EXPLANATORY MEMORANDUM TO

THE CIVIL PROCEEDINGS AND GENDER RECOGNITION APPLICATION FEES (AMENDMENT) ORDER 2021

2021 No. 462 (L. 6)

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and the Government Equalities Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument implements a bespoke court fee within the Civil Proceedings Fees Order 2008 (S.I. 2008/1053) in response to a new court application created by the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020. This instrument also reduces the application fee specified within the Gender Recognition Application Fees Order 2006 (S.I. 2006/758).

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 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.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the United Kingdom.

4.2 The territorial application of this instrument is the territory of the court or tribunal fee order it amends.

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 Civil Proceedings and Gender Recognition Application Fees (Amendment) Order 2021 amends both the Civil Proceedings Fees Order 2008 (S.I. 2008/1053) and the Gender Recognition Application Fees Order 2006 (S.I. 2006/758).

6.2 Regulation 38 (9) of the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England And Wales) Regulations 2020 grants debtors a right to appeal their debt advisor's decision to not withhold the debtor's

residential address from disclosure to creditors. This instrument implements a bespoke court fee that would be payable when making an application to the County Court.

6.3 Section 7(2) of the Gender Recognition Act 2004 provides for fees to be payable in relation to applications to a Gender Recognition Panel under sections 1(1), 5(2), 5A(2) and 6(1) of the Act. This Order prescribes the level of those fees for applications made on or after 4th May 2021. It revokes and replaces the Gender Recognition Application Fees Order 2006 (S.I. 2006/758).

7. Policy background

What is being done and why?

Civil Proceedings Fees Order 2008

7.1 As part of its efforts to incentivise more people in problem debt to access professional debt advice and achieve an appropriate debt solution, HM Government is establishing a debt respite scheme through the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England And Wales) Regulations 2020.

7.2 Through this scheme, eligible debtors seeking professional debt advice can benefit from a Breathing Space moratorium. A moratorium under the scheme will freeze charges, fees and certain interest as well as pausing enforcement action. This will give debtors time to engage fully with professional advice by reducing the stress caused by spiralling debt and impending enforcement action. Debtors benefitting from the moratorium will be listed within the Insolvency Service's register of moratoria, which will contain details capable of identifying the debtor, such as their name, date of birth, and usual residential address. This register is private and only creditors who have received a notification about a breathing space debt will be allowed to see the information held on the register about that debtor and the specific debt. The Debt Respite Scheme Regulations allow for a debtor to request that their residential address be withheld from the register and disclosure to creditors on the grounds that it would be expected to lead to violence against the debtor or against a person who normally resides with the debtor as a member of the debtor's family.

7.3 Should the debt advisor determine there are insufficient grounds to grant the debtor's request, the debtor may challenge this decision by making an application to the County Court. This instrument implements the court fee which would be payable by the debtor when making this application.

7.4 The Department believes it is only right that court and tribunal users contribute toward the funding of HMCTS when they can afford to do so. However, court and tribunal fees must not create financial barriers for individuals needing to defend or enforce their rights. Taking into consideration the financial circumstances of the prospective applicants, as well as ensuring there are no financial barriers to making an application which serves as a safeguard from potential harm, the Department has decided that a £5 court fee be payable.

Gender Recognition Application Fees Order 2006

7.5 This Order also reduces the application fee for a Gender Recognition Certificate from £140 to £5.

7.6 In 2018 Government carried out a consultation on reforming the Gender Recognition Act 2004 (the "GRA"). The GRA sets out the process which allows individuals, over the age of 18, to gain legal recognition of their acquired gender. Applicants are required to provide evidence to the Gender Recognition Panel, who determine whether the applicant has met the criteria set out in the GRA. A fee is a required part of the application.

7.7 The Government announced a review of the GRA, following the Women and Equalities Select Committee's report into transgender equality (2016). A public consultation ran from 3 July to 22 October 2018. In addition to the consultation, the Government Equalities Office (GEO) met with around 140 organisations to hear their views. This included trans and LGBT organisations, as well as organisations working for women's equality. GEO received a total of 102,818 valid responses to the consultation.

7.8 In response to the consultation, the Government concluded that the GRA should remain unchanged as the legislation allows people to gain legal recognition in their acquired gender, whilst maintaining appropriate checks. The Government also decided that there was a need to improve the process and experience that transgender people have when applying for a Gender Recognition Certificate (GRC) to make sure that applying for a GRC is as straightforward and dignified as possible.

7.9 Part of this was a consideration of the fee to ensure that no one faces financial barriers when applying for a GRC. In the consultation nearly 60% of the respondents who responded to a question on fees, responded that the fee should be removed. In the qualitative responses, it was pointed out that the fee was high compared to other official documentation, there were other costs involved in applying for a GRC, such as medical evidence and paying for a statutory declaration. The Government decided that it would reduce the application fee to a nominal amount which has been determined as £5.

7.10 The £140 fee has stayed the same since 2005, with only the thresholds and criteria for fee remission changing. The fee of £5 will now apply to applicants who do not meet the fee remission criteria.

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 legislation. Consolidated guidance is available which sets out all of the fees applicable in the County and High Court including those provided by the Civil Proceedings Fees Order 2008 as amended and will be further 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 and the Civil Justice Council when prescribing fees, as described in section 92(5) and (6) of the Courts Act 2003. A general public consultation on this instrument is not necessary because we are setting the fees to a nominal amount, and those who bring

proceedings or apply for a GRC will not be disadvantaged by the changes. A full public consultation was carried out on the Gender Recognition Act 2004 in 2018, which included a consideration of the fee.

11. Guidance

11.1 Accompanying guidance setting out the changes introduced by this instrument will be made available by HMCTS from May 2021.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there are no regulatory impacts on business caused by this instrument and there are low costs for HMCTS in providing these court and tribunals services. As the court and tribunal fees are being set to a nominal amount, there will be minimal impact upon court users bringing proceedings.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Ministry of Justice monitors the impact of changes to court fees in accordance with the Lord Chancellor's duty to ensure an efficient and effective courts system, as described in section 1 of the Courts Act 2003.

14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Parliamentary Under Secretary of State at the Ministry of Justice, Chris Philp MP has made the following statement:

"In my view the provisions of the Civil Proceedings Fees and Gender Recognition Application Fees (Amendment) Order 2021 have no net cost to business".

15. Contact

15.1 Harry Johnston, Ministry of Justice (email: Harry.Johnston@justice.gov.uk) and Kevin Mantle, Government Equalities Office (email: Kevin.Mantle@cabinetoffice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Joanna Otterburn and Roshnee Patel, Deputy Directors for Legal Support and Fees Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Oliver Entwistle, Deputy Director for LGBT policy and Operations at the Government Equalities Office can confirm that this Explanatory Memorandum meets the required standard.

15.4 The Rt. Hon Robert Buckland QC MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.