

<b>Title:</b>  <b>Proposed increase to Court Fees by Northern Ireland Courts and Tribunals Service</b>	Regulatory Impact Assessment (RIA)
	<b>Date:</b> Finalised October 2016
	<b>Type of measure:</b> Secondary Legislation
<b>Lead department or agency:</b>  <b>Department of Justice</b>	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> Domestic NI
<b>Other departments or agencies:</b>  <b>Northern Ireland Courts and Tribunals Services</b>	<b>Contact details:</b> Consultation Co-ordinator
	<a href="mailto:feeconsultation@courtsni.gov.uk">feeconsultation@courtsni.gov.uk</a>

## Summary Intervention and Options

### What is the problem under consideration? Why is government intervention necessary?

NICTS, in common with all Government Departments, is required to adopt a standard approach to setting charges for public services. This is known as the full cost recovery method. The policy on fee charging for the provision of services is set out in guidance published by the Department of Finance; fees should cover the full cost associated with providing each service. Following a recent review by Northern Ireland Courts & Tribunals Service (NICTS), it was discovered that NICTS is not recovering the full cost of the civil and family court business. In 2015/16, income from court fees was £20.8m with the cost of providing civil business £28.3m; this shows an under-recovery of costs of £7.5m and this is forecast to increase to £8.2m during 16/17.

Government intervention is considered necessary and NICTS has proposed that this intervention comes in the form of an increase to fees. This will help to prevent further subsidisation of civil court costs by the taxpayer and, ensure compliance with policy.

### What are the policy objectives and the intended effects?

The key objectives of the proposed increase in fees are:

- to meet the requirements to achieve full cost recovery by maximising fee income at, or as close as possible to, full cost levels; this is as laid down in Managing Public Money (NI);
- to ensure that the fee charging system is fair, easy to understand and cost effective to administer;
- to ensure the cost recovery model remains viable when patterns of demand change; and,
- to protect access to justice through a system of exemptions and remissions.

NICTS ran a public consultation exercise, over a 12 week period, from 14 March to 8 June 2016. The consultation document outlined why fee increases are necessary. In summary it set out the proposal to increase fees in the context of the current position of under-recovery, diminishing financial resources and falling business volumes. NICTS' main aim is to strive to meet the full cost recovery requirements.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

NICTS considered a long list of options on how best to resolve this issue. The number was narrowed down to four options, including the 'Do Nothing' option which has subsequently been rejected, on the grounds that it would fail to address the current under-recovery position. The following options represent those published as part of the consultation paper:

- Option 1 – Uplift all existing fees immediately to achieve full cost recovery; this would involve a fee increase of 37%, effective from April 2017.
- Option 2 – Uplift all existing fees to reflect the inflationary costs since 2008 onwards – this would involve increasing fees by 21.9%; note fees have remained static since 2007.
- Option 3 – Uplift all existing fees in a phased approach over a three year period with the aim of moving towards full cost recovery. This would mean a 10% increase to all fees on 1 April 2017, following by an increase of 7.5% in April 2018 with a final increase in fees being introduced in April 2019. In the consultation paper, NICTS has identified Option 3 as the **preferred approach**.

Since Budget 2010, NICTS have removed over £10m from its baseline requirements. Since 14/15, costs of around £4.5m have been driven out of the organisation, reducing the need for funding across the organisation as a whole. NICTS will continue to seek efficiencies through its Modernisation Programme. It is however evident that a return to full cost recovery cannot be achieved by removing costs alone; it is necessary to do more and this involves looking at a number of ways that this can happen, including an increase in the fees currently charged.

**Will the policy be reviewed?** Yes on a regular basis in order to monitor the levels of income raised, any changes in the volume of fees, which could indicate an adverse impact on access to justice; and the change in the cost recovery position.

**If applicable, set review dates:** April 2018 and annually thereafter.

Potential savings generated from Preferred (or more likely) Option				
Total net savings generated from the change introduced	Total savings to NICTS per year		Annual cost for implementation by Regulator	
£8.1m - £9.3m over a 4 year period	Approximately £2.2m - £2.5m		£0.2m	
Does Implementation go beyond minimum EU requirements?			NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
Are any of these organisations in scope?	Micro Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Small Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Medium Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Large Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

**The final RIA supporting legislation must be attached to the Explanatory Memorandum and published with it.**



Approved by:

Date: 31 October 2016

**ECONOMIC ASSESSMENT**

<b>Costs (£m)</b>	<b>Total Transitional (Policy)</b> (constant price) 4 Years	<b>Average Annual (recurring)</b> (excl. transitional) (constant price)	<b>Total Cost</b> (Present Value)
<b>Best Estimate</b>	<b>£0.8m</b>	<b>-</b>	<b>£0.8m</b>

**Description and scale of key monetised costs by 'main affected groups'.**

Overall NICTS will benefit from the proposals through additional fee income generated, although this will be offset by some unavoidable costs. Transitional costs will include the costs of minor adjustments to court IT systems along with some administrative requirements, such as the re-issue of forms and also further guidance to court users. There are also costs associated with resourcing the team responsible for taking forward the work on civil fees – this team was formed specifically to look at the civil fee regime across NICTS. The additional costs associated with implementing this policy have been estimated over the next 4 years and are summarised in the table above.

The total additional cost to court users (private individuals, businesses and other organisations) who initiate court proceedings is estimated in the benefits table below. It should be noted that in civil proceedings, this cost will ultimately be borne by unsuccessful claimants and by losing defendants. It is also worth highlighting that a large proportion of our customers do not want to be at court. Whether it is defendants or victims in criminal cases; victims of domestic violence; people going through family breakdown/divorce and parents of children involved in care proceedings. Even in civil proceedings, generally most customers do not relish the idea of coming to court. Court is viewed very much as a last option, therefore fees in many cases are irrelevant and, based on evidence gathered to date and from the recent public consultation process, NICTS do not believe an increase in fees will have a material impact on business and related volumes.

**Other key non-monetised costs by 'main affected groups'.**

There is a requirement to pay court fees in advance of any court proceedings. This may cause court users, or their legal representatives, to incur cash flow issues. There could also be an increased cost to NICTS in processing an increased number of fee remissions (as the court fee is taken into account when assessing an application for remission); this is not expected to be of material significance.

<b>Benefits (£m)</b>	<b>Total Transitional (Policy)</b> (constant price) 4 Years	<b>Average Annual (recurring)</b> (excl. transitional) (constant price)	<b>Total Benefit</b> (Present Value)
<b>Low</b>	<b>Optional</b>	<b>£2.4m</b>	<b>£8.9m</b>
<b>High</b>	<b>Optional</b>	<b>£2.7m</b>	<b>£10.1m</b>
<b>Best Estimate</b>			<b>In a range</b>

### **Description and scale of key monetised benefits by ‘main affected groups’.**

An increase in court fees will result in additional fee income for NICTS which should significantly bridge the gap between the levels of income raised and the costs associated with civil and family business; this will allow NICTS to strive to meet the full cost recovery requirements as laid down in MPM (NI).

By attempting to close the current gap between income and costs, this should help to reduce the financial burden on the Department of Justice and ultimately the taxpayer, as the necessary funding required to support the running cost of courts will be primarily found from the additional fee income raised by this policy change and, from those who use the courts.

The additional income (benefit) NICTS is expected to generate from the implementation of this policy has been estimated over the next 4 years and summarised in the benefit table above. The total benefit/savings is estimated to be in the range of £8.9m to £10.1m (present value) depending on the volume of business over that period. As noted above, *such benefits/savings to NICTS represent an additional cost to court users*. The financial impact on court users and businesses in particular, is considered at Section 7.

### **Other key non-monetised benefits by ‘main affected groups’.**

Having fees set to better reflect the cost of proceedings, ensures that court users consider the costs and benefits of bringing a case to court.

### **Key Assumptions, Sensitivities, Risks**

It is accepted that, due to external factors, there is a degree of uncertainty around future caseload volumes and therefore the associated fee income. Two estimates have been prepared, a high estimate and a low estimate: the “high” estimate assumes that 2015/16 business volumes and types of cases will remain largely unchanged over the next 4 years, while the “low” estimate assumes a continuing decline in business volumes over the same period, most notably within the Enforcement of Judgments Office (EJO). It is from within EJO that significant reductions have been witnessed in the levels of business usage over recent times.

NICTS considers the “low” estimate to be more realistic and has used this scenario as the basis for estimating the benefits of the proposals in the business case. It is not anticipated that the proposed increase in fees alone will cause a noticeable reduction in the volume of cases coming to court. For the majority of court users, initiating court proceedings is considered to be the last option and therefore it would seem that the fees in many cases are irrelevant in that decision making process. Based on evidence gathered to date and from the public consultation process, we do not believe an increase in fees will have a material impact on volumes.

Volumes and other related changes will be closely monitored throughout the life of the project and, in particular, it will be monitored quarterly by the Income Working Group and at the end of each financial year when final outturn figures become available. It will be at that point when assumptions will be reviewed and re-assessed and, where necessary, adjustments made to ensure that no over-recovery of costs occurs.

### **Cross Border Issues (Option 3)**

#### **How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland)**

NICTS is not alone in seeking to increase fees. Court fees have been, or shortly will be, increased in both England and Wales and Scotland. In the Republic of Ireland, court fee increases have been applied over recent years (however we note that in this particular jurisdiction no fees are charged in relation to family or matrimonial matters).

The proposed fee increases by NICTS are significantly lower than some of the recent fee increases in fees in England and Wales. For example the cost of divorce has increased from £410 to £550, this represents a 34% increase; contested applications in civil proceedings has increased by 64%, from £155 to £255. These increases were introduced in March 2016. Other proposed increases to some Tribunal Fees in England and Wales are under consideration, with some increases in the order of 600%.

# Evidence Base

## 1.0 Problem under consideration

- 1.1 NICTS, in common with all Government Departments, is required to adopt a standard approach to setting charges for public services. This is known as the full cost recovery method. NICTS is required to charge fees associated with business in the civil and family courts and, in doing so, is obliged to set fees to reflect the full cost of the services provided. This obligation is laid down in Chapter 6, Fees Levies and Charges, of Managing Public Money (NI).
- 1.2 In the summer of 2015, under the auspices of its Modernisation Programme, NICTS commissioned a review of court fees and the associated cost recovery model. The outcome of this work indicated that NICTS is recovering an estimated 75% of the costs in this area; during 2016/17, this is forecast to fall further, to a recovery position of around 70%.
- 1.3 NICTS is therefore obliged to consider the options available to it to move towards a full cost recovery position to ensure adherence to government policy.

## 2.0 Rationale for intervention

- 2.1 In order to move towards a full cost recovery position NICTS has reviewed all relevant costs and income streams. Over recent years due to the ever changing financial pressures, a concerted effort has been made to reduce costs significantly across the organisation.
- 2.2 Since April 2014, the overall costs of running the Agency have been reduced by £4.5m with a further reduction of £1.3m planned during 2016/17. NICTS has achieved this by:
  - reducing the staffing complement by 123 posts or almost 15%;
  - relocating from leased accommodation the Enforcement of Judgments Office, the Tribunal Hearing Centre, the Office of the Parole Commissioners, the Taxing Office and the Coroners Service;
  - temporarily closing the Old Townhall Building;
  - streamlining the corporate services function;
  - reducing the size of the Senior Management Team; and
  - reducing the costs associated with contracted services.
- 2.3 However, there is a limit to how much can be achieved through cost cutting measures alone. Court fees have remained static since 2007, when the last fee increase was introduced. It is now accepted that it is time to consider a further increase to the existing levels of court fees. This is therefore seen as a necessary intervention, which requires the necessary Ministerial approvals in order to proceed.

## 3.0 Policy Objective

- 3.1 In considering an increase to court fees, NICTS will seek to achieve a number of policy objectives:
  - to meet the requirements placed on NICTS to achieve full cost recovery by maximising fee income at, or as close as possible to, full cost levels;
  - to ensure that the fee charging system is fair, easy to understand and cost effective to administer;
  - to ensure the cost recovery model remains viable when patterns of demand change; and,

- to protect access to justice through a system of exemptions and remissions.

## 4.0 Policy Options under consideration.

NICTS has worked hard to live within its current budgetary constraints but there is a limit to how much can be achieved through cost cutting measures alone. NICTS has recently announced the rationalisation of the court estate which will include the potential closure of, up to six, court houses. And yet, despite this, unfunded pressures remain. The NICTS modernisation programme continues with a variety of reforms but if access to justice is to be protected and the overall cost of the courts to the taxpayer is to be reduced in line with spending review commitments, more has to be done. Such measures need to be complemented by increases in the contributions from those who use the court. There were a number of fee proposal options considered by NICTS prior to consultation; however taking a wide range of factors into consideration the following 4 options were identified:

### 4.1 Option 0 – Do Nothing

Given the significant and widening gap between costs and fee income, the option of doing nothing is not one that is open to NICTS. Under this option the recovery position remains unchanged, and likely to worsen given the forecast downturn in future business volumes. From a holistic budgetary position, the overall level of efficiencies demanded from NICTS cannot be achieved. Failure to address the cost recovery position will lead to further pressures on an already decreasing budget, failure to drive forward strategic objectives and potentially more courthouse closures. This is not a sustainable position. Consequently, this option was not listed for consideration in the consultation document.

#### **Benefits**

From a strategic perspective, there are no benefits arising from this option; however court users would continue to enjoy a level of fee that was originally set in 2007, and has remained static since that time, with no inflationary increase and with some degree of subsidisation. Maintaining the status quo would see no change to the cost of proceeding with civil actions in the Northern Ireland courts and would therefore not give rise to any additional concerns over its impact on access to justice or increases in legal aid expenditure.

#### **Costs**

Leaving the fee structure as it is would mean that fees for civil business would continue to fall short of the associated costs. This will place further strain on the NICTS budgetary position at a very challenging time. Any shortfall in civil fees would have to be met from within the Department of Justice (DoJ) and ultimately the taxpayer. This position cannot be fair as the user of the court would be subsidised by other stakeholders. The 'do nothing' option **fails to comply** with Government policy of achieving full cost recovery for civil and family court business. On that basis the option to do nothing is rejected as a solution.

### 4.2 Option 1 – Full Cost Recovery

This option would involve increasing civil fees to bridge the total forecast gap in income. During 2016/17 the estimated shortfall in cost recovery is estimated to be around £7.5m to £8.1m. This option would require an increase to the fees of at least approximately 37%<sup>1</sup>, effective from 1 April 2017.

---

<sup>1</sup> The uplift of 37% was originally identified as it was the estimated shortfall between income and costs in early 2016, when the public consultation paper was prepared. Since then the forecast has been updated and the shortfall (and the associated

### ***Benefits***

This option would allow NICTS to return immediately to a full cost recovery position (by boosting the total annual income levels to the required amount). This would return NICTS to a compliance position with current government fee policy. The additional income generated would place NICTS in a much stronger financial position and, less reliant on the DoJ, who would have to fund any projected shortfall.

### ***Costs***

Such an option would result in a dramatic increase to fees, higher than any inflationary increase and could ultimately have an adverse impact on access to justice. It could place barriers on access to justice and despite the existence of an exemptions and remissions policy, such an increase could lead to reductions in volumes and, therefore further reductions in the levels of income currently generated.

## **4.3 Option 2 – An inflation based uplift to existing fees**

This option would involve an increase to existing court fees to reflect the inflationary impact since the last increase to fees in 2007. Based on the Government's Gross Domestic Product (GDP) deflator, the average percentage increase to the fees would be 21.9%, effective from 1 April 2017.

### ***Benefits***

Such an uplift would allow NICTS to significantly increase fee income by an estimated £4.7m per annum placing NICTS in a much stronger financial position and therefore less reliant on DoJ funding. This would have a positive impact on the current budgetary pressures.

### ***Costs***

Although fee income under Option 2 would increase significantly, it would not return NICTS to a full cost recovery position and therefore this fails to comply with government policy in this area.

Under this option court users would be faced with a significant increase in court fees effective from 1 April 2017. The significant increase in fees in one year could have an adverse impact on access to justice and, like Option 1; it could drive down volumes and lead to a further reduction in the levels of income generated.

## **4.4 Option 3 – A phased increase to fees introduced over a 3 year period**

This is the preferred option and will allow for a phased increase to fees over the period 2017-20, aiming to close the income gap in a measured way whilst continuing to safeguard access to justice.

Under this option, NICTS would increase fees on a staged basis over a three year period beginning in April 2017. Rather than adopting the approach taken in Options 1 and 2 and increasing the fees dramatically and significantly in one year, NICTS is proposing an alternative approach; increasing fees by 10% on 1 April 2017; by 7.5% on 1 April 2018 and by 5% on 1 April 2019.

---

percentage gap) has changed slightly. The principle tenet of this option is that to return to full cost recovery, a large one-off increase in fees would be required to address the shortfall and close the gap.



## **Benefits**

In presenting this option NICTS acknowledges the importance of moving to a position of full cost recovery but recognises that it must do so in a carefully planned and measured way to safeguard access to justice.

This phased approach to increasing fees would mean that, over the three year period, NICTS would increase income by approximately £9.6m-£10.9m (not discounted). This would not return us to a full cost recovery position based on current costs and volumes but, Option 3 will take us a considerable way to achieving full cost recovery<sup>2</sup>. The timeframe is phased and therefore lessens any immediate adverse impact. NICTS will be able to effectively monitor the impact, and it will also provide scope to accommodate further changes to costs and income over the three year period (minimising the risk of over-recovery). It also provides business users time to adjust processes and to absorb any change.

## **Costs**

Although fee income under Option 3 would increase over a 3 year period, it would not return NICTS to a full cost recovery position and therefore still fails to comply with government policy in this area.

It could be argued that the administrative costs (setting up a civil fee team, updating IT systems, customer materials, drafting and printing new fees orders, staff training etc.) associated with this option are greater as, instead of increasing the fees in one go, it will require additional resourcing to increase fees and monitor this area throughout the three year period. Such costs associated with the implementation and operation of the proposals can, at best, only be estimated at this stage.

## **5.0 Rationale and evidence that justify the level of analysis used in the RIA (proportionality approach)**

NICTS has used data held on court systems on 'issuing parties' in order to estimate the proportion of civil and family court proceedings which are initiated by different user groups, including businesses. It is the issuing party who will pay the court fee and other legal costs associated with initiating court proceedings. The data on issuing parties has been applied to fee receipts data in order to estimate the financial impact on users of the proposal to increase court fees. A summary of the court user analysis is presented at Annex A. For some business areas for example, online searches, information on the user group is not recorded on the court systems, so assumptions have been applied, by apportioning the financial data over all business users on a pro rata basis.

The information at Annex A indicates that individuals are the largest group of court users and do account for 53% of the fees received through the civil and family courts. Government bodies represent the second highest court user group, with 32% of the court fees generated coming from this area. NICTS estimates that businesses account for 15% of fee income, which equates to approximately £3m from court fees per annum.

Further analysis in relation to business usage and the impact of a fee increase is included in Section 7.

It should be noted that the data held on issuing parties is sourced from information which has been recorded on ICOS/JEMS (NICTS internal systems) for administrative purposes. They are not official statistics and have not been validated by NICTS to ensure accuracy. However NICTS considers they are reasonable to use for the purposes of a court user analysis and estimating the proportions of fees paid by different user groups, including businesses.

---

<sup>2</sup> NICTS will need to continue to explore other options to return to a full cost recovery position, in addition to the proposed phased increase to court fees.

### **Consultation on NICTS fee increase proposals**

NICTS ran a public consultation exercise, over a 12 week period, from 14 March to 8 June 2016. A wide range of stakeholders were notified about the consultation, including business representative bodies and institutions. In all 10 responses were received, seven were in favour of an increase in fees, with six respondents supportive of the preferred option of a phased approach over a three year period. The majority of responses were connected or related in some way to the legal profession, with perhaps surprisingly, no responses from Chambers of Commerce, the Federation of Small Businesses Northern Ireland, or the wider business community.

## **6.0 Risks and Assumptions**

In preparing the range of options for consideration a number of assumptions have been made:

- a range of options have been selected based on the policy objectives listed in the consultation document;
- as laid down in Managing Public Money (NI), each option should aim to recover the full cost of providing the services of Civil and Family Court business;
- the anticipated levels of future income and costs have been determined using 2015/16 as a base, with adjustments made, where known, to future business volumes. For example, any court rationalisation and, reforms to legal aid which will directly impact on the functions and level of income generated from the Taxing Office. Fee income levels before this period have been higher; therefore it would be inappropriate to consider data before financial year 2015/16, distorting cost recovery levels. There may be further cost efficiencies achieved by NICTS and, the demand for civil court services could be higher or lower which is out-with the control of NICTS; and
- corporate overheads such as IT and HR support, accommodation etc. have been included.

A number of risks have been identified in relation to the proposals. These are summarised in the table below:

<b>Risk</b>	<b>Description</b>
Lack of support from key stakeholders	This relates to the risk of withdrawal of support for the fee increases by the Minister, Justice Committee and/or legal profession.
Increase in fees could lead to increase in legal aid expenditure	The increase to court fees will have an impact on legal aid. It is estimated that a 10% increase in 2017/18 will cost the legal aid budget an estimated £246k); as a result of a 10% increase, fees paid directly by the LSANI will increase by £46k; and fees charged by the Taxing Office, for taxation of legally aided High Court cases, will increase by an estimated £200k (expenditure on legal aid in 2015/16 was over £100m). The additional cost to the legal aid budget in future years is uncertain due to planned reforms within legal aid; such reforms will remove the taxation process and this change in process will impact adversely on NICTS, reducing income generated from this function by an estimated £2m.
Movement in the volume of fees paid	If there is a significant reduction in the number of civil and family fee cases, then the amount of fees collected will reduce and there is a risk that we will not reach the target of 80% - 85% of full cost recovery.
Full cost under recovery	If NICTS fail ultimately to generate enough income to attain a full cost recovery position, then there is a risk that we will continue to be in breach of

	MPM (NI).
Ease of implementation	This is one of the project objectives. If a fee increase is approved changes will need to be made to legislation as well as in ICOS and JEMS systems and across Operations.

## 7.0 Direct Costs and Benefits to business

### Business Impact/Small Business Impact

As the cost of court proceedings will increase from 1 April 2017, any business (or other court user) that brings a case to the civil courts, or who are defendants in civil claims will be affected by the proposals. NICTS has estimated that the financial impact of increasing court fees on all court users will be approximately £4.3m to £5m (undiscounted/today's value) per annum by the end of 2019/20. NICTS estimates that around 15% of overall court fees are paid for by businesses and therefore the financial impact of the proposals on business will be in the region of £0.65m to £0.75m per annum from 2019/20 onwards (this being an estimate of the additional court fees paid by businesses once the phased increases are implemented). Note in the first year on increases, the impact on business is estimated at £300k. Data held by NICTS on issuing participants confirms that business users are more prevalent in certain areas such as Small Claims, Licensing, Chancery and EJO.

There is anecdotal evidence to suggest that business users within the Chancery and EJO areas tend to be larger businesses, such as banks and other lending institutions. However, NICTS is not able to split the business impact between small, medium and larger businesses as information is neither collected nor held in that manner and, there is currently no facility for any markers for such categories to be placed on the courts operating systems. The effort required to obtain further information on the type of business would be disproportionate to the estimated impact.

NICTS acknowledges that the fee increase could cause cash flow issues for solicitors as the majority of court fees are required to be paid up front. A number of solicitors pay NICTS through prepaid accounts. If court fees increase, then such prepaid accounts will require to be topped up more frequently. For court users who are legally aided, there is provision for the solicitor to apply for an interim payment, in certain circumstances, from the Legal Aid fund to help alleviate cash flow burdens. This kind of provision is likely to continue.

NICTS introduced an Exemptions and Remission Policy in 2007 with the aim of strengthening safeguards to protect access to justice. It should be noted that fee remissions can be applied to sole traders, in addition to individuals, so in theory this provides a safeguard to a particular grouping within the small business category.

The benefits to business of the proposals are more difficult to articulate; but, if the cost of civil court business is met by users of the service rather than through general government funding, then the overall burden to the taxpayer (including business taxation) is lessened. So the proposals are (indirectly) beneficial to businesses that do not use court services.

## 8.0 Wider impacts (in the context of other Impact Assessments in Policy Toolkit Workbook 4, economic assessment and NIGEAE)

8.1 It should be noted that there will be no change to the groups of court users who are required to pay fees; nor will the court services and processes to which the fees relate, be changed. That said

NICTS recognises that an increase in court fees will have an impact on court users and other stakeholders including:

*8.2 Individuals:* NICTS estimates the largest user group of the Civil and Family Courts is private individuals, most of who will be legally represented by a solicitor. In court business areas such as family, divorce and probate, individuals make up the vast majority of court users. Individuals will continue to be protected by Legal Aid coverage, the NICTS Court Fee Exemption and Remission Policy and also by the NICTS subsidies applied in specific areas (e.g. domestic violence). NICTS has completed equality impact screening on the proposals and concluded that, at this time, there is no evidence to suggest the proposed increase to court fees will have any impact on Section 75 categories.

*8.3 Businesses:* NICTS acknowledges that an increase in court fees will have an impact on businesses within Northern Ireland, but this is not expected to be significant. See separate impact assessment (section 7 above).

*8.4 Other Organisations:* public sector bodies are also court users and are liable to cover the cost of court fees. For example, Land & Property Services (Department of Finance) use the courts and EJO to pursue and enforce unpaid rates bills. The proposed fee increases will therefore indirectly increase public expenditure. It is noteworthy that only one public sector organisation responded to the consultation exercise, Department of Regional Development (DRD); DRD accepted the reasoning behind the proposed fee increase and also agreed with the preferred option put forward by NICTS. Note a separate assessment has been completed in respect of Legal Aid, see below.

*8.5 Legal Services Agency NI:* court fees (including fees for taxation of legally aided High Court cases) are covered by Legal Aid and an increase in fees will create additional pressure on the legal aid budget. We have been working with officials from the Legal Services Agency to determine the current level of fees payable to NICTS and this work has estimated that additional court fees totalling £246k are likely in 2017/18; fees paid directly by the LSANI will increase by £46k; and fees charged to LSANI by the Taxing Office, NICTS, for taxation of legally aided High Court cases, will increase by an estimated £200k (note: expenditure on legal aid in 2015/16 was over £100m and this increase represents a 0.2% increase). The additional cost in future years to the legal aid budget is uncertain due to planned reforms within legal aid; such reforms will remove the taxation process and this change in process will impact adversely on NICTS by reducing income generated from this function by an estimated £2m. It will also reduce costs to LSANI.

*8.6 NICTS:* as indicated in earlier sections, the proposals will enable NICTS to move towards a full cost recovery position and therefore secure a more stable financial position with less reliance on central departmental funding. NICTS also anticipates an increase in the cost of operating its Exemption and Remission Policy; this is not expected to be significant.

*8.7 Taxpayer:* the current under recovery position in the civil courts means this service is being partly funded by the taxpayer (via the Department of Justice). The proposals would aim to reduce the annual unfunded pressures, so that ultimately the court users would fund the service.

*8.8 Aarhus Convention:* NICTS intends to exclude Aarhus judicial review cases from the scope of the fees uplift. This exclusion is necessary to align with wider departmental policy<sup>3</sup> which aims to ensure compliance with EU Law on legal costs in environmental cases; this would mean the court fee for taking a judicial review for such cases would remain at the current fee of £400.

---

<sup>3</sup> Note: DoJ consulted on proposals to revise the costs capping scheme for certain environmental challenges in November 2015; <https://www.justice-ni.gov.uk/consultations/consultation-proposals-revise-costs-capping-scheme-certain-environmental-challenges>

## **9.0 Implementation and Monitoring Arrangements**

9.1 NICTS preferred option is to implement a phased increase to court fees with the first increase effective from 1 April 2017. Court fees are currently set out under the Fees (Amendment) Orders (Northern Ireland) 2007; any changes to the fees will require an update to this Secondary Legislation.

9.2 In addition to the legislation, NICTS will make changes to their operating systems (ICOS and JEMS) to ensure that the new fee regime is introduced in all areas at the correct time. This will be coupled with awareness training across fee earning NICTS business areas. From an operational level, increased fees could result in a requirement for higher cash floats to be maintained at court offices/public counters.

9.3 NICTS recognises the importance of ensuring that robust monitoring and evaluation systems are in place following a fee increase. A benefits realisation plan is in place and specific actions include:

- a review of the effectiveness of the policy in achieving its objectives (detailed on page 1);
- monitoring the levels of fee income and cost recovery performance;
- monitoring user demand (volumes);
- monitoring the level of applications made under the Exemption and Remission Policy; and
- a search for any unintended consequences.

9.4 The monitoring and evaluation will be conducted and reported regularly, both internally through the Agency's Income Working Group and Finance Committee and externally through the Annual Report and Accounts of the Agency.

## Annex A – Estimate of Court Fees paid per annum by Court User Groups

Court User Group	Estimate of court fees paid per annum	% split	Court Fee Increase - estimate of financial impact in 2017/18	Court Fee Increase - estimate of financial impact in 2018/19	Court Fee Increase - estimate of financial impact in 2019/20
Business	£3m	15%	£0.3m	£0.5m - £0.6m	£0.65m - £0.75m
Government	£6m	32%	£0.6m - £0.7m	£1.1m - £1.2m	£1.4m - £1.6m
Individuals	£11m	53%	£1m - £1.1m	£1.7m - £2m	£2.3m - £2.7m
<b>Total</b>	<b>£20m</b>	<b>100%</b>	<b>£2m - £2.1m</b>	<b>£3.3m - £3.8m</b>	<b>£4.3m - £5m</b>

Sources: Integrated Court Operating System (ICOS), Enforcement of Judgments Office System (JEMS)<sup>4</sup>

Data based on income generated during 2015/16. Estimates in future years are undiscounted values and are presented in a range based on high and low future caseload volumes.

---

<sup>4</sup> Analysis is based on data held on the NICTS operating systems which record the category of issuing participants/customer group. This data has been recorded for administrative purposes and is not part of NICTS official statistics (therefore it has not been validated by the NICTS to ensure accuracy). The data on issuing participants/customer group has been combined with data on fee receipts in order to estimate the proportion of court fees (and fee increases) which will be incurred by businesses and other court users.