

## EXPLANATORY MEMORANDUM TO

### THE CIVIL PROCEEDINGS FEES (AMENDMENT) ORDER 2016

2016 No. 1191 (L. 19)

#### 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.

#### 2. Purpose of the instrument

- 2.1 This instrument amends the provisions governing when a trial fee becomes payable in certain proceedings and provides for the removal of trial fee refunds.

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

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

- 3.1 None.

##### *Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### 4. Legislative Context

- 4.1 This instrument amends the Civil Proceedings Fees Order 2008 (S.I. 2008/1053 L.5), as amended (“the 2008 Order”).

#### 5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.  
5.2 The territorial application of this instrument is 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

##### *What is being done and why*

- 7.1 Fee 2.1 in Schedule 1 of the 2008 Order governs the payment of trial fees previously known as hearing fees and sets out the circumstances in which a refund is payable. Under the existing provisions the fee can become payable many weeks or months before the date of the hearing and the level of any potential refund depends on how far in advance of the hearing date the case is withdrawn.
- 7.2 Refund applications are administratively costly for HMCTS to process and the 14 day notice period, which is the latest point at which someone can withdraw and still be eligible for a part refund, does not provide adequate time for HMCTS to reallocate

newly vacated time slots. In addition, there is no available evidence indicating that the refunds policy actively encourages the early settlement of claims. Furthermore, changes made by the Government in April 2014 absorbed the separate listing fee that existed previously into the trial fee and as such the courts will have incurred costs several weeks before the hearing, irrespective of whether or not it goes ahead.

7.3 Therefore the changes in this instrument provide that where a trial fee is payable it is required to be paid at least 28 days before the date of the hearing or 28 days before the Monday of the first week of the notified trial period, and should not be refundable. However this time-limit will be subject to two exceptions:

- (i) where the court sets the main hearing date 35 days or less before the hearing. In these circumstances the fee will be payable by the party within 7 days of despatch of the notification of the hearing date; and
- (ii) where a party has applied for a fee remission and that application is still outstanding at the point at which the fee is due, but is then refused in full or part, the fee (or the balance of the fee) must be paid within 7 days after the date of despatch of the notification that the fee remission has been refused in full or part, or at least 28 days prior to the trial date or the Monday of the first week of the notified trial period, whichever is latest.

7.4 The reference to “Supreme Court” at article 2 of the Civil Proceedings Fees Order 2008 has been replaced with “Senior Courts of England and Wales”, because the Constitutional Reform Act 2005 changed the term which described the Court of Appeal, the High Court and the Crown Court from “Supreme Court of England and Wales” to the “Senior Courts of England and Wales”. We are therefore updating the reference to “Supreme Court” at article 2 of the 2008 Order.

### ***Consolidation***

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

## **8. Consultation outcome**

8.1 In December 2013, a consultation question on the Government’s proposal to remove the availability trial fee refunds was included in its consultation *Court Fees: Proposals for Reform*. Of those who responded, 24 respondents agreed with the proposed change and 57 disagreed. A number of respondents pointed out that in many courts the trial fee is requested a significant time in advance of a hearing and that as a result settlement can occur significantly in advance of a hearing but after the fee is paid. Given this, some respondents suggested that abolishing the trial fee refund would need to be considered alongside changes to the date at which the fee becomes due, so that this is much closer to the hearing.

8.2 In response to part one of the consultation, *Court Fees: Proposals for Reform (Paragraph 49)*, the Government acknowledged the concerns raised by the respondents that if trial fees are requested early in the process, refunds should be available. The Government announced it was minded to press ahead with the removal of the trial fee refund because of the administrative costs involved, but that having considered the valid concerns raised by respondents, about the potential unfairness of removing refunds whilst still requiring trial fees to be paid so far in advance of a hearing, it had also decided to change the point at which the trial fee is required.

8.3 Further details are set out in the Government Response, a copy of which can be found at <https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform>.

8.4 Before making this Order, the Lord Chancellor has also consulted the Lord Chief Justice, the Master of the Rolls, the President of the Queens Bench Division, the Chancellor of the High Court, Head of Civil Justice, deputy Head of Civil Justice, the President of the Family Division, and the Civil Justice Council as required by sections 92(5) and (6) of the Courts Act 2003.

## **9. Guidance**

9.1 Her Majesty's Courts and Tribunal Service will update its guidance on fees payable in line with these amendments.

## **10. Impact**

10.1 We do not have detailed information on business, charities and voluntary sector, it is therefore difficult to assess the impact that this change will have. There is no evidence to suggest that businesses, charities and voluntary sectors will be disproportionately impacted in comparison to other applicants.

10.2 The only impact on the public sector is the small administrative time saving for HMCTS from not having to process refunds.

10.3 The impact assessment was published alongside the response to part one of the consultation, available at <https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform/results/cost-recovery-impact-assessment.pdf> was developed on the assumption of no refunds being available. This document summarises the key affected stakeholder groups and organisations.

## **11. Regulating small business**

11.1 We do not have detailed information on the characteristics of those who bring claims before the courts; how many of these proceedings may be initiated by, or against small businesses; and at to what extent cases are settled before court hearings. It is therefore difficult to assess the impact that this change will have. There is no evidence however, to suggest that small businesses will be disproportionately impacted in comparison to any other applicant. Moreover our decision to move the date at which a trial fee becomes payable to closer to the hearing date should mitigate any potential impacts.

## **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**

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