

Response to Consultation

Data Protection Fee Regime: Proposed Changes

October 2024



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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Privacy Law sub-committee welcome the opportunity to consider and provide comments on the consultation on the Data Protection Fee Regime: Proposed Changes.

About You

Question 1: Are you responding as an individual or on behalf of an organisation?*

<input type="checkbox"/>	Individual
<input checked="" type="checkbox"/>	Organisation

Question 2: Are you or the organisation you represent a data controller?*

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	Don't Know



Question 3: Which of the following best describes the sector you/your organisation operate(s) in?*

<input type="checkbox"/>	Private Sector
<input type="checkbox"/>	Public Sector
<input type="checkbox"/>	Civil Society and Voluntary, Community and Social Enterprise Sector
<input checked="" type="checkbox"/>	Other – the Law Society of Scotland who represent the views of the legal profession in Scotland.

Question 4: How many staff are employed by you/your organisation?*

<input type="checkbox"/>	0-10
<input checked="" type="checkbox"/>	11-250
<input type="checkbox"/>	More than 250
<input type="checkbox"/>	Don't know

Question 5: If applicable, what was your/your organisation's turnover in the financial year 2023-2024?*

<input type="checkbox"/>	Less than or equal to £632,000
<input type="checkbox"/>	Greater than £632,000 and less than or equal to £36 million
<input type="checkbox"/>	More than £36 million
<input type="checkbox"/>	Don't know
<input checked="" type="checkbox"/>	Not applicable

Question 6: We may wish to contact you in order to discuss your response in more detail. If you are happy to be contacted, please provide your details below (if responding on behalf of an organisation, please include the organisation details). If not, please move on to the next question.

Name: Richard Male (Secretary to Law Society of Scotland's Privacy Sub-Committee)
Email Adress: richardmale@lawscot.org.uk



Questions About Level of Fees

Question 7: How appropriate do you think the government's proposal to increase tier 1 fees by £15 is?*

<input type="checkbox"/>	Very Appropriate
<input type="checkbox"/>	Fairly Appropriate
<input type="checkbox"/>	Neither Appropriate nor Inappropriate
<input type="checkbox"/>	Fairly Inappropriate
<input type="checkbox"/>	Very Inappropriate
<input type="checkbox"/>	Don't Know/No Opinion

Please tell us why you think this (max 1000 characters)

Please see answer to **Question 10**.

Question 8: How appropriate do you think the government's proposal to increase tier 2 fees by £22 is?*

<input type="checkbox"/>	Very Appropriate
<input type="checkbox"/>	Fairly Appropriate
<input type="checkbox"/>	Neither Appropriate nor Inappropriate
<input type="checkbox"/>	Fairly Inappropriate
<input type="checkbox"/>	Very Inappropriate
<input type="checkbox"/>	Don't Know/No Opinion

Please tell us why you think this (max 1000 characters)

Please see answer to **Question 10**.



Question 9: How appropriate do you think the government’s proposal to increase tier 3 fees by £1,079 is?*

<input type="checkbox"/>	Very Appropriate
<input type="checkbox"/>	Fairly Appropriate
<input type="checkbox"/>	Neither Appropriate nor Inappropriate
<input type="checkbox"/>	Fairly Inappropriate
<input type="checkbox"/>	Very Inappropriate
<input type="checkbox"/>	Don't Know/No Opinion

Please tell us why you think this (max 1000 characters)

Please see answer to **Question 10**.

Question 10: Do you have any further comments about the government’s proposal to increase fees for all tiers by roughly 37.2% compared to current levels?

Please tell us why you think this (max 1000 characters)

We note the proposed increase to the fees payable to the Information Commissioner’s Office (ICO) across each of the 3 tiers. We understand the need to properly resource the ICO in its work to ensure the protection of personal data.

However having considered the consultation document, we are uncertain as to the precise rationale and underlying principles that have guided an increase of 37.2% to the charging structure. Whilst we note that no changes to the fee structure have been implemented since 2018, and that further resources are needed to support the ICO in fulfilling its functions, we are not clear from the information provided as to how the % increase has been calculated nor the precise benefits this will bring.

We would therefore ask that further information is provided to help demonstrate what services will improve and how this correlates to the increase in fees. This would enable a fuller response to this consultation.

Question 11: How easy or difficult is the current fee structure to understand?*

<input type="checkbox"/>	Very Easy
<input type="checkbox"/>	Fairly Easy
<input type="checkbox"/>	Neither Easy nor Difficult



<input type="checkbox"/>	Fairly Difficult
<input type="checkbox"/>	Very Difficult
<input checked="" type="checkbox"/>	Don't Know/No Opinion

Please tell us why you think this (max 1000 characters)

We believe that the current tiered fee structure is easy to understand enabling the proper classification of data controllers into one of the 3 Tiers.

However we would welcome a further awareness campaign to assist certain organisations from understanding their registration requirements as a data controller, thereby incurring a fee payable to the ICO. We note that the ICO provides an online tool to assist with this, however, from experience we note that it still remains common place for uncertainty to exist amongst certain data controllers as to their registration requirements (or more generally their data protection obligations). We point to the greatest uncertainty existing in those organisations falling within Tier 2.

We would therefore welcome further awareness being raised by the ICO to prevent any unnecessary enforcement action being taken, such as the imposition of financial penalties.

Question 12: The government is proposing to not change the criteria for determining the tier of fee payable (annual turnover or number of staff). Do you or the organisation you represent consider the criteria for determining fees to be appropriate?*

<input type="checkbox"/>	Very Appropriate
<input type="checkbox"/>	Fairly Appropriate
<input type="checkbox"/>	Neither Appropriate nor Inappropriate
<input type="checkbox"/>	Fairly Inappropriate
<input type="checkbox"/>	Very Inappropriate
<input checked="" type="checkbox"/>	Don't Know/No Opinion

Please tell us why you think this (max 1000 characters)

We do not have any response to this question.



Question 13: Do you have any further comments about the government’s proposal to retain the current fee structure?

We note that public authorities are able to categorise themselves according to staff numbers only and do not need to take annual turnover into account. Furthermore, we also note the Government’s approach to a tiered structure of fees based on proportionality, with smaller organisations paying correspondingly less.

However, we consider that any increase to the fee payable could result in certain organisations facing financial difficulties. For example, those operating within the public sector who may already be experiencing resourcing and funding difficulties will see any increase as having a negative impact upon them. Furthermore, those organisations operating within Tier 1 such as small businesses and sole traders may also see any increase as being difficult to meet.

In view of this, we would welcome further evidence that consideration has been given as to how the increase in fees will apply to those with lesser means and would welcome a considered approach based when dealing with any such organisation.

For example, we draw attention to the ICO’s approach to working with public authorities whereby discretion is given to the Information Commissioner to reduce the use and impact of fines on those operating within this sector. Instead, the ICO has the power to elect to use alternative powers such as warnings, reprimands and enforcement notices with fines being issued only in the most serious of cases.

We would therefore welcome an approach in line with similar principles which could include a discretionary waiver of the fee payable to the ICO for those who face challenges in meeting the fee.

Question 14: Do you currently use an exemption?*

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Don’t Know

Question 15: The Government is minded to keep the existing exemptions. Do you agree with this position?*

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No



<input type="checkbox"/>	Neither Agree nor Disagree
<input checked="" type="checkbox"/>	Don't Know

If your answer to the previous question was "No", please provide more detail as to why you disagree with the proposal to retain the current exemptions.

We refer to our response in question 13 and would welcome further detail as to why the Government is minded to keep the existing exemptions and the underlying principles that has guided this decision.

Question 16: Do you have any further thoughts about the current exemptions?

We do not have any response to this question.

Direct Debit

Question 17: Have you or the organisation you represent paid your data fee by direct debit in the past 12 months?* If you have selected "No" or "Don't Know" please skip question 18 and move on to question 19.

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input checked="" type="checkbox"/>	Don't Know/Not Applicable

Question 18: To what extent would you say that the £5 direct debit discount makes a difference to you/your organisation in terms of reducing costs?*

<input type="checkbox"/>	It makes a significance difference
<input type="checkbox"/>	It makes a small difference
<input type="checkbox"/>	It does not make a difference at all
<input checked="" type="checkbox"/>	Don't Know/ No Opinion

Please tell us why you think this (max 1000 characters)

We do not have any response to this question.

Question 19: To what extent do you agree with a proposal to retain the £5 direct debit discount?

<input type="checkbox"/>	Strongly Agree
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<input type="checkbox"/>	Somewhat Agree
<input type="checkbox"/>	Neither Agree nor Disagree
<input type="checkbox"/>	Somewhat Disagree
<input type="checkbox"/>	Strongly Disagree
<input checked="" type="checkbox"/>	Don't Know/No Opinion

Please tell us why you think this (max 1000 characters)

We do not have any response to this question.

Question 20: Do you have any further comments about the government's proposal to retain the direct debit discount?

We do not have any response to this question.



For further information, please contact:

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