

**EXPLANATORY MEMORANDUM TO**  
**THE CIVIL PROCEEDINGS, FAMILY PROCEEDINGS AND UPPER TRIBUNAL**  
**FEES (AMENDMENT) ORDER 2016**

2016 No. [XXXX]

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This instrument provides for fees to be prescribed in certain proceedings which exceed the costs of those proceedings (known as “enhanced fees”).

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument is the second occasion on which the Lord Chancellor has used the power, in section 180 of the Anti-social Behaviour, Crime and Policing Act 2014<sup>1</sup>, to prescribe enhanced fees.

*Other matters of interest to the House of Commons*

- 3.2 This entire instrument applies only to England and Wales.
- 3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of part of this instrument would not be within the devolved legislative competence of any of the Northern Ireland Assembly as a transferred matter, the Scottish Parliament or the National Assembly for Wales if equivalent in relation to the relevant territory were included in an Act of the relevant devolved legislature.
- 3.4 The Department has reached this view because it is within the devolved competence of the Scottish Parliament and of the Northern Ireland Assembly to legislate for fees to be payable in connection with anything done by the courts in Scotland and Northern Ireland respectively.

**4. Legislative Context**

- 4.1 This instrument increases the fees currently charged in connection with certain civil and family proceedings in the courts of England and Wales, as set out in the Civil Proceedings Fees Order 2008 (S.I. 2008/1056 L.5) and the Family Proceedings Fees Order 2008 (S.I. 2008/2054 L.6). This instrument also increases the fees payable where fresh claim judicial review proceedings are issued in or transferred to the Upper Tribunal (Immigration and Asylum Chamber) from the High Court in England and

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<sup>1</sup> [http://www.legislation.gov.uk/ukpga/2014/12/pdfs/ukpga\\_20140012\\_en.pdf](http://www.legislation.gov.uk/ukpga/2014/12/pdfs/ukpga_20140012_en.pdf)

Wales under the Upper Tribunal (Immigration and Asylum Chamber) (Judicial Review) (England and Wales) Fees Order 2011.

## **5. Extent and Territorial Application**

- 5.1 This instrument extends to England and Wales.
- 5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

## **6. European Convention on Human Rights**

- 6.1 The Parliamentary Under Secretary for the State of Justice, Shailesh Vara, has made the following statement regarding Human Rights:

“In my view, the provisions of the Civil Proceedings, Family Proceedings and Upper Tribunal Fees (Amendment) Order 2016 are compatible with the Convention Rights.”

## **7. Policy background**

### *What is being done and why*

- 7.1 The case for revisiting the way in which fees are charged is based firmly on the need to make sure that Her Majesty’s Court and Tribunal Service (“HMCTS”) is funded properly to protect the vital principle of access to justice.
- 7.2 Despite the significant economic progress that has been made over the last five years, the financial climate in which the Government is operating remains challenging. Since 2010, the Ministry of Justice has made substantial reductions to its spending but there is however, only so much that can be delivered through spending cuts. Therefore it is right to look again at the balance between what users pay towards the overall cost of the court and tribunal service as compared with the financial burden that falls on the taxpayer.
- 7.3 In January the Government consulted on further proposals to increase the fees for civil general applications (which are not included in any other proposals or specifically excluded) and possession claims. There was opposition to the proposals but the Government did not accept the argument that the increase would have the effect of preventing people from accessing justice. The increases are moderate and it is not anticipated that they will have any significant impact on demand. Therefore on balance the Government intends to proceed with the proposals. A copy of the original consultation can be found at the following link:  
[https://consult.justice.gov.uk/digital-communications/proposals-for-further-reforms-to-court-fees/supporting\\_documents/cm8971enhancefeesresponse.pdf](https://consult.justice.gov.uk/digital-communications/proposals-for-further-reforms-to-court-fees/supporting_documents/cm8971enhancefeesresponse.pdf).
- 7.4 The subsequent response can be found at the following link:  
<https://consult.justice.gov.uk/digital-communications/further-fees-proposal-consultation>.
- 7.5 When the Government originally consulted on the proposal to increase the divorce application fee from £410 to £750, there was strong opposition to this proposal. Therefore the Government decided in January that it would not proceed with the increase. A copy of the original consultation can be found at the following link:

[https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform/supporting\\_documents/courtfesconsultation.pdf](https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform/supporting_documents/courtfesconsultation.pdf).

7.6 A copy of the subsequent response can be found at the following link:

[https://consult.justice.gov.uk/digital-communications/proposals-for-further-reforms-to-court-fees/supporting\\_documents/cm8971enhancefeesresponse.pdf](https://consult.justice.gov.uk/digital-communications/proposals-for-further-reforms-to-court-fees/supporting_documents/cm8971enhancefeesresponse.pdf).

7.7 Given the financial imperative however, the Government believe it is right to reconsider the decision not to increase the divorce application fee. Taking account of the concerns raised during the original consultation, the Government has decided to increase the fee to £550, rather than to £750 (as originally proposed). A copy of the consultation response can be found at:

<https://consult.justice.gov.uk/digital-communications/further-fees-proposal-consultation>.

7.8 The increases in these fees will be made in exercise of the powers provided by section 180 of the Anti-Social Behaviour Crime and Policing Act 2014<sup>2</sup>. Under these provisions, the income from enhanced fees must be used to provide an efficient and effective system of courts and tribunals and so will form a key part of the plan to make sure that HMCTS is properly funded.

#### *Consolidation*

7.9 It is not intended that this statutory instrument will consolidate any other legislation.

### **8. Consultation outcome**

8.1 The specific provisions contained in this instrument were consulted on. The Government response and was published on 22 July 2015. A copy of which can be found at: <https://consult.justice.gov.uk/digital-communications/further-fees-proposal-consultation>.

8.2 After careful consideration of the responses, the Government concluded on balance to proceed with the proposals. This will mean:

- Increasing the fee for claims for possession of goods or land in the county court by £75, from £280 to £355 (from £250 to £325 for claims initiated online);
- Increasing the fee for uncontested general applications in civil proceedings made by consent by £50, from £50 to £100;
- Increasing the fee for contested general application in civil proceedings made on notice by £100, from £155 to £255;
- Increasing the fee for uncontested general applications in immigration judicial review proceedings in the Upper Tribunal by £55, from £45 to £100;
- Increasing the fee for contested general applications in immigration judicial review proceedings in the Upper Tribunal by £175, from £80 to £255;
- Increasing the fee for copy documents (first ten pages or on disk) in immigration judicial review proceedings in the Upper Tribunal by £5, from £5 to £10.

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<sup>2</sup> [http://www.legislation.gov.uk/ukpga/2014/12/pdfs/ukpga\\_20140012\\_en.pdf](http://www.legislation.gov.uk/ukpga/2014/12/pdfs/ukpga_20140012_en.pdf)

- 8.3 There were however, some situations where, due to particular sensitivities, it has been decided that it would be inappropriate to increase general application fees. Consequently, the fees payable in connection with the following are not being increased:
- applications to vary or extend an injunction for protection from harassment under the Protection of Harassment Act 1997;
  - applications for payment to be made from funds deposited in court; and
  - applications made in certain insolvency proceedings.
- 8.4 In December 2013, the Coalition Government also consulted on increasing the fee payable to issue divorce proceedings from £410 to £750. A copy of which can be found at: [https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform/supporting\\_documents/courtfeesconsultation.pdf](https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform/supporting_documents/courtfeesconsultation.pdf). For reasons outlined in Part 7 above, the Government reconsidered its position and decided to go forward with the increase to the amended amount of £550.
- 8.5 The Lord Chancellor has consulted the Lord Chief Justice, the Master of the Rolls, the President of the Queen’s Bench Division, the President of the Family Division, the Chancellor of the High Court, the Deputy Head of Civil Justice and the Civil Justice Council (“the statutory consultees”) in accordance with section 92(5) and (6) of the Courts Act 2003. They have expressed their opposition to the increased divorce fee as they think that it will be a disincentive for divorce and in particular, women that are victims of domestic violence.

## **9. Guidance**

- 9.1 Her Majesty’s Courts and Tribunal Service will update its guidance on fees payable in line with these amendments. Forms and leaflets will also be amended to reflect the changes.

## **10. Impact**

- 10.1 Some proceedings to which these fee changes apply may involve businesses, charities, voluntary bodies or public sector organisations. Information is not routinely collected on these people or organisations involved in court proceedings and therefore the potential impact cannot be calculated.
- 10.2 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website. Overall, we estimate that the fee increases will generate additional of £64 million per annum.
- 10.3 In the consultation responses, there was concern that the increase in the divorce fee would have a disproportionate impact on women because more applications are made by women than men. This issue was considered within the accompanying equality statement<sup>3</sup> to the consultation and the Government concluded that any impact would be mitigated by the remission scheme which operates to make sure that vulnerable persons who are unable to afford the fee are not denied access to justice.

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<sup>3</sup> [https://consult.justice.gov.uk/digital-communications/further-fees-proposal-consultation/supporting\\_documents/equalitiesstatementfeesresponse.pdf](https://consult.justice.gov.uk/digital-communications/further-fees-proposal-consultation/supporting_documents/equalitiesstatementfeesresponse.pdf)

## **11. Regulating small business**

- 11.1 Some proceedings to which the fee increases relate will be initiated by small businesses. In the impact assessment<sup>4</sup>, it detailed research that had been conducted by Ipsos Mori<sup>5</sup> which stated that litigation was seen as a last option for many small businesses.
- 11.2 Users with legal representation tended to have little awareness of legal costs (including court fees) than those who represented themselves, as courts fee were typically the sole costs they paid. When asked however about specific hypothetical increases to court fees, the research participants felt they were affordable and would not deter them from going to court.

## **12. Monitoring & review**

- 12.1 Fees and the impact of any changes are constantly monitored by way of feedback from courts and their customers and the monitoring of fee income and volumes.

## **13. Contact**

- 13.1 Bill Dowse at the Ministry of Justice Telephone: 020 3334 6099 or email: bill.dowse@justice.gsi.gov.uk can answer any queries regarding the instrument.

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<sup>4</sup> [https://consult.justice.gov.uk/digital-communications/further-fees-proposal-consultation/supporting\\_documents/governmentresponseimpactassessment.pdf](https://consult.justice.gov.uk/digital-communications/further-fees-proposal-consultation/supporting_documents/governmentresponseimpactassessment.pdf)

<sup>5</sup> “The role of court fees in affecting users’ decisions to bring cases to the civil and family courts: a qualitative study of claimants and applicants” MoJ (MoJ (2014)