

**EXPLANATORY MEMORANDUM TO
THE CIVIL PROCEEDINGS FEES (AMENDMENT) (No. 2) (AMENDMENT)
ORDER 2007**

2007 No. 2801 (L.29)

AND TO

**THE FAMILY PROCEEDINGS FEES (AMENDMENT) (No. 2)
(AMENDMENT) ORDER 2007**

2007 No. 2800 (L.28)

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. **Description**

- 2.1 The Civil Proceedings Fees (Amendment) (No 2) (Amendment) Order 2007 amends the Civil Proceedings Fees (Amendment) (No 2) Order 2007 (S.I. 2007/2176) (“the civil order”) so as to correct mistakes in that Order. In turn the Civil Order amends the Civil Proceedings Fees Order 2004 (S.I. 2004/3121).

- 2.2 The Family Proceedings Fees (Amendment) (No 2) (Amendment) Order 2007 amends the Family Proceedings Fees (Amendment) (No 2) Order 2007 (S.I. 2007/2175) (“the family order”) so as to correct mistakes in that Order. In turn, the family order amends the Family Proceedings Fees Order 2004 (S.I. 2004/3114).

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

- 3.1 This instrument contravenes the 21-day rule mentioned in paragraph 4.13.1 of *Statutory Instrument Practice*, which requires that instruments subject to annulment should normally not be brought into force until 21 days after laying, for the following reason: –

- 3.2 A number of errors were identified in both the civil order and family orders. In the civil order, a number of the fees in fees 1.1 and 1.3 were incorrectly set out in the order and fee 5.2 incorrectly included the words “excluding VAT and disbursements” which will affect the calculation of the fee. At a late stage it has been pointed out to us that fee 10.6 may arguably breach Article 12 of the Hague Convention (1965) and Council Regulation (EC) 1348/2000, and that in the latter

case there would be a significant risk of infraction proceedings being taken against the UK. Accordingly we have decided to omit that fee.

- 3.3 In the family order a similar mistake was made by the inclusion of the words “excluding VAT and disbursements” in fee 8.2 and a mistake was made in paragraph 2(1)(b) of Schedule 1A as sub-paragraph (b)(ii) should have been omitted.
- 3.4 The Department considers that it is preferable and less confusing to the public and to court users to amend the civil order and family order, so as to correct these mistakes, so that the Civil Proceedings Fees Order 2004 and the Family Proceedings Fees Order 2004 are amended once rather than twice in quick succession. In order to do this it is necessary to contravene the 21-day rule.
- 3.5 As this instrument corrects the defects in S.I.s 2007/2175 and 2176 arrangements have been made for copies of this instrument to be made available free of charge to purchasers of that instrument.

4. Legislative background

- 4.1 Section 92 of the Courts Act 2003 provides the Lord Chancellor with a single fee-setting power, with Treasury consent, to prescribe the fees payable in respect of anything dealt with in the Supreme Court, county courts and magistrates’ courts.

5. Extent

- 5.1 These Fees Orders only extend to courts within England and Wales.

6. European Convention on Human Rights

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

7. Policy Background

- 7.1 Order SI 2007 [] corrects one mistake in Column 1 of Schedule 1 in the Schedule to the Civil Proceedings Fees (Amendment) (No. 2) Order 2007 (S.I. 2007/2176). The mistake was in respect of the description of fee 5.2.
- 7.2 Order SI 2007 [] omits reference to the heading “foreign process” and fee 10.6 in Schedule 1 in the Schedule to the Civil Proceedings Fees (Amendment) (No. 2) Order 2007 (S.I. 2007/2176).
- 7.3 Order SI 2007 [] corrects six mistakes in Column 2 of Schedule 1 in the Schedule to the Civil Proceedings Fees (Amendment) (No. 2) Order 2007 (S.I. 2007/2176). The mistakes were in respect of sub-sections (c), (d) and (e) for fees 1.1 and 1.3.

7.4 Order SI 2007 [] corrects one mistake in Column 1 of Schedule 1 in the Schedule to the Family Proceedings Fees (Amendment) (No. 2) Order 2007 (S.I. 2007/2175). The mistake was in respect of the description of fee 8.2.

7.5 Order SI 2007 [] substitutes paragraph 2(1)(b) in Schedule 1A in the Schedule to the Family Proceedings Fees (Amendment) (No. 2) Order 2007 (S.I. 2007/2175).

8. Impact

8.1 An Impact Assessment was prepared and attached to the Consultation Paper on Civil Court Fee Increases an extract of that is annexed to this document at A. These amendments do not make any change to the impact assessment as set out.

9. Contact

9.1 Cara Mitchell-Langford, Fees Branch, Civil Law and Justice Division, Her Majesty's Courts Service, e-mail Cara.MitchellLangford@hmcourts-service.gsi.gov.uk telephone: 020 7210 8979 can answer any queries regarding the instruments.

Impact Assessment

Title of Proposal

Civil Court Fees, including revising the Exemption and Remission System.

Purpose and Intended Effect

The proposals are part of a longer-term strategy which aims to ensure that the system of court fees is fair and sustainable. In particular, it must:

- meet its cost recovery and net funding targets;
- protect access to justice for the less well-off; and
- be flexible enough to accommodate changes in demand.

Objective

The objectives of the current proposals are to:

- introduce a new system of fee concessions that is well-targeted, simple, transparent and consistent;
- re-balance the structure of civil fees so there is a close match between income and cost drivers within the system;
- increase civil magistrates' court fees, aimed at achieving overall fee levels that will recover about 55% of the full-cost in 2007-08.

Background

Court fees are worth about £550m and cover nearly 80% of the full cost of running the civil and family courts.

The Treasury's *Fees and Charges Guide* requires all fee-charging services to have an agreed financial objective. The norm is full-cost recovery, but ministers can agree lower targets. That is the case here, because our targets discount the cost of fee exemptions and remissions.

However, family fees and magistrates' court civil fees do not currently meet the full-cost net of fee concessions. And within the civil court system, there is a substantial mismatch between the points where most fees are charged and income raised and the procedures which incur most of the cost.

The proposals currently subject to consultation would:

- Introduce a new system of fee concessions with the following key features: entitlement to a full remission based on receipt of certain benefits or gross income below a prescribed benefits; partial remissions based on a means test similar to that for contributory civil legal aid; abolition of the automatic exemption in family proceedings for recipients of Legal Help.

- Introduce changes to civil fees that would achieve a closer match of income and cost drivers and, other things remaining equal, a small reduction in the total level of fees. This is necessary both to make the system fairer as between different types of litigant, and make it easier to ensure that cost and funding remain in balance as workload changes.
- Increase various civil fees in the magistrates' courts.

Rationale for Government Intervention

The changes are driven by the need to meet financial targets while protecting access to justice for the less well-off.

Options

The current proposals are part of the broader strategy summarised in Annex B of the Consultation Paper. They are driven by the department's financial targets as set in the latest sending review settlement; the need to comply with the principles of HM treasury's *Fees and Charges Guide*; and the need to ensure that the fees system protects access to justice and remains compliant with Article 6 of the European Convention on Human Rights. If the changes were not made, the benefits set out below would not be realised. In particular, if the increases to magistrates' fees are not made, HMCS would need to instead reduce spending commensurately (e.g. by closing courts or reducing staff numbers); this would inevitably affect court performance and service to customers. Therefore, this assessment analyses the costs and benefits of the proposals, but does not consider any alternative options to the proposed package.

Analysis of costs and benefits

Fee Exemptions and Remissions

The benefits of the reforms proposed are that the fee concession system will be:

- Better-targeted – assisting those who are genuinely unable to afford a fee, but not others. An over-generous system would be unaffordable and unfair to the taxpayer and other users. In particular, people who do not qualify for basic means-tested benefits and who have some disposable income will be required to pay a contribution.
- Simple and transparent – making it easier for applicants, their advisors and court staff to understand and apply. The system and its qualifying criteria will be well published setting out the process including what information is required and the criteria for applying.
- More consistent – a with the process clearly defined in three stages it prevents staff throughout the courts from using their own discretion and making different decisions from those made in other courts.

The new system provides automatic full remission for those on basic means-tested benefits or equivalent gross income. As such, it is slightly more generous than the

current system. Above that level, it provides for a means-test based on that for Community Legal Service funding. This calculates a maximum one-off contribution from income towards any fee otherwise payable by the applicant.

The core changes to remissions and exemptions will be broadly cost neutral. The slightly more generous criteria at the bottom of the scale will cost an estimated £1.2m in a full year through additional automatic full remissions. This will be offset by a reduction in the cost of remissions of about £1m, because more people of modest means will receive part rather than full remissions.

Removal of the automatic exemption for recipients of Legal Help in family proceedings will save over £3m in a full year. This does not create a consequential cost for the CLS fund as court fees are not recoverable under Legal Help.

Re-balancing the fee structure

We are proposing to introduce hearing fees for civil cases and adjust the fees for allocation, listing, applications and various ancillary processes so they more closely reflect cost. These increases will be slightly more than offset by reductions in issue fees, particularly for issue using HMCS's electronic channels.

The revised fee structure should provide stronger incentives for users to issue electronically and consider mediation or other means to settle the case before trial. Within the system, it shift some of the burden of fees away from undefended claims and onto cases which proceed further and therefore incur more court costs.

Undefended cases are typically issued against individuals and small businesses by large-scale creditors, such as credit card and utility companies. The fees are initially paid by the claimant, but then added to the judgment debt and potentially recovered from the defendant. The parties in these types of case will tend to benefit most from the reductions in issue fees.

The cost of hearing fees, on the other hand, will be borne by litigants in contested cases (again, the claimant initially, but ultimately the losing party). These cases include small claims, which are typically consumer claims against small business, personal injury claims against insurers and large-scale commercial litigation between companies.

The revenue arising from court fees depends on the number of cases issuing and reaching subsequent fee-charging points. This varies over time and depends on a wide range of factors, including economic conditions. The changes themselves are designed to encourage changes in litigants' behaviour (more electronic issue, more settlements). To illustrate the scale of the impact of the fee changes, however, the figures below are based on workload figures for 2006-07.

On that basis, the introduction of hearing fees and the other changes to downstream fees would generate additional fee income of about £10m a year.

The reductions in issue fees will reduce revenue by about £14m a year.

The net reduction of £4m will reduce the level of over-recovery on civil fees identified in 2005/06 by about 1%.

Fees for civil proceedings in the magistrates' courts

Fees for this area of business currently cover about 29% of the cost.

Assuming constant workload, the package proposed would increase cost recovery to 64% in a full year (55% on 2007-08 if introduced in September 2007), and raise an additional £12m in a full year.

This cost would be borne by applicants in a wide range of different types of case. In many cases, the cost will then be passed on to the defendant by way of an order for costs.

The most significant increase relates to the £25 fees payable in various stages in a wide range of miscellaneous applications for which case-specific fees are not set. These include recovery of unpaid income tax; applications for orders under various statutes (e.g. anti-social behaviour, proceeds of crime, environmental protection, dangerous dogs); and appeals against various local authority decisions (e.g. liquor licensing, Public Health Act).

We recognise that Anti-Social Behaviour Orders and other similar orders may require special consideration due to their close connection to criminal process. Full-cost recovery remains the aim, but further consultation with stakeholders in local government and the police will be required in order to develop a fair and workable system.

For licensing and other appeals, which often involve lengthy hearings, we are proposing a single new fee of £400. In other cases, fees of £75 and £50 will be charged. Many of the proceedings affected are ones brought by various public bodies. Others, including the £400 appeal fee, will typically fall on business.

Summary

The changes proposed would:

- increase the numbers eligible for an automatic full fee remission, but require others to pay at least a part contribution towards their fee;
- reduce the overall cost of fee exemptions and remissions by about £3m, due to the removal of the automatic exemption for recipients of Legal Help;
- reduce total fee income for mainstream civil business by about £4m (1%), while increasing fees paid in defended cases by about £10m;
- increase fees for civil proceedings in magistrates' courts by £12m.

The overall effect of the package is to increase the total level of fees paid by court users, and so reduce net spending by HMCS, by about £11m in a full year.

However, the CLS fund meets the cost of court fees for those in receipt of full legal representation in the main civil and family courts, and we are proposing to apply this to the magistrates' court as well when we introduce the new fee concessions system.

The additional cost to the legal aid fund as a result of the proposals will be about £3m in a full year (£1m for magistrates, £2m for higher courts). This has been factored into the legal aid forecasting as an additional pressure.

Public Consultation

This Consultation Paper is being sent to a variety of stakeholders including the judiciary, Civil and Family Justice Councils, and bodies representing consumer, small businesses and legal practitioners.

Equality Impact Assessment

Government policies should be assessed specifically to ensure that they do not discriminate against anyone on the grounds of: race; disability; gender; sexual orientation; age; religion or belief; and caring responsibilities.

There is a lack of evidence as to how changes to court fees, and remissions and exemptions, specifically affect diverse communities. We have set out the probable impacts below. We would welcome your views on these as part of your response to the consultation.

Race Equality Assessment

The following table uses figures from a fact sheet produced by the Department for Trade and Industry ¹ and shows the average hourly earnings of people in the United Kingdom, by ethnic group in Spring 2002.

Ethnic Group	Other Ethnic Group	Chinese	Indian	White	Caribbean	Black / Black American	African	Asian / Asian British	Mixed	Pakistani / Bangladeshi
Mean Hourly Earnings (£)	11.36	10.75	9.92	9.50	9.29	9.04	8.92	8.91	8.52	7.10

Some black and minority ethnic groups tend to have lower incomes, as the table above demonstrates. Any change in fees, therefore, would be likely to have a greater potential impact on these groups.

However, people for whom payment of fees will cause financial hardship will be able to take advantage of the exemptions and remission policy. Therefore, there will be no differential impact on these groups. Information on the fees including the remissions and exemptions policy will be available in a variety of other languages.

Because of the remissions and exemptions policy and other measures (e.g. provision of information in languages other than English) we will put in place, we do not think that there will be an impact of these fee policies on people because of their racial group.

¹ <http://www.womenandequalityunit.gov.uk/publications/>

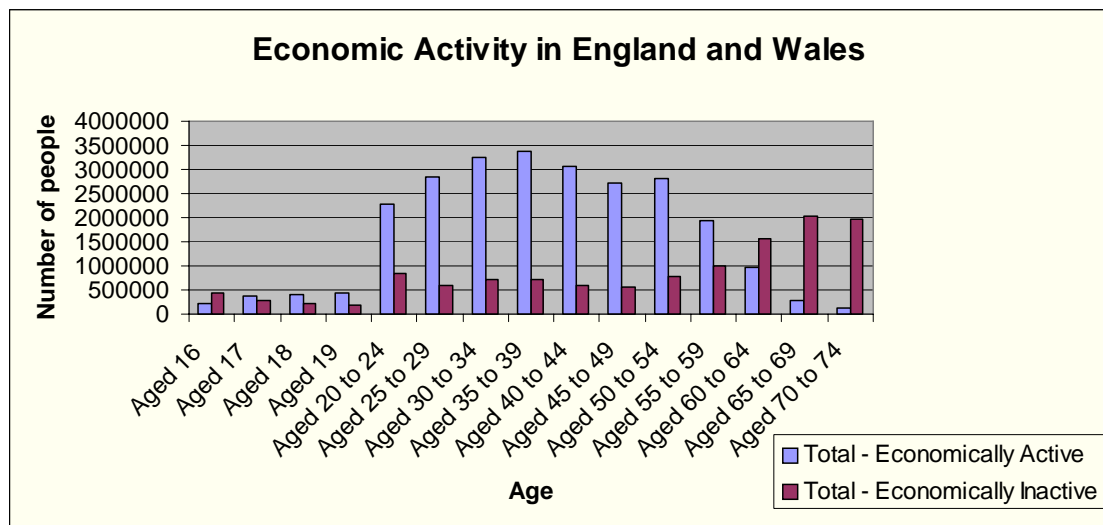
Religion and beliefs

Due to the variety of fees that impact on different areas of work we do not have any information that gives a breakdown on court users' religion or beliefs. We do not expect there to be any impact on people because of their religious or other beliefs.

Disability impact assessment

At some point in their lives, millions of people in the United Kingdom lose their ability to make decisions that effect their lives – either through illness, disability or injury. And some people are born with disabilities. Due to the variety of fees and different services offered and our remissions and exemption policy being designed for all those that would suffer financial hardship regardless of disability, we do not expect that these changes will have any impact on people with disabilities.

Age



The chart above shows the proportion of the population that is economically active in each of several age groups (from the 2001 census). We can see that until the age of 18, more people are economically inactive than are economically active. More significantly, people aged over 65 are much more likely to be economically inactive – due mostly, one would expect, to retirement.

We expect, therefore, that many of those potentially affected by fees will be covered by our remissions and exemptions policy, which is subject to no age limit. We think, therefore, that the actual impact of these policies on people because of age will be neutral.

Caring responsibilities

Again due to the variety of fees and different services offered the actual impact of these policies will be largely neutral. In any event our remissions and exemptions policy will permit those who may suffer financial hardship from paying a fee to avoid doing so should they qualify. Therefore, we do not expect there to be a direct impact of these fees on those with caring responsibilities.

Gender

The 2001 census shows that 48.67% of the population is male and 51.34% are female. Women tend to earn less than men (see below), and so they may be more impacted by new or increased fees.

Women who work full-time earn 13% less than men who work full-time, based on median hourly earnings, and 17% less based on mean hourly earnings. These lower

earnings leave women at greater risk of falling below the poverty line and of being worse off than men in retirement.²

It is expected that the exemptions and remission policy will mitigate this, allowing access to justice, and so, we do not expect there to be an impact of these changes on the basis of gender.

Sexual orientation

A recent study has shown that gay men earn, on average, 6% less than their heterosexual equivalents, although lesbian women earn about 11% more than their heterosexual counterparts.³ This means that an increase in fees may affect gay men more than heterosexual men. However, if people cannot afford to pay the fees, they will be covered by our exemptions and remissions policy. We do not therefore expect that the proposed changes will impact this segment of the population.

Environmental

There is nothing to suggest that these fee policies, nor the associated remissions and exemptions policy, will have an environmental impact.

Small Firms' Impact Test

Claimants are not required by the court rules to provide information that would make it possible to classify them as belonging to a particular group. It is therefore impossible to estimate the effect in isolation on the 'small business sector'. Business customers in general are mainly concerned about their ability to recover large numbers of small debts economically. However, the judicial statistics report for 2005-06 shows that 80% of liquidated claims (claims with a fixed monetary value) are issued by businesses to recover debts. The fees paid in those claims, which are ultimately recoverable from the debtor.

So the impact on the small business sector is likely to be neutral or positive. This is in accordance with the objective of setting fees to recover cost.

Competition Assessment

An initial competition assessment test was undertaken, in line with Cabinet Office guidance. The main sectors affected by the proposed fees are small business, solicitors, individuals and other government departments. These areas are not dominated by a small number of large firms and are not characterised by rapid technological change. The proposed fees would affect existing and newer potential business / individuals in the same way, regardless of their size. As such the proposed fees are not expected to have an impact on competition. We consider that the proposals are unlikely to have a negative impact upon competition in any market. It is unlikely that there would be any markets that would face a disproportionately large impact and a detailed competition assessment is not deemed necessary.

Enforcement / Sanctions / Monitoring

Nearly all fees are paid for in advance of the service so the sanction for non-payment is that the service will not be performed. Special arrangements apply to fees on allocation to track and setting down for trial. The proceedings may be struck out if the fee is not paid. Similar provisions in the Civil Procedure Rules will be needed to enforce payment of the fee in relation to the proposed new hearing fee.

Legal Aid / Judicial Impact test

² Data from the women and work commission report "shaping a fairer future" Feb 2006

³ <http://cop.ISE.ac.uk/centrepiece>

The impact of the proposed increases on the legal aid budget has been estimated at a cost of £3m (see breakdown of costs and benefits section for more detail).

The judicial impact will be broadly neutral, although there may be some reduction in the number of hearings required. Charging cost-based fees at key decision points in the process would mean that litigants were subject to appropriate incentives to encourage settlement before trial, whether as a result of negotiation, mediation or some other form of alternative dispute resolution. Refunding the hearing fee on early notice of settlement could reduce the amount of judicial resource wasted when cases settle on the day.

Administration burdens / simplification

Administrative burdens will reduce as systems become more transparent and easier to understand. A single system of fee remissions will apply to all courts including magistrates' courts.