

EXPLANATORY MEMORANDUM TO
THE COURT FEES (MISCELLANEOUS AMENDMENTS) ORDER 2021
2021 No. 985 (L. 14)

1. Introduction

- 1.1 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 To increase 128 court fees by inflation dated from August 2016, or the date the fee was last amended where later, through to the financial year 2021/22. These amendments apply to selected fees in the following orders: Family Proceeding Fees Order 2008 (S.I. 2008/1054), Civil Proceedings Fees Order 2008 (S.I. 2008/1053), Court of Protection Fees Order 2007 (S.I. 2007/1745) and Magistrates Court Fees Order 2008 (S.I. 2008/1052).
- 2.2 To increase the income thresholds for the Help with Fees (HwF) remission scheme, including the couple and child premium by inflation, by backdating from August 2016 through to the start of 2021/22. These amendments apply to the remission schedules (known as HwF provisions) set out in the following orders: Family Proceedings Fees Order 2008; Civil Proceedings Fees Order 2008; Court of Protection Fees Order 2007; Magistrates Courts Fees Order 2008; Non-Contentious Probate Fees Order 2004 (S.I. 2004 No. 3120); Gender Recognition (Application Fees) Order 2006 (S.I. 2006/758); Supreme Court Fees Order 2009 (S.I. 2009/2131); Upper Tribunal (Lands Chamber) Fees Order 2009 (S.I. 2009/1114); First-tier Tribunal (Gambling) Fees Order 2010 (S.I. 2010/42); The First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011 (S.I. 2011/2841); Upper Tribunal (Immigration and Asylum) (Judicial Review) (England and Wales) Fees Order 2011 (S.I. 2011/2344); and First-tier Tribunal (Property Chamber) Fees Order 2013 (S.I. 2013/1179).
- 2.3 Additionally, this instrument amends fee 2.1(u) in schedule 1 of the Family Proceedings Fees Order 2008 ‘enforcement order by change of address’. This fee will be reduced from £72 to £70.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

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

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure, no statement is required.

6. Legislative Context

- 6.1 The powers to prescribe the court fees which are the subject of this instrument are contained within section 92 of the Courts Act 2003, sections 414 and 415 of the Insolvency Act 1986, section 54 of the Mental Capacity Act 2005, section 52 of the Constitutional Reform Act 2005, section 42 of the Tribunals, Courts and Enforcement Act 2007 and section 7(2) of the Gender Recognition Act 2004. Fees set under these powers cannot be set above the cost of the underlying service (non-enhanced fees) and statutory instruments made under them are subject to the negative procedure as per sections 108 of the Courts Act 2003, 65(2) of the Mental Capacity Act 2005, section 144 of the Constitutional Reform Act 2005, section 49 of the Tribunals, Courts and Enforcement Act 2007, section 24(4) of the Gender Recognition Act 2004 and sections 414(6) and 415(5) of the Insolvency Act 1986.
- 6.2 However, certain court fees which are above the cost of service (enhanced fees) can be set with explicit parliamentary approval following the introduction of the ‘enhanced power’ provided in section 180 of the Anti-social Behaviour Crime and Policing Act 2014 (the Act). As per section 180(7) of the Act, orders made using section 180 are subject to the affirmative resolution procedure. There is an exception contained within section 180(8) which allows use of the negative procedure “if the statutory instrument only adjusts a fee to reflect changes in the value of money”. Accordingly, the negative procedure is being used for this instrument. The Order additionally cites the power under section 180(1) of the Act, since some fees previously increased under the enhanced power are now subject to the inflationary increase.
- 6.3 The current HwF remission scheme and associated provisions in the Orders listed in paragraphs 2.1 and 2.2, were introduced by the Courts and Tribunals Fee Remissions Order 2013 (S.I. 2013/2302), which provides for a standardised fee remissions system by inserting a similar, standard schedule in each Order. Similar provision was inserted in the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011 by the First-tier Tribunal (Immigration and Asylum Chamber) Fees (Amendment) Order 2020 (S.I. 2020/314).

7. Policy background

What is being done and why?

- 7.1 The Lord Chancellor has a duty to protect access to justice and has the authority to prescribe under section 92 of the Courts Act 2003 fees. The general policy on fee charging is set out in HM Treasury’s ‘Managing Public Money’ handbook, which states that fees should recover the full or at least part of the cost of the service provided.
- 7.2 The income received from court fees helps to fund the cost of running the courts and tribunals but currently meets less than half of that cost. In 2019/20, there was a net fee income of £724m against the £2bn running costs of Her Majesty’s Court and Tribunal Service (HMCTS), a significant gap that represents a cost to the taxpayer. Fees are a source of income for the Ministry of Justice and there have been minimal increases to fees in the courts and tribunals since 2016, despite growing costs to the services provided due to inflation, amongst other things. The majority of fees (117 in total) have not been increased since 2016, despite increases in costs caused by inflation.
- 7.3 The aims of this proposal are to:

- ensure that there is an efficient and effective courts system
- ensure access to justice, making sure those who need to access the courts can do so
- ensure that our courts and tribunals have the necessary resources and funding to deliver their much-needed services
- ensure that fees better meet the running costs of HMCTS

7.4 The Ministry of Justice estimates that the potential income generated by the fee increases is £20-25m p.a from 2022/23 and the uplift to the HwF scheme are expected to cost £6-7m p.a in reduced fee income, collectively generating an estimated total of £13-20m p.a for the department. The total income generated will contribute to funding HMCTS, however despite the inflationary increases generating further income, taxpayer funding will still be required to cover the total costs of running HMCTS.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 It is not intended that this instrument will consolidate any legislation.

10. Consultation outcome

- 10.1 The Lord Chancellor has performed his statutory obligation to consult the judiciary and, as appropriate, the Civil Justice Council when prescribing fee income and fee remissions, as provided in sections 92(5) and (6) of the Courts Act 2003, section 54(3) of the Mental Capacity Act 2005, section 42(5) of the Tribunals, Courts and Enforcement Act 2007, section 52(4) to (6) of the Constitutional Reform Act 2005
- 10.2 The Ministry of Justice conducted a consultation exercise between 22 March 2021 and 17 May 2021 and received a total 89 responses to their published consultation paper and Impact Assessment. An online survey was made available during the consultation period. Responses were received from a number of key stakeholders working in the legal sector, the public sector and members of the public. A quarter of these respondents work as solicitors and a sixth of respondents worked for local authorities. Further responses were received from those working in a range of industries, with a significant number working in the property sector, such as lessors and real estate agents. Several stakeholders came from associations that represented stakeholder groups, including solicitors, those working in credit services or enforcement, court users, families, mental health services and social care services.
- 10.3 Respondents were split on whether they agreed with the proposal that fees should be increased periodically in line with inflation. Respondents who disagreed with the proposed increase raised concerns that it was not the right time to increase court fees due to the impacts of Covid-19 and argued that the fee increases could reduce access to justice. Furthermore, several respondents were concerned that the proposed increases were unjustifiable due to the current quality of service levels provided by HMCTS and because increased digitisation and wider reform programme resulting in lower running costs, fees should not be increased.
- 10.4 On the contrary, the majority of respondents to the consultation agreed with the principle that HwF income thresholds including couple and child premiums should be

increased in line with inflation and that inflation should be applied since 2016 for the HwF income thresholds to bring them to 2021/22 levels.

- 10.5 The Ministry of Justice has carefully considered the concerns raised by stakeholders and has published a response on 31 August 2021 to the consultation paper and accompanying Impact Assessments which can be accessed via:
<https://www.gov.uk/government/consultations/increasing-selected-court-fees-and-help-with-fees-income-thresholds-by-inflation>

11. Guidance

- 11.1 Accompanying guidance setting out the changes introduced by this instrument will be made available by HMCTS in September 2021. The key guidance on all applicable fees and HwF will be updated to reflect these changes in time for the new fees to come into force.
- 11.2 Consolidated guidance which sets out all of the fees applicable in the Supreme Court, Magistrates Court, County and High Court including is available as amended and will be further updated to reflect the changes made by this instrument.
- 11.3 Consolidated guidance which sets out the remissions available to users in the County, High and Supreme Court as well as Tribunals is available as amended and will be further updated to reflect the changes made by this instrument.

12. Impact

- 12.1 There is no direct impact/cost on businesses, the public sector, charities or voluntary bodies as all fee payers will be affected in the same way. This instrument will result in uplifting selected court fees to reflect historic inflation backdated to August 2016. The Ministry of Justice will increase the funding for HMCTS by raising fee income.
- 12.2 Public authorities like all fee payers pay a range of fees. The impact on the public sector is that there will be an increase to three fees which are paid solely by local authorities. The fees affected are for the public law/supervision order cases which include Application for proceedings under section 31 of the Children Act 1989 - Care or supervision proceedings instigated by Local Authorities, the fee for application for a placement order under section 22 of the Adoption and Children Act 2002 and the fee for request for an order to recover a specified road traffic debt.
- 12.3 Three full Impact Assessments are submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are exclusively undertaken by small businesses.

14. Monitoring & review

- 14.1 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Minister Philp has made the following statement: “In my view the provisions of The Court Fees (Miscellaneous Amendments) Order 2021 have no net cost to business”.

15. Contact

- 15.1 Mark Burstow at the Ministry of Justice Telephone: 07826 444571 or email: Mark.Burstow@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Roshnee Patel and Joanna Otterburn, Deputy Directors for Legal Support & Fees Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Philp at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.