

EXPLANATORY MEMORANDUM TO
THE SUPREME COURT FEES ORDER 2024

2024 No. 148 (L. 4)

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. Purpose of the instrument

2.1 The Supreme Court Fees Order 2024 revokes, replaces, and consolidates the Supreme Court Fees Order 2009 (S.I. 2009/2131) as amended. It specifies the fees payable in relation to proceedings in the Supreme Court.

2.2 As part of the consolidation this order makes the following changes:

- (i) simplifies the fee structure by combining certain specified fees to reduce the number of fees that are payable by Supreme Court users at different stages of proceedings;
- (ii) removes the distinction between the fees payable for devolution jurisdiction case and civil case fees so that the same fees apply to both case types;¹
- (iii) amends the fee for filing a reference to the Supreme Court, widening its scope to include, in addition to references made under its devolution jurisdiction, references in respect of assimilated case law (previously known as retained EU case law), and increases the level of the fee to better reflect the administrative workload and costs to the Supreme Court that occur in such cases;
- (iv) increases 14 Supreme Court fees by historic inflation from April 2011, or from the date the fee was last amended, up to March 2023; and
- (v) makes minor consequential amendments and technical drafting changes to improve clarity.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 This instrument applies and extends to England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

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

¹ Devolution jurisdiction cases relate to proceedings under the Scotland Act 1998, the Government of Wales Act 2006 or the Northern Ireland Act 1998

6. Legislative Context

- 6.1 Section 52 of the Constitutional Reform Act 2005 (“the CRA”) provides the Lord Chancellor, with the consent of the Treasury, the power to prescribe court fees for proceedings in the Supreme Court. Fees set under this power cannot be set above the cost of the underlying service (non-enhanced fees) and statutory instruments made in exercise of this power are subject to the negative procedure in accordance with section 144 of the CRA.
- 6.2 Before exercising the power to set fees, the Lord Chancellor has a duty under section 52(4) to (6) of the CRA to consult specified members of the judiciary and other legal bodies.

7. Policy background

What is being done and why?

- 7.1 Whilst the Supreme Court is entirely independent of the Ministry of Justice and HM Courts and Tribunals Service (HMCTS), under section 50(1) of the CRA the Lord Chancellor has a statutory duty to ensure that the Supreme Court is provided with the resources necessary to carry out its functions effectively. Prescribing fees in the Supreme Court assists the Lord Chancellor in discharging this duty.
- 7.2 In setting fees for the Supreme Court, the Lord Chancellor also has a statutory duty under section 52(3) of the CRA 2005 to ensure that access to the court is not denied. This duty underpins the need for a fee structure that is fair, proportionate, and does not deter litigants from pursuing their legal rights. Fees in the Supreme Court were first introduced in 2009 by the Supreme Court Fees Order 2009 (“2009 Fees Order”). Fees prescribed by that Order have not changed, except for the fee payable on filing an application for permission to appeal (Fee 1.1), which was increased from £800 to £1000 in August 2011.² Between April 2011 and March 2023, the United Kingdom’s general price level as defined by the Consumer Price Index (CPI) rose by 40%. This has resulted in a substantial fall in the real term value of fees and fee income received by the Supreme Court.
- 7.3 The Supreme Court operates a fee remissions scheme (see Schedule 2 of the 2009 Fees Order), which grants full or partial fee remissions for litigants on low-income, those in receipt of certain benefits, and those who have little to no savings. The fee remission scheme was revised on 27 November 2023, which improved the level of remissions available for many individuals.³ These changes were preceded by a public consultation launched on 7 March 2023, seeking views about ways to reform the Ministry’s policy on fee remission and the operation of the scheme in HMCTS (called “Help with Fees”).⁴ The Ministry’s response to that consultation was published on 16 October 2023.⁵
- 7.4 In 2022/23, fees accounted for £783,000 in income against £13.1m in running costs for the Supreme Court. This income covered 6% of the Supreme Court’s running costs, with the majority covered through contributions from HMCTS, the Northern

² Article 3 of the Supreme Court Fees (Amendment) Order 2011 (S.I. 2011/1737)

³ Article 3 of the Courts and Tribunals (Fee Remissions and Miscellaneous Amendments) Order 2023 (S.I. 2023/1094)

⁴ Available to read at: <https://www.gov.uk/government/consultations/revising-the-help-with-fees-remission-scheme>.

⁵ Available to read at: [Revising the ‘Help with Fees’ remission scheme - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/revising-the-help-with-fees-remission-scheme)

Ireland Courts and Tribunals Service, the Scottish Government and HM Treasury. Between 2011 to 2023, the taxpayer has increased its contribution in cash terms to the administration of the Supreme Court. In 2010/11, the taxpayer contributed £5,970,000 and in 2022/23, this increased to £6,792,000. In 2010/11 fees accounted for £934,000, compared to £783,000 in 2022/23. Fees currently account for 10% of income, below the 13% of the Supreme Court's income they contributed in 2011.

- 7.5 Given the gradual decline in fee income and their real terms value, in 2022 the Ministry of Justice conducted a review of the fees that are payable in the Supreme Court to ensure they met the following four objectives:
- (i) to ensure a straightforward system for applicants to understand and the Supreme Court to administer;
 - (ii) to raise income from Supreme Court users that will contribute towards operating costs;
 - (iii) to support the long-term financial stability of the Supreme Court; and
 - (iv) to ensure that fees in the Supreme Court do not prevent access to justice.
- 7.6 The review highlighted a need for reforms to the Supreme Court fee structure. In line with the objectives above, this Order makes the changes set out below.
- 7.7 Simplify the fee structure: Under the 2009 Fees Order the costs to appellants to make an appeal in the Supreme Court was split across two fees. An appellant would be required to pay Fee 2.1 (£800 for civil cases or £400 for devolution jurisdiction cases), on filing a notice of intention to proceed with an appeal, or where permission to appeal is not required, Fee 2.2 on filing a notice of appeal (£1,600 for civil cases or £400 for devolution jurisdiction cases). An appellant would then be required to pay Fee 2.5 (£4,280 for civil cases or £800 for devolution jurisdiction cases) on filing a statement of relevant facts and issues and an appendix of essential documents.
- 7.8 This Order combines Fee 2.1 with Fee 2.5, and Fee 2.2 with Fee 2.5 so that an appellant is required to pay the combined fee on filing a notice of intention to proceed with an appeal or a notice of appeal (as applicable). This change reduces the number of fees payable by an appellant at different stages in proceedings, simplifies the fee structure, and reduces the administrative burden on the Supreme Court staff in processing fees and applications for remission or refund. The new Fee 2.1 and 2.2 are also increased by historic inflation (as part of the changes outlined in paragraph 7.12) and is set at £7,855 and £8,975 respectively.
- 7.9 Additionally, this Order also combines the fees that are payable for a claim for costs. The fee payable for a claim for costs under the 2009 Fees Order was split between Fee 4.1 on submitting a claim for costs, and Fee 4.2 on certification by the Registrar of the amount of assessed costs, or on receipt of an order showing the amount. This Order removes Fee 4.2 and amends Fee 4.1 so that the fee payable on submitting a claim for costs is 4% of the sum claimed. This change further simplifies the fee structure, reduces the number of fees payable at different stages in proceedings, and enables the Supreme Court to recover more of the costs involved in administering these claims.
- 7.10 Removes the distinction between devolution jurisdiction case and civil case fees: This Order removes the separate fee rates that applied under the 2009 Fees Order between civil cases and devolution jurisdiction cases. This better reflects the administrative cost and judicial time involved in devolution jurisdiction cases, which are the same as civil cases. Removing this distinction will simplify the fee structure and align fees more closely with the service costs.

- 7.11 Amends fees payable in reference cases: This Order amends Fee 2.3 to widen its scope so as to apply to the filing of either a reference under the Supreme Court’s devolution jurisdiction (relating to proceedings under the Scotland Act 1998, the Government of Wales Act 2006 or the Northern Ireland Act 1998) or references made under section 6A or 6B of the European Union (Withdrawal) Act 2018 in relation to assimilated case law (previously known as retained EU case law before 31st December 2023). This fee is also increased to better reflect the costs involved in such proceedings and is included as part of the wider inflationary increases (see paragraph 7.12).
- 7.12 Increases fees by historic inflation: This Order increases fees to account for historic inflation as measured by the Consumer Price Index (CPI). This covers inflation from April 2011, or the date of last change if later, up to March 2023, and represents a 40% uplift to fees. The extent of the fee change is set out in the Explanatory Note to this Order and is also contained in Annex B of the Government’s response to the consultation.
- 7.13 Minor consequential amendments, technical and drafting improvements: As part of the consolidation, minor consequential amendments and technical drafting improvements have been made. This includes amendments to the descriptions of certain fees to simplify the language; to reflect that certain fees have been combined; to reflect that the fee on filing a reference is now wider in scope; and, in respect to copy fees, to remove reference to copies of documents being provided on “computer disk” as this is now redundant, with copies of documents usually sent by email or other electronic method. In addition to revoking the 2009 Fees Order and its amending instruments, this Order remakes Schedule 2 (remissions, part remissions and refunds) with drafting improvements included. Redundant definitions have been removed, such as the definition for “family help (lower)” as this term is not used within the Order. In the definition for “excluded benefits”, reference to the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2011 is replaced by the Social Services and Well-being (Wales) Act 2014, as the 2011 Regulations have been revoked.⁶ The reference to the housing credit element of pension credit has also been removed as this payment has not been brought into force, and there are no longer plans to do so. The reference to constant attendance allowance has also been removed as this payment, where it is received, is an element of industrial injuries disablement benefit and is therefore already captured by the reference to ‘any payment from the industrial injuries disablement benefit’. Furthermore, certain provisions have been reordered to improve clarity, readability, and to avoid duplication, such as the list of passporting benefits being included as part of the gross monthly income test and moving the provisions regarding the Chief Executive’s power to grant remission to charitable or not-for-profit organisations, so that it follows immediately after the paragraph setting out the Chief Executive’s power to remit fees in exceptional circumstances. The changes made to Schedule 2 by this Order do not make any changes to the operation of the fee remissions scheme in the Supreme Court, since it was last revised on 27 November 2023.
- 7.14 This Order contains a savings provision to clarify the fees payable for appeals commenced or cost claims submitted before 1 April 2024.

⁶ Regulation 2(1) of and Schedule 1 to the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) (Secondary Legislation) Regulations 2016. (S.I. 2016/211).

7.15 It is anticipated that this Order will provide the Supreme Court with an additional income of £170,000 - £210,000 per annum.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union/trigger the statement requirements under the European Union (Withdrawal) Act 2020.

9. Consolidation

9.1 This Order consolidates the 2009 Fees Order and its amending instruments. Schedule 3 specifies the instruments and the extent to which they are revoked by this Order.

10. Consultation outcome

10.1 The Lord Chancellor has a statutory duty to consult certain senior judges and key organisations about fees payable in the Supreme Court. This is prescribed in section 52 (5) and (6) of the Constitutional Reform Act 2005. Before publishing the public consultation, we also engaged with the devolved administrations on the proposed reforms to Supreme Court fees.

10.2 The Ministry of Justice consulted on proposals to reform fees payable in the Supreme Court by publishing a consultation titled “Reforming Fees in the United Kingdom Supreme Court”. The consultation ran from 16 October 2023 to 27 November 2023.⁷ The Ministry of Justice published its response to the consultation on 12 February 2024. A summary of the consultation responses received, and the Ministry’s response is summarised below. The Impact Assessment that accompanied the consultation has also been updated to reflect changes in the implementation date. The Equalities Statement includes small amendments to reflect changes since it was last published. These documents are published alongside this consultation response.⁸

10.3 A total of nine responses to the consultation were received. Of these, five were from current members of the judiciary. Other respondents were a former member of the judiciary, the Bar Council of England and Wales, the Bar Council of Northern Ireland and the Forum of Insurance Lawyers.

10.4 Respondents were generally content with the principle of streamlining and simplifying fees. There was also some agreement to the rationale behind removing the distinction between devolution jurisdictions case and civil case fees. Respondents were divided on the general principle of fees needing to increase and the regularity of the increases. Respondents also expressed concerns about the specific proposals that were consulted on.

10.5 Overall, the main concerns raised were:

- (i) that combining fees payable when initiating an appeal would financially disadvantage those appellants who settle before the second fee would have been payable;
- (ii) that aligning fees payable in devolution jurisdiction cases with civil appeal cases did not consider income disparities across the devolved nations;

⁷ The consultation document is available to read at: <https://www.gov.uk/government/consultations/reforming-fees-in-the-united-kingdom-supreme-court/reforming-fees-in-the-united-kingdom-supreme-court>

⁸ All documents are available to read at: <https://www.gov.uk/government/consultations/reforming-fees-in-the-united-kingdom-supreme-court/reforming-fees-in-the-united-kingdom-supreme-court>

- (iii) whether a 40% increase to fees was justifiable in the context of current cost of living pressures;
 - (iv) that increasing fees would impede access to justice; and
 - (v) that higher fees shifted the funding burden of the Supreme Court away from the taxpayer and on to the user.
- 10.6 In response to paragraph 10.5(i) it is very rare that cases are withdrawn before a hearing. In the past five years, only eight cases have been withdrawn prior to a hearing before the Supreme Court., Additionally, there is limited evidence that the current split of fees to initiate an appeal, in practice, provides an incentive to settle before the next fee is triggered.
- 10.7 Regarding paragraph 10.5(ii) it is very rare that an individual brings a devolution jurisdiction case. In the past five years, there have been ten devolution jurisdiction cases, and all of these were bought by government. If an individual were to bring a devolution jurisdiction case and were on a low income and had little to no savings, they would be eligible to apply for fee remission.
- 10.8 The concerns referenced in paragraph 10.5 (iii) and (iv) are mitigated by the recent reforms made to the Supreme Court’s fee remission scheme, which has been improved to provide greater financial support for low income litigants. Individuals who receive full fee remission will not be affected by higher fees, nor are those individuals in receipt of Legal Aid, as court fees are covered under that scheme. An individual with a gross monthly income of £1,950 (£23,400 per year), with less than £16,000 in savings, would be eligible for partial remission in respect of the fee payable to initiate an appeal (Fee 2.1/2.2), and would instead be liable to pay a £260 fee on filing a notice of intention to proceed with an appeal or a notice of appeal, whereas prior to the reforms, the fee payable after remission would have been £390. Further detailed examples of how the fee remission scheme supports access to justice are set out at paragraphs 31 to 36 of the Government’s response to the consultation.
- 10.9 In respect of the concern referenced at paragraph 10.5(v), the taxpayer has broadly increased its contribution in cash terms to the administration of the Supreme Court Fee income on the other hand has generally been stable, and in comparison to 2010/11 has actually reduced. The proposed increase will align taxpayer and user funding closer to the level in 2011, with the taxpayer continuing to provide the majority of Supreme Court income.

11. Guidance

- 11.1 Accompanying guidance setting out the changes introduced by this instrument will be made available by the Supreme Court by April 2024.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 In respect of the amendments to the fees payable in the Supreme Court, a full updated Impact Assessment was published alongside the consultation response and is submitted alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 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 Supreme Court Fees Order 2024 have no net cost to business”.

15. Contact

- 15.1 Oliver Georgiou at the Ministry of Justice email: Oliver.Georgiou@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Cathryn Hannah, Deputy Director for Legal Support and Fees Policy at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Mike Freer MP, Parliamentary Under Secretary of State for the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.