

**EXPLANATORY MEMORANDUM TO
THE SUPREME COURT RULES 2009**

2009 No. 1603 L. 17

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 The Supreme Court Rules govern the practice and procedure to be followed in the Supreme Court. They will apply to civil and criminal appeals to the court and to appeals and references under the court's devolution jurisdiction. The overriding objective of the Rules is to ensure that the court is accessible fair and efficient.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Constitutional Reform Act (CRA) received royal assent in March 2005. The act allowed for the creation of a United Kingdom Supreme Court to replace the Appellate Committee of the House of Lords. The Supreme Court will become operational in October 2009, and upon its opening will need Rules of Court to allow it to function properly.

4.2 The CRA section 45 gives the President of the Supreme Court the power to make rules affecting the practice and procedure to be followed in the Court. In order to allow the Senior Law Lord to make these rules, (as there will only be a President once the court becomes operational), Section 45 is modified by the Constitutional Reform Act 2005 (Temporary Modifications) Order 2006 (S.I. 2006/227). This order allows for references to the "President" to be read as references to the "Senior Law Lord".

5. Territorial Extent and Application

5.1 This instrument applies to all of 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 At present, the exercise of the highest level of jurisdiction in the UK is shared between the Appellate Committee of the House of Lords and the Judicial Committee of the Privy Council. The Appellate Committee receives appeals from the courts in England and Wales and Northern Ireland, and in civil cases from Scotland. The Judicial Committee of the Privy Council, in addition to its overseas and ecclesiastical jurisdiction, considers questions as to whether the devolved administrations (the Scottish Parliament, the National Assembly for Wales and the Northern Ireland assembly) are acting within their legal powers.

7.2 This means that the highest appeal court in the land sits within the legislature. The Supreme Court is being brought into existence as the Government's view is that the highest court must be demonstrably independent of the legislature.

7.3 Part 3 of the CRA moves the 12 Lords of Appeal in Ordinary to a new Supreme Court separate from Parliament. The appellate jurisdiction of the House of Lords and the devolution jurisdiction of the Judicial Committee of the Privy Council will transfer to the new Court.

7.4 The judicial decisions of the 'House of Lords' are in practice decisions of the Appellate Committee and the current arrangements potentially confuse the judicial and legislative roles of the House. Creating a Supreme Court will help to avoid this.

7.5 The considerable growth of judicial review has brought the role of judges more into the public eye, and as such, it is vital to avoid the perception that any decisions could be perceived to be politically motivated. The European Convention on Human Rights, established in law by the Human Rights Act, stresses that judges must be independent, impartial and free of any prejudice or bias, both real and perceived. For this to be ensured, judicial independence needs not just to be preserved in practice, but also to be buttressed by appropriate and effective constitutional guarantees. The establishment of a Supreme Court will provide those guarantees. It will provide clarity in the UK's constitutional arrangements, and give people confidence that the institutional arrangements for our highest court are robust and will endure.

7.6 The new Court will also take on the devolution jurisdiction of Judicial Committee of the Privy Council. This will create the proper apex for constitutional issues for the court. Currently there is a danger of a case coming to the Judicial Committee as a devolution issue and to the House of Lords as an ordinary appeal. The creation of the Supreme Court will avoid this possibility.

7.7 The creation of procedural rules for this new Court are an important part of the success of the Court, determining procedures that ensure the court is accessible and fair to those wishing to bring cases.

7.8 The Rules govern the practice and procedure to be followed in the Supreme Court of the United Kingdom.

Part 1

- (1) contains interpretation provisions (rule 3);
- (2) makes provision for forms (rule 4);
- (3) contains rules about the service and filing of documents (rules 6, 7);
- (4) sets out what the Court may do in the event that the rules are not complied with (rule 8);
- (5) sets out how and by whom procedural decisions will be made (rule 9).

Part 2 contains the rules governing applications for permission to appeal and provides for the documents that are to be filed and the relevant time limits. Part 3 contains the rules about commencement of, and preparation for, an appeal, providing for the documents that are to be filed and the relevant time limits.

Part 4 contains rules about the hearing of appeals by the Court and Part 5 contains miscellaneous rules such as for the making of a procedural application, the hearing or withdrawal of appeals, the amendment of documents and orders for security for costs. Part 6 contains rules about particular types of appeals including those that contain human rights or devolution issues.

Part 7 contains provisions in relation to fees, claims for, and the assessment of, costs and for the payment out of security money. Part 8 contains transitional provisions.

8 Consultation Outcome

8.1 S45 (4) and (5) of the CRA place upon the President of the Supreme Court a duty to consult the following before making the Rules:

- the Lord Chancellor
- The General Council of the Bar of England and Wales
- The Law Society of England and Wales
- The Faculty of Advocates of Scotland
- The Law Society of Scotland
- The General Council of the Bar of Northern Ireland
- The Law Society of Northern Ireland
- Such other bodies as represent persons likely to be affected by the Rules as the President feels it is appropriate to consult.

8.2 Lord Bingham, who was the Senior Law Lord until October 2008, consulted on the new Rules in a paper issued on the 10 January 2007

and which closed on the 10 April 2007. The consultation was owned by the Law Lords and Lord Bingham consulted all of those mentioned above at 8.1 and widened the consultation to a full public consultation to ensure a diverse range of opinions were captured. The consultation can be found at

http://www.parliament.uk/documents/upload/SupremeCourt_rulesconsultation.pdf

- 8.3 The responses received were technical and detailed in their nature but some common themes emerged. These themes included the request from consultees that there be available the ability to make submissions to the court electronically; concern that the order of lodging and serving documents should be in a different sequential order; consideration of legal aid applications to be taken into account when looking at time limits; and the role of interveners in the Supreme Court process. Praise was received from many of the respondents that the language used was simpler and more accessible than that in the current Rules of the appellate committee. The Rules of Court set out in the Statutory Instrument have been refined and developed by the Law Lords in light of comments made during consultation.

9 Guidance

- 9.1 The Chief Executive of the Supreme Court is in regular contact with the relevant bodies that represent the interests of the main users of the court and work will be done to prepare potential court users for the changes. The Practice Directions that supplement the Rules provide supplementary guidance and information for Court users.

10. Impact

- 10.1 The impact on business, charities or the voluntary bodies is the same as for all potential users of the Supreme Court. The Rules are not predicted to have a negative effect and indeed, the simplified drafting and transparency of process should aid all these sectors.
- 10.2 The impact on the public sector will be as above at point 10.1
- 10.3 An impact assessment for the Supreme Court is attached to this memorandum at Annex A.

11. Regulating Small Business

- 11.1 The legislation applies to small businesses.
- 11.2 During the passage of the Constitutional Reform Act contact was made with the Small Business Service about the setting up of the Supreme Court and the Regulatory Impact done at that stage states that the Small Business Service agree that the impact on small businesses will be minimal.

12 Monitoring and Review

12.1 As the Supreme Court is a new institution there will be monitoring of the processes and procedures when it first become operational. In addition the Chief Executive will be under a duty to lay an annual report before Parliament which will deal with the running of the Court including the process and procedures.

13 Contact

13.1 Charles McCall at the Ministry of Justice Tel: 0203 334 3855 or e-mail charles.mccall@justice.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: MINISTRY OF JUSTICE	Title: Impact Assessment of UK Supreme Court	
Stage: Implementation	Version:	Date:
Related Publications: Constitutional Reform Act 2005 www.opsi.gov.uk Supreme Court for the United Kingdom www.dca.gov.uk/consult/supremecourt/index.htm		

Available to view or download at:

<http://www.>

Contact for enquiries: Charles McCall

Telephone: 0203 334 3855

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

The Supreme Court is being created in accordance with the Constitutional Reform Act 2005. This provides a clearer separation between the executive, the legislature and the judiciary. This reinforces people's expectations about the independence and transparency of the judicial system. It would also help ensure perception of the independence of the judiciary in accordance with Art 6 of the European Convention on Human Rights.

What are the policy objectives and the intended effects?

The policy objectives are to:

- 1) create a Supreme Court for the United Kingdom which will provide a single apex to the United Kingdom's judicial system;
- 2) to create a Supreme Court distinct from the legislature, enhancing the independence and perception of the independence of the judicial system;
- 3) to create a system of fees and rules that ensure the court is accessible fair and efficient.

What policy options have been considered? Please justify any preferred option.

1. Do nothing- not viable. The Government did not consider it appropriate that the highest appeal court in UK sits within the legislature- no benefits to this option.
2. Partial approach to removing Law Lords from House of Lords through House of Lords Standing Orders - not viable. Would not provide a full solution and would not be able to transfer devolution jurisdiction of the Privy Council or authorise expenditure to provide suitable accommodation.
3. Create new Supreme Court - chosen approach. Achieves all the policy objectives set out above

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? As the Supreme Court is a new institution there will be constant monitoring of the costs and benefits including to the PAC. The court's annual report will be required to be laid before Parliament.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Lord Bach

.....Date: 1st July 2009

Summary: Analysis & Evidence

Policy Option:	Description: The Evidence provided below relates to the fees system that will be adopted in the Supreme Court
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Fee income is already collected in the House of Lords and JCPC so impact on the administrative cost of fee collection is negligible. Fee levels proposed require a subsidy from HMCS of somewhere in the region of £5m per annum, already factored in to their MTFP. For Scottish Parliament around 0.5m and NI Court service 0.1m			
	One-off (Transition) Yrs		£ Negligible		
	Average Annual Cost (excluding one-off)		£ 6m Contribution		
			Total Cost (PV)	£	
Other key non-monetised costs by 'main affected groups'					

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' These Fees (combined with the contributions from the jurisdictions) are designed to deliver full cost recovery for civil cases (apart from the cost of remissions).			
	One-off Yrs		£ Nil		
	Average Annual Benefit (excluding one-off)		£ Nil		
			Total Benefit (PV)	£	
Other key non-monetised benefits by 'main affected groups' At present many of the costs associated with progressing civil cases are hidden within the wider costs of the House of Lords.					

Key Assumptions/Sensitivities/Risks The Supreme Court is a new institution and so assumptions have been made about case flow based on current figures from the Appellate Committee and also about the running costs of the institution. There will be some risk that case flow drops leaving a shortfall in funding.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	United Kingdom			
On what date will the policy be implemented?	1 October 2009			
Which organisation(s) will enforce the policy?	Supreme Ct/MOJ			
What is the total annual cost of enforcement for these organisations?	£ Negligible			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ Nil			
What is the value of changes in greenhouse gas emissions?	£ Nil			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large

Are any of these organisations exempt?	No	No	N/A	N/A
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Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)		
Increase	£	Decrease	£	Net	£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

STATISTICAL EVIDENCE TO INFORM FEE RECOVERY IN THE UK SUPREME COURT

1. INTRODUCTION

1.1 This paper is based on statistical evidence collected by the Judicial Office of the House of Lords, the Supreme Court Implementation Team and discussions with staff and Law Lords about the nature of their workload.

2. RUNNING COSTS IN THE UK SUPREME COURT

2.1 It has been estimated that the running costs of the new Supreme Court will be in the region of 12.3m a year. For the purpose of developing a mechanism to secure the recovery of the “civil” element of Supreme Court costs, this is broken down as follows ¹:

Table 1

Running Cost Type	£m 2010-11 prices (i.e. 1 st full year running costs)
Judicial Salaries	2.6
Staff costs	1.9
Admin (inc. security)	2.3
Utilities and rates	0.5
Building costs	5.0
Total	12.3

2.2 Following the established principle of cost recovery for civil Supreme Court work, we will determine that proportion of these running costs which should be attributable to civil cases, but excluding costs associated with the JCPC.

3. CIVIL CASELOAD IN THE APPELLATE COMMITTEE

3.1 As the Jurisdiction of the Appellate Committee remains relatively unchanged by the Constitutional Reform Act it has been assumed that the workflow of the Supreme Court will be similar to that of the Appellate Committee of the House of Lords. Appeals disposed of have remained fairly steady over the past 5 years and it is the availability of the Law Lords that has been one of the major factors in

¹ Figures produced by Supreme Court Implementation team and published in written ministerial statement of X. Some of these costs cover the provision of services to the JCPC for there is no authority to recover.

determining how many cases have been able to be dealt with per year. Our assumptions are based on this constraint remaining constant.²

3.2 There are two main processes that come before the Appellate Committee: Petitions for leave to appeal (the preliminary stage for most people applying for permission to bring a case to the court), and full appeals, once permission has been granted.

3.3 Since 2002 the figures for petitions for leave to appeal are as follows:

Table 2 Petitions entered	2002	2003	2004	2005	2006	Average
Total Petitions Entered	253	237	217	240	219	233
Civil Petitions	201	213	180	200	181	195
% Civil Petitions	79.5	90	83	83	82	84%

3.4 On average, there are 233 new petitions entered each year. 84% of all these relate to civil work. These petitions are processed by the administrative office who receive papers, bundle them, inform parties of progress and pass to judicial assistants who précis the case and pass to three law lords who then deal with the application on paper and come to a collective decision about whether to allow the appeal.

3.5 However, each year there are a number of petitions that either do not get disposed of by the law lords and are carried over to the next legal year, or cases from the previous legal year that have to be dealt with. From these figures we can see how many petitions were actually dealt with by the Law Lords.

Table 3 Petitions disposed	2002	2003	2004	2005	2006	Average
Total Petitions Disposed of	274	198	271	255	198	240
Civil Petitions	209	181	221	213	160	197
% Civil Petitions	76	91	81	83	80	82%

3.6 As well as petitions for leave the court deals with full appeals. Full appeals are processed by the administrative office and then handed to the Law Lords. The number of Appeals that were presented over the past 5 years are as follows:

Table 4 Full Appeals Presented	2002	2003	2004	2005	2006	Average
Appeals presented	107	89	111	87	73	93
Civil Appeals	88	71	88	75	62	77
% Civil Appeals	82	80	79	86	84	82%

3.7 As with the petitions above, there are a number of appeals that get lodged but either do not get dealt with, or are carried over from the year before. Therefore the number of appeals that actually get disposed of (usually by a full hearing heard by 5 law lords, but sometimes 7 or 9) are as follows:

Table 5 Full Appeals disposed of	2002	2003	2004	2005	2006	Average

² There has been no pressure to increase this number. In response to consultation 74% of respondents including the Law Lords felt 12 was the right number. The Law Lords felt keeping the number of Justices small was important to the quality and consistency of its decision making. They have, and will continue to have, recourse to a supplementary panel of Judges qualified to sit as Law Lords if needed.

Appeals disposed of	72	65	77	102	94	82
Civil Appeals	51	56	66	82	75	66
% Civil Appeals	70	86	85	80	80	80%

3.8 From the above tables an assumption can be drawn that around 80% of the casework dealt with by the Appellate Committee concerns civil work.

3.9 Discussions have been held with representatives of the Law Lords and the administrative office staff to ascertain whether there is any significant, measurable difference between the cost, complexity and time taken to progress civil cases as against other types of cases such as criminal or devolution cases. The consensus was that by the time a case reached the Appellate Committee the simple cases will have been filtered out. Therefore there is little variance in terms of complexity, and no necessity to place any sort of weighting upon civil cases. Furthermore, any difference in administrative process in progressing cases will be diminished even further with the introduction of the new Rules for the Supreme Court which fully harmonise the procedure for both civil and criminal cases.

4. DETAILED ANALYSIS

4.1 We can work on the assumption that cases before the court are all within a similar range of complexity, but splitting the running costs on the basis that 80% of all costs are attributable to civil cases in the supreme court, does not accurately reflect the cost of progressing civil cases. A number of adjustments must be made which are explored in detail below and provide a more refined analysis.

JUDICIAL SALARY

4.2 Account must be taken of the work the Law Lords do outside of the appellate committee. The Law Lords are involved in the work of the Judicial Committee of the Privy Council, leading inquiries, providing seminars, lectures, other academic work and devolution cases, all of which are not be regarded as associated with civil cases.

4.3 There are two ways of viewing this. Sitting days represent the actual time spent in Court on cases and Programmed days which are estimates of time needed for cases. ³ It is felt that programmed days are a better guide as they take account of work that may have been done even when a case might have collapsed etc. Comparing the number of programmed days and sitting days for the Appellate Committee and the JCPC provides an idea of the split of work.

	2003	2004	2005	2006	Average
Days sat Appellate committee	117	133	144	126	130
Days sat JCPC	117	101	89	103	102
TOTAL	234	234	233	229	232
% split A.Com/JCPC	50/50	57/43	62/38	55/45	56/44

	2003	2004	2005	2006	Average	Average per law lord
Programmed Days Appellate Committee	663	708	749	713	708	59
Programmed Days JCPC	481	490	479	505	489	41
TOTAL	1144	1198	1228	1218	1197	100
% split A.Com/JCPC	58/42	59/41	61/39	59/41	59/41	59/41

³ Lawyers provide time estimates for how long they think the case will take. The Appellate Committee and the JCPC then meet together and divide up the days they require based on these estimates. They do not include preparation time for cases.

4.4 On average, around 59% of programmed days are Appellate Committee work and 41% JCPC work. Programmed days do not include work done by the Law Lords such as inquiries, lectures, academic articles and devolution cases.

4.5 The number of programmed days for the Appellate Committee and JCPC combined is 1197 days. Divided between 12 Law Lords ⁴ this amounts to 99.75 programmed days per Justice, which for ease we will round up to 100 days per justice each year. Justices sit for a potential maximum of 183 days a year (the length of the legal year)⁵. This means that there are potentially 83 working days which are not programmed, given over to other work.

4.6 Based on the assessment in table 7, the average split of the law Lords time is:

59 Days – Appellate Committee (32% of working days)
 41 Days – Judicial Committee (23% of working days)
 83 Days – Non programmed days (45% of working days)

4.7 We are assuming that some of this non-programmed work will be preparation for civil case court work. Therefore, applying the same proportion to the 83 days means:

Appellate Committee 32% x 83 = 27 Days
 Judicial Committee 23% x 83 = 19 Days
 Non programmed 45% x 83 = 37 Days

Adding this to the average split of the Law Lords time at figure 4.6 we get:

Table 8

Work Type	Average Number of Sitting Days	% Time on Work Type
Appellate Committee	86	47
Judicial Committee	60	33
Non programmed days	37	20

4.8 This shows that the Law Lords spend an average of 47% of their time on appellate committee work. We have established that 80% of work in the Appellate Committee is civil work so there would be a duty to recover 37% (80%x47%) of the Judicial Salary.

JUDICIAL SALARIES = 2.6m

RECOVERABLE SALARY (37% x 2.6m) = £962,000

5. STAFF SALARY⁶

5.1 For the purposes of recovering staff salary, staff may be divided into three groups:

Direct Judicial Support
 Shared service staff
 Staff providing support solely to the Appellate Committee

Direct Judicial Support

⁴ Lord Saville is currently employed on the Bloody Sunday Inquiry, which in reality means that there are 11 Law Lords available to sit. However in obtaining an average we have divided by the full compliment to give an impression of how time is spent.

⁵ Michaelmas Term 1 October to 21 December
 Hilary Term 11 January to Wednesday before Easter Sunday
 Easter Term 2nd Tuesday after Easter Sunday to Friday before spring bank holiday
 Trinity Term 2nd Tuesday after the Spring Holiday to 31 July

5.2 Secretaries and Judicial Assistants provide direct support to the Judiciary. Their work patterns therefore closely follow those of the Law Lord that they work for. The assumption has therefore been made that the same adjustments made in section 4 (Judicial Salary) should be made to their salaries, when looking at what is recoverable. This means that 37% of their salary will be recoverable.

Table 9	Salary	Recoverable salary (37%)
Judicial Assistants	535869	178,830
Secretaries	356416	118,943
Total	892286	330,146

Shared Service Staff

5.3 Some staff such as receptionists, corporate services staff and librarians will be a resource for the whole building, JCPC and the Supreme Court. The recoverable element can therefore be calculated and adjusted in the same way as the Law Lords salaries, meaning 37% of their salary will be recoverable:

Shared Services staff salaries⁷ = £502,212

Recoverable salaries = £185,818

Staff Providing support solely for the Supreme Court

5.4 Some posts in the general office and administrative offices do not provide support or assistance to the JCPC. Therefore the cost of providing this service will have to be factored slightly differently. The split of work when looking at both petitions for leave and full appeals is about 80% of the workload of the appellate committee. We have therefore assumed that for staff working solely on Supreme Court work and 80% of their salary would be recoverable

⁷ Includes salaries of Director of corporate services, head of finance and resourcing, head of communications and library services, librarians, accommodation office, customer service, web officer, committee room assistants and receptionists.

Salaries of Staff only working on Supreme Court **8** = £ 514,656

Recoverable Salaries = £411,725

6. OTHER RUNNING COSTS ATTRIBUTABLE TO CIVIL CASES

6.1 We have already factored out the non civil costs for salaries, which has left us with the amount of recoverable costs.

6.2 When looking at other running costs such Administration, utilities and rates and building costs we again have to look at what is attributable to running civil cases. Other running costs include:

Table 10

Admin (inc. security)	2.3
Utilities and rates	0.5
Building costs	5.0
Total	7.8m

6.3 The Judicial Committee of the Privy Council will be co-located in the Supreme Court building and so a proportion of the running costs will be attributable to their work. If we use the split of time spent on civil cases, JCPC cases, and other work, then a 37% share of the courts other running costs dedicated to civil cases would be $37\% \times 7.8m = \mathbf{2.886m}$ recoverable costs.

6.4 In conclusion the way the recoverable civil element is worked out is:

$(37\% \times \text{Judicial salary}) + (37\% \times \text{Direct Judicial support salary}) + (37\% \times \text{Shared services salary}) + (80\% \text{ Supreme Court Support salary}) + (37\% \text{ admin, utilities and rates, building costs}) = \text{Recoverable civil costs}$

On present figures this would mean that the recoverable costs are:

Table 11

Recoverable Cost Type	Amount
Judicial Salary	962,000
Direct Judicial Support	330,146
Shared staffing	185,818
Staff dedicated to Sup Ct work	411,725
Admin, utilities and building	2,886,000
Total	4,775,689

6.5 The consultation paper on fees in the Supreme Court proposes a level for civil fee income. The remainder of the recoverable amount will come contributions from the devolved administrations, apportioned in accordance with their usage of the court (looking at number of cases brought before the court.)

SPECIFIC IMPACT TESTS

The Ministry of Justice published a consultation paper on civil court fees on 10 December 2008 in which they looked at a number of specific user groups and the impact of fee increases. The research done for

⁸ Includes salaries of Registrar, chief executive, director of court administration, taxing clerk, listing officer, deputy listing officer, senior clerical officers.

many of these tests is also pertinent to the new Supreme Court and so much of the research has been replicated here.

Sectors and groups affected

Users of Supreme Court will be affected. These include, amongst others companies, government departments, local authorities, charities, small businesses and individuals. Research published by the Ministry of Justice in 2007⁸ 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 concessions is in place to ensure access to justice is protected for those people who are unable to afford court.

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>. **Civil Court Fees 2008** Consultation Paper 33

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 “wellknown 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 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 concession 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 concession 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

The Court will be DDA compliant and so will provide better facilities for those with disabilities than are currently provided by the Appellate Committee of the House of Lords.

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 concession 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 concession 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 concession 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 concession 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 concession system. We do not therefore expect the proposed changes to impact this segment of the population.

Environmental

There is nothing to suggest that the Supreme Court will have an adverse 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

Any Legal or Judicial impact will be broadly neutral, with a fee concession system ensuring access to justice for those who might not otherwise be able to pay the fees charged.

Administration burdens / simplification

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

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	No	No

