

EXPLANATORY MEMORANDUM TO
THE COURT OF PROTECTION, CIVIL PROCEEDINGS AND MAGISTRATES’
COURTS FEES (AMENDMENT) ORDER 2018

2018 No. 812

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 This instrument reduces a number of fees charged under the Court of Protection Fees Order 2007 (S.I. 2007/1745), the Civil Proceedings Fees Order 2008 (S.I. 2008/1053) and the Magistrates’ Courts Fees Order 2008 (S.I. 2008/1052). The fees are each reduced to a level that reflects the cost of the service being provided.

2.2 The table at Annex A sets out in full the changes to fee levels resulting from this instrument.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Court of Protection, Civil Proceedings and Magistrates’ Courts Fees (Amendment) Order 2018 amends the Court of Protection Fees Order 2007 (the “2007 Order”), and the Civil Proceedings Fees Order 2008 and the Magistrates’ Courts Fees Order 2008 (the “2008 Orders”).

5. Extent and Territorial 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

What is being done and why

7.1 Most of the fees subject to this amending instrument (those prescribed in the 2008 Orders) were last amended in April 2014 via the Civil Proceedings Fee (Amendment)

Order 2014 (S.I. 2014/874) and the Magistrates' Courts Fees (Amendment) Order 2014 (S.I. 2014/875). They were part of wider reforms to the fees charged for civil and family proceedings which had the aim of bringing civil and family fees closer to a level where they recovered the full cost of the service.

- 7.2 When those amending statutory instruments were laid in 2014, we believed that they prescribed all fees at or below full cost recovery levels. However, we have undertaken a review of civil and family fees against the cost of the service, and this has identified that some of those fees were inadvertently set above full cost recovery levels. This instrument therefore corrects the position by prescribing those fees at full cost recovery levels.
- 7.3 The current fees charged in the Court of Protection (CoP) were set in 2007 on the basis that they were below the full cost of those proceedings. The review of the unit costs of fees has also confirmed that certain CoP fees are above cost and this statutory instrument therefore also reduces those fees to full cost recovery levels.
- 7.4 The Government will be establishing a refund scheme for those who have been over charged: full details will be announced in due course.
- 7.5 As these fees are being reduced, and a refund scheme is being put in place, we do not anticipate any significant impact on the groups who would typically pay these fees.

Consolidation

- 7.6 It is not intended that this instrument will consolidate any other legislation. The Government is reviewing when will be appropriate to consolidate the changes to the 2007 Order and each of the 2008 Orders. In the meantime, consolidated guidance is available which sets out all of the fees in the 2008 Orders and the 2007 Order and will be updated to reflect the changes made by this instrument.

8. Consultation outcome

- 8.1 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 and section 54(3) of the Mental Capacity Act 2005, which also contain the lists of persons consulted (though we have not consulted the Vice-President of the Court of Protection because the post is currently vacant). They had no observations to make on these changes.
- 8.2 A general public consultation on this instrument is not necessary because we are reducing fees to cost, and those who bring proceedings will not be disadvantaged by the change.

9. Guidance

- 9.1 Her Majesty's Courts and Tribunal Service will update its guidance on fees payable in line with these amendments. Forms and leaflets will also be amended to reflect the changes.

10. Impact

- 10.1 An Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. Overall, the changes to fees made by this instrument are expected to reduce HMCTS's fee income by around £9m per annum.

- 10.2 Most of the reduction in estimated fee income results from the reduction in the fee for an application for a council tax liability order. These proceedings are brought by local authorities against local council taxpayers who are in arrears on their council tax. These measures are therefore expected to reduce the cost of bringing these proceedings. In most cases, we understand that the fee is added to the arrears of council tax and therefore liable to be repaid by the council taxpayer. The overall impact on local authorities is therefore expected to be minimal.
- 10.3 This instrument also reduces the fee paid to bring a small number of other civil proceedings in the magistrates' courts, to make general applications in insolvency proceedings, to appoint a judge to sit as an arbitrator in the Commercial and Technology and Construction Courts and to start proceedings or an appeal in the Court of Protection.
- 10.4 Some of these proceedings are likely to be brought by businesses, charities and voluntary bodies. To the extent that they are, these measures are expected to reduce the costs of these proceedings to those organisations. The overall impact is expected to be minimal.
- 10.5 Some of these proceedings are brought by public sector organisations: the principal impact on the public sector is a reduction in the fee to local authorities for applications for a council tax liability order (see paragraph 10.2 above). The measures are also expected to reduce the costs to the public sector of bringing these proceedings although, for the reasons set out above, the overall impact on local authorities is expected to be minimal.

11. Regulating small business

- 11.1 Some of the proceedings subject to this instrument may be brought by small businesses. In those cases, the fee reductions will result in a small reduction in the cost of these proceedings to small businesses.

12. Monitoring & review

- 12.1 Fees and the impact of any changes are monitored by way of feedback from courts and their customers and the monitoring of fee income and volumes.
- 12.2 We are putting in place arrangements to ensure that fees are more regularly reviewed against cost and strengthen senior governance oversight.

13. Contact

- 13.1 Nicholas Craigen at the Ministry of Justice (telephone: 0787 0983 130 or email: nicholas.craigen@justice.gov.uk) can answer any queries regarding the instrument.

ANNEX A

Fee	Description	Current	New
COURT OF PROTECTION FEES ORDER 2007			
	Application fee (article 4)	£400	£385
	Appeal fee (article 5)	£400	£320
CIVIL PROCEEDINGS FEES ORDER 2008			
	Companies Act 1985, Companies Act 2006 and Insolvency Act 1986 (High Court and County Court)		
3.11	On an application by consent or without notice within existing proceedings where no other fee is specified.	£50	£25
3.12	On an application with notice within existing proceedings where no other fee is specified.	£155	£95
	Judge sitting as arbitrator		
10.4	On the appointment of:		
(a)	a judge of the Commercial Court as an arbitrator or umpire under section 93 of the Arbitration Act 1996; or	£2,455	£2,275
(b)	a judge of the Technology and Construction Court as an arbitrator or umpire under section 93 of the Arbitration Act 1996.	£2,455	£1,800
10.5	For every day or part of a day (after the first day) of the hearing before:		
(a)	a judge of the Commercial Court; or	£2,455	£2,275
(b)	a judge of the Technology and Construction Court, so appointed as arbitrator or umpire.	£2,455	£1,800
MAGISTRATES' COURTS FEES ORDER 2008			
	Attendance		
1.1	On an application which requires a justice of the peace to perform a function away from the court premises.	£50	£30
	Appeals		
2.1	On an application to state a case for the opinion of the High Court under section 111(1) of the Magistrates Court Act 1980.	£515	£155

Fee	Description	Current	New
2.3	Proceedings under Schedule 5 to the Licensing Act 2003 — on commencing an appeal under paragraph 1, 2(2), 3(2)(a), 4(2), 7(2), 8(2)(b), 8A(2)(b), 10, 11(2), 12(2), 13(2)(b), 14, 16(2), 17(1) and (4) or 18(2)(a) of Schedule 5 to the Licensing Act 2003.	£410	£70
2.4	On commencing an appeal where no other fee is specified.	£205	£70
	Certificates and Certified Documents		
3.3	On a request for a certified copy of a memorandum of conviction.	£60	£25
3.4	On a request for a certificate or certified document where no other fee is specified.	£60	£25
	Liability Orders		
4.1	Proceedings under the Council Tax (Administration and Enforcement) Regulations 1992 or the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 on an application for a liability order.	£3	50p
	Commitment		
10.2	On an application for a warrant for commitment made in proceedings under the Child Support Act 1991	£245	£45