

EXPLANATORY MEMORANDUM TO
THE COURT FEES (MISCELLANEOUS AMENDMENTS) ORDER 2019
2019 No. 1063 (L. 7)

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 Non-Contentious Probate Fees Order 2004 (S.I. 2004/3120), 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 Some of the fees being reduced are also being merged into a singular fee where practicable.
- 2.3 This instrument also exempts the Office of the Public Guardian (OPG) from paying certain fees under the Civil Proceedings Fees Order 2008 (S.I. 2008/1053) and the Family Proceedings Fees Order 2008 (S.I. 2008/1054).
- 2.4 The table at **Annex A** sets out in full the changes to fee levels and the fee exemptions 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.

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 As this instrument is subject to the negative procedure, consideration as to whether there are other matters of interest to the House of Commons does not arise unless this instrument is prayed against.

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 England and Wales.
- 4.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Court Fees (Miscellaneous Amendments) Order 2019 amends the Non-Contentious Probate Fees Order 2004 (the “2004 Order”), the Court of Protection Fees Order 2007 (the “2007 Order”), and the Civil Proceedings Fees Order 2008, the Family Proceedings Fees Order 2008 and the Magistrates’ Courts Fees Order 2008 (the “2008 Orders”).

7. Policy background

What is being done and why?

- 7.1 We have undertaken a review of civil and family fees against the cost of the service for 2017/18, and this has identified that certain fees are now above full cost recovery levels. This instrument therefore corrects the position by prescribing those fees at full cost recovery levels.
- 7.2 The rationale for reducing the probate copy fees is to simplify the fee structure by consolidating two hard copy fees into a single fee (the first copy fee of £10 and subsequent copy fee of 50p), and to eliminate the over recovery. This would distinguish probate copy fees from copy fees in other civil and family jurisdictions, generally set at £10. The lower fee in this context is justified by the wider public value derived by charities and the general public from the information in these documents, particularly as a way of confirming that an estate is being distributed in accordance with a will.
- 7.3 The two fees for filing a request for a detailed assessment of costs incurred in the Court of Protection (fees 6.1(a) and 6.1(b) in Schedule 1 to the Civil Proceedings Fees Order 2008) are being merged into a singular fee as the cost of service for both is the same.
- 7.4 The two fees for the appointment as an arbitrator of a judge of the Commercial Court and a judge of the Technology and Construction Court (fees 10.4(a) and 10.4(b) in Schedule 1 to the Civil Procedure Fees Order 2008) are also being replaced with a single fee. This is a result of an amendment made to section 93 of the Arbitration Act 1996 (c. 23) by the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33). The amendment provides that any eligible High Court judge may now be appointed as an arbitrator, rather than only judges of those two courts. The same fee will apply irrespective of the judge appointed. Likewise, the subsequent daily hearing fees are also being merged (fees 10.5(a) and 10.5(b)). The single fee represents our reasonable predictive estimate of the costs of this service by any eligible High Court judge, taking into account the costs incurred by the service as previously only provided by judges of the Commercial Court and the Technology and Construction Court.
- 7.5 As these fees are being reduced, we do not anticipate any significant impact on the groups who would typically pay these fees.
- 7.6 In July 2018 certain court fees were reduced through the Court of Protection, Civil Proceedings, and Magistrates Courts’ Fees (Amendment) Order 2018 (S.I 2018/812). This action was taken as it was determined those fees were not set on the basis of a reasonable predictive estimate of the costs involved in delivering the services they related to. A refund scheme for those persons who paid those fees will be launched in due course. A refund scheme will not be launched in respect of the fees that are

reduced in this instrument because they were set based on a reasonable predictive estimate, taking into account cross-subsidisation (where applicable), and, following our cost review for 2017/18, we have taken prompt action to reduce them. The only exception are the fees described in paragraph 6.3 above which were not set based on reasonable predictive estimates; refunds for the over-recovered part of those fees will be incorporated into the refund scheme described above.

- 7.7 The OPG is being exempted from paying certain fees in proceedings under the Guardianship (Missing Persons) Act 2017 (c. 27) (“the 2017 Act”), which is due to come into force in July 2019 and has cross-party support. The 2017 Act will provide a new legal role of ‘guardians’ who can apply to the court to manage the financial and property affairs of a missing person. Guardians will be supervised by the OPG who may apply to the court to vary the terms of the guardianship order or to revoke the order if they believe the assets are being mismanaged. To ensure that the cost is not passed on to OPG users and that the policy intention of creating a low-cost avenue to manage the assets of a missing person is not compromised, we have decided to exempt the OPG from paying fees for these applications. The OPG has a similar exemption from fees for applications it makes to the Court of Protection in relation to its role supervising deputies appointed under section 16 of the Mental Capacity Act 2005 (c. 9).

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 other legislation. The Government is reviewing when will be appropriate to consolidate the changes to the 2007 Order and each of the 2008 Orders. Consolidated guidance is available which sets out all of the fees in the 2004 Order, the 2007 Order and the 2008 Orders and will be 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 and section 54(3) of the Mental Capacity Act 2005, which also contain the lists of persons consulted. 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 changes.

11. Guidance

- 11.1 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.

12. Impact

- 12.1 There is no significant impact on the public sector other than the financial effects described below.
- 12.2 An Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. Resetting the fees in this instrument to full cost recovery are expected to reduce HMCTS's fee income by around an average of £1.7m per annum. The additional refunds to be added to the refund scheme are expected to total £2.6m. The exemption for the OPG is expected to cost HMCTS around £40,000 per annum.
- 12.3 This instrument reduces the fee paid: for an electronic or hard copy of a document requested from the probate principal or district registries; to bring a small number of civil proceedings in the Magistrates' Courts; the application, appeal and hearing fees in the Court of Protection; to file in the Senior Courts for an assessment of costs incurred in the Court of Protection; and to appoint an eligible High Court judge to sit as an arbitrator. In addition, the two separate fees for assessment of costs are to be merged into one singular fee. The four fees relating to judges sitting as arbitrators are also to be merged into two fees. The two fees relating to hard copy probate documents are being merged into one fee.
- 12.4 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.
- 12.5 Providing an exemption for the OPG will avoid placing a financial burden on the OPG which would be passed on to users via increases to fees for other services (the OPG is a 100% cost recovery body) and would prevent the obstruction of a key pillar of the new guardianship provisions.

13. Regulating small business

- 13.1 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.

14. Monitoring & review

- 14.1 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.
- 14.2 We are putting in place arrangements to ensure that fees are more regularly reviewed against cost and strengthen senior governance oversight.

15. Contact

- 15.1 James Evans at the Ministry of Justice (telephone: 07967 792093 or email: james.evans1@justice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Andrew Waldren, Deputy Director for Court Reform and Fees Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Paul Maynard MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

Annex A

Fee	Description	Current	New
NON-CONTENTIOUS PROBATE FEES ORDER 2004			
8	Copy documents		
	On a request for a copy of any document whether or not provided as a certified copy:		
8(a)	for the first copy;	£10	Fees to be merged £1.50
8(b)	for every subsequent copy of the same document if supplied at the same time;	50p	
8(c)	where copies of any document are made available on a computer disk or in other electronic form, for each such copy;	£10	£1.50
COURT OF PROTECTION FEES ORDER 2007			
	Application fee (article 4)	£385	£365
	Appeal fee (article 5)	£320	£230
	Hearing Fee (article 6)	£500	£485
CIVIL PROCEEDINGS FEES ORDER 2008			
	Determination in the Senior Courts of costs incurred in the Court of Protection		
6.1(a)	Filing of a request for detailed assessment where the amount of the costs to be assessed (excluding VAT and disbursements) does not exceed £3,000.	£115	Fees to be merged £85
6.1(b)	Filing of a requested for detailed assessment in all other cases.	£225	
	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	£2,275	Fees to be

Fee	Description	Current	New
(b)	a judge of the Technology and Construction Court as an arbitrator or umpire under section 93 of the Arbitration Act 1996.	£1,800	merged £610
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	£2,275	Fees to be merged £610
(b)	a judge of the Technology and Construction Court, so appointed as arbitrator or umpire.	£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.	£30	£25
	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.	£155	£135
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.	£70	£60
2.4	On commencing an appeal where no other fee is specified.	£70	£60
	Certificates and Certified Documents		
3.3	On a request for a certified copy of a memorandum of conviction.	£25	£20
3.4	On a request for a certificate or certified document where no other fee is specified.	£25	£20
	Commitment		
10.2	On an application for a warrant for commitment made in proceedings under the Child Support Act 1991	£45	£40

Fees which the OPG is to be exempted from:

Fee	Description	Fee Amount
CIVIL PROCEEDINGS FEES ORDER 2008		
2.4 (a)	On an application on notice where no other fee is specified, except for applications referred to in fee 2.4(b).	£255
2.5 (a)	On an application by consent or without notice where no other fee is specified, except for applications referred to in fee 2.5(b).	£100
FAMILY PROCEEDINGS FEES ORDER 2008		
5	Applications in existing proceedings	
5.1	On an application in existing proceedings without notice or by consent, except where separately listed in this schedule.	£50
5.3	On an application in existing proceedings on notice, except where separately listed in this schedule.	£155

