

EXPLANATORY MEMORANDUM TO
THE CIVIL AND FAMILY PROCEEDINGS FEES (AMENDMENT) ORDER 2024

2024 No. 538 (L. 8)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Declaration

- 2.1 Mike Freer MP, Parliamentary Under-Secretary of State at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Abigail Plenty, Deputy Director for the Illegal Migration Programme, Fees and Tribunals, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Abdul Huson at the Ministry of Justice (abdul.huson@justice.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 This instrument revises the Civil Proceedings Fees Order 2008 (S.I. 2008/1053 – “CPFO”) and the Family Proceedings Fees Order 2008 (S.I. 2008/1054 - “FPFO”). The purpose of these revisions is to exempt certain fees from being payable for individuals making applications to the Senior Courts in relation to the Illegal Migration Act 2023.

Where does the legislation extend to, and apply?

- 4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

- 5.1 The Illegal Migration Act 2023 (‘IMA’) introduces new powers for tackling illegal migration. It establishes a new procedure for the removal of persons who enter or arrive in the United Kingdom in breach of immigration control. Section 2 of the IMA places a duty on the Secretary of State to make arrangements for the removal of a person, if the person meets specified conditions, from the United Kingdom to their home country or to a safe third country. The IMA also provides immigration officers with the power to detain individuals in connection with that duty.

- 5.2 The IMA includes provisions which will affect the operation of the courts and tribunals. Once a decision has been made by the Secretary of State for removal under the IMA, a person may challenge this decision by making a ‘suspensive claim’. The Home Secretary’s decision on this suspensive claim is subject to a right of appeal to the Upper Tribunal. In England and Wales, any onward appeals of the decision by the Upper Tribunal would be heard by the Court of Appeal.
- 5.3 In addition, decisions to detain an individual using the powers in the Act may be challenged by the existing mechanism of habeas corpus, and decisions more generally under the IMA may be challenged by way of judicial review. In England and Wales, these challenges would be made to the High Court of England and Wales. By virtue of the High Court (Distribution of Business) Order 2014 (S.I. 2014/3257), all applications for habeas corpus in relation to minors are considered family proceedings and are made to the Family Division of the High Court.
- 5.4 Court fees are typically charged for applications or appeals made to the Court, as well as for applications for permission to appeal where required. The power to prescribe court fees in civil and family proceedings is contained within section 92 of the Courts Act 2003. The Civil Proceedings Fees Order 2008 (‘CPFO’) and Family Proceedings Fees Order 2008 (‘FPFO’) set out the fees that would apply for those applications that take place in the Senior Courts. An additional power to set fees above the underlying cost of the service is contained within section 180 of the Anti-social Behaviour, Crime and Policing Act 2014, and has been used to set some of the fees due to be exempted in this Order. In setting fees under either power, the Lord Chancellor must have regard to the principle that access to the courts must not be denied.
- 5.5 This S.I. exempts some of the fees in the CPFO and FPFO from applying. The policy objective underpinning this proposal is to ensure swift access to justice. By removing the need for appellants to pay a fee, or for applications for refunds or remission to be made, this proposal is intended to speed up the administrative process behind these appeals and ensure that access to justice is not denied.
- 5.6 Specifically, this S.I. makes two changes. First, it exempts fees from being payable by adults and minors for a writ of habeas corpus, where the decision to detain was made using the powers contained in the IMA. Second, it exempts fees from being payable in pursuing an onward appeal of a suspensive claim in the Court of Appeal of a decision made by the Upper Tribunal.

What was the previous policy, how is this different?

- 5.7 The previous policy was to charge fees for all writs of habeas corpus and for all appeals in the Court of Appeal, relying on fee remission or refunds to ensure access to justice for those who may not otherwise be able to afford the fees. The purpose of this proposal is to remove the reliance on those mechanisms in relation to the IMA by making no fee be payable, simplifying the administrative process in those instances.

6. Legislative and Legal Context

How has the law changed?

- 6.1 This instrument revises the Civil Proceedings Fees Order 2008 (S.I. 2008/1053) and the Family Proceedings Fees Order 2008 (S.I. 2008/1054).
- 6.2 No changes are made to the fees payable for judicial review. This S.I. also does not make changes to the fee regimes in the tribunals for immigration and asylum matters.

Why was this approach taken to change the law?

- 6.3 Fees (including exceptions from fees) are set out in secondary legislation in the form of Fees Orders. As a result, amending these Fees Orders is the only possible approach for making the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 A consultation was not conducted for these proposals, on the basis that the proposals were to exempt fees from being payable. No individuals are expected to be negatively affected by these proposals, and we expect there to be a benefit to the Ministry and to appellants in the form of reduced administrative burden. This stems from removing the need to apply for or process refunds for those who are legally aided, or eligible for a fee exemption or remission.

8. Applicable Guidance

- 8.1 Once these changes come into force, public guidance on the fees payable in the courts and tribunals will be updated.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because there is not expected to be a significant impact for businesses.

Impact on businesses, charities and voluntary bodies

- 9.2 This instrument is out of scope from the definition of “regulatory provisions” as it makes or amends provisions relating to fees.
- 9.3 There is no, or no significant, impact on business, charities or voluntary bodies because they are not expected to make use of the fee exemption.
- 9.4 The legislation does not impact small or micro businesses.
- 9.5 There is no, or no significant, impact on the public sector, apart from reduced administrative burden for staff in HM Courts and Tribunals Service and the Legal Aid Agency.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is through regular engagement with HM Courts and Tribunals Service to understand that the legislation is being implemented as intended.
- 10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Mike Freer MP has made the following statement:
- “In my view the provisions of the Civil and Family Proceedings Fees (Amendment) Order 2024 have no net cost to business.”

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).