

**EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEEDINGS FEES (AMENDMENT) ORDER 2009**

2009 No. 1498 L. 15

THE FAMILY PROCEEDINGS FEES (AMENDMENT) ORDER 2009

2009 No. 1499 L. 16

THE NON-CONTENTIOUS PROBATE FEES (AMENDMENT) ORDER 2009

2009 No. 1497 L. 14

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the Instrument**

- 2.1 The Civil Proceedings (Amendment) Fees Order 2009 amends the Civil Proceedings Fees Order 2008 (S.I. 2008/1053) as amended. It sets out amendments made to fees payable in relation to civil proceedings in the Supreme Court and the county courts. This order makes the following changes:-

- (i) In Schedule 1, in fee 2.10 after “judgments” it inserts “orders and fines”.
- (ii) In Schedule 1, the note to fee 4.1 has been replaced to make clear exactly when a copy charge is to be made. The previous wording has caused confusion to our users.
- (iii) It increases some of the fees in Schedule 1 to the 2008 Order to bring them to full cost recovery. Where there has been a change to the amounts only, this has been set out at Annex A.
- (iv) Articles 6 to 10 replace the separate fees in fee 5 for Supreme Court and county court matters with a single fee for both jurisdictions.
- (v) Article 11 inserts a new fee 8.1. The fee payable for the issue of a warrant of execution against goods no longer depends on the amount for which the warrant is issued. This reflects the fact that the cost of this service is the same regardless of the amount for which the warrant is issued.

- 2.2 The Non-Contentious Probate Fees (Amendment) Order 2009 amends the Non-Contentious Probate Fees Order 2004 (S.I. 2004/3120) as amended. This order:-
- (i) Introduces a new Schedule 1A containing provisions for remission and part-remission of fees which are consistent with those that apply in other court fees orders.
- 2.3 The Family Proceedings Fees (Amendment) Order 2009 amends the Family Proceedings Fees Order 2008 (SI2008/1054) as amended. This order makes the following changes of substance:-
- (i) It increases some of the fees in Schedule 1 to the 2008 Order to bring them to full cost recovery. Where there has been a change to the amounts charged, this has been set out at Annex A.
 - (ii) Article 5 inserts a new sub-paragraph into fee 2.1 to take account of amendments to the Children Act 1989 by the Human Fertilisation and Embryology Act 2008. This will come into force on 1 September 2009.
 - (iii) Article 15, amends fee 11.1. The fee payable for the issue of a warrant of execution against goods no longer depends on the amount for which the warrant is issued. This reflects the fact that the cost of this service is the same regardless of the amount for which the warrant is issued.
- 2.4 The Civil, Family and Non-Contentious Probate fees orders amendments are made to increase the figures for gross annual income and deductions for living expenses which are taken into account when determining whether a party is eligible for fee remission. The rates have changed in line with Her Majesty's Revenue and Customs allowance for working tax credit and the Department for Work and Pensions income support allowances. (The Civil Proceedings Fees (Amendment) Order 2009 – Articles 19-22, Schedule 2. The Family Proceedings Fees (Amendment) Order 2009 – Articles 23-26 of Schedule 2. The Non-Contentious Probate Fees (Amendment) Order 2009 – changes are reflected in the new replacement Schedule).

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Civil and Family Proceedings amendments introduce a number of fee increases in Schedule 1.
- 3.2 See section 2 and Annex A for the particular changes and Section 7 provides the background to the changes.

- 3.3 The Non-Contentious Probate Fees Order deals with a technical point, bringing Probate into line with the other two fees orders in respect of the remission system.
- 3.4 The main changes to civil and family fees particularly those for enforcement processes are made in order to maintain full-cost recovery for civil business and keep the relevant family fees aligned with the civil equivalents.

4. Legislative context

- 4.1 Court fees need to reflect the true cost of court proceedings. Together with a system that waives or reduces fees for those who cannot afford them, that is the right balance to ensure fair access to justice, fairness to the taxpayer and proper funding of courts' running costs now and in the future.
- 4.2 Fees are waived automatically for people on means-tested benefits (such as income support) or on low incomes (e.g. £13,000 for a single person with no children and £29,720 for a couple with 4 children).
- 4.3 People who do not meet either of those criteria can still apply to the court for a full or partial fee waiver based on an assessment of their disposable income (i.e. taking account of rent and other key household expenditure)

5. Territorial Extent and Application

- 5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

- 7.1 The total cost of running the civil and family courts of England and Wales is currently almost £650 million a year. These costs include staff and judicial salaries, accommodation costs, maintenance and IT costs.

- 7.2 In 2007/08, court fees covered 78% (around £472m) of the total cost. That part of the cost not covered by fees is met by the general taxpayer as part of the budget of the Ministry of Justice (MoJ). The taxpayer's contribution is made up of two elements:
- potential fee income foregone under the system of fee remissions;
 - fees set below full-cost levels (i.e. they would not cover the total cost even if none were remitted).
- 7.3 In previous years, the latter subsidy was partly offset by the fact that civil fees in the county courts recovered significantly more than the cost of those proceedings. Figures for 2008/09, and for future years, indicate that this previous over-recovery has been eliminated and that full-cost recovery could not be maintained given current fee levels.
- 7.4 Court fees have to comply with the legal and policy principles that apply to all services where the Government charges fees under statutory powers. General policy on fee charging is set out in "Managing Public Money – Charges and Levies" (which has replaced the "Fees and Charges Guide" referred to in previous consultations). It requires every fee-charging service to have a financial objective for the level of cost recovery agreed between the responsible minister and the Treasury. The default position is that fees should cover the full cost (but no more). Lower targets can be agreed where there is a sound policy justification.
- 7.5 In the case of court fees, a system of fee remissions is available to protect access to justice for the less well-off and represents such an agreed policy objective. In 2007/08, 212,418 fee remissions were granted at a value of £27.5 million.
- 7.6 Although the term 'full-cost recovery' is often used, our target is not literally 'full-cost recovery'. The taxpayer makes, and will continue to make, a significant contribution to the cost of running the civil and family courts. A better way of describing the policy is 'full-cost pricing'. In other words, fees should be set at levels calculated to cover the full cost of the system if paid in full in every case. Full-cost pricing, together with a system of remissions to protect the less well-off, is the best way of targeting the taxpayer's contribution to where it is most needed. Setting fees generally at levels lower than full-cost price would mean corporations and other institutions or wealthy individual litigants would benefit from that contribution – increasing its cost and in turn putting pressure on other budgets such as legal aid.
- 7.7 The overall objectives of the strategy are to ensure that the system:
- meets its financial targets for cost recovery and net expenditure;

- protects access to justice through a well-targeted system of fee remissions;
 - remains viable when patterns of demand change, by achieving as close a match between income and costs within the system as reasonably practicable.
- 7.8 These objectives are concerned with fairness as well as financial considerations.
- 7.9 Appropriate financial targets ensure that the system is fair to the taxpayer (and therefore, users of other public services). In particular, the policy of full-cost pricing (that is full-cost recovery allowing for fee remissions) ensures that so far as is reasonable, the actual users pay for the service they receive.
- 7.10 Better matching the income from specific fees with the cost of associated processes, will both help ensure that the system is sustainable because funding levels can reflect workload changes over time, and make the system fairer between different categories of court user. The fees charged will more closely reflect the cost of the particular services used.
- 7.11 The underlying fee policy and the need to raise income to meet financial targets, were not in question in the consultation and the consultation paper did not consider a ‘do-nothing’ option. If fee income is not raised to maintain the necessary level of funding, court services would be compromised and HMCS would be forced to consider further cost-cutting options.
- 7.12 The latest forecasts for civil (excludes Magistrates’ civil) indicate that we need to increase fees in order to cover costs. Cost and fee income forecasts for 2009/10 indicate we are currently at 98% recovery. This means we need to increase fee income by around £21m. We propose to focus increases on enforcement fees as this is an area that currently recovers only about half of its full cost. These fees were not increased in the last round of civil changes, in October 2007.
- 7.13 Research into the impact of court fees on court users was undertaken in 2007(1) and concluded that court fees are a minor consideration in an individual’s initial decision to take matters to court.

¹ “What’s cost got to do with it? The impact of changing court fees on users” published in May 2007 can be accessed online at <http://www.justice.gov.uk/publications/research280607.htm>

- 7.14 The Ministry of Justice is committed to ensuring that court fees do not prevent access to the courts for those less well-off. Further research has been commissioned on the remissions system. This will assess whether the scheme is operating effectively and meeting the needs of those that use it or who may need to use it in the future. It will look at whether the fee remission scheme is targeting the right people, whether it is being applied consistently, and find out what users know and understand about it. The information received from the research will form the basis of any future changes that may be needed to the system of fee remissions. The findings from the research will be published during the Summer of 2009.

8. Consultation Outcome

- 8.1 The consultation paper published on 10 December 2008 proposed a package of fee increases designed to raise an additional £38 million a year in fee income. The consultation closed on 4 March 2009. Fifty-two responses were received from law professionals, local authorities, the judiciary, individuals and other stakeholder bodies.
- 8.2 After careful consideration of these, the Government has decided to proceed with the increases, subject to a number of adjustments to reflect particular points raised by respondents.
- 8.3 These changes to the charging regime in the civil courts are to be introduced in order to target taxpayers' money more effectively while continuing to help those in financial difficulty.
- 8.4 There are changes to approximately 25 types of civil court fee, out of the 200-plus fees in operation. Most of the changes relate to applications to enforce judgments that have already been made in debt claims between private parties, and which are recoverable from defaulters who can but won't pay their debts.
- 8.5 They are being introduced so that fees reflect the true cost of the work done by the courts - currently subsidised by the taxpayer and fee-payers in other types of cases. These changes are in the best interests of people on low incomes and of taxpayers.
- 8.6 The report summarising the responses in more detail can be found at link <http://www.justice.gov.uk/consultations/consultations.htm>.

9. Guidance

- 9.1 The fees stated in the various SIs are already in place and being recovered by courts – these amendments only increases and / or amalgamates them. Both the HMCS and MOJ websites will have information providing court users with information about the amended fees orders.

10. Impact

- 10.1 An Impact Assessment of the effect that these instruments will have on the costs of business and the voluntary sector is available in the Civil Fees Consultation Paper (CP31/08) on the Ministry of Justice website at <http://www.justice.gov.uk/publications/civil-court-fees-2008-consultation.htm>. A copy is annexed to this paper at B.

11. Regulating small business

- 11.1 The legislation will not apply specifically to small business, but to all users of the civil and family courts.

12. Monitoring and review

- 12.1 Fees and the impact of any changes are constantly monitored by way of feedback from courts and customers and the monitoring of fee income and volumes. Court fees must be responsive to the needs of the business. Policy officials meet regularly and fees orders are reviewed every six months. The legislation may then be amended accordingly.

13. Contact

- 13.1 Cara Mitchell-Langford, Head of Civil and Family Fees Branch, Ministry of Justice, e-mail cara.mitchell-langford@justice.gsi.gov.uk Telephone: 020 3334 3174.

| Summary of Fees in County and High Courts | Current Fee | | | | New Fee |
|--|----------------|--------------------|-----------------|---------------------|---------|
| | county - civil | High Court - civil | county - family | High Court - Family | |
| Description of fee | | | | | |
| Enforcement | | | | | |
| Application for judgment debtor or other person to attend court to provide information | 45 | 50 | 45 | 40 | 50 |
| Warrant of execution (not issued using County Court Bulk Centre) | 35/55 | | 35/55 | | 100 |
| Warrant of execution (issued using County Court Bulk Centre) | 25/45 | | | | 70 |
| Writ of (a) execution, (b) possession, (c) delivery (High Court) | | 50 | | 30 | 50 |
| Application for an attachment of earnings order | 65 | | 65 | | 100 |
| Application for a third party debt order | 55 | 100 | 55 | 50 | 100 |
| Application for a charging order | 55 | 100 | 55 | 50 | 100 |
| Application to register an award for enforcement | | 50 | | 30 | 50 |
| Application for a judgment summons | 95 | 100 | 95 | 90 | 100 |
| Determination of Costs | | | | | |
| Application for an order under Part 3 of the Solicitors Act 1974(a) for the assessment of costs payable to a solicitor by a client; or on the commencement of costs only proceedings | 40 | 40 | 30 | | 40 |
| Application for a default costs certificate | 45 | 50 | 60 | | 60 |
| Detailed assessment of costs where party is legally aided or is funded by the Legal Services Commission | 105 | 120 | 140 | | 140 |

| | | | | | |
|--|-----|-----|-----|--|-----|
| Approval of a certificate of costs payable from the Community Legal Service Fund | 35 | 50 | 30 | | 50 |
| Application to set aside a default costs certificate | 65 | 100 | 60 | | 100 |
| Appeal against a detailed assessment of costs | 105 | 200 | 100 | | 200 |
| Various other fees | | | | | |
| Making a search of the Decree Absolute index or of any final orders kept at the Principal Registry of the Family Division | | | 40 | | 60 |
| Application for service by bailiff of any document in family proceedings (with the exception of an order for debtor to attend the adjourned hearing of a judgement summons, an interpleader summons under an execution, an order made under section 23 of the Attachment of Earnings Act 1971(e) or an order for debtor to attend an adjourned oral examination of means) | | | 30 | | 100 |
| Request for service by a bailiff of an order to attend court for questioning | 30 | | | | 100 |

Public Consultation

The Consultation Paper is being sent to a variety of stakeholders including the Senior Judiciary of England and Wales, other Government Departments, the Civil Justice Council and the Family Justice Council.

Sectors and groups affected

Users of the magistrates', county and High Court will be affected. These include large-scale creditors such as credit card and utility companies, local authorities, small businesses and individuals pursuing debts. Research published by the Ministry of Justice in 2007² suggests that fees are not a major factor in the decision making process when individuals are considering court action. In addition the system of fee remissions is in place to ensure access to justice is protected for those people who are unable to afford court fees.

Equality Impact Assessment

Government policies must be assessed specifically to ensure that they do not discriminate against anyone on the grounds of race, disability, gender, sexual orientation, age, religion or belief, and caring responsibilities.

Court users are not required to provide personal information about themselves so there is a lack of evidence as to how changes to court fees specifically affect diverse communities. We have set out the probable impacts below.

Race Equality Assessment

Research produced by the Department for Trade and Industry in 2002 shows that some black and minority ethnic groups' average (mean) hourly wages are significantly less than others. For example, Bangladeshi and Pakistani men earned almost 30% less per hour than the group identified as 'White'. Men identified as 'black/black British' earned 12% less than their Indian counterparts.

Ethnicity data for Jobseekers Allowance (JSA) claimants (produced by the Office of National Statistics) shows that a higher proportion of the ethnic minority working age population in England are claiming JSA compared with the white population. The paper suggests that these findings signal the "well-known labour market disadvantage faced by ethnic minorities". International Labour Organisation unemployment rates show ethnic minorities have a higher unemployment rate compared with the overall rate (latest data for spring 2006 show ethnic minorities have an unemployment rate of 11.2% compared with 5.2% overall). Within the ethnic minority population, however, there is considerable variation. The black or black British ethnic group has the highest proportion

²*What's cost got to do with it? The impact of changing court fees on users* was carried out by Opinion Leader Research and published on 27 June 2007. It is available on the Ministry of Justice Website at <http://www.justice.gov.uk/publications/research280607.htm>.

of their working age population on the claimant count, with 10.2% of the Other Black group on JSA.

Research undertaken by the Joseph Rowntree Foundation states that the income poverty rate varies substantially between ethnic groups: Bangladeshis (65%), Pakistanis (55%) and black Africans (45%) have the highest rates; black Caribbeans (30%), Indians (25%), white Other (25%) and white British (20%) have the lowest rates.

As the research above highlights, some minority ethnic groups tend to have lower incomes, be in receipt of benefits and be living in poverty. Any change in fees, therefore, would be likely to have a greater potential impact on these groups, and restrict their ability to seek justice in court. However, any person for whom payment of fees will cause financial hardship will be able to take advantage of the fee remission system. An applicant is eligible to receive a full remission if they either receive a specified means-tested benefit (including JSA) or if they can demonstrate that their gross annual income is below a specified threshold. Alternatively an applicant can receive a part-remission (they pay a contribution towards the fee) based on their disposable income.

Because of the fee remission system we do not think that there will be an impact of these fee proposals on people because of their racial group.

Religion and beliefs

There is a lack of information concerning earnings across different religions and HMCS does not collect any information that gives a breakdown on court users' religion or beliefs.

However the fee increases proposed will impact a wide variety of fees and within the scope of the civil court fees project we do not expect there to be any impact on people because of their religious or other beliefs.

Disability impact assessment

According to the UK's Office for National Statistics' Labour Force Survey, Sept - Dec 2006, only about half of disabled people of working age are in work (50%), compared with 80% of non disabled people of working age. The same survey reports that almost half (45%) of the disabled population of working age in Britain are economically inactive i.e. outside of the labour force. Only 16% of non-disabled people of working age are economically inactive

However due to the variety of fees and different services offered and our fee remission system being designed for all those that would suffer financial hardship regardless of disability, we do not expect that these proposals will have any impact on people with disabilities.

Age

The results of the 2007 Annual Survey of Hours and Earnings (ASHE) show that the top 10 per cent of the earnings distribution earned more than £906 per week, while the bottom 10 per cent earned less than £252.

Young people often earn significantly less than their older counterparts. In 2007 there were 16,000 jobs held by 16 to 17-year-olds with pay less than £3.30 per hour and 45,000 jobs held by 18 to 21-year-olds with pay less than £4.45 per hour. 231,000 jobs were held by those aged 22 and over with pay less than £5.35 per hour.

Median gross weekly earnings for full-time employees were highest for 40 to 49-year-olds at £516. Earnings increased until employees reached this age group and steadily decreased thereafter. People aged over 65 are much more likely to be economically inactive – due mostly, one would expect, to retirement.

We expect, therefore, that many of those potentially affected by fees will be covered by our fee remission system. As a result the actual impact of these policies on people because of age will be neutral.

Caring responsibilities

People with caring responsibilities often work part time, which increases their likelihood of being paid below the minimum wage and thus their ability to pay fees. The National Statistics ASHE estimates for Spring 2006 show that people in part-time work were almost three times more likely than people in full-time work to be paid less than the minimum wage.

Again due to the variety of fees and different services offered, the actual impact of these policies will be largely neutral. In any event our fee remission system will permit those who may suffer financial hardship from paying a fee doing so, should they qualify. Therefore, we do not expect there to be a direct impact of these fees on those with caring responsibilities.

Gender

Although figures are not available to us, anecdotal evidence would suggest that fathers generally pay child support maintenance to mothers rather than vice versa and thus it may appear likely that increases to the fee for issuing committal proceedings for unpaid child support maintenance would affect more women than men. The gender impact, however, is negligible. Proceedings are issued and paid for by the Child Support Agency on behalf of the applicant. The fee is then recovered from the debtor.

The 2001 census shows that 48.67% of the population is male and 51.34% are female. Women tend to earn less than men and so fees may have a greater impact on them.

According to the Office of National Statistics ASHE the gender pay gap for full time workers in April 2007 was 12.6 percent or 17.2 percent if mean rather than median earnings are used. The part-time gender pay gap measures female part time hourly earnings against male full time hourly earnings. In April 2007 this gap was 39.1 per cent using median hourly earnings and 35.6 per cent using mean earnings. These lower earnings leave women at greater risk of falling below the poverty line and of being worse off than men in retirement. It is expected that the fee remission system will mitigate this, allowing access to justice, and so we do not expect there to be an impact of these changes on the basis of gender.

Sexual orientation

A recent study has shown that gay men earn, on average, 6% less than their heterosexual equivalents, although lesbian women earn about 11% more than their heterosexual counterparts. This means that an increase in fees may affect gay men more than heterosexual men. However, if people cannot afford to pay the fees, they will be covered by our fee remission system. We do not therefore expect the proposed changes to impact this segment of the population.

Environmental

There is nothing to suggest that these fee changes will have an environmental impact.

Small Firms' Impact Test

Claimants are not required by the court rules to provide information that would make it possible to classify them as belonging to a particular group. It is therefore impossible to estimate the effect in isolation on the small business sector. Businesses in general, only pursue enforcement action when it is economical to do so, taking account of the likelihood of success. The fees paid for successful enforcement process are ultimately recoverable from the debtor, so the impact on the small business sector is likely to be broadly neutral.

Competition Assessment

The main sectors affected by the proposed fees are large-scale creditors, solicitors, individuals and other government departments. These areas are not dominated by a small number of large firms and are not characterised by rapid technological change. The proposed fees would affect existing and newer potential business / individuals in the same way, regardless of their size. As such, the proposed fees are not expected to have an impact on competition. We consider the proposals are unlikely to have a negative impact upon competition in any market. It is unlikely there would be any markets that would face a disproportionately large impact and a detailed competition assessment is not deemed necessary.

Enforcement / Sanctions / Monitoring

Nearly all fees are paid for in advance of the service so the sanction for non-payment is that the service will not be performed.

Legal Aid / Judicial Impact test

The majority of civil cases are not legally aided. Any Legal or Judicial impact will be broadly neutral. Charging the full cost for services undertaken by the court ensures users consider the true cost benefit and likely effectiveness of taking proceedings to court.

If the fee changes were not introduced, HMCS would be required to make significant savings across the business. This would have a detrimental effect on court performance.

Administration burdens / simplification

Administrative burdens will reduce as systems become more transparent and easier to understand.