

**EXPLANATORY MEMORANDUM TO
THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER) FEES ORDER 2013**

2013 No. 1179

AND

THE UPPER TRIBUNAL (LANDS CHAMBER) FEES (AMENDMENT) ORDER 2013

2013 No. 1199

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

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

- 2. Purpose of the instruments**

- 2.1 The First-tier Tribunal (Property Chamber) Fees Order 2013 (the “2013 PC Fees Order”) prescribes the fees payable by users of the Property Chamber of the First-tier Tribunal (the “Property Chamber”), which will include the transferred Residential Property and Leasehold Valuation Tribunals. The 2013 PC Fees Order combines the fees contained in the Residential Property Tribunal Procedures and Fees (England) Regulations 2011 (the “2011 regulations) and in the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 (the “2003 regulations”).
- 2.2 The Upper Tribunal (Lands Chamber) (Fees) (Amendment) Order 2013 (the “2013 LC Fees Order”) provides that where a case has been transferred from the Property Chamber to the Upper Tribunal (Lands Chamber) (“Lands Chamber”) the fee payable is the fee that would have applied in the Property Chamber.
- 2.3 The 2013 LC Fees Order also removes the requirement for any fee due to the Lands Chamber to be paid by cheque or postal order. This is in line with other fees orders which do not include this information.

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

- 3.1 The fees contained in the 2011 regulations were last adjusted in 2011 and the fees contained in the 2003 regulations were last adjusted in 2003. The 2013 PC Fees Order adjusts both sets of fees by the cumulative rate of Consumer Price Index inflation since they were last increased.

- 3.2 The maximum aggregate fee level for issuing proceedings where there is also a substantive hearing has been increased by the cumulative rate of inflation from £500 to £630. The fee levels and the aggregate level for proceedings will be kept under review. Details of the fee increases are provided in Annex A.

4. Legislative Context

- 4.1 The Lord Chancellor's powers to charge fees for matters dealt with in the First-tier Tribunal Property Chamber are contained in section 42 of the Tribunals, Courts and Enforcement Act 2007 (the "2007 Act").
- 4.2 Section 42(6) of the 2007 Act provides that the making of a tribunals fees order requires the consent of the Treasury except where the order contains provision only for the purpose of altering amounts payable by way of fees already prescribed. The 2013 PC Fees Order only alters the amounts of fees which are already prescribed. As the fees will now be payable in a new tribunal and therefore are not yet prescribed by the 2007 Act Treasury consent is required to make the Order.
- 4.3 The 2013 LC Fees Order does not alter the amount of fees payable and so Treasury consent is required to make the Order.

5. Territorial Extent and Application

- 5.1 The 2013 PC Fees Order applies in England.
- 5.2 The 2013 LC Fees Order extends to England and Wales.

6. European Convention on Human Rights

- 6.1 As these instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The general policy on fee charging is set out in HM Treasury's publication "Managing Public Money – Fees, Charges and Levies". It requires every fee-charging service to have a financial objective for the level of cost recovery agreed between the responsible minister and HM Treasury. The normal policy is that fees should cover the full-cost (but no more) of providing the service. Lower targets can be agreed where there is a sound policy justification. As a proportion of the cases due to come to the Property Chamber (previously dealt with by the Residential Property and Leasehold Valuation tribunals) are disputes between

parties the Government considers that the taxpayer should not be required to provide a general untargeted subsidy for the resolution of these disputes. The Government believes that as much of the cost of providing this service as possible should be borne by those who use the service.

- 7.2 Access to justice is protected by a fee waiver/remission system. Schedule 2 to the 2013 PC Fees Order contains the circumstances in which remissions/waivers of the fees apply. This combines the previous systems of remissions set out in the 2003 and 2011 regulations
- 7.3 In addition, the Government actively encourages and promotes mediation and other methods of dispute resolution and provides information about where to access free advice on alternative dispute resolution.

8. Consultation outcome

- 8.1 On the basis that these fee increases are in line with cumulative inflation since they were last increased they have not been subject to a public consultation. The fee increases are based on a predetermined formula of the inflationary rates since the dates of the last increases using the Consumer Price Index.
- 8.2 The Lord Chancellor has consulted the Senior President of Tribunals and the Administrative Justice and Tribunals Council in accordance with section 42(5) of the Tribunals, Courts and Enforcement Act 2007 before making these Orders.

9. Guidance

- 9.1 All the fees stated in the 2013 PC Fees Order are already in place and are being recovered by the Residential Property Tribunal or the Leasehold Valuation Tribunal under the 2003 and 2011 regulations respectively. The MoJ website will provide information about the fee increases in advance of the implementation date. Publications for parties issued by HMCTS will also be updated to reflect the new fees.
- 9.2 All the fees stated in the 2013 LC Fees Order are already in place and are being recovered by the Lands Chamber.

10. Impact

- 10.1 An Impact Assessment has not been prepared for this instrument following consultation with the Better Regulation Unit. An Impact Assessment is not required for inflationary increases in fees. In addition, the amalgamation of fees will not result in an additional cost to business over and above the inflationary rise so there is no requirement for scrutiny by the Reducing Regulation Committee or the Regulatory Policy Committee in this instance.

11. Regulating small business

11.1 HMCTS does not collect information about property chamber or Land Chamber appellants that would make it possible to classify them as belonging to a particular group or to estimate what percentage of users are small businesses. It is therefore not possible to estimate the effect in isolation on small firms.

12. Monitoring & review

12.1 Fees and the impact of any changes are constantly monitored by way of feedback from tribunals and customers and the monitoring of fee income and volumes. Policy officials meet regularly and fees orders are regularly reviewed.

13. Contact

13.1 Bill Dowse, Head of Tribunals Fees Policy at the MOJ Fees Policy Team Tel: 020 3334 6099 or email: bill.dowse@justice.gsi.gov.uk can answer any queries regarding the instrument.

<i>Number and description of fee</i>	<i>Current Fee</i>	<i>New fee</i>	<i>Year of last increase</i>
1 Application under the Housing Act 2004			
Application under the following provisions of the Housing Act 2004 -			
1.1 section 22(9) Housing Act 2004 (refusal to approve use of premises subject to a prohibition order)	£150	£155	2011
1.2 section 62(7) Housing Act 2004 (HMO licensing: refusal to grant temporary exemption notice)			
1.3 section 86(7) Housing Act 2004 (selective licensing: refusal to grant temporary exemption notice)			
1.4 section 126(4) Housing Act 2004 (effect of management orders: furniture)			
1.5 section 138 Housing Act 2004 (compensation payable to third parties)			
1.6 paragraph 10 of Schedule 1 to the Housing Act 2004 (improvement notice)			
1.7 paragraph 13 of Schedule 1 to the Housing Act 2004 (local housing authorities decision to vary, or to refuse to revoke or vary, an improvement notice)			
1.8 paragraph 7 of Schedule 2 to the Housing Act 2004 (prohibition order)			
1.9 paragraph 9 of Schedule 2 Housing Act 2004 (local housing authorities decision to vary, or to refuse to revoke or vary, a prohibition order)			
1.10 paragraph 11 of Schedule 3 to the Housing Act 2004 (improvement notice: demand for recovery of expenses)			
1.11 paragraph 31 of Schedule 5 to the Housing Act 2004 (grant or refusal of licence)			
1.12 paragraph 32 of Schedule 5 to the Housing Act 2004 (HMO licensing: decision to vary or revoke, or to refuse to vary or revoke licence)			
1.13 paragraph 28 of Schedule 6 to the Housing Act 2004 (local housing authorities decision to vary or revoke, or to refuse to vary or revoke, a management order)			
1.14 paragraph 32 of Schedule 6 to the Housing Act 2004 (management order: third party compensation)			
1.15 paragraph 26(1)(a) and (b) of Schedule 7 to the Housing Act 2004 (final EDMO)			
1.16 paragraph 30 of Schedule 7 to the Housing Act 2004 (local housing authorities decision to vary or revoke, or to refuse to vary or revoke, an interim or final EDMO)			
1.17 paragraph 34(2) of Schedule 7 to the Housing Act 2004 (EDMO: third party compensation)			
1.18 under paragraph 24 of Schedule 6 to the Housing Act 2004 (interim and final management order)			
2 Application under the Housing Act 1985			
Application under the following provisions of the Housing Act 1985 -			
2.1 section 269(1) of the Housing Act 1985 (demolition orders)	£150	£155	2011
2.2 section 318(1) of the Housing Act 1985 (power of tribunal to authorise execution of works on unfit premise or for improvement)			
3 Application under the Mobile Homes Act 1983			

Application under the following provisions of the Mobile Home Act 1983 -			
3.1 paragraph 28(1)(h) of Chapter 2, or paragraph 26(1)(h) of Chapter 4, of Part 1 of Schedule 1 (qualifying residents' association to be acknowledged by owner of protected site)	£150	£155	2011
3.2 section 2(2) (terms concerning matters mentioned in Part 2 of Schedule 1 to the Mobile Homes Act 1983)—			
3.3 section 2(3) (variation or deletion of express terms in agreement)—			
3.4 section 4 (determination of any question arising under the Mobile Homes Act 1983 or any agreement to which the Mobile Homes Act 1983 applies)—			
3.5 paragraphs 4, 5 or 5A(2) of Chapter 2, or paragraphs 4, 5 or 6(1) of Chapter 4, of Part 1 of Schedule 1 (termination by owner)—			
3.6 paragraph 10(1) of Chapter 2, or paragraph 8(1) of Chapter 4, of Part 1 of Schedule 2 (re-sitting of mobile home)—			
(a) Where the application contains one reference	£150	£155	2011
(b) Where the application contains two references	£200	£205	2011
(c) where the application contains three or four references	£400	£410	2011
(d) where the application contains five or more references	£500	£515	2011
4 Application in respect of a service charge, insurance premium or administrative charge			
Application under the following provisions -			
4.1 section 27A of the Landlord and Tenant Act 1985 (determination of liability to pay a service charge)—			
4.2 paragraph 8(2)(b) of the Schedule to the Landlord and Tenant Act 1985 (right to challenge the insurance premium)—			
4.3 paragraph 3 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (variation of lease because of administration charge)—			
4.4 On an application under paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (determination of liability to pay an administration charge)—			
where the service charge, insurance premium or administration charge which is the subject of the application			
(a) does not exceed £500	£50	£65	2003
(b) exceeds £500 but does not exceed £1000	£70	£90	2003
(c) exceeds £1000 but does not exceed £5000	£100	£125	2003
(d) exceeds £5000 but does not exceed £15,000	£200	£250	2003
(e) exceeds £15,000	£350	£440	2003
5 Application in respect of a consultation, insurance, appointment of manager and variation of lease			
Application under the following provisions -			
5.1 section 20ZA of the Landlord and Tenant Act 1985 (determination to dispense with consultation requirements)—			
5.2 paragraph 8(2)(a) of the Schedule to the Landlord and Tenant Act 1985 (determination as to suitability of insurer)—			

5.3 section 24 of the Landlord and Tenant Act 1987 (appointment of managers)—			
5.4 Part 4 of the Landlord and Tenant Act 1987 (variation of leases)—			
(a) where the application relates to 5 or fewer dwellings	£150	£190	2003
(b) where the application relates to between 6 and 10 dwellings	£250	£315	2003
(c) where the application relates to more than 10 dwellings	£350	£440	2003
6 Hearing Fee			
On receiving notice of a hearing date where an application has been made which attracts fee 4 or 5.	£150	£190	2003