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STATUTORY INSTRUMENTS

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**2023 No. 1094**

**The Courts and Tribunals (Fee Remissions  
and Miscellaneous Amendments) Order 2023**

**Amendments to fee remissions**

2.—(1) Schedule 1A (remissions and part remissions) to the Non-contentious Probate Fees Order 2004<sup>(1)</sup>, the Schedule (remissions and part remissions) to the Gender Recognition (Application Fees) Order 2006<sup>(2)</sup>, and Schedule 2 (remissions and part remissions) to—

- (a) the Court of Protection Fees Order 2007<sup>(3)</sup>;
- (b) the Family Proceedings Fees Order 2008<sup>(4)</sup>;
- (c) the Magistrates' Courts Fees Order 2008<sup>(5)</sup>;
- (d) the Upper Tribunal (Lands Chamber) Fees Order 2009<sup>(6)</sup>;
- (e) the First-tier Tribunal (Gambling) Fees Order 2010<sup>(7)</sup>;
- (f) the Upper Tribunal (Immigration and Asylum) (Judicial Review) (England and Wales) Fees Order 2011<sup>(8)</sup>; and
- (g) the First-tier Tribunal (Property Chamber) Fees Order 2013<sup>(9)</sup>

are amended as follows.

(2) In paragraph 1(1) (interpretation) in the definition of “excluded benefits”—

- (a) in sub-paragraph (a) omit paragraph (viii);
- (b) in sub-paragraph (b)(ii) after “element” insert “, disabled element or severely disabled element”;
- (c) omit sub-paragraph (d).

(3) For paragraph 3 (disposable capital test) substitute—

**“Disposable capital test**

3. Subject to paragraph 4, a party satisfies the disposable capital test if the fee payable by the party and for which an application for remission is made is—

- (a) up to and including £1,420 and the party's disposable capital is less than £4,250;
- (b) £1,421 to £5,000 and the party's disposal capital is less than three times the amount of the fee payable;
- (c) £5,001 or more and the party's disposable capital is less than £16,000.”.

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(1) S.I. 2004/3120; relevant amending instruments are S.I. 2013/2302, 2014/590, 2016/211, 2017/422 and 2021/985.  
(2) S.I. 2006/758; relevant amending instruments are S.I. 2013/2302, 2014/590, 2016/236, 2016/228, 2017/422 and 2021/985.  
(3) S.I. 2007/1745; relevant amending instruments are S.I. 2013/2302, 2014/590, 2016/211, 2017/422 and 2021/985.  
(4) S.I. 2008/1054; relevant amending instruments are S.I. 2013/2302, 2014/590, 2015/687, 2016/211, 2017/422 and 2021/985.  
(5) S.I. 2008/1052; relevant amending instruments are S.I. 2013/2302, 2014/590, 2016/211, 2017/422 and 2021/985.  
(6) S.I. 2009/1114; relevant amending instruments are S.I. 2013/2302, 2014/590, 2016/211, 2017/422 and 2021/985.  
(7) S.I. 2010/42; relevant amending instruments are S.I. 2013/2302, 2014/590, 2017/422 and 2021/985.  
(8) S.I. 2011/2344; relevant amending instruments are S.I. 2013/2302, 2014/590, 2016/211, 2017/422 and 2021/985.  
(9) S.I. 2013/1179; relevant amending instruments are S.I. 2013/2302, 2014/590, 2016/211, 2017/422 and 2021/985.

- (4) In paragraph 4—
- (a) before the text insert the heading “**Disposable capital test - deeming provisions for those aged 66 or over**”;
  - (b) for “61” substitute “66”.
- (5) In paragraph 5 (disposable capital)—
- (a) renumber the text after the heading as sub-paragraph (1);
  - (b) in sub-paragraph (1) as renumbered by this Order for “every resource of a capital nature” substitute “any savings and investments”;
  - (c) after sub-paragraph (1) as renumbered by this Order insert—
    - “(2) In sub-paragraph (1), reference to “savings and investments” includes, but is not limited to—
    - (a) bonds;
    - (b) stocks and shares; and
    - (c) the value of any land or property.”.
- (6) In paragraph 6 (disposable capital - non-money resources) for “a resource of a capital nature that does” substitute “any savings and investments that do”.
- (7) For paragraph 7 (disposable capital - resources held outside the United Kingdom) substitute—

**“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 that resource would realise if sold to a buyer in the United Kingdom.
- (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 which that resource would realise if sold in that country, in accordance with paragraph 6.”.
- (8) In paragraph 9 (disposable capital - jointly owned resources) for “resource of a capital nature is” substitute “savings and investments are”.
- (9) In paragraph 10 (excluded disposable capital)—
- (a) omit sub-paragraphs (b), (c) and (e);
  - (b) after sub-paragraph (q) insert—
    - “(r) any payments under the Armed Forces Compensation Scheme;
    - (s) any compensation paid as a result of the Grenfell Tower fire;
    - (t) any payments under the Lambeth Children’s Homes Redress Scheme;
    - (u) any payments from the London Emergencies Trust;
    - (v) any payments under the Medomsley Detention Centre Physical Abuse Settlement Scheme;
    - (w) any payments under the Miscarriage of Justice Compensation Scheme;
    - (x) any payments from the National Emergencies Trust;
    - (y) any payments under the Infected Blood Support Scheme;
    - (z) any payments in relation to internment, forced labour, injury or loss of a child during the Second World War;

- (za) any payments under the Jesus Fellowship Redress Scheme;
- (zb) any payment under the Vaccine Damage Payment Scheme;
- (zc) any compensation paid as a result of variant Creutzfeldt-Jakob Disease;
- (zd) any compensation paid under the Victims of Overseas Terrorism Compensation Scheme;
- (ze) any payments under the We Love Manchester Emergency Fund; and
- (zf) any compensation paid under the Windrush Compensation Scheme (Expenditure) Act 2020(10).”.

(10) For paragraph 11 (remission of fees - gross monthly income) substitute—

**“Remission of fees - gross monthly income**

**11.**—(1) Subject to paragraphs 11A and 12, 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’s gross monthly income does not exceed the applicable threshold.

(2) The applicable threshold is—

- (a) £1,420, for a party that is single and has no children;
- (b) £2,130, for a party that is part of a couple and has no children; or
- (c) as otherwise calculated in accordance with sub-paragraph (3).

(3) Where this sub-paragraph applies, the applicable threshold is determined by taking the following steps—

(Step 1) Identify the number of children aged 13 or below and multiply this number by £425.

(Step 2) Identify the number of children aged 14 or over and multiply this number by £710.

(Step 3) Add together the amounts calculated at Step 1 and Step 2.

(Step 4) Add £1,420 to the amount calculated at Step 3.

4) The result is the applicable threshold for a party that is single and has children.

(Step 5) *If a party is part of a couple, take this additional step.*

5) Add £710 to the amount calculated at Step 4.

The result is the applicable threshold for a party that is part of a couple and has children.

(4) Subject to sub-paragraph (6), if a party’s gross monthly income exceeds the applicable threshold, that party must pay an amount towards the fee payable to which the application for remission relates, which is determined in accordance with sub-paragraph (5).

(5) Where this sub-paragraph applies, the amount payable is determined as follows—

(Step 1) Deduct the applicable threshold from the party’s gross monthly income.

1) The amount calculated is the “excess income”.

(Step 2) Apply the rates specified in the second column of the Table to the parts of the party’s excess income specified in the corresponding row of the first column.

(Step 3) Add together the amounts calculated at Step 2 (if there are two or more such amounts).

Subject to sub-paragraph (6), the result is the amount payable.

**Table**

<i>Part of excess income</i>	<i>Rate</i>
Up to and including £1,000	50%
£1,001 to £2,000	70%
£2,001 to £3,000	90%

(6) No party is required to pay an amount that is more than the fee payable for which the application for remission has been made, if no remission had been granted.”.

(11) After paragraph 11 (remission of fees - gross monthly income) insert—

**“Gross monthly income— passporting benefits**

**11A.**—(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 is in receipt of any passporting benefits.

(2) The following are passporting benefits—

- (a) income-based Jobseeker’s Allowance;
- (b) income-related Employment and Support Allowance;
- (c) income support;
- (d) pension credit (Guarantee Credit); and
- (e) universal credit with additional gross annual earnings of less than £6,000.”.

(12) For paragraph 12 (gross monthly income cap) substitute—

**“Gross monthly income cap**

**12.** No remission is available if a party’s gross monthly income exceeds the applicable threshold determined in accordance with paragraph 11(2), plus the sum of £3,000.”.

(13) For paragraph 13 (gross monthly income) substitute—

**“Gross monthly income**

**13.**—(1) Subject to paragraph 14, “gross monthly income” means the total sum of—

- (a) the lower of—
  - (i) the gross amount that has been earned by the party in the month immediately preceding that in which the application for remission is made; or
  - (ii) the average of the gross amount that has been earned by the party in the three months immediately preceding that in which the application for remission is made, and
- (b) the gross amount received by the party from any other source in the month immediately preceding that in which the application for remission is made, other than receipt of any of the excluded benefits.

(2) For the purposes of sub-paragraph (1), earnings from a trade, business or gainful occupation other than an occupation at a wage or salary are calculated as the lower of—

- (a) the party's net profits for the month preceding that in which the application for remission is made; or
  - (b) the average of the party's net profits for the three months preceding that in which the application for remission is made.
- (3) In sub-paragraph (2), "net profits" means the profits which have accrued to the party less all sums necessarily expended to earn those profits."
- (14) In paragraph 15 (application for remission of a fee)—
- (a) in sub-paragraph (2)(c) for "paragraphs 11 and 12" substitute "paragraph 11";
  - (b) in sub-paragraph (3) omit "or before";
  - (c) after sub-paragraph (4) insert—
    - "(5) The Lord Chancellor may by written notice request such additional information or evidence as is required to assess the party's entitlement to fee remission under this Order, and the period specified by such notice must not be less than 7 days, beginning with the day after the date on which the notice is sent.
    - (6) An application for remission of a fee may be treated as abandoned and no further action taken, if a party fails to provide the information requested under sub-paragraph (5) within the period specified by that notice, or such other extended period as may be agreed in writing at the Lord Chancellor's discretion."
- (15) In paragraph 17(2) (refunds) for "paragraph 15" substitute "paragraph 16".

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**Commencement Information**

**II** [Art. 2](#) in force at 27.11.2023, see [art. 1\(2\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Courts and Tribunals (Fee Remissions and Miscellaneous Amendments) Order 2023, Section 2.