

2020 No. 314

TRIBUNALS AND INQUIRIES

**The First-tier Tribunal (Immigration and Asylum Chamber) Fees
(Amendment) Order 2020**

<i>Made</i> - - - -	<i>16th March 2020</i>
<i>Laid before Parliament</i>	<i>18th March 2020</i>
<i>Coming into force</i> - -	<i>20th April 2020</i>

The Lord Chancellor makes the following Order in exercise of the powers conferred by section 42 of the Tribunals, Courts and Enforcement Act 2007(a).

The Lord Chancellor has consulted the Senior President of Tribunals in accordance with section 42(5) of that Act before making this Order and has obtained the consent of the Treasury in accordance with section 42(6) of that Act.

Citation and commencement

1. This Order may be cited as the First-tier Tribunal (Immigration and Asylum Chamber) Fees (Amendment) Order 2020 and comes into force on 20th April 2020.

Amendments to the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011

2.—(1) The First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011(b) is amended as follows.

(2) For article 7, substitute—

“7.—(1) Subject to paragraph (2), the Schedule applies for the purpose of ascertaining whether an appellant is entitled to a remission or reduction of a fee specified in this Order.

(2) The Schedule does not apply to an appellant who is not in the United Kingdom on the date on which the Notice of Appeal is given.

(3) A fee specified in this Order may be remitted or reduced where the Lord Chancellor is satisfied that there are exceptional circumstances which justify doing so.”

(3) In article 9(1)(b), for “article 7” substitute “article 7(3)”.

(4) After article 9, insert—

(a) 2007 c. 15; section 42 was amended by S.I. 2010/21 and 2013/2042.
(b) S.I. 2011/2841, to which there are amendments not relevant to this Order.

Remissions and reductions

Interpretation

1.—(1) In this Schedule—

“child” means a person—

(a) whose main residence is with a party and who is aged—

(i) under 16 years; or

(ii) 16 to 19 years; and is—

(aa) not married or in a civil partnership; and

(bb) enrolled or accepted in full-time education that is not advanced education, or approved training; or

(b) in respect of whom a party or their partner pays child support maintenance or periodic payments in accordance with a maintenance agreement,

and “full-time education”, “advanced education” and “approved training” have the meaning given by the Child Benefit (General) Regulations 2006(a);

“child support maintenance” has the meaning given in section 3(6) of the Child Support Act 1991(b);

“couple” has the meaning given in section 39(1) of the Welfare Reform Act 2012(c);

“disposable capital” has the meaning given in paragraph 5;

“excluded benefits” means any of the following—

(a) any of the following benefits payable under the Social Security Contributions and Benefits Act 1992(d) or the corresponding provisions of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(e)—

(i) attendance allowance under section 64(f);

(ii) severe disablement allowance;

(iii) carer’s allowance;

(iv) disability living allowance;

(v) constant attendance allowance under section 104 as an increase to a disablement pension;

(vi) any payment made out of the social fund;

(vii) housing benefit;

(viii) widowed parents allowance;

(b) any of the following benefits payable under the Tax Credits Act 2002(g)—

(a) S.I. 2006/223; relevant amending instruments are S.I. 2009/3268, 2012/818, 2012/1512, 2014/1231, 2015/1512, 2016/360, 2017/607.

(b) 1991 c. 48; section 3(6) was amended by section 1(2)(a) of the Child Support, Pensions and Social Security Act 2000 (c. 19).

(c) 2012 c. 5; section 39(1) was substituted by S.I. 2014/3229 and amended by S.I. 2019/1458.

(d) 1992 c. 4.

(e) 1992 c. 7.

(f) Section 64 was amended by section 66(1) of the Welfare Reform and Pensions Act 1999 (c. 30), paragraph 41 of Schedule 1(8) to the Pensions Act 2007 (c. 22) and paragraph 5(2), Schedule 9 to the Welfare Reform Act 2012 (c. 5). Amendments to the corresponding provision of the NI Act (also section 64) are by paragraph 38 of Schedule 1(8) to the Pensions Act (Northern Ireland) 2008 (c.1) (N.I.) and S.I. 1999/3147 (N.I. 11), 2015/2006 (N.I. 1).

(g) 2002 c. 21; these benefits have been abolished by section 33(1)(f) of the Welfare Reform Act 2012 (c. 5) subject to the savings specified in article 3 of S.I. 2019/167.

- (i) any disabled child element or severely disabled child element of the child tax credit;
- (ii) any childcare element of the working tax credit;
- (c) any direct payment made under the Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009(a), the Carers and Direct Payments Act (Northern Ireland) 2002(b), section 12B(1) of the Social Work (Scotland) Act 1968(c), the Social Care (Self-directed Support) (Scotland) Act 2013(d) or under regulations made under sections 50 to 53 of the Social Services and Well-being (Wales) Act 2014(e);
- (d) a back to work bonus payable under section 26 of the Jobseekers Act 1995(f), or article 28 of the Jobseekers (Northern Ireland) Order 1995(g);
- (e) any exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983(h);
- (f) any payments from the Industrial Injuries Disablement Benefit in accordance with sections 103 to 105, paragraphs 2 and 3, and Parts II and III of Schedule 7 to the Social Security Contributions and Benefits Act 1992(i);
- (g) any pension paid under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pension Order 2006(j);
- (h) any payment made from the Independent Living Funds listed in regulation 20(2)(b) of the Criminal Legal Aid (Financial Resources) Regulations 2013(k);
- (i) any payment of bereavement support payment under section 30 of the Pensions Act 2014(l);
- (j) any financial support paid under an agreement for the care of a foster child;
- (k) any housing credit element of pension credit;
- (l) any armed forces independence payment;
- (m) any personal independence payment payable under the Welfare Reform Act 2012;
- (n) any payment on account of benefit as defined in the Social Security (Payments on Account of Benefit) Regulations 2013(m);
- (o) any of the following amounts, as defined by the Universal Credit Regulations 2013(n), that make up an award of universal credit—
 - (i) an additional amount to the child element in respect of a disabled child;

(a) S.I. 2009/1887, amended by S.I. 2010/2246, 2011/2298 and 2013/2270.
 (b) 2002 c. 6 (N.I.).
 (c) 1968 c. 49; section 12B was inserted by section 4 of the Community Care (Direct Payments) Act 1996 (c. 30), and repealed by section 25 of the Social Care (Self-directed Support) (Scotland) Act 2013 (asp. 1) subject to savings set out in article 5 of S.S.I. 2014/32.
 (d) 2013 asp. 1.
 (e) 2014 anaw. 4; section 53 was amended by S.I. 2016/413 (W. 131). Regulations made under sections 50 to 53 are S.I. 2015/1815 (W. 260), 2015/1842 (W. 270), 2015/1843 (W. 271), 2015/1844 (W. 272), 2017/214 (W. 58), 2018/123 (W. 29), 2019/234 (W. 53).
 (f) 1995 c. 18; section 26 has been partially repealed by paragraph 1 of Schedule 14(1) to the Welfare Reform Act 2012 (c. 5).
 (g) S.I. 1995/2705 (N.I. 15). Article 28 was partially repealed by S.I. 2015/2006 (N.I. 1) as specified in articles 6 and 7 of S.R. 2017 No. 190; there are other amending instruments but none is relevant.
 (h) S.I. 1983/686, relevant amending instruments are S.I. 2001/420, 2019/420.
 (i) 1992 c. 4; section 103 was amended by section 64(1)(b) of the Welfare Reform Act 2012 (c. 5), paragraph 3 of Schedule 7 was amended by paragraph 43 of Schedule 8 to the Pension Schemes Act 1993 (c. 48), paragraph 41 of Schedule 1 and paragraph 1 of Schedule 2 to the Social Security (Incapacity for Work) Act 1994 (c. 18), paragraph 36 of Schedule 2 to the Jobseekers Act 1995 (c. 18) and S.I. 2014/3213.
 (j) S.I. 2006/606, amended by S.I. 2006/1455, S.I. 2007/909, S.I. 2008/679, S.I. 2008/2683, S.I. 2009/706, S.I. 2010/240, S.I. 2011/235, S.I. 2011/1740, S.I. 2012/359, S.I. 2013/241, S.I. 2013/388, S.I. 2013/630, S.I. 2014/107, S.I. 2014/505, S.I. 2014/3229, S.I. 2015/176, S.I. 2015/208, S.I. 2016/236, S.I. 2016/288, S.I. 2016/374, S.I. 2017/161, S.I. 2018/176, S.I. 2018/388, S.I. 2019/186, S.I. 2019/1458 and S.I. 2019/1514.
 (k) S.I. 2013/471, to which there are amendments not relevant to this Order.
 (l) 2014 c. 19.
 (m) S.I. 2013/383, to which there are amendments not relevant to this Order.
 (n) S.I. 2013/376, relevant amending instruments are S.I. 2014/2888, 2015/1754, 2017/204, 2017/725. Regulation 24 (the child element) has also been amended by section 14 of the Welfare Reform and Work Act 2016 (c. 7).

- (ii) a housing costs element;
- (iii) a childcare costs element;
- (iv) a carer element;
- (v) a limited capability for work or limited capacity for work and work-related activity element;

“gross monthly income” has the meaning given in paragraph 13;

“maintenance agreement” has the meaning given in section 9(1) of the Child Support Act 1991;

“partner” means a person with whom the party lives as a couple and includes a person with whom the party is not currently living but from whom the party is not living separate and apart;

“party” means the individual who would, but for this Schedule, be liable to pay a fee under this Order;

“restraint order” means—

- (a) an order under section 42(1A) of the Senior Courts Act 1981(a);
- (b) an order under section 33 of the Employment Tribunals Act 1996(b);
- (c) a civil restraint order made under rule 3.11 of the Civil Procedure Rules 1998(c), or a practice direction made under that rule; or
- (d) a civil restraint order under rule 4.8 of the Family Procedure Rules 2010(d), or the practice direction referred to in that rule.

(2) References to remission of a fee are to be read as including references to a reduction of a fee as appropriate and remit and remitted shall be construed accordingly.

Fee remission

2. If a party satisfies the disposable capital test, the amount of any fee remission is calculated by applying the gross monthly income test.

Disposable capital test

Disposable capital test

- 3.—(1) Subject to paragraph 4, a party satisfies the disposable capital test if—
- (a) the fee payable by the party and for which an application for remission is made, falls within a fee band set out in column 1 of Table 1; and
 - (b) the party’s disposable capital is less than the amount in the corresponding row of column 2.

Table 1

<i>Column 1 (fee band)</i>	<i>Column 2 (disposable capital)</i>
Up to and including £1,000	£3,000
£1,001 to £1,335	£4,000
£1,336 to £1,665	£5,000
£1,666 to £2,000	£6,000
£2,001 to £2,330	£7,000

(a) 1981 c. 54; subsection 42(1A) was inserted by section 24 of the Prosecution of Offences Act 1985 (c. 23).
(b) 1996 c. 17; section 33 was amended by section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and by section 49 of the Employment Relations Act 2004 (c. 24).
(c) S.I. 1998/3132, amended by S.I. 2013/262; there are other amending instruments but none is relevant.
(d) S.I. 2010/2955, amended by S.I. 2013/3204; there are other amending instruments but none is relevant.

£2,331 to £4,000	£8,000
£4,001 to £5,000	£10,000
£5,001 to £6,000	£12,000
£6,001 to £7,000	£14,000
£7,001 or more	£16,000

4. Subject to paragraph 14, if a party or their partner is aged 61 or over, that party satisfies the disposable capital test if that party's disposable capital is less than £16,000.

Disposable capital

5. Subject to paragraph 14, disposable capital is the value of every resource of a capital nature belonging to the party on the date on which the application for remission is made, unless it is treated as income by this Order, or it is disregarded as excluded disposable capital.

Disposable capital – non-money resources

6. The value of a resource of a capital nature that does not consist of money is calculated as the amount which that resource would realise if sold, less—

- (a) 10% of the sale value; and
- (b) the amount of any borrowing secured against that resource that would be repayable on sale.

Disposable capital – resources held outside the United Kingdom

7.—(1) Capital resources in a country outside the United Kingdom count towards disposable capital.

(2) If there is no prohibition in that country against the transfer of a resource into the United Kingdom, the value of that resource is the amount which that resource would realise if sold in that country, in accordance with paragraph 6.

(3) If there is a prohibition in that country against the transfer of a resource into the United Kingdom, the value of that resource is the amount that resource would realise if sold to a buyer in the United Kingdom.

Disposable capital – foreign currency resources

8. Where disposable capital is held in currency other than sterling, the cost of any banking charge or commission that would be payable if that amount were converted into sterling, is deducted from its value.

Disposable capital – jointly owned resources

9. Where any resource of a capital nature is owned jointly or in common, there is a presumption that the resource is owned in equal shares, unless evidence to the contrary is produced.

Excluded disposable capital

10. The following things are excluded disposable capital—

- (a) a property which is the main or only dwelling occupied by the party;
- (b) the household furniture and effects of the main or only dwelling occupied by the party;
- (c) articles of personal clothing;

- (d) any vehicle, the sale of which would leave the party, or their partner, without motor transport,
- (e) tools and implements of trade, including vehicles used for business purposes;
- (f) the capital value of the party's or their partner's business, where the party or their partner is self-employed;
- (g) the capital value of any funds or other assets held in trust, where the party or their partner is a beneficiary without entitlement to advances of any trust capital;
- (h) a jobseeker's back to work bonus;
- (i) a payment made as a result of a determination of unfair dismissal by a court or tribunal, or by way of settlement of a claim for unfair dismissal;
- (j) any compensation paid as a result of a determination of medical negligence or in respect of any personal injury by a court, or by way of settlement of a claim for medical negligence or personal injury;
- (k) the capital held in any personal or occupational pension scheme;
- (l) any cash value payable on surrender of a contract of insurance;
- (m) any capital payment made out of the Independent Living Funds;
- (n) any bereavement support payment in respect of the rate set out in regulation 3(2) or (5) of the Bereavement Support Payment Regulations 2017(a);
- (o) any capital insurance or endowment lump sum payments that have been paid as a result of illness, disability or death;
- (p) any student loan or student grant;
- (q) any payments under the criminal injuries compensation scheme.

Gross monthly income test

Remission of fees – gross monthly income

11.—(1) If a party satisfies the disposable capital test, no fee is payable under this Order if, at the time when the fee would otherwise be payable, the party or their partner has the number of children specified in column 1 of Table 2 and—

- (a) if the party is single, their gross monthly income does not exceed the amount set out in the appropriate row of column 2; or
- (b) if the party is one of a couple, the gross monthly income of that couple does not exceed the amount set out in the appropriate row of column 3.

Table 2

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Number of children of party</i>	<i>Single</i>	<i>Couple</i>
no children	£1,085	£1,245
1 child	£1,330	£1,490
2 children	£1,575	£1,735

(2) If a party or their partner has more than 2 children, the relevant amount of gross monthly income is the appropriate amount specified in Table 2 for 2 children, plus the sum of £245 for each additional child.

(3) For every £10 of gross monthly income received above the appropriate amount in Table 2, including any additional amount added under sub-paragraph (2), the party must pay £5 towards the fee payable, up to the maximum amount of the fee payable.

(a) S.I. 2017/410.

(4) This paragraph is subject to paragraph 12.

Gross monthly income cap

12.—(1) No remission is available if a party or their partner has the number of children specified in column 1 of Table 3 and—

- (a) if the party is single, their gross monthly income exceeds the amount set out in the appropriate row of column 2 of Table 3; or
- (b) if the party is one of a couple, the gross monthly income of that couple exceeds the amount set out in the appropriate row of column 3 of Table 3.

Table 3

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Number of children of party</i>	<i>Single</i>	<i>Couple</i>
no children	£5,085	£5,245
1 child	£5,330	£5,490
2 children	£5,575	£5,735

(2) If a party or their partner has more than 2 children, the relevant amount of gross monthly income is the appropriate amount specified in Table 3 for 2 children, plus the sum of £245 for each additional child.

Gross monthly income

13.—(1) Subject to paragraph 14, gross monthly income means the total monthly income, for the month preceding that in which the application for remission is made, from all sources, other than receipt of any of the excluded benefits.

(2) Income from a trade, business or gainful occupation other than an occupation at a wage or salary is calculated as—

- (a) the profits which have accrued or will accrue to the party; and
- (b) the drawings of the party;

in the month preceding that in which the application for remission is made.

(3) In calculating profits under sub-paragraph (2)(a), all sums necessarily expended to earn those profits are deducted.

Resources and income treated as the party's resources and income

14.—(1) Subject to sub-paragraph (2), the disposable capital and gross monthly income of a partner of a party is to be treated as disposable capital and gross monthly income of the party.

(2) Where the partner of a party has a contrary interest to the party in the matter to which the fee relates, the disposable capital and gross monthly income of that partner, if any, is not treated as the disposable capital and gross monthly income of the party.

Application for remission of a fee

15.—(1) An application for remission of a fee must be made at the time when the fee would otherwise be payable.

(2) Where an application for remission of a fee is made, the party must—

- (a) indicate the fee to which the application relates;
- (b) declare the amount of their disposable capital; and
- (c) provide documentary evidence of their gross monthly income and the number of children relevant for the purposes of paragraphs 11 and 12.

(3) Where an application for remission of a fee is made on or before the date on which a fee is payable, the date for payment of the fee is disappplied.

(4) Where an application for remission is refused, or if reduction of a fee is granted, the amount of the fee which remains unremitted must be paid within the period notified in writing to the party.

Refunds

16.—(1) Subject to sub-paragraph (3), where a party pays a fee at a time when that party would have been entitled to a remission if they had provided the documentary evidence required by paragraph 15, the fee, or the amount by which the fee would have been reduced as the case may be, must be refunded if documentary evidence relating to the time when the fee became payable is provided at a later date.

(2) No refund shall be made under this paragraph unless the party who paid the fee applies within 3 months of the date on which the fee was paid.

(3) The Lord Chancellor may extend the period of 3 months mentioned in sub-paragraph (2) if the Lord Chancellor considers that there is a good reason for a refund being made after the end of the period of 3 months.

Vexatious litigants

17.—(1) This paragraph applies where—

- (a) a restraint order is in force against a party; and
- (b) that party makes an application for permission to—
 - (i) issue proceedings or take a step in proceedings as required by the restraint order;
 - (ii) apply for amendment or discharge of the order; or
 - (iii) appeal the order.

(2) The fee prescribed by this Order for the application is payable in full.

(3) If the party is granted permission, they are to be refunded the difference between—

- (a) the fee paid; and
- (b) the fee that would have been payable if this Schedule had been applied without reference to this paragraph.”.

12th March 2020

Chris Philp
Parliamentary Under Secretary of State
Ministry of Justice

We consent

16th March 2020

James Morris
Maggie Throup
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

The First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011 (“the 2011 Order”) (S.I. 2011/2841) prescribes the fees that are payable for appeals to the Immigration and Asylum Chamber of the First-tier Tribunal. This Order amends the 2011 Order to introduce a scheme for the remission of fees for appellants who are in the United Kingdom when they bring their appeal.

Eligibility for remission or reduction of a fee will be based on two tests - a disposable capital test and a gross monthly income test. These tests are set out in a Schedule (“the Schedule”) which is inserted into the 2011 Order by article 2(4) of this Order.

Paragraphs 3 and 4 of the Schedule set out the disposable capital test. Appellants who satisfy the disposable capital test will receive a full fee remission, pay a contribution to the fee or have to pay the fee in full, as determined by the gross monthly income test set out in paragraphs 11 and 12 of the Schedule.

The gross monthly income test applies a series of thresholds to single people or couples, with an allowance for the number of dependent children they have. Appellants with a gross monthly income below a certain threshold will receive a full fee remission. Appellants will be required to pay a contribution of £5 towards their fee for every £10 of gross monthly income they earn over the relevant threshold.

A full impact assessment of the effect that this instrument will have on the Ministry of Justice, HM Courts and Tribunals Service (HMCTS) and HMCTS users is available from the Ministry of Justice, 102 Petty France, London, SW1H 9AJ and is published with an Explanatory Memorandum alongside the instrument on <https://legislation.gov.uk>.

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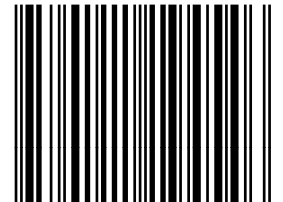
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