

EXPLANATORY MEMORANDUM TO
THE COURTS AND TRIBUNALS FEES (MISCELLANEOUS AMENDMENTS) ORDER
2014

2014 No. 590 (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 This instrument amends a series of fee orders to change the application and hearing fees in a number of Employment Tribunal proceedings, corrects some minor errors in the fee remissions system and amends the terminology used in enforcement in Civil and Family proceedings.

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

- 3.1 The amendment to the Court of Protection Fees Order 2007 at article 3(2)(b) of this instrument rectifies the drafting error in article 5(8) of the Courts and Tribunals Fee Remissions Order 2013, referred to in the 15th report of the Committee.

4. **Legislative context**

- 4.1 The amendments to correct errors in the fee remissions system are made to those fees orders amended by the Courts and Tribunals Fee Remissions Order 2013 (S.I. 2013/2032).

- 4.2 The amendments to the terminology used in enforcement in Civil and Family proceedings take account of the provisions on taking control of goods under section 62 of, and Schedule 12 to, the Tribunals Courts and Enforcement Act 2007 (c. 15).

- 4.3 The changes to application fees and hearing fees payable in the Employment Tribunals and Employment Appeals Tribunals are made by amending Table 2 in Schedule 2 to the Employment Tribunals and Employment Appeals Tribunal Order 2013 (the "Employment Fees Order").

5. **Territorial Extent and Application**

- 5.1 This instrument applies to 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 In 2011/12 the Government consulted on proposals to introduce fees for proceedings in the Employment Tribunals and the Employment Appeals Tribunal. Following the consultation exercise, the Government published its response on 13 July 2012 announcing its intention to introduce a two tier system of issue and hearing fees for these proceedings.

- 7.2 The proposal was that the majority of proceedings would be subject to the lower, Type A, fee but certain specified proceedings, which are complex and longer, would be subject to a higher, Type B fee. Overall, fees were set at a level to recover around a third of the cost of proceedings before fee remissions were taken into account.

- 7.3 The fees were introduced on 29 July 2013 in the Employment Fees Order. However, when the Employment Fees Order was made, certain proceedings which should have attracted a Type B fee were wrongly included in the table for Type A fees in Schedule 2. Those proceedings are:

7.3.1 a complaint in relation to a breach of a sex equality clause under section 66 of the Equality Act 2010 (c. 15);

7.3.2 a complaint in relation to a breach of, or application in relation to the effect of, a sex equality rule in an occupational pension scheme under section 67 of the Equality Act 2010;

7.3.3 a complaint in relation to failure of an employer to inform or consult under regulation 13 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).

7.3.4 a complaint that an employer has refused to allow compensation, payment or compensatory rest under regulations 24, 24A, 27 and 27A of the Working Time Regulations 1998 (S.I. 1998/1833); and

7.3.5 a complaint that an employer has failed to allow time off for studies or training or if a refusal is based on incorrect facts under sections 63D to 63I of the Employment Rights Act 1996 (c. 18).

- 7.4 To correct that mistake, this instrument removes those proceedings from Table 2 in Schedule 2 to the Employment Fees Order.

7.5 This instrument also includes a number of other, minor amendments to various fees orders. Specifically, it amends:

7.5.1 Schedule 2 of the Court of Protection Fees Order 2007 (S.I. 2007/1745) to change the time limit for application of a refund in the Court of Protection from three months from the date on which the fee is paid to three months from the date of the final order of the court;

7.5.2 the Civil Proceedings Fees Order 2008 (S.I. 2008/1053) and Family Proceedings Fees Order 2008 (S.I. 2008/1054) to amend the terminology used in relation to enforcement fees; and

7.5.3 all those fees orders that apply the system of fee remissions introduced by the Courts and Tribunals Fee Remissions Order 2013 to correct the reference “childcare element of the child tax credit” to “childcare element of the working tax credit” in the definition of “excluded benefits”.

8. Consultation outcome

8.1 Before making this Order, the Lord Chancellor has consulted those persons and bodies required by section 92(5) and (6) of the Courts Act 2003 (c. 39), section 42(5) of the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 52(4) to (6) of the Constitutional Reform Act 2005 (c. 4) and section 54(3) of the Mental Capacity Act 2005 (c. 9).

9. Guidance

9.1 Her Majesty’s Courts and Tribunal Service will update its guidance on fees payable in line with these amendments as necessary.

10. Impact

10.1 This main impact of the amendments in this Order is to ensure that the correct, Type B, fee is payable for certain proceedings before the Employment Tribunals, as the Government originally intended. An impact assessment¹ was prepared to accompany the introduction of fees in the Employment Tribunals. As these amendments are made to align the fee charges to the original policy intention, we have not produced a further impact assessment.

10.2 The other amendments correct minor drafting errors or changes to the naming of processes, and do not impact on the level of fees charged. An impact assessment has therefore not been prepared.

¹ <https://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011/results/et-fees-response-ia.pdf>

10.3 This instrument does not introduce or make any changes to the fees payable by the public sector.

11. Regulating small business

11.1 In most cases, the fees in the Employment Fees Order will be paid by individuals bringing employment related disputes before the Employment tribunals and Employment Appeals Tribunal. The respondents to these proceedings will be employers, some of which are Small or Medium sized Enterprises (SMEs). Those tribunals have the power to order a respondent to reimburse a successful claimant any sums he or she has had to pay in fees. In most cases where the claimant is successful, we expect such an order will be made.

11.2 The MoJ does not collect information on the number of respondents who are SMEs and are not therefore able to calculate the impact on small businesses. However, as the overall impact is expected to be minimal we do not anticipate that this amendment will have more than a minimal impact on small businesses. As it will reflect the original policy intention, the original impact assessment for the Employment Fees Order sets out the anticipated impact on small business.

12. Monitoring & review

12.1 Fees and the impact of any changes are constantly monitored by way of feedback from courts, tribunals and customers and the monitoring of fee income and volumes.

13. Contact

13.1 Jane Sigley, Head of Fees Policy at the MOJ Fees Policy Team Tel: 020 3334 5442 or email: jane.sigley@justice.gsi.gov.uk can answer any queries regarding the instrument.