

**EXPLANATORY MEMORANDUM TO**  
**THE CIVIL PROCEEDINGS FEES (AMENDMENT) ORDER 2013**

**2013 No. 734 (L. 6)**

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 Order amends the Civil Proceedings Fees Order 2008 (S.I. 2008/1053). The wording of fee 2.1 of Schedule 1 of the civil order has been amended to reflect amendments to procedures made by the Civil Procedure (Amendment) Rules 2013 (SI 2013/262) which introduce a directions questionnaire in place of an allocation questionnaire.

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

- 3.1 This Order will come into force on 1 April 2013, which is less than 21 days after it is laid (see paragraph 3.5 below)

- 3.2 Section 2.1 of Schedule 1 of the Civil Proceedings Fees Order 2008 (as amended) sets out two fees which are payable on the claimant filing an allocation questionnaire. A fee of £40 is payable if the claimant considers the case should be allocated to the small claims track and exceeds £1500 (fee 2.1a), and a fee of £220 is payable if the claimant considers the case should be allocated to the fast or multi-track (fee 2.1b). The amendment will also make these fees payable on the claimant filing a directions questionnaire, which replaces the allocation questionnaire.

- 3.3 Without this amendment, it is not clear that the Lord Chancellor would have power to charge a fee for the filing of a directions questionnaire from 1 April 2013, where he previously had power to charge for an allocation questionnaire. Her Majesty's Courts and Tribunals Service receive approximately £130,000 income per working day from the fees at 2.1 of Schedule 1.

- 3.4 It was the intention of the Ministry of Justice to include this amendment alongside other unrelated amendments to the Civil Proceedings Fees Order and amendments to other fees orders, to come into effect on 1 April. However the delivery of those amendments has been subject to delay of at least one month. Given the likely financial loss and in the context of the increasingly tight financial settlements faced by the Ministry, it is considered necessary to bring forward an immediate amendment to the civil order.

- 3.5 The Order comes into force on 1<sup>st</sup> April, in breach of the 21 day rule. The Ministry of Justice apologises to the Committee for this. But, as already explained, this is considered necessary to avoid a significant loss of income. The Committee should note that this Order does not alter the amounts payable in connection with these questionnaires.

#### **4. Legislative Context**

4.1 The Civil Proceedings Fees (Amendment) Order 2013 amends The Civil Proceedings Fees Order 2008 (S.I 2008/1053) as amended.

#### **5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

#### **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

#### **7. Policy background**

7.1 The change from an allocation to a direction questionnaire is part of a number of changes to civil court operations resulting from the 2009 Jackson Review of the civil courts. An allocation questionnaire is used to seek information from parties to inform the decision on allocation of a case to track and to set directions. For higher value cases, the directions questionnaire will request the same information as the existing allocation questionnaire with additional information on cost budgeting and agreed directions where possible. For lower value claims the information requested will be simpler and shorter. The new directions questionnaire will apply in cases where a defence is filed on or after 1<sup>st</sup> April. For a period therefore, both kinds of questionnaire will be in use.

#### **8. Consultation outcome**

8.1 Under section 92(5) and (6) of the Courts Act 2003 the Lord Chancellor is required to consult the Lord Chief Justice, Master of the Rolls, President of the Queen's Bench Division, President of the Family Division, Chancellor of the High Court, Head of Civil Justice, Deputy Head of Civil Justice and, in the case of changes to the Civil Proceedings Fees Order, the Civil Justice Council before making a fees order. The Lord Chancellor has written to these statutory consultees and they have made no objection to the amendments.

#### **9. Guidance**

9.1 The guidance provided by the Ministry of Justice and Her Majesty's Courts and Tribunals Service for court users, both electronic and in paper form have been updated to reflect the change in process giving rise to this amendment.

#### **10. Impact**

10.1 There are no impacts on business, charities, or the public sector.

10.2 There is no direct impact from this change and as a result no impact assessment has been prepared.

**11. Regulating small business**

11.1 The legislation will not apply specifically to small business, but to all users of the civil courts.

**12. Monitoring & review**

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

**13. Contact**

Jane Sigley, Head of Fees Policy, Ministry of Justice, tel: 0203 334 5442 or email: [jane.sigley@justice.gsi.gov.uk](mailto:jane.sigley@justice.gsi.gov.uk) can answer any queries regarding the instrument.