

EXPLANATORY MEMORANDUM TO
THE NON-CONTENTIOUS PROBATE FEES (AMENDMENT) ORDER 2014

2014 No. 876 (L. 19)

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 number of the fees charged in the Non-Contentious Probate Fees Order 2004 for non-contentious probate applications. The fee changes are being brought as part of a wider set of fee changes following a review of fees across the civil court system to ensure that the income they generate more closely matches the cost of the service being provided.

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

- 3.1 The change to the fee for an application for a grant of probate from £45 to £155 sets this fee so that it recovers the full cost of the service. The cost is calculated by adding the actual cost of the staff and judicial time to process this type of application, and a portion of the costs of the overheads (e.g. IT and estates) of the civil court system.

- 3.2 The changes to other fees are intended to ensure that the fees for similar processes across all courts are aligned, to provide greater clarity for court users and staff. Therefore the fee for copy documents (either paper or electronic) is standardised at £10 (an increase from £5) plus 50p per additional page (a decrease from £1) and the fee for affidavits standardised at £11 (an increase from £6). The fee for a standing search is increase from £6 to £10 match the fee for a copy document to ensure parity, as a search will result in the provision of a copy document.

- 3.3 The table at annex A sets in full the changes to fees resulting from this Order:

4. **Legislative context**

- 4.1 The Non-Contentious Probate Fees (Amendment) Order 2014 amends the Non-Contentious Probate Order 2004 (S.I. 2004/3120) 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 civil court system includes the civil, family and probate jurisdictions, the Court of Protection and the Court of Appeal (Civil Division). For many years, fees have been charged to access these courts. In recent years it has been the government's aim that the revenue from court fees should meet the costs of providing the civil courts system, excluding the cost of the remissions system, which provides a full or partial fee waiver for those unable to afford fees. In 2012/2013 the Ministry of Justice recovered only four-fifths of the cost of the civil court system, with a deficit of £125m¹. At a time when the Government has made reducing the fiscal deficit a top priority, and when the Ministry of Justice is committed to reducing its budget by a third in real terms by 2014/15, the Government felt it vital that options for reducing public spending were considered.

7.2 It is within this context that part one of the Government's public consultation, *Court Fees: Proposals for reform*, entitled "Cost recovery" set out proposals to recover close to the full cost of the civil court system through fees, transferring more of the cost to the user and reducing the cost to the general taxpayer. It also sought to continue to simplify and rationalise the fees charged across the courts, so that similar processes attracted similar fees, making the fee system easier for users of the courts, and for court staff, to understand. The consultation ran from 3 December 2013 to 21 January 2014 and its response was published on 1 April 2014 <https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform>. The consultation followed a wide-ranging review of the costs of the civil court system and contained detailed proposals for fee changes to recover more of the cost of the courts, including the probate service. This Order implements those fee changes for non-contentious probate services.

7.3 The Government continues to offer a system of fee remissions (full or partial fee waivers) for those unable to afford fees to ensure that those with limited financial means are not denied access to the justice system. The Government consulted on changes to the fee remission system in operation in the courts and most tribunals in 2013, introducing a scheme which operated across a wide range of fee levels on 7 October 2013.

¹ Re-stated figure from 2012/13 HMCTS annual accounts using revised costing approach set out in consultation document and uplifted to 2013/14 prices so as to align with the accompanying Impact Assessment.

8. Consultation

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). Their responses are considered, alongside others received to the public consultation, in the consultation response.

9. Guidance

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

10. Impact

10.1 The impacts of the combined fee changes being implemented across the civil court system are set out in the attached impact assessment. The combined fee changes across the civil court system are expected to deliver additional income of around £105m per annum. This income estimate is net of remissions, is presented in 2013/14 prices and assumes no behavioural changes as a result of fee changes.

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

11. Regulating small business

11.1 This instrument does not impact on small business as probate applications will be brought by individuals or groups of individuals dealing with the deceased's estate.

12. Monitoring & review

12.1 Fees and the impact of any changes are constantly monitored by way of feedback from courts and their 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.

Annex A - Non-Contentious Probate Fees

		Current fee	New fee	
1	Application for a grant of probate	£45	£155	
2	Personal application fee	£60	£60	
3.1	Duplicate/second grant for same deceased person	£20	£20	
3.2	Grant for an estate exempt from Inheritance Tax	£10	£10	
4	Application for the entry or extension of a caveat	£20	£20	
5	Application for a standing search	£6	£10	
6	Deposit of wills	£20	£20	
7	Inspection of will/other document retained by the registry	£20	£20	
	COPY DOCUMENTS			
8(a)	Copy of a document (10 pages or less)	£6	£10	
8(b)	For each subsequent page	£1	50p	
8(c)	Copy of a document in electronic form (for each copy)	£6	£10	
8(d)	Search of the index	£4	£4	
	OATHS			
9.1	For each deponent to each affidavit	£6	£11	
9.2	For marking each exhibit	£2	£2	
10	Determination of costs	*	*	*See Civil Proceedings Fees Order Section 5
11	Settling documents	£12	£12	