
STATUTORY INSTRUMENTS

2024 No. 538 (L. 8)

SENIOR COURTS OF ENGLAND AND WALES

The Civil and Family Proceedings
Fees (Amendment) Order 2024

Made - - - - - *18th April 2024*
Laid before Parliament *22nd April 2024*
Coming into force in accordance with article 1(2)

The Lord Chancellor, with the consent of the Treasury, makes the following Order in exercise of the powers conferred by section 92(1) and (2) of the Courts Act 2003(1).

The Lord Chancellor has had regard to the principle referred to in section 92(3) of that Act.

In accordance with section 92(5) and (6) of that Act the Lord Chancellor has consulted the Lord Chief Justice, the Master of the Rolls, the President of the King’s Bench Division, the President of the Family Division, the Chancellor of the High Court, the Head of Civil Justice, the Deputy Head of Civil Justice and the Civil Justice Council.

Citation and commencement

1.—(1) This Order may be cited as the Civil and Family Proceedings Fees (Amendment) Order 2024.

(2) This Order comes into force on 13th May 2024 or immediately after the coming into force of section 44 of the Illegal Migration Act 2023(2), whichever is the later.

Amendments to the Civil Proceedings Fees Order 2008

2.—(1) The Civil Proceedings Fees Order 2008(3) is amended as follows.

(2) After article 3C insert—

“**3D.** Fee 1.5 (starting proceedings for any remedy other than recovery of money or land) is not payable where the application is for habeas corpus in respect of a decision mentioned in paragraph 3A(1) of Schedule 10 to the Immigration Act 2016(4).”

(1) 2003 c. 39. Section 92 was amended by paragraph 345 of Schedule 4, and paragraph 4 of Schedule 11 to the Constitutional Reform Act 2005 (c. 4), and paragraph 95 of Schedule 10 to the Crime and Courts Act 2013 (c. 22).
(2) 2023 c. 37.
(3) S.I. 2008/1053 as amended by S.I. 2014/874 and 2021/985. There are other amending S.I.s not relevant to this Order.
(4) 2016 c. 19. Paragraph 3A(1) was added by section 13(4) of the Illegal Migration Act 2023.

3E. Fees 13.1(a) (application to the Court of Appeal for permission to appeal or for extension of time for appealing or both), 13.1(b) (filing an appellant’s or respondent’s notice where permission to appeal is not required or has been granted), 13.1(c) (filing an appeal questionnaire), 13.2 (filing a respondent’s notice where the respondent wishes to ask the appeal court to uphold the order of the lower court for different or additional reasons) and 13.3 (filing an application notice) are not payable in proceedings where the decision being appealed is a decision of the Upper Tribunal under section 44(6) of the Illegal Migration Act 2023.”.

Amendments to the Family Proceedings Fees Order 2008

3.—(1) The Family Proceedings Fees Order 2008(5) is amended as follows.

(1) After article 3C insert—

“**3D.** Fee 1.1 (application to start proceedings where no other fee is specified) is not payable where the application is for habeas corpus in respect of a decision mentioned in paragraph 3A(1) of Schedule 10 to the Immigration Act 2016.”.

Signed by the authority of the Lord Chancellor

18th April 2024

Mike Freer
Parliamentary Under Secretary of State
Ministry of Justice

We consent

18th April 2024

Amanda Milling
Mike Wood
Two of the Lord’s Commissioners of His
Majesty’s Treasury

(5) [S.I. 2008/1054](#) as amended by [S.I. 2014/877](#). There are other amending S.I.s not relevant to this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Civil Proceedings Fees Order 2008 ([S.I. 2008/1053](#)) ('the 2008 Order') as a consequence of amendments made to immigration legislation by the Illegal Migration Act [2023 \(c. 37\)](#) ('the Act') and in relation to certain appeal proceedings brought against decisions of the Upper Tribunal under the Act.

The Act establishes a new procedure for the removal of persons who enter or arrive in the United Kingdom in breach of immigration control. Section 2 of the Act places a duty on the Secretary of State to make arrangements for the removal of a person, if the person meets specified conditions, from the United Kingdom to their home country or to a safe third country. Section 11(2) of the Act inserts into Schedule 2 to the Immigration Act [1971 \(c. 19\)](#) paragraph 16(2C) which gives immigration officers powers to detain persons in connection with that duty. Section 11(5) and (6) of the Act inserts into section 62 of the Nationality, Immigration and Asylum Act [2002 \(c. 41\)](#) subsection (2A) which gives the Secretary of State powers to detain persons in the same circumstances. By paragraphs 3A(1), (2) and (3) of Schedule 10 to the Immigration Act [2016 \(c. 19\)](#) ('the 2016 Act'), inserted by section 13(4) of the Act, subject to certain exceptions those detention decisions, as well as a decision of the Secretary of State to refuse immigration bail from detention thereunder, are final and not liable to be questioned in any court or tribunal, including by way of judicial review. However, paragraph 3A(5)(a) of the 2016 Act (as inserted by the Act) preserves the ability for a person detained under the provisions listed in paragraph 3A(1) of the 2016 Act to make an application for habeas corpus.

A person may challenge the decision of the Secretary of State for removal under the Act on the basis that their claim is a 'suspensive claim' as defined under section 38(2) of the Act. Section 44 of the Act provides a right of appeal to the Upper Tribunal against a decision of the Secretary of State to refuse a suspensive claim.

Article 2 inserts into the 2008 Order new articles 3D and 3E. Article 3D exempts fees for habeas corpus applications made in respect of a decision listed in paragraph 3A(1) of the 2016 Act. Article 3E exempts fees payable in the Court of Appeal where the decision being appealed is a decision of the Upper Tribunal under section 44 of the Act.

By virtue of the High Court (Distribution of Business) Order 2014 ([S.I. 2014/3257](#)), all applications for habeas corpus in relation to minors are made to the Family Division of the High Court. Article 3 inserts into the Family Proceedings Fees Order 2008 ([S.I. 2008/1054](#)) new article 3D which exempts fees for habeas corpus applications in relation to a minor in respect of a decision listed in paragraph 3A(1) of the 2016 Act.

An impact assessment has not been produced for this instrument as no significant impact on the private, voluntary or public sectors is foreseen.