
*Status: Point in time view as at 06/11/2023. This version of this Instrument contains provisions that are prospective.
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This Statutory Instrument has been made in part to correct an error in S.I. 2020/314 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2023 No. 1094 (L. 9)

**BETTING, GAMING AND LOTTERIES
COUNTY COURT, ENGLAND AND WALES
FAMILY PROCEEDINGS,
ENGLAND AND WALES
GENDER RECOGNITION
MAGISTRATES' COURTS,
ENGLAND AND WALES
MENTAL CAPACITY, ENGLAND AND WALES
SENIOR COURTS OF ENGLAND AND WALES
SUPREME COURT OF THE UNITED KINGDOM
TRIBUNALS AND INQUIRIES**

The Courts and Tribunals (Fee Remissions
and Miscellaneous Amendments) Order 2023

Made - - - - 12th October 2023

Laid before Parliament 16th October 2023

Coming into force in accordance with article 1(2)

The Lord Chancellor and the Secretary of State makes this Order in exercise of the powers conferred on the Lord Chancellor by section 92(1) and (2) of the Courts Act 2003⁽¹⁾, sections 414 and 415 of the Insolvency Act 1986⁽²⁾, section 52(1) and (2) of the Constitutional Reform Act 2005⁽³⁾,

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- (1) 2003 c. 39; section 92 was amended by paragraph 345 of Schedule 4, and paragraph 4 of Schedule 11, to the Constitutional Reform Act 2005 (c. 4) and by paragraph 40(a) of Schedule 9, and paragraph 95 of Schedule 10, to the Crime and Courts Act 2013 (c. 22).
- (2) 1986 c. 45; section 414 was amended by sections 126 and 161 of the Banking Act 2009 (c. 1), paragraphs 1 and 23 of Schedule 3 to the Corporate Insolvency and Governance Act 2020 (c. 12), and by S.I. 2007/2194 and 2009/805, there are other amendments not relevant to this Order. Section 415 was amended by paragraphs 1 and 9 of Part 1 of Schedule 20 to

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section 54(1) and (2) of the Mental Capacity Act 2005(4), section 42(1) and (2) of the Tribunals, Courts and Enforcement Act 2007(5), and on the Secretary of State by section 7(2) of the Gender Recognition Act 2004(6).

The Lord Chancellor has consulted in accordance with section 92(5) and (6) of the Courts Act 2003, section 52(4) to (6) of the Constitutional Reform Act 2005, section 54(3) of the Mental Capacity Act 2005 and section 42(5) of the Tribunals, Courts and Enforcement Act 2007.

In accordance with section 92(1) of the Courts Act 2003, sections 414(1) and 415(1) of the Insolvency Act 1986, section 52(1) of the Constitutional Reform Act 2005, section 54(1) of the Mental Capacity Act 2005 and section 42(6) of the Tribunals, Courts and Enforcement Act 2007, the Lord Chancellor has obtained the agreement, consent and sanction of the Treasury.

PROSPECTIVE

Citation, commencement and extent

1.—(1) This Order may be cited as the Courts and Tribunals (Fee Remissions and Miscellaneous Amendments) Order 2023.

(2) This Order comes into force on 27th November 2023, except for article 3(2) which comes into force on the twenty-first day after the day on which this Order is laid.

(3) This Order has the same extent as the instruments it amends.

Commencement Information

II Art. 1 in force at 27.11.2023, see [art. 1\(2\)](#)

PROSPECTIVE

Amendments to fee remissions

2.—(1) Schedule 1A (remissions and part remissions) to the Non-contentious Probate Fees Order 2004(7), the Schedule (remissions and part remissions) to the Gender Recognition (Application Fees) Order 2006(8), and Schedule 2 (remissions and part remissions) to—

- (a) the Court of Protection Fees Order 2007(9);
- (b) the Family Proceedings Fees Order 2008(10);
- (c) the Magistrates' Courts Fees Order 2008(11);

the Tribunals, Courts and Enforcement Act 2007 (c. 15), and by paragraphs 1 and 59 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c. 24).

(3) 2005 c. 4.

(4) 2005 c. 9.

(5) 2007 c. 15; section 42 was amended by S.I. 2010/21 and S.I. 2013/2042.

(6) 2004 c. 7; there are amendments to section 7, but none is relevant.

(7) S.I. 2004/3120; relevant amending instruments are S.I. 2013/2302, 2014/590, 2016/211, 2017/422 and 2021/985.

(8) S.I. 2006/758; relevant amending instruments are S.I. 2013/2302, 2014/590, 2016/236, 2016/228, 2017/422 and 2021/985.

(9) S.I. 2007/1745; relevant amending instruments are S.I. 2013/2302, 2014/590, 2016/211, 2017/422 and 2021/985.

(10) S.I. 2008/1054; relevant amending instruments are S.I. 2013/2302, 2014/590, 2015/687, 2016/211, 2017/422 and 2021/985.

(11) S.I. 2008/1052; relevant amending instruments are S.I. 2013/2302, 2014/590, 2016/211, 2017/422 and 2021/985.

- (d) the Upper Tribunal (Lands Chamber) Fees Order 2009(12);
- (e) the First-tier Tribunal (Gambling) Fees Order 2010(13);
- (f) the Upper Tribunal (Immigration and Asylum) (Judicial Review) (England and Wales) Fees Order 2011(14); and
- (g) the First-tier Tribunal (Property Chamber) Fees Order 2013(15)

are amended as follows.

- (2) In paragraph 1(1) (interpretation) in the definition of “excluded benefits”—
 - (a) in sub-paragraph (a) omit paragraph (viii);
 - (b) in sub-paragraph (b)(ii) after “element” insert “, disabled element or severely disabled element”;
 - (c) omit sub-paragraph (d).
- (3) For paragraph 3 (disposable capital test) substitute—

“Disposable capital test

3. Subject to paragraph 4, a party satisfies the disposable capital test if the fee payable by the party and for which an application for remission is made is—

- (a) up to and including £1,420 and the party’s disposable capital is less than £4,250;
- (b) £1,421 to £5,000 and the party’s disposal capital is less than three times the amount of the fee payable;
- (c) £5,001 or more and the party’s disposable capital is less than £16,000.”.

- (4) In paragraph 4—
 - (a) before the text insert the heading “**Disposable capital test - deeming provisions for those aged 66 or over**”;
 - (b) for “61” substitute “66”.
- (5) In paragraph 5 (disposable capital)—
 - (a) renumber the text after the heading as sub-paragraph (1);
 - (b) in sub-paragraph (1) as renumbered by this Order for “every resource of a capital nature” substitute “any savings and investments”;
 - (c) after sub-paragraph (1) as renumbered by this Order insert—
 - “(2) In sub-paragraph (1), reference to “savings and investments” includes, but is not limited to—
 - (a) bonds;
 - (b) stocks and shares; and
 - (c) the value of any land or property.”.
- (6) In paragraph 6 (disposable capital - non-money resources) for “a resource of a capital nature that does” substitute “any savings and investments that do”.
- (7) For paragraph 7 (disposable capital - resources held outside the United Kingdom) substitute—

(12) S.I. 2009/1114; relevant amending instruments are S.I. 2013/2302, 2014/590, 2016/211, 2017/422 and 2021/985.

(13) S.I. 2010/42; relevant amending instruments are S.I. 2013/2302, 2014/590, 2017/422 and 2021/985.

(14) S.I. 2011/2344, relevant amending instruments are S.I. 2013/2302, 2014/590, 2016/211, 2017/422 and 2021/985

(15) S.I. 2013/1179; relevant amending instruments are S.I. 2013/2302, 2014/590, 2016/211, 2017/422 and 2021/985.

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“Disposable Capital - resources held outside the United Kingdom

7.—(1) Capital resources in a country outside the United Kingdom count towards disposable capital.

(2) If there is no prohibition in that country against the transfer of a resource into the United Kingdom, the value of that resource is the amount that resource would realise if sold to a buyer in the United Kingdom.

(3) If there is a prohibition in that country against the transfer of a resource into the United Kingdom, the value of that resource is the amount which that resource would realise if sold in that country, in accordance with paragraph 6.”.

(8) In paragraph 9 (disposable capital - jointly owned resources) for “resource of a capital nature is” substitute “savings and investments are”.

(9) In paragraph 10 (excluded disposable capital)—

(a) omit sub-paragraphs (b), (c) and (e);

(b) after sub-paragraph (q) insert—

“(r) any payments under the Armed Forces Compensation Scheme;

(s) any compensation paid as a result of the Grenfell Tower fire;

(t) any payments under the Lambeth Children’s Homes Redress Scheme;

(u) any payments from the London Emergencies Trust;

(v) any payments under the Medomsley Detention Centre Physical Abuse Settlement Scheme;

(w) any payments under the Miscarriage of Justice Compensation Scheme;

(x) any payments from the National Emergencies Trust;

(y) any payments under the Infected Blood Support Scheme;

(z) any payments in relation to internment, forced labour, injury or loss of a child during the Second World War;

(za) any payments under the Jesus Fellowship Redress Scheme;

(zb) any payment under the Vaccine Damage Payment Scheme;

(zc) any compensation paid as a result of variant Creutzfeldt-Jakob Disease;

(zd) any compensation paid under the Victims of Overseas Terrorism Compensation Scheme;

(ze) any payments under the We Love Manchester Emergency Fund; and

(zf) any compensation paid under the Windrush Compensation Scheme (Expenditure) Act 2020(16).”.

(10) For paragraph 11 (remission of fees - gross monthly income) substitute—

“Remission of fees - gross monthly income

11.—(1) Subject to paragraphs 11A and 12, if a party satisfies the disposable capital test, no fee is payable under this Order if, at the time when the fee would otherwise be payable, the party’s gross monthly income does not exceed the applicable threshold.

(2) The applicable threshold is—

(a) £1,420, for a party that is single and has no children;

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- (b) £2,130, for a party that is part of a couple and has no children; or
- (c) as otherwise calculated in accordance with sub-paragraph (3).

(3) Where this sub-paragraph applies, the applicable threshold is determined by taking the following steps—

- (Step 1) Identify the number of children aged 13 or below and multiply this number by £425.
- (Step 2) Identify the number of children aged 14 or over and multiply this number by £710.
- (Step 3) Add together the amounts calculated at Step 1 and Step 2.
- (Step 4) Add £1,420 to the amount calculated at Step 3.
- (Step 4) The result is the applicable threshold for a party that is single and has children.
- (Step 5) *If a party is part of a couple, take this additional step.*
- (Step 5) Add £710 to the amount calculated at Step 4.

The result is the applicable threshold for a party that is part of a couple and has children.

(4) Subject to sub-paragraph (6), if a party's gross monthly income exceeds the applicable threshold, that party must pay an amount towards the fee payable to which the application for remission relates, which is determined in accordance with sub-paragraph (5).

(5) Where this sub-paragraph applies, the amount payable is determined as follows—

- (Step 1) Deduct the applicable threshold from the party's gross monthly income.
 - 1) The amount calculated is the "excess income".
- (Step 2) Apply the rates specified in the second column of the Table to the parts of the party's excess income specified in the corresponding row of the first column.
- (Step 3) Add together the amounts calculated at Step 2 (if there are two or more such amounts).

Subject to sub-paragraph (6), the result is the amount payable.

Table

<i>Part of excess income</i>	<i>Rate</i>
Up to and including £1,000	50%
£1,001 to £2,000	70%
£2,001 to £3,000	90%

(6) No party is required to pay an amount that is more than the fee payable for which the application for remission has been made, if no remission had been granted."

(11) After paragraph 11 (remission of fees - gross monthly income) insert—

"Gross monthly income— passporting benefits

11A.—(1) If a party satisfies the disposable capital test, no fee is payable under this Order if, at the time when the fee would otherwise be payable, the party is in receipt of any passporting benefits.

- (2) The following are passporting benefits—
 - (a) income-based Jobseeker's Allowance;

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- (b) income-related Employment and Support Allowance;
- (c) income support;
- (d) pension credit (Guarantee Credit); and
- (e) universal credit with additional gross annual earnings of less than £6,000.”.

(12) For paragraph 12 (gross monthly income cap) substitute—

“Gross monthly income cap

12. No remission is available if a party’s gross monthly income exceeds the applicable threshold determined in accordance with paragraph 11(2), plus the sum of £3,000.”.

(13) For paragraph 13 (gross monthly income) substitute—

“Gross monthly income

13.—(1) Subject to paragraph 14, “gross monthly income” means the total sum of—

- (a) the lower of—
 - (i) the gross amount that has been earned by the party in the month immediately preceding that in which the application for remission is made; or
 - (ii) the average of the gross amount that has been earned by the party in the three months immediately preceding that in which the application for remission is made, and
- (b) the gross amount received by the party from any other source in the month immediately preceding that in which the application for remission is made, other than receipt of any of the excluded benefits.

(2) For the purposes of sub-paragraph (1), earnings from a trade, business or gainful occupation other than an occupation at a wage or salary are calculated as the lower of—

- (a) the party’s net profits for the month preceding that in which the application for remission is made; or
- (b) the average of the party’s net profits for the three months preceding that in which the application for remission is made.

(3) In sub-paragraph (2), “net profits” means the profits which have accrued to the party less all sums necessarily expended to earn those profits.”.

(14) In paragraph 15 (application for remission of a fee)—

- (a) in sub-paragraph (2)(c) for “paragraphs 11 and 12” substitute “paragraph 11”;
- (b) in sub-paragraph (3) omit “or before”;
- (c) after sub-paragraph (4) insert—

“(5) The Lord Chancellor may by written notice request such additional information or evidence as is required to assess the party’s entitlement to fee remission under this Order, and the period specified by such notice must not be less than 7 days, beginning with the day after the date on which the notice is sent.

(6) An application for remission of a fee may be treated as abandoned and no further action taken, if a party fails to provide the information requested under sub-paragraph (5) within the period specified by that notice, or such other extended period as may be agreed in writing at the Lord Chancellor’s discretion.”.

(15) In paragraph 17(2) (refunds) for “paragraph 15” substitute “paragraph 16”.

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Commencement Information

I2 Art. 2 in force at 27.11.2023, see [art. 1\(2\)](#)

Amendments to the Civil Proceedings Fees Order 2008

3.—(1) The Civil Proceedings Fees Order 2008(17) is amended as follows.

(2) In Schedule 1 (fees to be taken), in the entry for fee 2.1(a) for “the multi-track” substitute “the intermediate track or the multi-track”.

(3) In Schedule 2 (remissions and part remissions)—

(a) in paragraph 1(1) (interpretation) in the definition of “excluded benefits”—

(i) in sub-paragraph (a) omit paragraph (viii);

(ii) in sub-paragraph (b)(ii) after “element” insert “, disabled element or severely disabled element”;

(iii) omit sub-paragraph (d);

(b) for paragraph 3 (disposable capital test) substitute—

“Disposable capital test

3. Subject to paragraph 4, a party satisfies the disposable capital test if the fee payable by the party and for which an application for remission is made is—

(a) up to and including £1,420 and the party’s disposable capital is less than £4,250;

(b) £1,421 to £5,000 and the party’s disposal capital is less than three times the amount of the fee payable;

(b) £5,001 or more and the party’s disposable capital is less than £16,000.”;

(c) in paragraph 4—

(i) before the text insert the heading “**Disposable capital test - deeming provisions for those aged 66 or over**”;

(ii) for “61” substitute “66”;

(d) in paragraph 5 (disposable capital)—

(i) renumber the text after the heading as sub-paragraph (1);

(ii) in sub-paragraph (1) as renumbered by this Order for “every resource of a capital nature” substitute “any savings and investments”;

(iii) after sub-paragraph (1) as renumbered by this Order insert—

“(2) In sub-paragraph (1), reference to “savings and investments” includes, but is not limited to—

(a) bonds;

(b) stocks and shares; and

(c) the value of any land or property.”;

(e) in paragraph 6 (disposable capital - non-money resources) for “a resource of a capital nature that does” substitute “any savings and investments that do”;

(17) S.I. 2018/1053; relevant amending instruments are S.I. 2013/2302, 2014/590, 2014/874, 2014/1834, 2015/576, 2016/211, 2016/1191, 2017/422 and 2021/985.

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- (f) for paragraph 7 (disposable capital - resources held outside the United Kingdom) substitute—

“Disposable Capital - resources held outside the United Kingdom

7.—(1) Capital resources in a country outside the United Kingdom count towards disposable capital.

(2) If there is no prohibition in that country against the transfer of a resource into the United Kingdom, the value of that resource is the amount that resource would realise if sold to a buyer in the United Kingdom.

(3) If there is a prohibition in that country against the transfer of a resource into the United Kingdom, the value of that resource is the amount which that resource would realise if sold in that country, in accordance with paragraph 6.”;

- (g) in paragraph 9 (disposable capital - jointly owned resources) for “resource of a capital nature is” substitute “any savings and investments are”;
- (h) in paragraph 10 (excluded disposable capital)—
- (i) omit sub-paragraphs (b), (c) and (e);
- (ii) after sub-paragraph (q) insert—

- “(r) any payments under the Armed Forces Compensation Scheme;
- (s) any compensation paid as a result of the Grenfell Tower fire;
- (t) any payments under the Lambeth Children’s Homes Redress Scheme;
- (u) any payments from the London Emergencies Trust;
- (v) any payments under the Medomsley Detention Centre Physical Abuse Settlement Scheme;
- (w) any payments under the Miscarriage of Justice Compensation Scheme;
- (x) any payments from the National Emergencies Trust;
- (y) any payments under the Infected Blood Support Scheme;
- (z) any payments in relation to internment, forced labour, injury or loss of a child during the Second World War;
- (za) any payments under the Jesus Fellowship Redress Scheme;
- (zb) any payment under the Vaccine Damage Payment Scheme;
- (zc) any compensation paid as a result of variant Creutzfeldt-Jakob Disease;
- (zd) any compensation paid under the Victims of Overseas Terrorism Compensation Scheme;
- (ze) any payments under the We Love Manchester Emergency Fund; and
- (zf) any compensation paid under the Windrush Compensation Scheme (Expenditure) Act 2020.”;

- (i) for paragraph 11 (remission of fees - gross monthly income) substitute—

“Remission of fees - gross monthly income

11.—(1) Subject to paragraphs 11A and 12, if a party satisfies the disposable capital test, no fee is payable under this Order if, at the time when the fee would otherwise be payable, the party’s gross monthly income does not exceed the applicable threshold.

- (2) The applicable threshold is—

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- (a) £1,420, for a party that is single and has no children;
- (b) £2,130, for a party that is part of a couple and has no children; or
- (c) as otherwise calculated in accordance with sub-paragraph (3).

(3) Where this sub-paragraph applies, the applicable threshold is determined by taking the following steps—

- (Step 1) Identify the number of children aged 13 or below and multiply this number by £425.
- (Step 2) Identify the number of children aged 14 or over and multiply this number by £710.
- (Step 3) Add together the amounts calculated at Step 1 and Step 2.
- (Step 4) Add £1,420 to the amount calculated at Step 3.
- (Step 4) The result is the applicable threshold for a party that is single and has children.
- (Step 5) *If a party is part of a couple, take this additional step.*
- (Step 5) Add £710 to the amount calculated at Step 4.

The result is the applicable threshold for a party that is part of a couple and has children.

(4) Subject to sub-paragraph (6), if a party's gross monthly income exceeds the applicable threshold, that party must pay an amount towards the fee payable to which the application for remission relates, which is determined in accordance with sub-paragraph (5).

- (5) Where this sub-paragraph applies, the amount payable is determined as follows—
 - (Step 1) Deduct the applicable threshold from the party's gross monthly income.
 - 1) The amount calculated is the "excess income".
 - (Step 2) Apply the rates specified in the second column of the Table to the parts of the party's excess income specified in the corresponding row of the first column.
 - (Step 3) Add together the amounts calculated at Step 2 (if there are two or more such amounts).

Subject to sub-paragraph (6), the result is the amount payable.

Table

<i>Part of excess income</i>	<i>Rate</i>
Up to and including £1,000	50%
£1,001 to £2,000	70%
£2,001 to £3,000	90%

(6) No party is required to pay an amount that is more than the fee payable for which the application for remission has been made, if no remission had been granted.”;

- (j) after paragraph 11 (remission of fees - gross monthly income) insert—

“Gross monthly income— passporting benefits

11A.—(1) If a party satisfies the disposable capital test, no fee is payable under this Order if, at the time when the fee would otherwise be payable, the party is in receipt of any passporting benefits.

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- (2) The following are passporting benefits—
 - (a) income-based Jobseeker’s Allowance;
 - (b) income-related Employment and Support Allowance;
 - (c) income support;
 - (d) pension credit (Guarantee Credit); and
 - (e) universal credit with additional gross annual earnings of less than £6,000.”;
- (k) for paragraph 12 (gross monthly income cap) substitute—

“Gross monthly income cap

12. No remission is available if a party’s gross monthly income exceeds the applicable threshold determined in accordance with paragraph 11(2), plus the sum of £3,000.”;

- (l) for paragraph 13 (gross monthly income) substitute—

“Gross monthly income

13.—(1) Subject to paragraph 14, “gross monthly income” means the total sum of—

- (a) the lower of—
 - (i) the gross amount that has been earned by the party in the month immediately preceding that in which the application for remission is made; or
 - (ii) the average of the gross amount that has been earned by the party in the three months immediately preceding that in which the application for remission is made, and
- (b) the gross amount received by the party from any other source in the month immediately preceding that in which the application for remission is made, other than receipt of any of the excluded benefits.

(2) For the purposes of sub-paragraph (1), earnings from a trade, business or gainful occupation other than an occupation at a wage or salary are calculated as the lower of—

- (a) the party’s net profits for the month preceding that in which the application for remission is made; or
- (b) the average of the party’s net profits for the three months preceding that in which the application for remission is made.

(3) In sub-paragraph (2), “net profits” means the profits which have accrued to the party less all sums necessarily expended to earn those profits.”;

- (m) in paragraph 15 (application for remission of a fee)—

- (i) in sub-paragraph (2)(c) for “paragraphs 11 and 12” substitute “paragraph 11”;
- (ii) in sub-paragraph (3) omit “or before”;
- (iii) after sub-paragraph (5) insert—

“(6) The Lord Chancellor may by written notice request such additional information or evidence as is required to assess the party’s entitlement to fee remission under this Order, and the period specified by such notice must not be less than 7 days, beginning with the day after the date on which the notice is sent.

(7) An application for remission of a fee may be treated as abandoned and no further action taken, if a party fails to provide the information requested under sub-

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paragraph (6) within the period specified by that notice, or such other extended period as may be agreed in writing at the Lord Chancellor’s discretion.”;

(n) in paragraph 17(2) (refunds) for “paragraph 15” substitute “paragraph 16”.

Commencement Information

I3 Art. 3(1)(3) in force at 27.11.2023, see [art. 1\(2\)](#)

I4 Art. 3(2) in force at 6.11.2023, see [art. 1\(2\)](#)

PROSPECTIVE

Amendments to the Supreme Court Fees Order 2009

4.—(1) Schedule 2 (remissions and part remissions) to the Supreme Court Fees Order 2009(**18**) is amended as follows.

(2) In paragraph 1(1) (interpretation) in the definition of “excluded benefits”—

- (a) in sub-paragraph (a) omit paragraph (viii);
- (b) in sub-paragraph (b)(ii) after “element” insert “, disabled element or severely disabled element”;
- (c) omit sub-paragraph (d).

(3) For paragraph 3 (disposable capital test) substitute—

“Disposable capital test

3. Subject to paragraph 4, a party satisfies the disposable capital test if the fee payable by the party and for which an application for remission is made is—

- (a) up to and including £1,420 and the party’s disposable capital is less than £4,250;
- (b) £1,421 to £5,000 and the party’s disposal capital is less than three times the amount of the fee payable;
- (c) £5,001 or more and the party’s disposable capital is less than £16,000.”.

(4) In paragraph 4—

- (a) before the text insert the heading “**Disposable capital test - deeming provisions for those aged 66 or over**”;
- (b) for “61” substitute “66”.

(5) In paragraph 5 (disposable capital)—

- (a) renumber the text after the heading as sub-paragraph (1);
- (b) in sub-paragraph (1) as renumbered by this Order for “every resource of a capital nature” substitute “any savings and investments”;
- (c) after sub-paragraph (1) as renumbered by this Order insert—

“(2) In sub-paragraph (1), reference to “savings and investments” includes, but is not limited to—

- (a) bonds;
- (b) stocks and shares; and

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(c) the value of any land or property.”.

(6) In paragraph 6 (disposable capital - non-money resources) for “a resource of a capital nature that does” substitute “any savings and investments that do”.

(7) For paragraph 7 (disposable capital - resources held outside the United Kingdom) substitute—

“Disposable Capital - resources held outside the United Kingdom

7.—(1) Capital resources in a country outside the United Kingdom count towards disposable capital.

(2) If there is no prohibition in that country against the transfer of a resource into the United Kingdom, the value of that resource is the amount that resource would realise if sold to a buyer in the United Kingdom.

(3) If there is a prohibition in that country against the transfer of a resource into the United Kingdom, the value of that resource is the amount which that resource would realise if sold in that country, in accordance with paragraph 6.”.

(8) In paragraph 9 (disposable capital - jointly owned resources) for “resource of a capital nature is” substitute “savings and investments are”.

(9) In paragraph 10 (excluded disposable capital)—

(a) omit sub-paragraphs (b), (c) and (e);

(b) after sub-paragraph (q) insert—

“(r) any payments under the Armed Forces Compensation Scheme;

(s) any compensation paid as a result of the Grenfell Tower fire;

(t) any payments under the Lambeth Children’s Homes Redress Scheme;

(u) any payments from the London Emergencies Trust;

(v) any payments under the Medomsley Detention Centre Physical Abuse Settlement Scheme;

(w) any payments under the Miscarriage of Justice Compensation Scheme;

(x) any payments from the National Emergencies Trust;

(y) any payments under the Infected Blood Support Scheme;

(z) any payments in relation to internment, forced labour, injury or loss of a child during the Second World War;

(za) any payments under the Jesus Fellowship Redress Scheme;

(zb) any payment under the Vaccine Damage Payment Scheme;

(zc) any compensation paid as a result of variant Creutzfeldt-Jakob Disease;

(zd) any compensation paid under the Victims of Overseas Terrorism Compensation Scheme;

(ze) any payments under the We Love Manchester Emergency Fund; and

(zf) any compensation paid under the Windrush Compensation Scheme (Expenditure) Act 2020.”.

(10) For paragraph 11 (remission of fees - gross monthly income) substitute—

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“Remission of fees - gross monthly income

11.—(1) Subject to paragraphs 11A and 12, if a party satisfies the disposable capital test, no fee is payable under this Order if, at the time when the fee would otherwise be payable, the party’s gross monthly income does not exceed the applicable threshold.

(2) The applicable threshold is—

- (a) £1,420, for a party that is single and has no children;
- (b) £2,130, for a party that is part of a couple and has no children; or
- (c) as otherwise calculated in accordance with sub-paragraph (3).

(3) Where this sub-paragraph applies, the applicable threshold is determined by taking the following steps—

(Step 1) Identify the number of children aged 13 or below and multiply this number by £425.

(Step 2) Identify the number of children aged 14 or over and multiply this number by £710.

(Step 3) Add together the amounts calculated at Step 1 and Step 2.

(Step 4) Add £1,420 to the amount calculated at Step 3.

4) The result is the applicable threshold for a party that is single and has children.

(Step 5) *If a party is part of a couple, take this additional step.*

5) Add £710 to the amount calculated at Step 4.

The result is the applicable threshold for a party that is part of a couple and has children.

(4) Subject to sub-paragraph (6), if a party’s gross monthly income exceeds the applicable threshold, that party must pay an amount towards the fee payable to which the application for remission relates, which is determined in accordance with sub-paragraph (5).

(5) Where this sub-paragraph applies, the amount payable is determined as follows—

(Step 1) Deduct the applicable threshold from the party’s gross monthly income.

1) The amount calculated is the “excess income”.

(Step 2) Apply the rates specified in the second column of the Table to the parts of the party’s excess income specified in the corresponding row of the first column.

(Step 3) Add together the amounts calculated at Step 2 (if there are two or more such amounts).

Subject to sub-paragraph (6), the result is the amount payable.

Table

<i>Part of excess income</i>	<i>Rate</i>
Up to and including £1,000	50%
£1,001 to £2,000	70%
£2,001 to £3,000	90%

(6) No party is required to pay an amount that is more than the fee payable for which the application for remission has been made, if no remission had been granted.”.

(11) After paragraph 11 (remission of fees - gross monthly income) insert—

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“Gross monthly income— passporting benefits

11A.—(1) If a party satisfies the disposable capital test, no fee is payable under this Order if, at the time when the fee would otherwise be payable, the party is in receipt of any passporting benefits.

(2) The following are passporting benefits—

- (a) income-based Jobseeker’s Allowance;
- (b) income-related Employment and Support Allowance;
- (c) income support;
- (d) pension credit (Guarantee Credit); and
- (e) universal credit with additional gross annual earnings of less than £6,000.”.

(12) For paragraph 12 (gross monthly income cap) substitute—

“Gross monthly income cap

12. No remission is available if a party’s gross monthly income exceeds the applicable threshold determined in accordance with paragraph 11(2), plus the sum of £3,000.”.

(13) For paragraph 13 (gross monthly income) substitute—

“Gross monthly income

13.—(1) Subject to paragraph 14, “gross monthly income” means the total sum of—

- (a) the lower of—
 - (i) the gross amount that has been earned by the party in the month immediately preceding that in which the application for remission is made; or
 - (ii) the average of the gross amount that has been earned by the party in the three months immediately preceding that in which the application for remission is made, and
- (b) the gross amount received by the party from any other source in the month immediately preceding that in which the application for remission is made, other than receipt of any of the excluded benefits.

(2) For the purposes of sub-paragraph (1), earnings from a trade, business or gainful occupation other than an occupation at a wage or salary are calculated as the lower of—

- (a) the party’s net profits for the month preceding that in which the application for remission is made; or
- (b) the average of the party’s net profits for the three months preceding that in which the application for remission is made.

(3) In sub-paragraph (2), “net profits” means the profits which have accrued to the party less all sums necessarily expended to earn those profits.”.

(14) In paragraph 15 (application for remission of a fee)—

- (a) in sub-paragraph (2)(c) for “paragraphs 11 and 12” substitute “paragraph 11”;
- (b) in sub-paragraph (3) omit “or before”;
- (c) after sub-paragraph (4) insert—

“(5) The Chief Executive of the Supreme Court may by written notice request such additional information or evidence as is required to assess the party’s entitlement to fee remission under this Order, and the period specified by such notice must not be less than 7 days, beginning with the day after the date on which the notice is sent.

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(6) An application for remission of a fee may be treated as abandoned and no further action taken, if a party fails to provide the information requested under sub-paragraph (5) within the period specified by that notice, or such other extended period as may be agreed in writing at the Chief Executive of the Supreme Court’s discretion.”.

(15) In paragraph 17(2) (refunds) for “paragraph 15” substitute “paragraph 16”.

Commencement Information

I5 Art. 4 in force at 27.11.2023, see [art. 1\(2\)](#)

PROSPECTIVE

Amendments to the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011

5.—(1) The Schedule (remissions and reductions) to the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011⁽¹⁹⁾ is amended as follows.

(2) In paragraph 1(1) (interpretation) in the definition of “excluded benefits”—

- (a) in sub-paragraph (a) omit paragraph (viii);
- (b) in sub-paragraph (b)(ii) after “element” insert “, disabled element or severely disabled element”;
- (c) omit sub-paragraph (d).

(3) For paragraph 3 (disposable capital test) substitute—

“Disposable capital test

3. Subject to paragraph 4, a party satisfies the disposable capital test if the fee payable by the party and for which an application for remission is made is—

- (a) up to and including £1,420 and the party’s disposable capital is less than £4,250;
- (b) £1,421 to £5,000 and the party’s disposal capital is less than three times the amount of the fee payable;
- (c) £5,001 or more and the party’s disposable capital is less than £16,000.”.

(4) In paragraph 4—

- (a) before the text insert the heading “**Disposable capital test - deeming provisions for those aged 66 or over**”;
- (b) for “61” substitute “66”.

(5) In paragraph 5 (disposable capital)—

- (a) renumber the text after the heading as sub-paragraph (1);
- (b) in sub-paragraph (1) as renumbered by this Order for “every resource of a capital nature” substitute “any savings and investments”;
- (c) after sub-paragraph (1) as renumbered by this Order insert—

“(2) In sub-paragraph (1), reference to “savings and investments” includes, but is not limited to—

⁽¹⁹⁾ [S.I. 2011/2841](#); relevant amending instruments are [S.I. 2020/314](#) and [S.I. 2021/985](#).

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- (a) bonds;
- (b) stocks and shares; and
- (c) the value of any land or property.”.

(6) In paragraph 6 (disposable capital - non-money resources) for “a resource of a capital nature that does” substitute “any savings and investments that do”.

(7) For paragraph 7 (disposable capital - resources held outside the United Kingdom) substitute—

“Disposable Capital - resources held outside the United Kingdom

7.—(1) Capital resources in a country outside the United Kingdom count towards disposable capital.

(2) If there is no prohibition in that country against the transfer of a resource into the United Kingdom, the value of that resource is the amount that resource would realise if sold to a buyer in the United Kingdom.

(3) If there is a prohibition in that country against the transfer of a resource into the United Kingdom, the value of that resource is the amount which that resource would realise if sold in that country, in accordance with paragraph 6.”.

(8) In paragraph 9 (disposable capital - jointly owned resources) for “resource of a capital nature is” substitute “any savings and investments are”.

(9) In paragraph 10 (excluded disposable capital)—

- (a) omit sub-paragraphs (b), (c) and (e);
- (b) after sub-paragraph (q) insert—
 - “(r) any payments under the Armed Forces Compensation Scheme;
 - (s) any compensation paid as a result of the Grenfell Tower fire;
 - (t) any payments under the Lambeth Children’s Homes Redress Scheme;
 - (u) any payments from the London Emergencies Trust;
 - (v) any payments under the Medomsley Detention Centre Physical Abuse Settlement Scheme;
 - (w) any payments under the Miscarriage of Justice Compensation Scheme;
 - (x) any payments from the National Emergencies Trust;
 - (y) any payments under the Infected Blood Support Scheme;
 - (z) any payments in relation to internment, forced labour, injury or loss of a child during the Second World War;
 - (za) any payments under the Jesus Fellowship Redress Scheme;
 - (zb) any payment under the Vaccine Damage Payment Scheme;
 - (zc) any compensation paid as a result of variant Creutzfeldt-Jakob Disease;
 - (zd) any compensation paid under the Victims of Overseas Terrorism Compensation Scheme;
 - (ze) any payments under the We Love Manchester Emergency Fund; and
 - (zf) any compensation paid under the Windrush Compensation Scheme (Expenditure) Act 2020.”.

(10) For paragraph 11 (remission of fees - gross monthly income) substitute—

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“Remission of fees - gross monthly income

11.—(1) Subject to paragraphs 11A and 12, if a party satisfies the disposable capital test, no fee is payable under this Order if, at the time when the fee would otherwise be payable, the party’s gross monthly income exceeds the applicable threshold.

(2) The applicable threshold is—

- (a) £1,420, for a party that is single and has no children;
- (b) £2,130, for a party that is part of a couple and has no children; or
- (c) as otherwise calculated in accordance with sub-paragraph (3).

(3) Where this sub-paragraph applies, the applicable threshold is determined by taking the following steps—

(Step 1) Identify the number of children aged 13 or below and multiply this number by £425.

(Step 2) Identify the number of children aged 14 or over and multiply this number by £710.

(Step 3) Add together the amounts calculated at Step 1 and Step 2.

(Step 4) Add £1,420 to the amount calculated at Step 3.

4) The result is the applicable threshold for a party that is single and has children.

(Step 5) *If a party is part of a couple, take this additional step.*

5) Add £710 to the amount calculated at Step 4.

The result is the applicable threshold for a party that is part of a couple and has children.

(4) Subject to sub-paragraph (6), if a party’s gross monthly income exceeds the applicable threshold, that party must pay an amount towards the fee payable to which the application for remission relates, which is determined in accordance with sub-paragraph (5).

(5) Where this sub-paragraph applies, the amount payable is determined as follows—

(Step 1) Deduct the applicable threshold from the party’s gross monthly income.

1) The amount calculated is the “excess income”.

(Step 2) Apply the rates specified in the second column of the Table to the parts of the party’s excess income specified in the corresponding row of the first column.

(Step 3) Add together the amounts calculated at Step 2 (if there are two or more such amounts).

Subject to sub-paragraph (6), the result is the amount payable.

Table

<i>Part of excess income</i>	<i>Rate</i>
Up to and including £1,000	50%
£1,001 to £2,000	70%
£2,001 to £3,000	90%

(6) No party is required to pay an amount that is more than the fee payable for which the application for remission has been made, if no remission had been granted.”.

(11) After paragraph 11 (remission of fees - gross monthly income) insert—

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“Gross monthly income— passporting benefits

11A.—(1) If a party satisfies the disposable capital test, no fee is payable under this Order if, at the time when the fee would otherwise be payable, the party is in receipt of any passporting benefits.

(2) The following are passporting benefits—

- (a) income-based Jobseeker’s Allowance;
- (b) income-related Employment and Support Allowance;
- (c) income support;
- (d) pension credit (Guarantee Credit); and
- (e) universal credit with additional gross annual earnings of less than £6,000.”.

(12) For paragraph 12 (gross monthly income cap) substitute—

“Gross monthly income cap

12. No remission is available if a party’s gross monthly income exceeds the applicable threshold determined in accordance with paragraph 11(2), plus the sum of £3,000.”.

(13) For paragraph 13 (gross monthly income) substitute—

“Gross monthly income

13.—(1) Subject to paragraph 14, “gross monthly income” means the total sum of—

- (a) the lower of—
 - (i) the gross amount that has been earned by the party in the month immediately preceding that in which the application for remission is made; or
 - (ii) the average of the gross amount that has been earned by the party in the three months immediately preceding that in which the application for remission is made, and
- (b) the gross amount received by the party from any other source in the month immediately preceding that in which the application for remission is made, other than receipt of any of the excluded benefits.

(2) For the purposes of sub-paragraph (1), earnings from a trade, business or gainful occupation other than an occupation at a wage or salary are calculated as the lower of—

- (a) the party’s net profits for the month preceding that in which the application for remission is made; or
- (b) the average of the party’s net profits for the three months preceding that in which the application for remission is made.

(3) In sub-paragraph (2), “net profits” means the profits which have accrued to the party less all sums necessarily expended to earn those profits.”.

(14) In paragraph 15 (application for remission of a fee)—

- (a) in sub-paragraph (2)(c) for “paragraphs 11 and 12” substitute “paragraph 11”;
- (b) in sub-paragraph (3) omit “or before”;
- (c) after sub-paragraph (4) insert—

“(5) The Lord Chancellor may by written notice request such additional information or evidence as is required to assess the party’s entitlement to fee remission under this Order, and the period specified by such notice must not be less than 7 days, beginning with the day after the date on which the notice is sent.

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(6) An application for remission of a fee may be treated as abandoned and no further action taken, if a party fails to provide the information requested under sub-paragraph (5) within the period specified by that notice, or such other extended period as may be agreed in writing at the Lord Chancellor’s discretion.”.

Commencement Information

I6 Art. 5 in force at 27.11.2023, see [art. 1\(2\)](#)

PROSPECTIVE

Saving provisions

6. The instruments amended by articles 2 to 5 of this Order and in force immediately before 27th November 2023, continue to apply as if this Order had not been made in respect of—

- (a) a fee paid before 27th November 2023 (including an application for a refund relating to a fee paid before 27th November 2023); or
- (b) an application for remission received before 27th November 2023.

Commencement Information

I7 Art. 6 in force at 27.11.2023, see [art. 1\(2\)](#)

11th October 2023

Mike Freer
Parliamentary Under Secretary of State
Ministry of Justice

We consent

12th October 2023

Andrew Stephenson
Steve Double
Two of the Lords Commissioners of His
Majesty’s Treasury

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to the fee remissions system for courts and tribunals as provided in the following Fees Orders—

- the Non-Contentious Probate Fees Order 2004
- the Gender Recognition (Application Fees) Order 2006
- the Court of Protection Fees Order 2007
- the Civil Proceedings Fees Order 2008
- the Family Proceedings Fees Order 2008
- the Magistrates’ Courts Fees Order 2008
- the Supreme Court Fees Order 2009
- the Upper Tribunal (Lands Chamber) Fees Order 2009
- the First-tier Tribunal (Gambling) Fees Order 2010
- the Upper Tribunal (Immigration and Asylum) (Judicial Review) (England and Wales) Fees Order 2011
- the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011
- the First-tier Tribunal (Property Chamber) Fees Order 2013

Eligibility for remission or part remission of a fee is determined against the disposable capital test and the gross monthly income test.

Articles 2(3), 3(3)(b), 4(3) and 5(3) amend the disposable capital test to replace the current ten-band system with a simplified three-band structure and increase the lower disposable capital threshold from £3,000 to £4,250. As the size of a fee increases above £1,421 the applicable disposable capital threshold increases at a multiplier of three times the level of the fee payable, up to a maximum disposable capital threshold of £16,000. A party who satisfies the disposable capital test will be considered against the gross monthly income test, which will determine if a party will receive full fee remission, pay the fee in full or in part.

Articles 2(4)(b), 3(3)(c)(ii), 4(4)(b) and 5(4)(b) raise the ‘age cap’ from 61 to 66 years old. The ‘age cap’ provides that a party or their partner aged 66 or over satisfies the disposable capital test if they have less than £16,000 as disposable capital.

Articles 2(5), 3(3)(d), 4(5) and 5(5) amend the definition of ‘disposable capital’ to refer to a party’s savings and investments.

Articles 2(9), 3(3)(h), 4(9) and 5(9) update the list of capital that is disregarded (‘excluded disposable capital’) for the purposes of the disposable capital test. Household furniture, articles of personal clothing and tools and implements of trade are removed from the list of excluded disposable capital. In addition, the list is amended to include payments received from specified compensation schemes.

Articles 2(10), 3(3)(i), 4(10) and 5(10) amend the gross monthly income test. The gross monthly income test applies a series of applicable thresholds to a party. The applicable threshold for a party is determined by reference to their household composition. The applicable threshold for a party who is single with no children is £1,420, with an additional £710 applied to this threshold for a couple. If a party has children an additional £710 is applied for each child aged 14 or over, and a further

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£425 applied for each child aged 13 or below. A party whose gross monthly income falls below the applicable threshold will receive full fee remission.

Articles 2(11), 3(3)(j), 4(11) and 5(11) further amend the gross monthly income test to provide that a party who receives any ‘passporting benefits’ as defined by this Order automatically satisfies the gross monthly income test and will be eligible for full fee remission.

Articles 2(12), 3(3)(k), 4(12) and 5(12) amend the gross monthly income cap. A party with income in excess of £3,000 above the applicable threshold will not be eligible for any remission.

Articles 2(13), 3(3)(l), 4(13) and 5(13) amend the definition of ‘gross monthly income’ so that it may be determined against either the party’s gross monthly earnings in the month immediately preceding the application for fee remission, or as an average of the party’s earnings in the three months immediately preceding the application for fee remission, plus any gross amount received from any other source other than excluded benefits in the month preceding the application.

Articles 2(14), 3(3)(m), 4(14) and 5(14) provide the Lord Chancellor (or the Chief Executive of the Supreme Court in the case of the Supreme Court Fees Order 2009) with the power to request further information and evidence to assess a party’s eligibility for fee remission. They further provide the Lord Chancellor (or the Chief Executive of the Supreme Court in the case of the Supreme Court Fees Order 2009) the discretion to treat an application as abandoned where a party fails to comply with the request within a specified period of time.

This Order also amends Fee 2.1(a) of the Civil Proceedings Fees Order 2008 to apply this fee to cases assigned to the new ‘intermediate track’. Prior to the introduction of the ‘intermediate track’ such cases would have been assigned to the ‘multi-track’, for which the same Fee 2.1(a) is prescribed.

Savings provisions in Article 6 preserve the current remission system for applications for remission received before 27th November 2023, including an application for a refund received on or after 27th November 2023 relating to a fee paid before 27th November 2023.

In respect of the amendments made by this Order to the fee remissions scheme, a full impact assessment was published alongside the response to the consultation ‘revising the ‘Help with Fees’ remission scheme’, and copies can be obtained on [legislation.gov.uk](https://www.legislation.gov.uk) website.

No impact assessment has been carried out for amendments to Fee 2.1(a) of the Civil Proceedings Fees Order 2008 as no, or no significant impact, on the private, voluntary, or public sectors is foreseen.

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