

EXPLANATORY MEMORANDUM TO

THE CIVIL PROCEEDINGS FEES (AMENDMENT) ORDER 2021

2021 No. [XXXX]

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

2. Purpose of the instrument

- 2.1 This instrument amends the Civil Proceedings Fees Order 2008 (S.I. 2008/1053). It removes a fee exemption and introduces consolidated fees for paper and online civil money and possession claims.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument amounts to imposing fee increases above the rate of inflation for some court users because the fees for online civil money and possession claims are to be aligned with the fees for their paper counterparts. The current difference in fees between the online and paper processes means such alignment involves an increase above the rate of inflation.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 This entire instrument applies to England and Wales only.
- 3.3 In the view of the Department, for the purposes of House of Commons Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this instrument would not be within the devolved legislative competence of any of the Northern Ireland Assembly as a transferred matter, the Scottish Parliament or the National Assembly for Wales if equivalent provision in relation to the relevant territory were included in an Act of the relevant devolved legislature.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is set out in Section 3 under “Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)”.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State at the Ministry of Justice, Chris Philp MP has made the following statement regarding Human Rights:

“In my view the provisions of the Civil Proceedings Fees Order 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The fees being amended in this instrument, are made under s.92 of the Courts Act 2003 and set above the cost of service (enhanced fees) under s.180 of the Anti-Social Behaviour Crime and Policing Act 2014 which specifies that, before setting a fee at an enhanced level, the Lord Chancellor must have regard to: a) the financial position of the courts and tribunals including any costs not being met by current fee income; and b) the competitiveness of the legal services market.
- 6.2 The fees for civil money and possession claims are set out in the Civil Proceedings Fees Order (CPFO) 2008. Currently, the fees order applies a discount for issuing civil money and possession claims online via the following platforms: The County Court Business Centre (CCBC), Money Claims Online (MCOL), Possession Claims Online (PCOL) and Online Civil Money Claims (OCMC). Users who lodge the same claims via the paper based system currently pay a higher fee. Similarly, a discount and an exemption are applied for certain enforcement applications made online compared to paper applications.
- 6.3 The instrument removes these online discounts and exemption applied to the fees for users of the online platforms mentioned above in para 6.2. The intention is to align the fees to have a single consolidated fee for both paper and online claims.

7. Policy background

What is being done and why?

- 7.1 The overarching policy objectives which underpin this instrument are to:
- help ensure there is an efficient and effective courts system;
 - make sure those who need to access the courts can do so which ensures access to justice;
 - ensure that those who can afford to pay a fee, and pay the same fee regardless of whether they lodge a claim online or via the paper route by introducing a consolidated fee; and
 - simplify the existing fees structure.
- 7.2 The income received from court fees helps to fund the cost of running courts and tribunals, but meets less than half of that cost. In 2019/20 for example, 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 burdens the taxpayer.
- 7.3 This instrument will help to contribute to the funding of the HMCTS by moving to a single consolidated fee for both online and paper civil money and possession claims. The effect of aligning these fees will result in the removal of the online discount and exemption. The online discount was introduced initially to incentivise users to make claims online. The platforms (mentioned in para 6.2) have now become the default option for most users, accounting for just under 90% of all money claims issued up to the value of £100,000. Based on this, the objective behind the discount for online claims has been achieved. The Ministry of Justice estimates that these fee changes will contribute an additional income of £6m-£16m in 2021/22, and £9-£25m from 2022/23 onwards.

7.4 The instrument aligns the issue fees for civil money claims and proceedings for the recovery of land, and application fees for county court warrants of control to the level currently set for those who issue claims on paper. This means a fee increase for online users. Issue fees for online civil money claims are banded according to the value of the claim, and thus the fee for a lower value claim (up to £300) lodged online will see an increase from £25 to £35 to match its paper equivalent. Whereas, for higher value claims (between £10,000.01 to £100,000), the issue fee will increase from 4.5% of the claim to 5% to match its paper equivalent.

7.5 For online claims relating to starting proceedings for the recovery land, the fee will increase from £325 to £355. The fee for a warrant of control will be aligned at £83 (an increase from £77 for online users and a decrease from £110 for paper users). Finally, the fee exemption for online users to request a further attempt at execution of a warrant at a new address following a notice of the reason for nonexecution is being removed. Online users and those who lodge this request via the paper based system will pay the same existing paper fee of £33.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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. Consolidated guidance is available which sets out all of the fees applicable in the County and High Court including those provided by the Civil Proceedings Fees Order 2008 as amended and will be further updated to reflect the changes made by this instrument.

10. Consultation outcome

10.1 The Lord Chancellor has performed his statutory obligation to consult the judiciary when prescribing fee income, as described in sections 92(5) and (6) of the Courts Act 2003.

10.2 The Ministry of Justice conducted a consultation exercise between 20 November 2020 and 30 December 2020 and received a total 22 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 from the legal sector, the service sector and the third sector. Further responses were received from debt recovery companies, stakeholders' associations as well as individual citizens.

10.3 The majority of respondents to the consultation disagreed with the proposed alignment and raised a number of concerns which include the contention that the proposed fees do not represent the costs of proceedings and the risk that high value claims could be priced out, with claimants deterred from pursuing a claim due to a high fee, which could therefore inhibit access to justice. In addition to concerns relating to the quality of the service provided by Ministry of Justice, stakeholders opposed the principle of enhanced fees altogether.

10.4 The Ministry of Justice has carefully considered the concerns raised by stakeholders and will shortly publish a response to the consultation paper and accompanying Impact Assessment.

11. Guidance

11.1 Accompanying guidance setting out the changes introduced by this instrument will be made available by HMCTS from May 2021.

12. Impact

12.1 There is no direct impact on businesses, the public sector, charities or voluntary bodies. This instrument will result in additional fees incurred by court users (e.g. individuals or businesses) in the event users wish to make an online civil money or possession claim. Courts fees are not deemed to be a direct cost to businesses, the public sector, charities or voluntary bodies.

12.2 A full Impact Assessment will be submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. By aligning these fees by the removal of the online discounts and a certain exemption, this instrument is expected to contribute an additional income of £6m-£16m in 2021/22, and £9-£25m from 2022/23 onwards. The assessment of the impact is up to date and will be set out in an Impact Assessment which will shortly be published.

13. Regulating small business

13.1 While the instrument does not apply to activities that are undertaken by small businesses, court fees are payable by some court users such as small businesses or individuals in the event they wish to make a claim.

14. Monitoring & review

14.1 A statutory review clause is not included in this instrument and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Parliamentary Under Secretary of State at the Ministry of Justice, Chris Philp MP has made the following statement:

“In my view the provisions of the Civil Proceedings Fees (Amendment) Order 2021 have no net cost to business”.

14.2 The Ministry of Justice monitors the impact of changes to court fees in accordance with the Lord Chancellor's duty to ensure an efficient and effective courts system, as described in section 1 of the Courts Act 2003.

15. Contact

15.1 Antonio Perra, Ministry of Justice (email: Antonio.Perra@justice.gov.uk) and Sulekha Jama, Ministry of Justice (email: Sulekha.Jama@justice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Joanna Otterburn and Roshnee Patel, Deputy Directors for Legal Support and Fees Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt. Hon Robert Buckland QC MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.