

EXPLANATORY MEMORANDUM TO
THE SUPREME COURT FEES (AMENDMENT) ORDER 2011

2011 No. 1737 (L. 16)

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

2. Purpose of the instrument

2.1 This instrument increases the fee for applying for permission to appeal to the Supreme Court of the United Kingdom (“UKSC”) from £800 to £1,000.

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

3.1 The Supreme Court Fees (Amendment) Order 2011 increases the fee for applications for permission to appeal to the UKSC in civil matters (the “permission fee”) by 25%. The consumer price index rate of inflation since the permission fee was introduced in October 2009 is 6.98%.

3.2 When the amount to be charged for the permission fee was last reviewed, the Appellate Committee of the House of Lords (the predecessor of the UKSC) was dealing with an average of 228 cases a year. Currently, the UKSC deal with 275 cases a year. This is an increase of 20%.

3.3 The permission fee is being increased to reflect the additional workload in both staff and judicial time in dealing with these applications. The increase will assist the UKSC to move towards its target of recovering the full cost of its civil business.

3.4 The other fees chargeable by the UKSC have not been increased. The fee structure is due to be formally reviewed in 2012/13

4. Legislative Context

4.1 The Supreme Court Fees (Amendment) Order 2011 amends the Supreme Court Fees Order 2009.

There has been no Parliamentary debate, or Ministerial statement in Parliament in respect of this instrument or its contents.

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom.

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

- *What is being done and why*

7.1 This instrument raises the permission fee from £800 to £1,000.

The number of applications for permission to appeal to the UKSC is 20% higher than when this fee was set. The permission fee does not reflect the amount of work required to process and determine each application for permission to appeal to the UKSC and is being raised to reflect the resulting additional workload.

7.2 The Lord Chancellor is statutorily responsible, under section 52(1) of the Constitutional Reform Act 2005, for the fees instrument which prescribes fees charged in the UKSC.

8. Consultation outcome

8.1 The Lord Chancellor is statutorily obliged to consult certain senior judges and key organisations about the Fees Order and these are prescribed in section 52 (5) and (6) of the Constitutional Reform Act 2005.

8.2 The Government consulted on two proposals, the first being the increase of the permission fee from £800 to £1,000; the second to allow the Lord Chancellor to increase fees charged by the UKSC by the amount of any increase in the Consumer Price Index without further consultation.

8.3 The Government received 10 responses to its consultation paper, one from a member of the public and the remaining nine from statutory consultees or interested legal organisations.

8.4 On the first proposal, six of the respondents were against the fee increase, with the majority of these stating that fees were either already too high or that it was wrong in principle to recover court costs through fees.

8.5 On the second proposal, no respondent was in favour of the proposal.

8.6 In light of these responses, and weighing up the Government's need for fees to be set at a level which fairly represents the amount of work required to process the applications, the Government decided to raise the permission fee but not to pursue the second proposal.

9. Guidance

9.1 The chief executive of the UKSC is in regular contact with the relevant bodies that represent the interests of the main users of the court and amended guidance in both paper and electronic format will be available for potential court users through the UKSC.

9.2 General guidance on the operation of the UKSC Fees policy can be found on the UK Supreme Court website at:

<http://www.supremecourt.gov.uk/procedures/rules-of-the-court.html>

10. Impact

10.1 The impact on business, charities or voluntary bodies is assessed minimal as an analysis of civil cases brought before the UKSC since its creation in October 2009 shows that the majority of civil cases are brought by individuals and so it is unlikely that any particular business, charity or voluntary body will bring many cases to the UKSC.

10.2 The impact on the public sector is minimal. It is unlikely that the public sector will bring many appeals before the Court. An analysis of recent cases shows that the public sector is most likely to be the respondent to any appeal brought to the UKSC, not the appellant.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk

11. Regulating small business

11.1 The legislation applies to small business, although as outlined in paragraph 10.1 the impact is assessed as minimal and so no special provision is required.

12. Monitoring & review

12.1 The impact of this fee increase will be reviewed at the next formal review, which is due in 2012/13.

13. Contact

13.1 Philip Staker at the Ministry of Justice Tel: 020 3334 3898 or email: Philip.staker@justice.gsi.gov.uk can answer any queries regarding the instrument.