EXPLANATORY MEMORANDUM TO

THE UPPER TRIBUNAL (IMMIGRATION AND ASYLUM CHAMBER) (JUDICIAL REVIEW) (ENGLAND AND WALES) FEES (AMENDMENT) ORDER 2014

2014 No. 878 (L. 21)

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

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

2. Purpose of the instrument

2.1 This instrument amends existing fees in The Upper Tribunal (Immigration and Asylum Chamber) (Judicial Review) (England and Wales) Fees Order 2011. The fee changes are being brought as part of a wider review of fees across the civil court system to ensure that the income they generate more closely matches the cost of the service being provided.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The fees for judicial review have been increased to cover the full cost of the process (see further detail in section 7 below on the full cost policy). If a case is granted following an oral renewal hearing, only half of fee 1.2 is payable for the full hearing. This change implements the policy decision that, if an applicant is refused permission on the papers but is subsequently granted a full hearing following an oral renewal, they should pay no more in total than an applicant to whom permission was granted on the papers.

3.2 The cost is calculated by adding the actual cost of the staff and judicial time to process this type of application, and a portion of the costs of the overheads (e.g. IT and estates) of the civil court system.

3.3 The table at Annex A sets out the full changes to fees resulting from this order.

4. Legislative context

4.1 This instrument amends The Upper Tribunal (Immigration and Asylum Chamber) (Judicial Review) (England and Wales) Fees Order 2011.

5. Territorial extent and application

5.1 This instrument applies to England and Wales 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

7.1 The civil court system includes the civil, family and probate jurisdictions, the Court of Protection and the Court of Appeal (Civil Division). For many years, fees have been charged to access these courts. In recent years it has been the government's aim that the revenue from court fees should meet the costs of providing the civil courts system, excluding the cost of the remissions system, which provides a full or partial fee waiver for those unable to afford fees. In 2012/2013 the Ministry of Justice recovered only four-fifths of the cost of the civil court system, with a deficit of £125m[1]. At a time when the Government has made reducing the fiscal deficit a top priority, and when the Ministry of Justice is committed to reducing its budget by a third in real terms by 2014/15, the Government felt it vital that options for reducing public spending were considered.

7.2 It is within this context that part one of the Government's public consultation, *Court Fees: Proposals for reform,* entitled "Cost recovery" set out proposals to recover close to the full cost of the civil court system through fees, transferring more of the cost to the user and reducing the cost to the general taxpayer. It also sought to continue to simplify and rationalise the fees charged across the courts, so that similar processes attracted similar fees, making the fee system easier for users of the courts, and for court staff, to understand. The consultation ran from 3 December 2013 to 21 January 2014 and its response was published on 1 April 2014 and can be found at https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform. The consultation followed a wide-ranging review of the costs of the civil court system and contained detailed proposals for fee changes to recover more of the cost of the courts, including judicial review procedures. This Order implements those fee changes to judicial review in the Upper Tribunal (Immigration and Asylum Chamber) so that they match the fees charged for judicial review in the Civil Proceedings Fees Order 2008.

7.3 The Government continues to offer a system of fee remissions (full or partial fee waivers) for those unable to afford fees to ensure that those with limited financial means are not denied access to the justice system. The Government consulted on changes to the fee remission system in operation in the courts and most tribunals in 2013, introducing a scheme which operated across a wide range of fee levels on 7 October 2013.

8. Consultation

8.1 Before making this order, the Lord Chancellor consulted with the Senior President of Tribunals in accordance with section 42(5) of that Act before making this Order and has obtained the consent of the Treasury in accordance with section 42(6) of that Act.

[1] Re-stated figure from 2012/13 HMCTS annual accounts using revised costing approach set out in consultation document and uplifted to 2013/14 prices so as to align with the accompanying Impact Assessment.

9. Guidance

9.1 Her Majesty's Courts & Tribunals Service will update its guidance on fees payable in line with these amendments.

10. Impact

10.1 The impacts of the combined fee changes being implemented across the civil court system are set out in the attached impact assessment. The combined fee changes across the civil court system are expected to deliver additional income of around £105m per annum. This income estimate is net of remissions, is presented in 2013/14 prices and assumes no behavioural changes as a result of fee changes.

10.2 We would not expect the fee changes resulting from this instrument to impact on the public sector as judicial review cases are brought against the public sector in the Immigration and Asylum Chamber. However, if the public sector loses a judicial review, they may be expected to refund the fees paid in the form of costs.

11. Regulating small business

11.1 While judicial review cases to the Immigration and Asylum Chamber will generally be brought by individuals, the fees may be payable by small businesses in some instances. The impact of the overall fee changes on small businesses is considered in the impact assessment. The impact assessment has been granted a "fit for purpose" rating by the Regulatory Policy Committee

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 Jane Sigley, Head of Fees Policy at the MOJ Fees Policy Team Tel: 020 3334 5442 or email: jane.sigley@justice.gsi.gov.uk, can answer any queries regarding the instrument.

Annex A – Judicial Review Fees

		Current Fee	New Fee	
1.1	Permission to apply	£60	£140	
1.1(a)	On request to reconsider at a hearing a decision on permission	£215	£350	
1.2	Permission to proceed	£215	£700	Where fee 1.1(a) has been paid and permission is granted at a hearing, only £350 of fee 1.2 is payable
1.3	Permission to proceed (claim not started by JR procedure)	£60	£140	