# EXPLANATORY MEMORANDUM TO

# THE UPPER TRIBUNAL (LANDS CHAMBER) FEES (AMENDMENT) ORDER 2010

## 2010 No. 2601

**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 The Upper Tribunal (Lands Chamber) Fees (Amendment) Order 2010 (the "2010 Fees Order") amends the Upper Tribunal (Lands Chamber) Fees Order 2009 (S.I. 2009 No. 1114) ("the 2009 Fees Order") and sets out increases to the fees payable by users of the Upper Tribunal (Lands Chamber).

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

3.1 The Lands Chamber's fees were last adjusted in 1996 when they were set to recover around 50% of its operating costs. The level of fees charged has not been revised since that date and therefore recovery rates have been eroded. In 2008 / 2009 approximately 20% (£325,000) and in 2009 / 2010 13% (£274,000) of the running costs of the Lands Chamber were recovered through fees. The fee increases introduced by the amendment order will bring around 50% recovery. In order to achieve this the increases are above the current rate of inflation.

3.2 The level of fees is increased across all charging points in the current Schedule. Rather than apply a blanket increase across all the Lands Chambers fees we have increased them according to the amount of work involved and resources needed. Details of the fee increases are provided in **Annex A.**

## 4. Legislative Context

4.1 The Lord Chancellor's powers to charge fees for matters dealt with in the Upper Tribunal are contained in section 42(1)(b) of the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act"). The 2009 Fees Order also contains provisions regarding circumstances in which exemptions, reductions and remission of fees apply. The new Schedule inserted by the 2010 Fees Order sets out the scales and rates of fees payable in respect of proceedings before the Lands Chamber.

4.2 The 2010 Fees Order only alters the amounts of fees already prescribed to be taken in the Lands Chamber. Section 42(6) of the 2007 Act provides that the consent of the Treasury is not required for such an Order.

**5. Territorial Extent and Application**

5.1 The 2010 Fees Order applies to England and Wales.

**6. European Convention on Human Rights**

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

**7. Policy background**

7.1 The general policy on fee charging is set out in HM Treasury's publication "Managing Public Money – Fees, Charges and Levies". It requires every fee-charging service to have a financial objective for the level of cost recovery agreed between the responsible Minister and HM Treasury. The default position is that fees should cover the full-cost (but no more). Lower targets can be agreed where there is a sound policy justification. In general, fees are not paid by tribunal appellants as the majority of tribunals deal with cases where an individual is appealing against a decision made by the State. However, a proportion of the cases coming to the Lands Chamber are disputes between parties and the Government considers that the taxpayer should not be required to provide a general, untargeted subsidy for resolution of these disputes. The Government believes that as much of the cost of providing this service as possible should be borne by those who use the service. The 2010 Fees Order will result in the recovery of approximately 48% of the operating costs of the Lands Chamber.

7.2 Access to justice is protected by a fee remission system which will be retained. In addition, the Government recognises that courts and tribunals are not necessarily the best way to resolve disputes. The Government actively encourages and promotes mediation and other methods of dispute resolution and provides information about where to access free advice on alternative dispute resolution.

**8. Consultation outcome**

8.1 The consultation paper, published on 2 December 2009, proposed a package of fee increases designed to increase cost recovery to 50%. The consultation closed on 28 February 2010. The consultation paper 'Review of Fees for the Lands Chamber' can be found at **http://www.justice.gov.uk/consultations/docs/lands-tribunal-fees-consultation.pdf** .

8.2 Fourteen responses to the consultation paper were received. Seven responses were from members of professional bodies including the Royal Institution of Chartered Surveyors, the Residential Landlords Association and the Compulsory Purchase

Association. Five responses came from public bodies including the Residential Property Tribunal Service and the Administrative Justice and Tribunals Council. The Law Society and the Bar Council also responded.

8.3 The responses were collated and analysed for comments on the proposals, suggestions for how they could be improved and feedback on how the proposals would impact users of the Lands Chamber. The majority of respondents stated they understood the need and believed it was reasonable and appropriate for the fees to be increased; however, some respondents expressed concern over the level of the proposed increases.

8.4 After consideration of the comments from respondents, the Government decided to proceed with the increases proposed in the consultation, subject to some adjustments to address particular concerns raised. It will also retain the current method of calculating variable hearing fees, i.e. fees based on the rateable value or the amount awarded or determined by the Lands Chamber. The Government believes the revisions to the proposals will strike the right balance between achieving sufficient revenue whilst maintaining fair access to the Lands Chamber for potential users. The Government Response to the consultation was published on 25 August 2010 and can be found at **http://www.justice.gov.uk/consultations/docs/lands-fees-consultation-response.pdf** .

8.5 The Government estimates that implementation of the 2010 Fees Order will generate income equivalent to 48% of the Lands Chamber running costs, compared to the estimated 50% which would have been generated by the original proposals in the consultation document. It is estimated that the fee income from the Lands Chamber will increase from £0.27 million in 2009/10 to £0.7million for 2011/12.

8.6 The Senior President of Tribunals, the President of the Lands Chamber and the Administrative Justice and Tribunals Council were consulted during the development of this Order.

**9. Guidance**

9.1 Fees are already being charged in the Lands Chamber; regular users and current applicants will receive information about the increases to these fees. The website of the Tribunals Service will provide information about the amended fees order in advance of the implementation date.

**10. Impact**

10.1 An Impact Assessment has not been prepared for this instrument. An Impact Assessment was prepared for the Government Response to the public consultation ‘Review of Fees for the Lands Tribunal’. This was published on 25 August 2010 and can be found at **http://www.justice.gov.uk/consultations/docs/land-fees-impact-assessment.pdf** .

**11. Regulating small business**

11.1 The Lands Chamber does not collect information about appellants that would make it possible to classify them as belonging to a particular group or to estimate what percentage of users are small businesses. It is therefore not possible to estimate the effect in isolation on small firms. However, the post implementation review will monitor cases to see whether small firms are negatively impacted.

**12. Monitoring & review**

12.1 The changes to the fees will be monitored and reviewed to consider their impact and the extent to which the policy objectives have been achieved.

**13. Contact**

13.1 Mary Dallas, New Jurisdictions, Tax, Lands and Legislation Policy, mary.dallas3@tribunals.gsi.gov.uk, telephone: 0161 833 6315, can answer any queries regarding this instrument.

**Annex A Table of Fees – Old and New**

**The fees were last increased on 1 May 1996.**

| *Item* | Old Fee £ | New Fee £ |
|---|---|---|
| **Lodging an application for permission to appeal** | | |
| 1. On lodging an application for permission to appeal under old rule 38 (interlocutory applications) / new rule 21 (application to the Tribunal for permission to appeal). | 40 | 200 |
| **Lodging a reference or an appeal** | | |
| 2. On lodging a notice of reference: | | |
| under old rule 10 / new rule 28 (notice of reference) or a notice of appeal under old rule 6 / new rule 24 (notice of appeal); or | 50 | 250 |
| on lodging a notice of a rating appeal under old rule 6 / new rule 24 (notice of appeal). | 50 – 5,000 | 250 |
| **Lodging an absent owner application** | | |
| 3. On lodging an application for a determination under Schedule 2 to the Compulsory Purchase Act 1965 (absent or untraced owners) or section 58 of the Land Clauses Consolidation Act 1845 (compensation to absent parties to be determined by a surveyor appointed by two justices). | 100 | 500 |
| **Lodging a restrictive covenant application** | | |
| 4. On lodging an application under old rule 13 / new rule 32 (method of making application) in respect of section 84 of the Law of Property Act 1925 (power to discharge or modify restrictive covenants affecting land). | 200 | 800 |
| **Lodging a rights of light application** | | |
| 5. On lodging an application under old rule 21 (form of application) / new rule 41 (method of making application) in respect of section 2 of the Rights of Light Act 1959 | | |

| | | |
|---|---|---|
| (registration of notice in lieu of obstruction of access of light)- | | |
| (a) for a definitive certificate | 250 | 1,200 |
| (b) for a temporary and definitive certificate. | 300 | 1,500 |
| **Interlocutory or consent order application** | 40 | 100 |
| 6. On lodging an interlocutory application under old rule 38 / new rule 6. | 100 | 150 |
| 7. On lodging an application for a consent order under old rule 51 / new rule 50 (consent orders). | | |
| **Hearing a rating appeal** | | |
| 8. On the hearing of an appeal from the decision of a Tribunal with jurisdiction to hear rating appeals, five percent of rateable value as determined in the final order of the Tribunal, subject to— | | |
| (a) minimum fee | 100 | 250 |
| (b) maximum fee. | 5,000 | 15,000 |
| **Hearing a reference or other appeal (excluding one where the hearing fee is calculated on the basis of rental value)** | | |
| 9. On the hearing of a reference or an appeal against a determination or on an application for a certificate of value (excluding one where the hearing fee is calculated on the basis of rental value), two per cent of the amount awarded or determined by the Tribunal, agreed by the parties following a hearing or determined in accordance with old rule 27 (determination of proceedings with a hearing) / new rule 46 (decision with or without a hearing), subject to— | | |
| (a) minimum fee | 100 | 250 |
| (b) maximum fee. | 5,000 | 15,000 |
| **Hearing a reference or other appeal where the hearing fee is calculated on the basis of rental value** | | |

| | | |
|---|---|---|
| 10. On the hearing of a reference or an appeal against a determination where the award is in terms of rent or other annual payment, two per cent of the annual rent or other payment determined by the Tribunal, agreed by the parties following a hearing or determined in accordance with old rule 27 (determination of proceedings with a hearing / new rule 46 (decision with or without a hearing), subject to— | | |
| (a) minimum fee | 100 | 250 |
| (b) maximum fee. | 5,000 | 15,000 |
| **Determining a restrictive covenant application** | | |
| 11. On the hearing of an application or the making of any order under section 84 of the Law of Property Act 1925(power to discharge or modify restrictive covenants affecting land)— | | |
| (a) a hearing as to entitlement under section 84(3A) | 250 | 500 |
| (b) order without a hearing (old rules 17(2) and (3), new rule 46) | 250 | 250 |
| c) substantive hearing of an originating application | 350 | 1,000 |
| (c) engrossing Minutes of Order. | 100 | 200 |
| **Hearing (no amount awarded)** | | |
| 12. On the hearing or preliminary hearing of a reference or appeal (not being the determination of an application under paragraph 11 above) where either the amount determined is nil or the determination is not expressed in terms of an amount. | 200 | 500 |
| **Copies of documents** | | |
| 13. For a photocopy or certified copy of a document, or for examining a plain copy and marking as a certified copy (for each page). | 1 | 1 per page. Minimum charge of 10. |

| | | |
|---|---|---|
| 14. For supplying published decisions to subscribers (for each page).<br><br>**Determination of amount of costs** | 1 | 1 per page. Minimum charge of 10. |
| 15. For a determination of the amount of costs by the Tribunal under new Rule 10(5), (amount of costs) for every £1 or part thereof allowed. | 0.05 | 0.05 |