuel car rates:** are paid at the maximum rate payable for any engine size to promote the use of environmentally friendly cars.

8. *Environmental Considerations*

8.1 Given current concerns regarding the impact of vehicle usage on the environment, it may be appropriate to revise travel allowances with regard to these concerns. For instance, it may be considered appropriate to adjust the rates to encourage the use of more environmentally friendly modes of transport and/or to discourage the use of those that are more environmentally damaging.

9. *Public Transport*

9.1 Justices of the peace are reimbursed for the actual cost of travel when fulfilling their duties. No method of calculation is required to set these rates; therefore it is not proposed to review expense payments for the use of public transport.

10. *Revision of Rates*

10.1 It is to be noted that the rates payable by HMCS to magistrates in England and Wales in respect of travel expenses is subject to annual revision, to take effect from 1 May each year.⁴ A review of the rates payable within the Scottish Government is also under consideration. If it is deemed appropriate to revise JP allowances to bring rates into line with either magistrates in England and Wales, or the professional judiciary, any changes to those rates would need to be taken into account when setting rates for JPs.

http://www.theaa.com/motoring_advice/motoring_costs.html

⁴ As noted at para 3.1, magistrates' allowance rates were adjusted on 1 August 2008 to take account of recent unprecedented increases to the price of petrol. HMCS have emphasised that this action does not set a precedent in respect of reviewing the rates, which will continue to be revised annually.

Consultation Questions on Travel Expenses

Q1 Do you consider that the current allowance rates for motor mileage are reasonable?

Q2 If adjusted, do you consider the travel allowance rates should be made more consistent with the rates payable to magistrates in England and Wales?

Q3 Do you think motor vehicle rates should increase with respect to engine size?

Subsistence

11. Periods of Absence

11.1 Currently subsistence is paid to JPs for periods of absence of:

- 4 - 8 hours,
- 8 - 12 hours,
- over 12 hours,
- Overnight.

SUBSISTENCE ALLOWANCE							
MAGISTRATES (in England & Wales)		SG STAFF		PROFESSIONAL JUDICIARY		JUSTICES OF THE PEACE	
NIGHT SUBSISTENCE							
outside London	£100.00	outside London*	up to £75.00 plus £23.50 meals allowance**	Upper limit	Actual receipted expenditure incurred, up to £98.50	outside London	£77.43
		within London*	up to £100, plus £24.10 meals allowance**			within London	£88.31
within London	£120.00	staying with friends	£25.00	Staying with friends	£30.00	within London	£88.31
DAY SUBSISTENCE							
4-8 hours absence	£7.34	over 5 hours	£4.90***	over 5 hours	£4.90	4-8 hours absence	£6.57
8-12 hours absence	£10.23					8-12 hours absence	£9.16
over 12 hours absence	£19.31	over 10 hours	£10.70***	over 10 hours	£10.70	over 12 hours absence	£17.29
<p>*an incidental personal allowance of £5.00 is also claimable in addition to these rates</p> <p>**Receipted cost of bed and breakfast can be claimed up to the limit specified. If, during 24 hours, additional expenditure is incurred on meals the flat rate meals allowance can be claimed.</p> <p>*** Does not require to be receipted.</p>							

12. *Day Subsistence*

12.1 The day subsistence allowance for JPs and magistrates in England and Wales is subject to an upper limit, and is claimable if expenditure is actually and necessarily incurred. If a JP incurs expenditure, the full amount is claimable, notwithstanding the actual amount.

13. *Night Subsistence – Friends and Family Allowance*

13.1 The Scottish Government pays an allowance of £25.00 if staying overnight with friends or family while on official business. The allowance covers accommodation and all meals in the 24 hour period starting when the official journey commenced. Receipts are not required to be produced to support a claim for this allowance.

14. *HMCS Methodology*

14.1 **Periods of absence:** HMCS consider that the time periods specified in the table above are appropriate as alternative periods, such as sittings, would represent a four hour time period in any case.

14.2 **Day Subsistence:** HMCS reviews these rates annually to take account of inflationary pressures. To calculate inflationary pressures, HMCS uses the gross domestic product deflator published by HM Treasury, from data provided by the Office of National Statistics (ONS). The Treasury considers that the GDP deflator is the most appropriate index for the public sector to adopt when calculating inflationary pressures.

14.3 **Night Subsistence:** Magistrates in England and Wales can use the Expotel booking service used by the Department for Constitutional Affairs (DCA). The night subsistence rates are based on the national rates that the DCA has agreed with Expotel.

Consultation Questions on Subsistence Allowances

Q4 Do you consider that the current allowance rates for subsistence are reasonable?

Q5 Do you consider that the introduction of an allowance in respect of staying overnight with family or friends is appropriate?

Financial Loss

15. *Financial Loss Allowance*

15.1 The amount of financial loss payable to JPs in Scotland is significantly lower than the allowance that can be claimed by magistrates in England and Wales.

FINANCIAL LOSS ALLOWANCE					
MAGISTRATES (in England & Wales)			JUSTICES OF THE PEACE		
	Gross Rate	Net Rate		Gross Rate	Net Rate
Up to 4 hours	£56.63	£45.30	Up to 4 hours	£39.41	£30.35
Over 4 hours	£113.26	£90.61	Over 4 hours	£78.82	£60.69

16. *Proposed Adjustment to Net Rate of Financial Loss Allowance*

16.1 The current financial loss allowance rate for JPs who are employed on a PAYE basis is based on a previous basic rate of income tax of 23%, rather than the current rate of 20%. It is proposed to address this anomaly in the review. This would mean, for example, that if the current gross rates were to remain unaltered, the net rate of financial loss payable for employed JPs would increase to £31.53 for a period of absence of up to 4 hours, and £63.06 for over 4 hours.

17. *Children's Panel Member Rates*

17.1 Children's Panel Members are paid a financial loss allowance of £27.21 for periods of up to 4 hours, and £54.43 for longer periods. These are recommended maximum rates, however, and the actual level payable is at the discretion of the local authority.

18. *HMCS Methodology*

18.1 Financial loss allowance is paid in respect of:

- Loss of earnings or social security benefit incurred by a justice in the performance of his or her duties;
- A cost incurred by a justice to maintain their earnings; or
- A cost incurred by a justice in the performance of their duties.

18.2 To calculate financial loss allowance rates, HMCS uses the mean earnings for full-time UK employees as reported by the ONS, using data from the Annual Survey of Hours and Earnings (ASHE).

Consultation Questions on Financial Loss Allowance

Q6 Do you agree it is appropriate to revise the rates for financial loss to use the 20% rate of income tax?

Additional Expenses

19. Carers' Allowances

19.1 Some organisations currently pay child care or other care expenses. For example, where a carer was required to accompany a member in the performance of his or her duties, some of the carer's expenses would also be claimable.

20. Children's Panel Care Expenses

20.1 Reimbursement of reasonable receipted childcare or other care expenses may be paid to all members who incur such expenses while undertaking their public duties. For instance, in attending hearings, training or meetings. Current guidance, based on advice from the Scottish Government's Public Appointments Unit, suggests that the standard range for such payments is between £30 and £40 per day.

20.2 Children's Panel members are paid allowances by local authorities. The rates quoted are recommended maxima, and we are aware that the rates payable to panel members can vary depending on which local authority area they belong to. Equity of support for panel members is one aspect of the reform of the children's hearings system currently being addressed.

Consultation Questions on Additional Expenses

Q7 Do you consider that the introduction of a carer's allowance, similar to that which applies to Children's Panel members, would be appropriate?

Q8 Do you consider there is any other category of expenses not detailed in this paper which should be taken into account when setting JP allowance rates?

Annex

CURRENT ALLOWANCES FOR JUSTICES OF THE PEACE

Travelling Allowance			
Description	Motor Mileage Allowance in Pence Per Mile		
	Up to 1100cc	1101-1400cc	Over 1400cc
MMA up to 5000 miles	27.4	36.8	44.7
MMA after 5000 miles	23.6	23.6	23.6
Passenger travelling allowance	1p per passenger (up to a maximum of 4 passengers, who would otherwise be entitled to claim motor mileage allowance in their own right)		
Bicycle	6.9		

Subsistence Allowance	
Allowance Type	Allowance Rate
Night subsistence: outside London	£77.43
Night subsistence: within London	£88.31
Day subsistence: 4 to 8 hours absence	£6.57
Day subsistence: 8 to 12 hours absence	£9.16
Day subsistence: over 12 hours absence	£17.29

Financial Loss Allowance	
Gross FLA Rate (self employed justices who are liable to pay tax on FLA)	
Up to 4 hours	£39.41
Over 4 hours	£78.82
Net FLA Rate (other justices)	
Up to 4 hours	£30.35
Over 4 hours	£60.69

THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses.⁵ Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (eg, analysis of response reports) can be accessed at: [Scottish Government consultations](http://www.scotland.gov.uk/consultations) (<http://www.scotland.gov.uk/consultations>).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

⁵ <http://www.scotland.gov.uk/consultations>

Consultation Questions Response Sheet

It would be helpful if you could provide reasons for your answers

	Yes	No	Don't Know	Comment
Q1 Do you consider that the current allowance rates for motor mileage are reasonable?				
Q2 If adjusted, do you consider the travel allowance rates should be made more consistent with the rates payable to magistrates in England and Wales?				
Q3 Do you think motor vehicle rates should increase with respect to engine size?				
Q4 Do you consider that the current allowance rates for subsistence are reasonable?				
Q5 Do you consider that the introduction of an allowance in respect of staying overnight with family or friends is appropriate?				
Q6 Do you agree it is appropriate to revise the rates for financial loss to use the 20% rate of income tax?				
Q7 Do you consider that the introduction of a carer's allowance, similar to that which applies to Childrens' Panel members, would be appropriate?				
Q8 Do you consider there is any other category of expenses not detailed in this paper which should be taken into account when setting JP allowance rates?				

Please return your response sheet to JPAllowancesconsultation@scotland.gsi.gov.uk or by post to Katrina McNeill at Criminal Procedure Division, Room GW.14 St Andrew's House, Regent Road, Edinburgh, EH1 3DG by **Friday 19 December 2008**.