**EXPLANATORY MEMORANDUM TO**

**THE COURT OF APPEAL AND UPPER TRIBUNAL (LANDS CHAMBER) FEES (AMENDMENT) ORDER 2016**

**2016 No. 434 (L. 6)**

## 1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

## 2. Purpose of the instrument

2.1 This instrument will increase the fees charged in connection with proceedings in the Lands Chamber of the Upper Tribunal and for bringing appeals in civil proceedings before the Court of Appeal.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 This instrument is made under the powers contained in section 42 of the Tribunals, Courts and Enforcement Act 2007[1] and section 92 of the Courts Act 2003[2] in order to increase fees payable in connection with proceedings in the Lands Chamber of the Upper Tribunal and civil proceedings before the Court of Appeal.

3.2 Given the ongoing financial pressures, the Government has decided that it is right to increase the fees charged in these jurisdictions. Although these fees have been increased above the current level of inflation, the fees still remain below the level necessary for Her Majesty's Court and Tribunal Service to recover the full cost of providing the relevant service

***Other matters of interest to the House of Commons***

3.3 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

## 4. Legislative Context

4.1 This instrument amends:

4.2 the Upper Tribunal (Lands Chamber) Fees Order 2009 (S.I. 2009/1114) to increase the fees payable in respect of proceedings in that Chamber of the Upper Tribunal by ten per cent; and

4.3 the Civil Proceedings Fees Order 2008 (S.I. 2008 No. 1053 (L. 5)) to increase the fees for appeals in civil proceedings before the Court of Appeal. A ten per cent increase will be applied to the fees which were intended to be implemented in April 2014.

[1] http://www.legislation.gov.uk/ukpga/2007/15/pdfs/ukpga_20070015_en.pdf
[2] http://www.legislation.gov.uk/ukpga/2003/39/pdfs/ukpga_20030039_en.pdf

These changes were never implemented and we have, therefore, applied the ten per cent uplift to the intended levels.

## 5. Extent and Territorial Application

5.1 This instrument extends to England and Wales only.

5.2 The provisions in this Order which amend the Civil Proceedings Fees Order apply to England and Wales. The provisions which amend the Upper Tribunal (Lands Chamber) Fees Order apply to England only.

## 6. European Convention on Human Rights

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

## 7. Policy background

***What is being done and why***

7.1 This instrument will increase the fees charged in connection with proceedings in the Lands Chamber of the Upper Tribunal and for bringing appeals in civil proceedings before the Court of Appeal.

7.2 The case for revisiting the way in which fees are charged is based firmly on the need to make sure that Her Majesty's Court and Tribunal Service ("HMCTS") is funded properly to protect the vital principle of access to justice.

7.3 Despite the significant economic progress that has been made over the last five years, the financial climate in which the Government is operating remains challenging. Since 2010, the Ministry of Justice has made substantial reductions to its spending but there is only so much that can be delivered through efficiency savings alone. Therefore it is right to look again at the balance between what users pay towards the overall cost of the court and tribunal service as compared with the financial burden that falls on the taxpayer.

7.4 In light of this the Government believes that it is right to increase the fees charged in the Upper Tribunal (Lands Chamber) and the Court of Appeal (Civil Division). The relevant fees are currently set at levels which are below those necessary for HMCTS to recover the full cost of providing the relevant service. The fees will remain below full cost recovery levels even after these increases made by this instrument.

7.5 The fees that are being increased for appeals in civil proceedings before the Court of Appeal are those which were intended to be implemented in April 2014. These changes were not implemented and we have, therefore, applied the ten percent uplift to the intended levels.

***Consolidation***

7.6 It is not intended that this statutory instrument will consolidate any other legislation.

## 8. Consultation outcome

8.1 On 22 July 2015, the Government launched a public consultation on the proposals to increase fees for proceedings in the Upper Tribunal (Lands Chamber) by ten per cent.

8.2 In respect of the fees in the Court of Appeal (civil division), the consultation which proposed the original increases was published in December 2013 and, then announced they would be taken forward in a Government response, published in April 2014.

However, those increases were not made due to an oversight. We therefore proposed in the July 2015 consultation that we should increase the fees in the Court of Appeal at their intended April 2014 level plus by a further ten per cent. The consultation of December 2013 and the subsequent Government response, published in April 2014, can be found at the below links:

https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform/supporting_documents/courtfeesconsultation.pdf

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300100/cm8845-court-fees-proposals-for-reform.pdf

8.3 The consultation on the increases in the Upper Tribunal (Lands Chamber) and further increase to the fees charged in the Court of Appeal (civil division) closed on the 15 September 2015. A copy of the original consultation can be found at the following link:

https://consult.justice.gov.uk/digital-communications/further-fees-proposal-consultation/supporting_documents/Government%20response%20to%20consultation%20on%20enhanced%20fees%20and%20consultation%20on%20further%20fees%20proposals%20web.pdf

8.4 After careful consideration of the responses that were received, the Government responded to this consultation on 17 December 2015 indicating that it was minded to proceed with these proposals as part of a wider package of fee reforms. A copy of the consultation response is available at the following link:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486536/further-fees-proposals-gov-response-consultation.pdf

## 9. Guidance

9.1 Her Majesty's Courts and Tribunal Service will update its guidance on fees payable in line with these amendments. Forms and leaflets will also be amended to reflect the changes.

## 10. Impact

10.1 Some proceedings to which these fee changes apply may involve businesses, charities or voluntary bodies. Information is not routinely collected on these people or organisations involved in court or tribunal proceedings and therefore the potential impact cannot be calculated.

10.2 There is also no information which is regularly collected on public sector organisations and therefore any potential impact on this group cannot be calculated.

10.3 Two separate Impact Assessments are submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website. Overall we estimate that the fee increases will generate an additional £0.3 million worth of fee income per annum.

## 11. Regulating small business

11.1 Some proceedings to which the fee increases relate will be initiated by or against small businesses. The Ministry of Justice has undertaken research, conducted by Ipsos Mori[3], which found that litigation was seen as a last option for many small businesses.

11.2 Users with legal representation tended to have little awareness of legal costs (including court fees) than those who represented themselves, as courts fee were typically the sole costs they paid. When asked however about specific hypothetical increases to court fees, the research participants felt they were affordable and would not deter them from going to court.

## 12. Monitoring & review

12.1 Fees and the impact of any changes are constantly monitored by way of feedback from courts and their customers and the monitoring of fee income and volumes.

## 13. Contact

13.1 Nick Rees at the Ministry of Justice Telephone: 020 3334 4731 or email: Nick.Rees@justice.gsi.gov.uk can answer any queries regarding the instrument.

[3] "The role of court fees in affecting users' decisions to bring cases to the civil and family courts: a qualitative study of claimants and applicants" MoJ (MoJ (2014)