EXPLANATORY MEMORANDUM TO

THE CIVIL PROCEEDINGS AND MAGISTRATES' COURTS FEES (AMENDMENT) ORDER 2025

2025 No. [XXXX]

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, Administrative Justice, Fees & Irregular Migration, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Cosob Awil at the Ministry of Justice. Email: cosob.awil@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 Fee 4.1 and Fee 9.1 in the Magistrates' Courts Fees Order 2008 (S.I. 2008/1052) and Fee 11.2 in the Civil Proceedings Fees Order 2008 (S.I. 2008/1053) are prescribed under section 92 of the Courts Act 2003, which grants the Lord Chancellor the power to prescribe court and tribunal fees. However, under this power the Lord Chancellor may not charge fees in excess of a reasonable predictive estimate of the cost to HM Courts and Tribunals Service of administration. The fees are currently set to recover no more than the underlying costs of their service (known as a "non-enhanced" fee).

4.2 This instrument will restate Fee 4.1 and Fee 9.1 in the Magistrates' Courts Fees Order 2008 and Fee 11.2 in the Civil Proceedings Fees Order 2008 under section 180 of the Anti-social Behaviour, Crime and Policing Act 2014 ('the 2014 Act'). Fees prescribed under this power may recover more than the underlying cost of the service to which they relate. Whilst this instrument will not change the nominal amount of each fee, the instrument will confer specific Parliamentary authority that by way of these fees, the Lord Chancellor may recover a sum which exceeds the cost of the service in respect of which the fees are charged.

4.3 Fee 4.1 in the Magistrates' Courts Fees Order 2008 relates to applications for council tax liability orders (CTLOs), which are made by local authorities to legally demand payment of council tax arrears, under the Council Tax (Administration and Enforcement) Regulations 1992 (S.I. 1992/613) and the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (S.I. 1989/1058). The current value of the fee will not be changed at this time and will remain at £0.50p.

4.4 Fee 9.1 in the Magistrates' Courts Fees Order 2008 relates to the fee charged on applications for a warrant of entry, which are primarily used by utility companies to gain entrance into private premises to disconnect gas or electricity supply. In some cases, applications for a warrant of entry can be made by Social Services or a Mental Health Team to seek entry to premises to remove a person believed to be suffering from a mental disorder to a place of safety under s.135 of the Mental Health Act 1983. Like Fee 4.1, although it will be restated as an enhanced fee, the current value of the fee will not be changed at this time and will remain at £22.

4.5 Fee 11.2 in the Civil Proceedings Fees Order 2008 relates to the fee charged on the sale of a ship or goods worth more than £100,000 which are seized and auctioned off following a claim made to the High Court, e.g. relating to issues of towage, ownership or damage. The sale fee begins at a minimum of £205, increasing by £0.50 for every £100 of the ship's value. This fee is primarily used by those in the Admiralty jurisdiction of the Royal Courts of Justice. As with Fees 4.1 and 9.1, this instrument will not change the value of Fee 11.2 at this time.

Where does the legislation extend to, and apply?

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

4.7 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 Ministry of Justice has recently undertaken a substantial revision of its costing methodology in relation to court processes, and as a result has identified several changes to the underlying cost of the activities for which HMCTS charges a fee. The revised costing methodology is a more nuanced model which relies on data sources which were not available to the previous methodology; therefore although the Ministry considers the previous methodology was a legitimate basis for its previous estimate, the new model is considered to be an improvement, in line with the Ministry's general duty to keep its fees and processes under review.

5.2 As such, we consider it appropriate to revisit the value of fees charged for the services identified and the powers under which the fees are prescribed. This is being done by both a negative statutory instrument and this affirmative instrument. The negative instrument is planned for laying in March 2025 and will reduce fees to the cost of the service provided by HMCTS where appropriate. The fees reduced in the negative instrument will remain prescribed under section 92 of the Courts Act 2003. Fees set under this power may not exceed a reasonable predictive estimate of the cost to HM Courts and Tribunals Service of administration. In most cases, we will reduce fee values to the cost of service; further detail will be set out in the Explanatory Memorandum accompanying that instrument in due course.

5.3 This affirmative instrument makes provision in respect of the three fees identified above, where we consider it to be more appropriate to keep the nominal fee value the same. This is achieved by 'restating' the fees on the express basis that they will recover more than the predictive estimate of cost of the underlying process to which they relate, without the fee value itself being increased. This will be done in reliance on the 'enhanced' fee power in section 180 of the 2014 Act, which expressly permits the Lord

Chancellor to prescribe court and tribunal fees of an amount which is intended to exceed the cost of anything in respect of which the fee is charged.

5.4 Fee 4.1 in the Magistrates' Courts Fees Order 2008, the £0.50p fee payable upon an application for a CTLO, attracts a high volume of applications each year which raises significant levels of income for the courts and tribunals system. In 2022/2023, 2.1 million CTLOs applications were received which generated £1.1 million in fee income for HMCTS. These funds support HMCTS to continue to deliver its services. CTLOs are processed in bulk and given the low level of the fee and the administrative processes involved, the cost of this service can regularly fluctuate by just a few pence. Under the previous costing methodology, Fee 4.1 was estimated to cost HMCTS more than the £0.50p fee charged, and so was not considered to be at risk of over-recovering. However, the revised costing methodology has identified Fee 4.1 to now be at risk of over recovering.

5.5 Fee 9.1 in the Magistrates' Courts Fees Order 2008 is charged on a warrant of entry. Like Fee 4.1, this fee attracts high volumes of applications and is currently an important source of income for the Department. For example, in 2022/2023 there were approximately 327,000 applications for warrants of entries which resulted in £7.2 million in fee income for HMCTS. The fee is currently charged at £22, and following revision to the costing methodology, the latest calculation of the cost of the activity relating to the fee was lower than the fee itself.

5.6 Fee 11.2 in the Civil Proceedings Fees Order 2008 is the fee charged on the sale of a ship or goods where the value of the item is greater than £100,000. Although this fee does not attract many applications, it is still an important source of income for the Department when the goods are of very high value, with some ships sold for several million. This fee was not considered to be at risk of over recovering under the previous costing methodology. However, the revised costing methodology now in use utilises a more nuanced assessment of resource allocated to any individual fee process which has resulted in Fee 11.2 being identified as at risk of over recovering.

5.7 Restating each of the above fees under the enhanced fee power will ensure that the existing fee values can be retained to continue to generate income for the courts and tribunals service. This will also remove the requirement to regularly adjust the value of the fee and lay a separate statutory instrument each time the cost of the fee changes to prevent future over-recovery, which would come at an increased overall cost to the taxpayer.

5.8 We do not expect that enhancing these fees will create any affordability concerns, particularly as we are not increasing the nominal values of the fees in question. Instead, this instrument will keep the fee values the same.

5.9 The surplus generated will be used to finance the efficient and effective administration of courts and tribunals, as required by section 180(6) of the 2014 Act.

What was the previous policy, how is this different?

5.10 Prior to this instrument, the CTLO, warrant of entry and sale of ship fees were established under section 92 of the Courts Act 2003 and were set with the intention to recover their full cost of administration from users, but not to exceed a reasonable estimate of the costs of the service at the time the fees were originally set.

5.11 With this instrument, the CTLO, warrant of entry and sale of ship fees are now established under the powers outlined in section 180 of the 2014 Act, which allows the fees to be set above the amount it costs to administer the application. Although the fee

values have not been changed, re-stating the fees using these powers accounts for any potential future fluctuations in their cost.

6. Legislative and Legal Context

How has the law changed?

6.1 The legislative power to prescribe the CTLO, warrant of entry and sale of ship fees is contained within section 92(1)(c) of the Courts Act 2003. Fees set under these powers cannot be set above the underlying cost of the related service ("non-enhanced fees").

6.2 Fees can only be set at a value above the cost of the related service ("enhanced fees") with explicit parliamentary approval using the powers provided in section 180 of the 2014 Act. Instruments that are made enacting enhanced fees are subject to the affirmative procedure, as per section 180(7) of the 2014 Act.

6.3 The CTLO, warrant of entry and sale of ship fees were previously set under section 92 of the Courts Act 2003, as non-enhanced fees. This instrument restates the fees under section 180 of the 2014 Act so that they can be set above their costs, but does not change their nominal value.

Why was this approach taken to change the law?

6.4 The alternative option to restating the fees using the Lord Chancellor's enhanced power would be to lower the fee values in a statutory instrument. For the policy reasons described above, it was not considered appropriate to lower the fees. The approach we have decided to take is the most practical option, offers the most predictability for service users, and will protect the level of income derived from the fees.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Ministry of Justice published a consultation, including the proposal to enhance the CTLO fee, titled "Implementing increases to selected court and tribunal fees", which ran from 10 November 2023 to 22 December 2023.[1] The response to this consultation was published on 01 April 2024. An updated Impact Assessment and Equalities Statement that accompanied the consultation were also published alongside this response.

7.2 52 responses to the consultation were received. Of these, 62% came from those working in the legal or public sector. Other respondents included members of the judiciary, academics and members of the public. 30 of the 52 respondents provided an answer to the question regarding the proposal to enhance the CTLO fee.

7.3 Of those that responded to the proposal to enhance the CTLO fee, 63% had no view and no further comments to share. 17% of respondents agreed with the proposal, stating that enhancing the fee would not negatively impact users, as the fee was still being retained at its current value of £0.50p. Only two respondents (7%) disagreed, but their responses indicated that they had incorrectly assumed that the fee was being increased. The other 13% were unclear in their response, but also seemed to assume that the fee was being increased.

7.4 Regarding these concerns, we are not increasing the fee above its current value. Our intention is to amend the legislation so that we can continue to charge £0.50p for CTLO

[1] The consultation document is available to read at:
https://www.gov.uk/government/consultations/implementing-increases-to-selected-court-and-tribunal-fees

applications, whilst ensuring that the fee remains lawful. Further details can be found in the response to the consultation, which was published by the Ministry of Justice on 01 April 2024. A draft affirmative instrument to enhance the CTLO fee was laid on the 13th May 2024 but was not debated due to the July 2024 General Election. That instrument has been withdrawn in favour of this affirmative instrument, enhancing the CTLO, warrant of entry and sale of ship fees.

7.5 We have determined that a consultation on the warrant of entry and sale of ship fees is not required, as the fee changes follow the same principle as the CTLO fee change. Furthermore, given the lack of response to the CTLO proposal in our November 2023 consultation, we do not assess the changes relating to the warrant of entry and sale of ship fees to be significant enough to justify a public consultation for a series of very minor legislative changes where there is no change in fee value.

7.6 The Lord Chancellor has a statutory duty to consult with certain senior members of the judiciary and with the Civil Justice Council about changes to fees, as prescribed in section 92(5) and (6) of the Courts Act 2003. Prior to the publication of both the public consultation and consultation response in respect of the CTLO fee in 2023, we sent letters of engagement to all statutory consultees to fulfil this duty and inform them of the proposed changes. We received direct responses from the Civil Justice Council, the Master of the Rolls and the Deputy Head of Civil Justice during the consultation period, however there was no comment on the subject matter of this Order.

7.7 More recently, in December 2024 the Lord Chancellor consulted with the statutory consultees on all changes in this Order. We have also engaged with the devolved administrations to notify them of all changes in this Order. There continues to be no comment on the subject matter of this order.

8. Applicable Guidance

8.1 Guidance is not applicable for this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument as the changes described in this instrument will not change the values of the CTLO, warrant of entry and sale of ship fees.

9.2 The change to the CTLO fee was mentioned in a previous impact assessment that was published alongside SI. 2024/476.[2]

Impact on businesses, charities and voluntary bodies

9.3 This instrument is out of scope from the definition of "regulatory provisions" as it makes or amends provisions relating to fees.

9.4 There is no, or no significant, impact on business, charities or voluntary bodies because the current fee values will not change. The CTLO fee pertains to local authorities, the warrant of entry fee mostly impacts utility companies, and the sale of ship fee pertains to large admiralty sales.

9.5 The legislation does not impact small or micro businesses.

[2] The impact assessment is available to read at: https://www.legislation.gov.uk/uksi/2024/476/contents/made

9.6 There is no, or no significant, impact on the public sector because although the CTLO fee is payable by local authorities, the current fee value of £0.50p will be retained. Although the fee will be enhanced, this instrument does not increase the cost of the fee to users.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to regularly review the underlying cost of the CTLO, warrant of entry and sale of ship fees to determine whether this has changed, and if an update to the fee values is required.

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 Freer has made the following statement: "In my view the provisions of the Magistrates' Courts Fees (Amendments) 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 The Parliamentary Under Secretary of State for Justice has made the following statement regarding Human Rights:

"In my view the provisions of the Civil Proceedings and Magistrates' Courts Fees (Amendment) 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").