EXPLANATORY MEMORANDUM TO

THE MAGISTRATES' COURTS FEES (AMENDMENT) ORDER 2024

2024 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 Freer, Parliamentary Under Secretary of State at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Laura Beaumont and Abigail Plenty, Deputy Directors for Tribunals and Fees Policy, at the Ministry of Justice confirm 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 will restate Fee 4.1 in the Magistrates' Courts Fees Order 2008 (S.I. 2008/1052) under a power which allows the Lord Chancellor to set fees above the underlying cost of their service (making this what is known as an "enhanced" fee). This fee relates to applications for council tax liability orders (CTLOs), which are made by local authorities to legally demand payment of council tax arrears. Although it will be restated as an enhanced fee, the current value of the fee will remain unchanged at £0.50.

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 CTLOs are applied for 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 fee for these orders is prescribed under section 92 of the Courts Act 2003, which allows the Lord Chancellor to prescribe

court and tribunal fees. Fees set under that power may not exceed the cost to HM Courts and Tribunals Service of administration.

5.2 Fee 4.1 is payable upon an application for a CTLO. It is currently set to recover the underlying cost of its service (known as a "non-enhanced" fee) and is charged at £0.50. The latest assessment of its cost suggests that the cost of administering the application has fallen below the £0.50 value that is currently payable.

5.3 This Order restates the £0.50 fee under the Lord Chancellor's "enhanced" power in section 180 of the Anti-Social Behaviour, Crime and Policing Act 2014 ("the 2014 Act"). CTLOs attract a high volume of applications each year which raises significant levels of income for the courts and tribunals system. These funds then support HMCTS to continue to deliver its services. This power will enable the fee to be set above the cost of its service and therefore to retain its existing value of £0.50. The surplus generated will therefore be used to finance the efficient and effective administration of courts and tribunals, as required by section 180(5) of the 2014 Act.

5.4 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. Restating the fee under the enhanced power will ensure that the fee value of £0.50can be retained to continue to generate income for the courts and tribunals service, and 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, reducing the overall cost to the taxpayer.

What was the previous policy, how is this different?

5.5 Prior to this instrument, the CTLO fee was established under section 92 of the Courts Act 2003 and was set with the intention to recover its full cost of administration from users. This meant that the fee could not exceed the cost of the service.

5.6 With this instrument, the CTLO fee is now established under the powers outlined in section 180 of the 2014 Act, which allows it to be set above the amount it costs to administer the application. Although the fee value of £0.50 has not been changed, re-stating the fee using these powers accounts for any potential future fluctuations in its cost.

6. Legislative and Legal Context

How has the law changed?

6.1 The legislative power to prescribe the CTLO fee 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 fee was previously set under section 92 of the Courts Act 2003, as a non-enhanced fee. This instrument restates the fee under section 180 of the Anti-Social Behaviour, Crime and Policing Act 2014 so that it can be set above its cost.

Why was this approach taken to change the law?

6.4 The alternative option to restating the fee using the Lord Chancellor's enhanced power would be to lower the fee value in a statutory instrument. Doing this would

mean that we would have to regularly adjust the fee value every time the service cost fluctuates, and to do this, we would have to lay a statutory instrument each time. The approach we have decided to take is the most practical option and will avoid the requirement of regularly amending the legislation to adjust the fee value.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Ministry of Justice published a consultation 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 who 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 £0.50. Only two respondents (7%) disagreed, but their responses indicated that they had 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 £0.50 for CTLO applications. Further details can be found in the response to the consultation, which was published by the Ministry of Justice on 01 April 2024.[2]

7.5 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, 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.

7.6 Although the subject matter of this Order is reserved, we also engaged with the devolved administrations to notify them of all changes pertaining to them. They too did not provide any further comment on the subject matter of this Order.

8. Applicable Guidance

8.1 Guidance is not applicable for this instrument.

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

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 change described in this instrument was mentioned in the 10% increases to court fees impact assessment that was published alongside SI 2024/476.[3]

9.2 CTLO applications generated just over £1m in fee income in 2022/23. The most recent assessment of the underlying cost relating to this fee shows it to have fallen below the level of the fee, and this cost will be subject to fluctuations in future years.

9.3 As the CTLO fee will remain at its current value this change will not have a financial impact on users.

Impact on businesses, charities and voluntary bodies

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

9.5 There is no, or no significant, impact on business, charities or voluntary bodies because the fee only pertains to local authorities.

9.6 The legislation does not impact small or micro businesses.

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

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 fee to determine whether this has changed, and if an update to the fee value is required.

10.2 The instrument does not include a statutory review clause and, is in line with the requirements of the Small Business, Enterprise and Employment Act 2015.

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

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 Magistrates' Court Fees (Amendment) Order 2024 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").