

EXPLANATORY MEMORANDUM TO
THE COURTS AND TRIBUNALS FEE REMISSIONS ORDER 2013

2013 No. 2302 (L. 21)

- 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 instrument

- 2.1 The Courts and Tribunals Fee Remissions Order 2013 will introduce a single fee remissions system to all court and tribunals subject to this instrument.
- 2.2 The Courts and Tribunals Fee Remissions Order 2013 will also introduce a new £215 Judicial Review oral renewal hearing fee.

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

- 3.1 The order introduces a new £215 fee for an oral renewal hearing in judicial review proceedings conducted both in the civil courts and in the Upper Tribunal (Immigration and Asylum Chamber). The fee is set at the same level as the fee to fix a substantive hearing. If the new fee is paid and permission is granted at the renewal hearing, the fee for a full hearing will be waived, so that an applicant with a properly arguable case will not pay two fees.

4. Legislative Context

- 4.1 The instrument provides a new remissions schedule and amends the existing remissions scheme in each order amended by this instrument, either by replacing the existing remissions schedule with the new schedule or by amending the order to enable the new remissions schedule to be included.

5. Territorial Extent and Application

- 5.1 This instrument applies to the territory of the court or tribunal fee order it amends.

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

- 7.1 A system of fee waivers, known as a fee remission, is available to those who would otherwise have difficulty paying a court or tribunal fee to ensure that they are not denied access to the justice system. The criteria by which eligibility for a fee remission is assessed are set out in the relevant fees orders. At present, the system of fee remissions in operation across the courts and tribunals subject to this instrument varies, with the result that a person paying a fee in one court or tribunal may receive a different decision on their entitlement to a remission to that they would receive in a different court or tribunal, where the same level of fee is payable.
- 7.2 In most courts and tribunals, an individual may be eligible for a full remission, where no fee is payable, or a part remission, where a contribution towards the fee is required. Eligibility is assessed according to the applicant's income, and where applicable, that of their partner. None of the remissions systems currently in operation assess the applicant's capital.
- 7.3 The changes in this instrument are intended to provide a single system of fee remissions for fee paying courts and tribunals which is simple to use, more cost efficient and better targeted.

8. Consultation outcome

- 8.1 A public consultation on the reform of the fee remission system ran from 18th April to 16th May 2013. A copy of the consultation paper entitled "*Fee Remissions for the Courts and Tribunals*" (CP15/2013), a summary of responses, and the Government's response can be found at: <https://consult.justice.gov.uk/digital-communications/fee-remissions-court-tribunals>. The Lord Chancellor has also consulted all of the statutory consultees and their responses have been considered alongside those received to the public consultation.
- 8.2 A total of 64 responses to the consultation were received. Of these responses, 15 were from representative bodies, 11 from legal bodies, 10 from trade unions, 9 from public bodies, 7 from individuals, 5 from voluntary bodies, 4 from judicial bodies and 3 from business groups. Having considered the views of the respondents, the government outlined the following key changes to the proposals consulted upon in its response:
- the amendment of the disposable capital test to include more thresholds and the provision of a different threshold for those aged 61 or over;
 - amendments and clarifications to the terms of the disposable capital test;
 - the addition of more excluded benefits under the gross monthly income test; and
 - the time period in which to apply for a retrospective fee remission to be three rather than two months.

- 8.3 The government consulted on the introduction of a fee for oral renewal applications in judicial review proceedings in its consultation “*Judicial Review: proposals for reform*” which ran from 13 December 2012 to 24 January 2013. The response to the consultation (CP 25/2012) stated that a fee of £215 would be introduced for oral renewal hearings with the provision that the fee for a full hearing will be waived if permission is granted at the oral renewal hearing, so that an applicant with a properly arguable case will not pay two fees.

9. Guidance

- 9.1 Detailed public guidance will be issued and signposted so that court and tribunal users are aware of the changes to the remissions system and that they may be eligible for a full or partial remission of their fee. Updated guidance and training will also be provided to court and tribunal staff. The guidance will be issued in paper and digital format in English and Welsh and will be available in the relevant courts and tribunals and on the government’s website. It will also be circulated in advance of the implementation date to key stakeholders who provide advice to users of the courts and tribunals. The guidance will provide clear information on:

- the terms of the disposable capital test and gross monthly income test;
- the documentary evidence required of the applicant;
- where an applicant is unable to make a fee remission application; and
- the process for refunds and appeals.

10. Impact

- 10.1 The legislation maintains the discretion of the Chief Executive of the UK Supreme Court to reduce or remit a fee where an application for permission to intervene in an appeal is filed by a charitable or not-for-profit organisation which seeks to make submissions in the public interest.
- 10.2 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

- 11.1 The legislation does not apply to small business.

12. Monitoring & review

- 12.1 The impact of fee remission changes are constantly monitored by way of feedback from courts, tribunals and customers.

13. Contact

- 13.1 Jane Sigley at the Ministry of Justice. Tel: 0230 334 5442, or email: mojfeespolicy@justice.gsi.gov.uk can answer any queries regarding the instrument.