EXPLANATORY MEMORANDUM TO

THE COURT AND PUBLIC GUARDIAN FEES (MISCELLANEOUS AMENDMENTS) ORDER 2025

2025 No. 1126

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 Minister Sackman, Minister of State at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Jenny Pickrell, Deputy Director for Tribunals, Fees and Irregular Migration, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Chloe Upton at the Ministry of Justice email: chloe.upton@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 increases fees for applications relating to the registration of Lasting Powers of Attorney (LPA), Enduring Powers of Attorney (EPA), and the reduced fee for repeat applications to register an LPA in the Office of the Public Guardian (OPG), as well as fees for obtaining copies of probate grants. These fees will be increased to align them more closely with their estimated cost. These changes are explained in more detail at paragraphs 5.1-5.3 and 5.12-5.14.

4.2 This instrument will also add a fee exemption where a decision by the Parole Board to release an indeterminate or fixed-term prisoner is referred to the High Court for review by the Secretary of State; and will exempt fees for Persons at Risk of Violence (PARV) Order applications. These changes are explained further at paragraphs 5.4-5.6 and 5.7-5.9.

4.3 This instrument makes amendments to fees in the following Fees Orders: the Non-Contentious Probate Fees Order 2004; the Public Guardian (Fees, etc) Regulations 2007; and the Civil Proceedings Fees Order 2008.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales only.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales only.

5. Policy Context

What is being done and why?

Fees associated with the Office of the Public Guardian

5.1 The Mental Capacity Act 2005 provides the legal framework for making decisions on behalf of individuals in England and Wales who lack the mental capacity to make decisions for themselves. It establishes the statutory role of the Public Guardian, appointed by the Lord Chancellor, and supported by the Office of the Public Guardian (OPG), an executive agency of the Ministry of Justice (MoJ). The OPG is responsible for carrying out key functions under the Act, including the registration of lasting powers of attorney (LPAs). An LPA is a legal instrument that enables an individual (the "donor") to appoint one of more persons (the "attorneys") to make decisions on their behalf, in the event that they lose the capacity to do so themselves. There are two types of LPAS: one for property and affairs, and another for health and welfare. These instruments ensure that decisions can be made in the donor's best interests, in accordance with the principles and safeguards set out in the Act.

5.2 A fee of £82 is payable by individuals when applying to register an LPA. This fee helps cover the costs incurred by the OPG in processing and registering LPAs, as well as delivering other related services, and the aim is for the OPG to operate on a full cost-recovery basis. To enable this, the fee is set under section 58(3)(b) of the Mental Capacity Act 2005 and section 180 of the Anti-Social Behaviour, Crime and Policing Act 2014, which together allow the fee to exceed the direct cost of registration in order to fully fund the OPG's operations.

5.3 However, the LPA fee has not changed since 2017, during which time the OPG's costs have increased due to inflation. As a result, the MoJ is looking to increase the LPA fee to £92. This is within the inflationary increase and assessed to be the level of fee that will enable the OPG to recover its expected costs in 2026/27. There are two lesser-used fees that the MoJ is proposing to increase as a consequence, again within inflation. The first is the fee for an Enduring Power of Attorney (EPA). EPAs have broadly been replaced by LPAs, but it is still possible to register EPAs with the OPG if they had been signed prior to 1 October 2007. Therefore, the MoJ proposes to increase the EPA fee from £82 to £92 as well. Second, the fee to resubmit an application to register an LPA, e.g. if the original application was invalid, is half of the LPA fee – the MoJ therefore proposes to increase this fee from £41 to £46.

Fees associated with referrals of Parole Board decisions

5.4 Sections 61 and 62 of the Victims and Prisoners Act 2024 provide a framework for certain parole decisions to be referred to the High Court. Where the Parole Board makes a decision to release an indeterminate or fixed-term prisoner who has committed a certain set of offences specified in the Act, the Act gives the Secretary of State a power to direct the Parole Board to refer this decision to the High Court. The High Court is then required to review the release decision to decide whether the statutory release test is met, i.e. whether it is necessary for public protection for the individual to remain confined. This process may have the effect of stopping the release.

5.5 The referral process is due to be commenced shortly. A fee of £646 would ordinarily be payable for the making of the referral, which is the fee payable to bring a civil proceedings in the High Court where the remedy sought is something other than money or possession. The Parole Board in this instance would be liable for paying the fee.

5.6 The policy intention is for such a fee not to be payable. The rationale for this is threefold. First, to avoid imposing a small financial pressure on the Parole Board; second, in recognition of the fact that the Parole Board (who would be liable for the fee) are not the instigators of the referral (which will be the Secretary of State); and third, to avoid the administrative burden associated with the transfer of funds between the Parole Board and HMCTS (two bodies funded within the Ministry of Justice's financial envelope).

Fees associated with Persons at Risk of Violence (PARV) Orders

5.7 When an individual becomes insolvent, they have the option to apply for an insolvency solution, some of which are made to the court, and some are made to the Insolvency Service. Insolvency solutions include Individual Voluntary Arrangements (IVAs), Debt Relief Orders (DROs) and Bankruptcy. Under statute, all these solutions lead to the publication of the individual's personal details in The Gazette and the Individual Insolvency Register. Individuals, often victims of domestic abuse, can prevent their details from being made public if they can evidence that doing so would put them, or those residing at their address, at risk of harm. To do this, they can apply to the court for a Persons at Risk of Violence (PARV) Order.

5.8 This statutory instrument will remove the fee which applies to PARV Orders. There is no specific fee for PARV Orders. The relevant fee charged is for general applications in insolvency matters where no other fee is specified. The fee currently payable is £318. There are a small number of applications per year.

5.9 Removing the fee applicable for PARV Orders achieves a key policy objective to remove financial barriers for those applying to the Court for protection from harm. Additionally, removing the fee aligns with the policy applied to other protective orders related to domestic abuse. Fees are not payable for non-molestation orders, occupation orders and forced marriage protection orders.

Fees associated with applications for a grant of probate

5.10 Probate is the judicial process of proving that a will is valid and officially recognising it as the deceased's final testament. Applying for probate is required to be able to administer the estate of someone who has died. To obtain this, an application is made to His Majesty's Courts and Tribunals Service (HMCTS).

5.11 We have provided a clause to exempt a duty to pay for those who are currently exempt from paying inheritance tax on the grounds that the deceased were emergency services personnel who have died in service, members of the armed forces who have died in active service, or constables or service personnel targeted because of their status. This was the policy intention in the *Court and Tribunal Fees (Miscellaneous Amendments) Order 2025*, which removed a fee of £11 for such cases. However, it is felt that the way the legislation had been drafted was not sufficiently explicit in carving out the intended exemption, and could therefore leave those administering estates of members of the armed forces and emergency personnel liable to pay the full fee associated with a grant of probate application. This SI therefore clarifies the policy intention behind that legislation.

Copy fee for probate grants and wills

5.12 HMCTS provides a service which allows users to obtain copies of documents within the Principal Registry of the Family Division, district registries and any sub-registries attached. Individuals can use this service to search for records and order copies of documents where probate has already been issued, or to request extra copies of a probate grant that has recently been applied for.

5.13 There are currently two separate services operated by HMCTS for the purpose of providing users with copies of documents or wills, which both currently charge users £1.50 per copy. The first is for individual users seeking a copy of a single document or will. This includes the "Find a Will" service, where users can search for copies of existing grants of probate, or in circumstances where a user has applied for a grant of probate and requests extra copies of the grant. Users are charged £1.50 per copy requested. The second service allows for bulk access and allows users to access every copy of a grant of probate or will issued in England and Wales. The value of this service is primarily for organisations. For this service, users are periodically charged £1.50 per document that is added to the service from when they start using it. Given that these services are separately provided for different purposes and have different costs, our policy intention is to charge separate fees for each service.

5.14 The estimated cost to HMCTS of providing single copies of documents under the Find a Will service equates to £16 per copy. The £1.50 fee therefore significantly under-recovers its cost, despite fees being set with the intention of full cost recovery. This statutory instrument will therefore increase the fee for users to obtain copies of documents within the Principal Registry of the Family Division, district registries and any sub-registries attached, which includes the "Find a Will" service and individual users requesting extra copies of probate grants from £1.50 to £16, to align more closely with its costs and ensure that HMCTS can continue to deliver its services effectively. A new fee for bulk access will be implemented in a subsequent instrument.

What was the previous policy, how is this different?

5.15 In relation to the fees in the OPG, there is no underlying change in policy – namely for the OPG to be a full cost-recovery organisation, enabled in part by a fee for LPAs (and EPAs) that may legally over-recover. The fee value for an LPA that achieves this policy has changed from £82 to £92.

5.16 The fee for obtaining copies of probate grants and wills had previously been set at a rate below cost (£1.50). In line with Managing Public Money principles, we are now increasing the fee to £16 to ensure it is closer to cost recovery.

5.17 Prior to this instrument, the Parole Board made final decisions on prisoner releases and these decisions were not referred to the courts for reconsideration. The new process introduced by the Victims and Prisoners Act 2024 allows the Secretary of State to direct the Parole Board to refer prisoner release decisions to the High Court, where the original decision can be agreed or quashed.

5.18 PARV Order applications previously attracted a £318 fee. With this instrument, there will no longer be a fee payable for these applications, in alignment with the policy to exempt fees that has been applied to other types of protective order related to domestic abuse.

6. Legislative and Legal Context

How has the law changed?

6.1 The legislative powers to prescribe court and tribunal fees that are affected by this instrument are contained within section 92 of the Courts Act 2003, section 58 of the Mental Capacity Act 2005, and section 415 of the Insolvency Act 1986. Fees set under these powers cannot be set above the underlying cost of the related service ("non-enhanced fees"). Some fees can be set at a value that is above the cost of service ("enhanced fees") using legislative powers that are prescribed in section 180 of the

Anti-Social Behaviour, Crime and Policing Act 2014. Instruments that enact enhanced fees are subject to the affirmative procedure, however section 180(8) of that Act allows the negative procedure to be used if the instrument adjusts a fee to reflect changes in the value of money.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Lord Chancellor has a statutory duty to consult with certain senior members of the judiciary about changes to fees, as prescribed in section 92(5) and (6) of the Courts Act 2003. We consulted with the senior judiciary and received a direct response from the Deputy Head of Civil Justice, who requested further clarification regarding the amendment for Parole Board decision referrals to the High Court. Other than that, there were no further comments on the subject matter of the Order.

7.2 A public consultation was not undertaken for any of the measures in this instrument. Fee increases are intended to align fees more closely with cost recovery, a principle that is well established across Government. Fees are regularly reviewed and revised promptly to ensure that HMCTS is adequately resourced to deliver its services efficiently. The fee exemptions that will be implemented by this instrument are minor administrative changes that will not affect the public directly and are not controversial in nature.

8. Applicable Guidance

8.1 Accompanying guidance for staff setting out the changes introduced by this instrument will be made available by His Majesty's Courts and Tribunals Service in October 2025 on GOV.UK.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 An Impact Assessment has been submitted with this memorandum, for the increase to the registering of an LPA and EPA fee. These will be published alongside the Explanatory Memorandum on the legislation.gov.uk website. Impact assessments have not been prepared for the fee changes to copy fees for grants and wills, and for the removal of the fee applicable to PARV Orders. An Equalities Statement has also been prepared for the increase to the fee for the registering of an LPA and EPA fee.

9.2 In making decisions, Minister Sackman has been fully briefed on, and has given due regard to, all responsibilities arising under the Public Sector Equality Duty as set out in the section 149 of the Equality Act 2010. This includes careful consideration of the need to eliminate unlawful discrimination, advance equality of opportunity, and foster good relations between individuals who share protected characteristics and those who do not.

9.3 None of the measures contained in this Statutory Instrument are considered to result in direct discrimination against any group. Furthermore, each measure has been evaluated to ensure it represents a proportionate means of achieving a legitimate policy aim, in line with the principles of fairness, necessity and transparency. Minister

Sackman is satisfied that the proposals strike an appropriate balance between policy objectives and equality considerations.

Impact on businesses, charities and voluntary bodies

9.4 There is no, or no significant, impact on business, charities or voluntary bodies because the changes to probate copy fee, fees in the Office of the Public Guardian, and PARV Order application fees pertain to individuals. The fee exemption for parole decision referrals to the High Court impacts the Parole Board, a government agency.

9.5 The legislation does not impact small or micro businesses.

9.6 There is no, or no significant, impact on the public sector because fee changes do not affect the delivery of public services or impose an additional cost on public sector bodies.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to review court and tribunal fees routinely to ensure that they are set at levels that recover the cost of administering court and tribunal services, whilst also ensuring that they are affordable to users and do not present as a barrier to justice.

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 Minister Sackman has made the following statement: "In my view the provisions of the Court and Public Guardian Fees (Miscellaneous Amendments) Order 2025 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.

Matters of special interest to the Joint Committee on Statutory Instruments

11.2 Article 6(1) of the instrument will come into force at the same time as section 61(1) of the Victims and Prisoners Act 2024 (2024 c. 21) comes into force. Article 6(2) will come into force at the same time as section 62(1) of the Victims and Prisoners Act 2024 comes into force. Sections 61(1) and 62(1) will come into force on such day as the Secretary of State may by regulations appoint under section 81(2) of the Victims and Prisoners Act 2024. The date for commencement of these provisions is not anticipated to be before December 2025. Therefore, this instrument will be laid in Parliament.

12. European Convention on Human Rights

12.1 The Minister has made the following statement regarding Human Rights:

"In my view the provisions of the Court and Public Guardian Fees (Miscellaneous Amendments) Order 2025 are compatible with the Convention rights."

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").