

Title: Court fees Impact Assessment: Uplifting selected court fees by inflation IA No: MoJ002/2021 RPC Reference No: N/A Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies: HM Courts and Tribunals Service (HMCTS)	Impact Assessment (IA)			
	Date: 31/08/2021			
	Stage: Implementation			
	Source of intervention: Domestic			
	Type of measure: Secondary Legislation			
Contact for enquiries: mojfeespolicy@justice.gov.uk				

Summary: Intervention and Options	RPC Opinion: RPC Opinion Status
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Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status Qualifying provision
N/A	N/A	N/A	N/A

What is the problem under consideration? Why is government action or intervention necessary?

Civil court fees are a reasonable means of making resources available to secure access to justice, and accounted for £724m in income against £2bn in running costs for HM Courts and Tribunal Service (HMCTS) in 2019/20. While the running costs of HMCTS and the general UK price level have been rising, the majority of court fees have not been increased since 2016 meaning that the value of many have fallen in real terms. To ensure access to justice is maintained through a properly funded court system, we are proposing to uplift selected court fees with the Consumer Price Index (CPI) backdated to August 2016 or the date of the last fee change if later, to offset inflation over this period. Government intervention is required because changing fees requires secondary legislation. To ensure access to justice is maintained, the Government will also uplift the Help with Fees (HwF) income threshold means test using CPI with owner occupiers' housing costs (CPIH). This is considered in Impact Assessment MoJ003/2021, and the impacts of both measures are brought together in an overarching Impact Assessment MoJ004/2021.

What are the policy objectives of the action or intervention and the intended effects?

The policy objectives are to protect access to justice by ensuring that the courts and tribunals are adequately resourced; and to reduce the overall taxpayer subsidy for HMCTS. By uplifting selected fees to reflect historic inflation backdated to August 2016 (the last time large scale fee increases were made), or the date of last change if it was later, the MoJ will increase the funding for HMCTS by raising fee income.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The following options are considered in this Impact Assessment (IA):

- Option 0: Do Nothing. Maintain the current fee structure.
- Option 1: Uplift selected court fees by inflation, backdated to August 2016 (or date of last fee change, if later).

The Government's preferred option is to implement Option 1 as it will reduce the subsidisation required by the taxpayer and will ensure HMCTS can continue to deliver access to justice for all.

Will the policy be reviewed? yes If applicable, set review date: Month/Year				
Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	Micro No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: n/a		Non-traded: n/a

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: Date:

Summary: Analysis & Evidence

Policy Option 1

Description: Uplift selected court fees by inflation, backdated to August 2016 (or date of last fee change, if later)

FULL ECONOMIC ASSESSMENT

Price Base Year 21/22	PV Base Year 21/22	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	Optional	£18m	Optional
High	Optional	Optional	Optional
Best Estimate	N/A	£22m	N/A

Description and scale of key monetised costs by 'main affected groups'

The ongoing cost to court users from uplifting the fees by inflation is estimated to be around £20m-£25m per annum. This equates to an annual average of £18m-£22m in real terms. As this represents a direct transfer from court users to HMCTS it does not form part of the NPV.

Other key non-monetised costs by 'main affected groups'

There will be some transitional costs to HMCTS (from making adjustments to IT systems and reissuing forms and guidance). These have not been monetised and are not expected to be substantial. There may also be costs related to familiarisation with the increased fees for HMCTS staff, legal professionals, and customers.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	Optional	£18m	Optional
High	Optional	Optional	Optional
Best Estimate	N/A	£22m	

Description and scale of key monetised benefits by 'main affected groups'

The ongoing benefit to the MoJ arising from uplifting the fees in line with inflation is estimated to be around £20m-£25m per annum, equating to an annual average of £18m-£22m in real terms. As above, this represents a direct transfer from court users to HMCTS and so is not included in the NPV.

Other key non-monetised benefits by 'main affected groups'

None

Key assumptions/sensitivities/risks

For the purposes of this IA, the following assumptions have been made:

- The implementation date is assumed to be October 2021.
- Caseload volumes for 2018/19 are used to estimate the income from the fee changes, supplemented by electronic payment data for 2019/20 for a small number of fees.
- An optimism bias of 20% is included to account for uncertainty in volumes due to fluctuations and demand responses to the increases in fees.
- Fees are inflated in line with CPI inflation, backdated to August 2016, or the date of the last fee change if later.
- CPI inflation rates have been used to uprate HMCTS unit costs from 2018/19 to 2021/22.
- Fees have been rounded to the nearest whole pound (rounded down where necessary to avoid over-recovery).
- Net fee income assumes no change in the current Help with Fees scheme.
- There is no net detrimental impact on outcomes in either civil or family court cases or for Court of Protection or access to justice.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	

Evidence Base

A. Background

1. HM Courts and Tribunals Service (HMCTS) delivers a benefit for courts users and the general public by providing a place where people can enforce and defend their rights. A large number of people use the services of HMCTS every year. Whether it be separated parents in a family court, a vulnerable witness to a crime, or someone appealing a benefits decision, people interact with HMCTS at some of the most difficult times in their lives.
2. Fees in civil and family cases are an important source of funding for the courts, and a reasonable means of making resources available to secure access to justice. Under s92 of the Courts Act 2003, the Lord Chancellor has the power to prescribe fees in respect of things done by the courts, which helps to ensure he fulfils his statutory duty to ensure *an efficient and effective* courts system.¹
3. The general legal principle, set out in HMT’s Managing Public Money guidance², is that fees should not be set at a level that exceeds the cost of the service provided without express Parliamentary approval. The only court fees that may be set at a level that exceeds costs are those set under the enhanced court fee power (section 180 of the Anti-social Behaviour, Crime and Policing Act 2014).
4. Within HMCTS, there are c. 370 separate fees charged for civil and family proceedings in the courts of England and Wales, and in some tribunals.³ These fees are not routinely increased⁴ and, as the vast majority of fees have not been increased since 2016, they have been falling in real terms due to inflation.
5. Between August 2016 and March 2021, the UK's general price level, as defined by the Consumer Price Index (CPI), rose by around 7.8%, representing a substantial fall in income to HMCTS in real terms, other things being equal. If fee income is not raised to keep pace with inflation, court services may be affected, and the overall taxpayer subsidy for HMCTS will likely increase. The option assessed in the Impact Assessment (IA) seeks to address this issue by increasing 128 fees by inflation backdated to August 2016, or the date of the last fee change if later.
6. Annex A provides full details of the 128 fees which are proposed to be increased. The court fees proposed to increase have been selected from those that are currently set below their unit cost, or that have been set under the enhanced court fee power. Further details can be found in the methodology and key assumptions section starting at paragraph 23 below. Table 1 below provides a summary of the number of affected fees, by fees order:

Table 1: Fees affected, by fees order

Fees Order	Number of fees
The Civil Proceedings Fees Order 2008 No 1053	66
Family Proceedings Fees Order 2008 No 1054	42
Magistrates’ Courts Fees Order 2008 No 1052	17
Court of Protection Fees Order 2007 No 1745	3
Total	128

7. Court fees should not prevent anyone from accessing justice and so HMCTS operates the Help with Fees (HwF) scheme, which offers a full or partial fee remission for court users who only have a small

¹ S1(1) Courts Act 2003 – “The Lord Chancellor is under a duty to ensure that there is an efficient and effective system to support the carrying on of the business of the Senior Courts, the Court of Protection, the county court, the family court and magistrates’ courts, and that appropriate services are provided for those courts.” See also s6A Promissory Oaths Act 1868 and s180(3)(a) of the Anti-Social Behaviour Crime and Policing Act 2014.

² ‘Managing Public Money’, Chapter 6 (Fees, Charges and Levies). July 2013.

³ The vast majority of fees are charged in the courts, with only some tribunals charging fees, namely the Gambling Tribunal, Immigration and Asylum Chamber, Upper Tier Immigration and Asylum Chamber, the Property Chamber and the Upper Tribunal Lands Chamber

⁴ The last time that fees were increased in line with inflation was in 2013 (The Family Proceedings Fees (Amendment) Order 2013/1407; The Magistrates’ Courts Fees (Amendment) Order 2013/1409; The Civil Proceedings Fees (Amendment No. 2) Order 2013/1410).

amount of savings and who are in receipt of certain benefits or who are on a low income. Therefore, and alongside the option described in this IA, the government is also proposing to uplift the income thresholds in the HwF means test by CPI including owner occupiers' housing costs (CPIH).

8. A consultation paper, "Increasing selected court fees and Help with Fees income thresholds by inflation" was published on 22 March 2021. It invited comments on the proposals discussed above – that is, on the proposal to increase selected court fees and Help with Fees income thresholds by inflation.
9. The consultation period closed on 17 May 2021. We received 89 responses, the majority of which came from legal services providers and local authorities. A consultation response has been published alongside this impact assessment.⁵ Having considered the responses to the consultation, the Ministry of Justice (MoJ) has decided to proceed with the increases proposed in the consultation.
10. In summary, this IA assesses the impact of uplifting certain fees to reflect historic inflation backdated to August 2016, or the date of the last fee change if later. It should therefore be considered alongside IA MoJ003/2021, which assesses the impact of uplifting the income thresholds of the HwF scheme using inflation, also backdated to August 2016. Finally, IA MoJ004/2021 summarises the total cost/benefit impacts of these two separate changes.

B. Policy Rationale and Objectives

11. The conventional economic approach to government intervention is based on efficiency or equity arguments. Government may consider intervening if there are strong enough failures in the way markets operate, for example monopolies overcharging debtors, or if there are strong enough failures in existing government interventions, such as outdated regulations generating inefficiencies. In all cases the proposed intervention should avoid generating a further set of disproportionate costs and distortions. Government may also intervene for reasons of equity (fairness) and for re-distributional reasons (e.g. reallocating resources from one group in society to another).
12. The primary rationale for intervention in this case is efficiency. As noted in paragraph 2, fees are an important source of funding for the courts and tribunals system. A properly funded courts system, which everyone can access, is essential to ensure that access to justice and the rule of law are maintained in the long term. The associated policy objectives are to ensure that the court system is properly funded, whilst reducing the overall taxpayer subsidy. Increasing selected fees in line with historic inflation (backdated to August 2016, or date of last change if later) will raise funding to help recover the running costs of HMCTS.

C. Description of Options Considered

13. To meet these policy objectives, the following options are considered in this IA:

- **Option 0 – Do Nothing. Maintain the current fee structure.**
- **Option 1 – Increase selected court fees by inflation, backdated to August 2016 (or date of last fee change, if later)**

14. Option 1 is the Government's preferred option as it best meets the policy objectives.

Option 0

⁵ The response can be found at <https://consult.justice.gov.uk/>

15. Under the “Do Nothing” option the selected court fees would remain unchanged. As the real value of these fees has fallen since 2016, this option would represent a decline in the resources available to HMCTS.

Option 1

16. Under this option, 128 fees would be increased in line with CPI inflation, backdated from August 2016 through to the start of the 2021/22 financial year⁶, by 7.8%.⁷

17. CPI is used to uplift the fees as this provides a good measure of the general increase to prices as well as inflation experienced by HMCTS. Fees are rounded to the nearest whole pound, but fees set solely under the section 92 power, and which are therefore not already authorised to recover above unit cost, are not to be increased above their unit cost. The CPI increase is slightly higher than the figure used in the consultation as this was based on a forecast for 2021 Quarter 1. The publication of CPI figures for March 2021 mean it is now possible to inflate the thresholds using CPI actuals.

D. Affected Stakeholder Groups, Organisations and Sectors

18. The options assessed in this IA will primarily affect users of the services where fees are changing. A list of all the main groups that would be affected is shown below:

- Court users – those who use the services for which fees in Annex A are changed. Court users include, among others, individuals, Local Government Authorities, landlords, debt management and utility companies. It also includes unsuccessful defendants who are ordered to pay their opponent’s costs, including court fees, at the conclusion of proceedings.
- HMCTS – who operate the services;
- Taxpayers – who subsidise HMCTS, as overall HMCTS income falls below its overall costs;
- Legal services providers – who provide services to users of HMCTS;
- Ministry of Justice (MoJ) – who sponsor HMCTS (which provides the services for which fees are charged).

E. Cost & Benefit Analysis

19. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.

20. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. These might be impacts on certain groups of society or data privacy impacts, both positive and negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.

21. The costs and benefits of each proposal are compared to option 0, the counterfactual or “do nothing” scenario, where fees are maintained at their current levels. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).

22. The estimate of costs and benefits is higher than the consultation Impact Assessment because electronic payment data has been used to supplement the recorded volumes of fees paid, used to

⁶ CPI inflation for the year to March of each year is used.

⁷ 13 fees will be increased by a lower rate, as they were last changed either in December 2016 (5 fees), July 2018 (2 fees) or July 2019 (6 fees).

estimate income from the fee change. This means that it is possible to estimate fee income for some fees where previously it had not been possible. This is explained in more detail in paragraph 33.

Methodology and key assumptions

23. The impacts described in this IA are based on modelling and assumptions. These are described below. The risks associated with these assumptions are described in section F.
24. The MoJ reviews court fees and in 2020 undertook an exercise to map each court fee to the cost of that particular service, referred to as a fee's unit cost, using data for 2018/19. Inflationary increases have been applied to these 'unit costs' to give an estimated cost for 2021/22. The consultation IA applied an internal HMCTS inflation rate, whereas we have now used CPI. As the CPI inflation rate for the period 2018/19 to 2021/22 is lower than the HMCTS inflation rate, a small number of fees have now increased by a smaller amount.
25. Fees have been inflated using CPI inflation, backdated from August 2016 (or later, for the 13 fees that were last changed after August 2016)⁸ to the first quarter of 2021. The inflationary increase was calculated using 8 months of inflation as measured by the CPI annual rate from August 2016 to March 2017, another 12 months to March 2018, and so forth until March 2021⁹. When the consultation was published, fees had to be inflated using a forecast for the inflationary increase for Q1 2021. The publication of March 2021 CPI data means that it is now possible to base the increased fees on CPI outturns. The inflation rate for the majority of the fees has changed from 7.7% to 7.8%.
26. Using CPI inflation to uprate the unit costs, using CPI outturns for March 2021 and updating the calculation of the fees that were last changed after July 2016 has led to 37 fee levels being different to what was proposed in the consultation. Three of the fees are no longer being increased, 22 fees are increasing by a higher amount (on average £1) and 12 fees are increasing by a lower amount (on average £3). The final fee values can be viewed in Annex A.
27. CPI is used to uplift the fees as this provides a good measure of the general increase to prices as well as inflation experienced by HMCTS. The main reasons for doing so are:
- A. The Lords Economic Affairs Select Committee published a report in 2019¹⁰, suggesting that government could be accused of 'index shopping' when not using CPI as the default measure of inflation. In particular, at paragraph 156, the report states "While the single general measure is being determined, the Government should switch to CPI for uprating purposes in all areas where it is not bound by contract to use RPI."
 - B. CPI inflation data is published by the Office of National Statistics (ONS) and is widely accepted as a good indicator of the general increase in prices, ensuring transparent methodology of the rates used.
28. Fees that are legally not allowed to recover above the cost of the service are capped at their estimated unit cost for 2021/22, whereas 'enhanced fees' (fees that can legally over-recover) are not capped. Fees have been rounded to the nearest pound (rounded down in the case of cost-recovery fees in order to prevent inadvertent over-recovery).
29. The court fees proposed to increase have been selected from those that are set below their unit cost, or that have been set under the enhanced court fee power. Not all such fees were included in Option 1 for inflationary increases as we have excluded some fees from the proposal, including, for example:
- a. Tribunal fees;
 - b. Fees reduced to cost recovery levels in August 2020¹¹;

⁸ See footnote 7.

⁹ Figures for CPI annual rates can be found at <https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7q7/mm23>.

¹⁰ Available at <https://publications.parliament.uk/pa/ld201719/ldselect/ldeconaf/246/246.pdf>

¹¹ The Court Fees (Miscellaneous Amendments) Order 2020

- c. Fees included in the MoJ Consultation: Alignment of the fees for online and paper civil money and possession claims¹²;
- d. Probate application fees;
- e. Fees for Judicial Reviews (JR) in Civil Courts;
- f. Fees that are currently set at £0;
- g. Fees where after rounding they do not change.

30. Of the 128 fees that would be increased in line with CPI inflation, 87 are set under cost recovery and 43 are set under the enhanced fee power (of these 11 are below cost).

31. In order to calculate the impact on HMCTS fee income, the change in fee has been multiplied by the expected volumes of users of the service for each fee that is to change, taking into account remissions. There is uncertainty around the volumes for a number of reasons, including a possible demand response from court users to the fee increases.

Volumes

32. The change in fee income from Option 1 has been assessed using volumes for 2018/19, the latest date for which volumes by fee are available. Fee volumes are estimated by fees being mapped to services in the civil and family courts. However, in some cases it is not possible to estimate the volume for a fee, either because a group of fees is mapped to one service or because a fee cannot be directly mapped to a service (this is the case for 65 fees of those being considered in Option 1).

33. During the consultation period, we undertook further analysis to supplement volumes data for those fees with missing volumes data. We used HMCTS transaction level information on electronic payment processes for 2019/20 to supplement the recorded volumes of a number of fees, as well as additional court volumes data, adding a total of c. 2.5m additional instances of payment of fees.

34. Since the first national Covid-19 lockdown in March 2020, the number of proceedings filed has decreased and, although they have gradually been increasing since then, they are not yet back to levels seen in 2019/20 across all jurisdictions. Relative to their respective pre-Covid-19 weekly averages in the eight weeks ending 23rd May 2021, civil court applications were 20% below, public family law was 12% below, private family law was 5% below and divorce was 3% below.¹³ It should be noted that these figures are subject to the data quality issues associated with large administrative systems, which can lead to the figures for previous periods being revised each publication and weekly figures tend to be subject to larger revision than less frequent figures.

35. A reduction of 20% has been applied to volumes to account for the uncertainty, both due to fluctuations in volumes and possible demand response (see paragraphs 36-40).

Demand

36. It is difficult to determine exactly how much raising a particular fee will impact on demand for that specific court process. The existing research is largely qualitative rather than quantitative. The research which does exist demonstrates that several factors influence the decision to take a case to court, such as access to legal representation, the availability of alternatives like mediation, case-type and the perceived benefit of the outcome compared to the cost.

37. For example, qualitative research carried out in 2014 explored the motivations to go to court amongst 54 civil and family court applicants.¹⁴ The research found that emotional factors outweighed financial motivations in the decision to go to court amongst many applicants. In family matters, this included concern over the welfare of the child and in civil cases, emotional motivations included securing recognition from others of the perceived validity of the case.

¹² <https://consult.justice.gov.uk/digital-communications/civil-money-possession-claims-fees/>

¹³ HMCTS Management Information, 14 January 2021. <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-may-2021>.

¹⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/299804/role-of-court-fees-in-decisions-to-bring-cases-to-courts.pdf

38. This IA considers increases to 128 court fees. Although the proposed fee increases range from £1 to £480, most of the fee changes are of low monetary value, with a weighted average of £7; 82% of the fee changes are less than £20 and 92% are less than £50. A large number of the fees being increased are also for actions for which there is a lack of alternative remedies and/or where there are strong non-financial motivations to pursue the case. For example, there are no alternatives for divorce cases. Option 1 also includes fees that relate to several courses of action, such as general application fees, for which it is difficult to estimate a demand response. In addition, many of the fees to be changed are for applications within proceedings or enforcement and would be charged once a case is in process, rather than at issue, and so are less likely to impact on the decision to proceed (but might impact a decision to continue).
39. For the reasons highlighted in the paragraphs above, we do not expect the fee changes to lead to a fall in demand. However, as explained in paragraph 35, we have applied an optimism bias of 20% to the volumes to reflect the uncertainty that could arise from any changes in user behaviour.
40. It has also been assumed that there is no detrimental impact on outcomes in either civil or family court cases, or on access to justice.

Remissions

41. For the purposes of this IA we estimate net fee income, taking into account the current fee remissions scheme. Net income has been estimated using 2019/20 remission rates calculated using HwF management information for 2019/20 (the latest available year) and gross fee income. IA MoJ004/2021 summarises the total cost/benefit of the two separate changes being considered, namely inflating fees (assessed in this IA) and inflating the HwF thresholds (assessed in IA MoJ003/2021).

Fee Income

42. The income estimates in this IA have been calculated using primarily 2018/19 volumes¹⁵ and multiplying these by the increase in the relevant fee, taking into account the 'remission rate', i.e., the percentage of gross fee income that is remitted. All income estimates have been rounded to the nearest £million. An optimism bias is applied to account for the uncertainty in the volumes for the fees considered, both to account for possible fluctuations in volumes and possible negative demand response. The analysis assumes an implementation date of October 2021.
43. Table 2 gives the nominal annual estimated income from the fees to be changed, both with and without a 20% optimism bias (low and best estimate, respectively). As fees do not keep track with inflation the real value of the annual average income will fall over time when measured in 2021/22 prices. Income estimates are rounded to the nearest £million.

Table 2: Annual nominal estimated net income from fees to be inflated, £millions

Nominal Income £m	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	Annual Average
Best	£13	£25	£25	£25	£25	£25	£25	£25	£25	£25	£24
Low	£10	£20	£20	£20	£20	£20	£20	£20	£20	£20	£19

Based on 2018/19 volumes; 2021/22 figures are for 6 months; income is net of remissions.

44. Table 3 shows the additional income adjusted for expected inflation. As noted above, it shows that, because fees do not keep track with inflation, the real value of the extra fee income falls over time.

Table 3: Real value of estimated net income from fees to be inflated, £millions

¹⁵ Except where supplemented with HMCTS electronic payments data for a small number of fees.

Real Income £m	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	Annual Average
Best	£13	£25	£25	£24	£24	£23	£23	£22	£22	£21	£22
Low	£10	£20	£20	£19	£19	£19	£18	£18	£17	£17	£18

Based on 2018/19 volumes; 2021/22 figures are for 6 months; income is net of remissions.

Net Present Value

45. The fee changes are not included in the overall NPV as they represent a transfer payment between the individuals who use court services and HMCTS. While there are costs to HMCTS to implement the fee changes (see paragraph 46) these have not been possible to monetise.

Option 1 – Increase selected court fees with inflation, backdated to August 2016 (or date of last fee change, if later)

Costs of Option 1

Transitional costs

HMCTS

46. HMCTS is expected to incur costs from amendments to IT systems, staff guidance and publications for court users. There may also be costs related to HMCTS staff having to familiarise themselves with the new fees. These are not expected to be substantial.

HMCTS users and the providers of legal services

47. There may be familiarisation and awareness costs incurred by individuals and legal services providers who use the court services where these fees are being changed. These have not been monetised but are expected to be minor.

Ongoing costs

Users of HMCTS services

48. The fee changes are expected to be introduced in October 2021. Under the best estimate we estimate that HMCTS service users will see their costs increase by £13m in 2021/22, the first six months of the fee change, and £25m per annum after that (averaged over the remaining 9 years of the appraisal period and in 2021/22 prices).

Benefits of Option 1

Transitional Benefits

49. No transitional benefits are expected.

Ongoing benefits

HMCTS and Taxpayers

50. As a result of the overall fee changes, under the best estimate we estimate that HMCTS will benefit by £13m in 2021/22, the first six months of the fee change, and £25m per annum after that (averaged over the remaining 9 years of the appraisal period and in 2021/22 prices).

Net impact of Option 1

51. HMCTS is expected to incur small transitional costs from implementing the new fee amounts. Individuals and legal service providers are expected to incur negligible costs from familiarising themselves with the new fee structure.
52. On an ongoing basis the overall changes in fees are expected to result in an increase in funding for HMCTS of £25m per annum in 2021/22 prices. This benefit to the MoJ will be offset by the cost to HMCTS users, and therefore the ongoing net impact of this option is expected to be minimal.

F. Risks and Sensitivity Analysis

53. As the impacts described in this IA are based on certain assumptions, there are also some associated risks. These risks, and their potential impacts, are described below.
54. There is inherent uncertainty around the potential demand for court services in the future. A reduction of 20% has been applied to the 18/19 fee volumes to account for uncertainty in the future volume of, including demand for, the court services subject to the proposed fee changes. This has the effect of reducing the estimated fee income by c. £5m p.a. for each full year of the policy change (see Table 2).
55. The estimated income from inflating court fees is particularly sensitive to the volume of applicants and demand for court services. The estimates of income are primarily based on 2018/19 volumes for the individual fees, but future volumes could be higher or lower than these. A sensitivity analysis was carried out to demonstrate how the income would vary if fee volumes were 10% higher or lower than those in 2018/19.
56. Table 4 and Table 5 below show the impact of the sensitivity analysis on the best estimate. Inflating the fees as set out in Annex A is expected to increase funding for HMCTS under all the volume scenarios considered. In real values, average annual additional funding contribution varies between £20m over ten years in the case of volumes being 10 per cent down on 2018/19 levels, to £24m for the case where volumes are 10% above 2018/19 levels. This is based on the best estimate scenario.

Table 4: Sensitivity to changes in fees volumes, annual nominal best estimate income, £millions

Nominal Gross Income £m	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	Annual Average
10% reduction in volumes	£11	£23	£23	£23	£23	£23	£23	£23	£23	£23	£22
Best estimate	£13	£25	£25	£25	£25	£25	£25	£25	£25	£25	£24
10% increase in volumes	£14	£28	£28	£28	£28	£28	£28	£28	£28	£28	£26

Based on 2018/19 volumes; 2021/22 figures are for 6 months; income is net of remissions.

Table 5: Sensitivity to changes in fees volumes, real value best estimate income, £millions

Real Gross Income £m	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	Annual Average
10% reduction in volumes	£11	£23	£22	£22	£21	£21	£20	£20	£19	£19	£20
Best estimate	£13	£25	£25	£24	£24	£23	£23	£22	£22	£21	£22

10% increase in volumes	£14	£28	£27	£27	£26	£25	£25	£24	£24	£23	£24
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Based on 2018/19 volumes; 2021/22 figures are for 6 months; income is net of remissions.

G. Wider Impacts

Equality impacts

57. A separate equalities assessment has been produced for this proposal.

Public sector impacts

58. Analysis of the impact to local authorities, police and fire associations from these fee changes has been carried out based on the available data; however, for some fees not all payment channels will be covered and where a fee is not paid solely by public users, we are reliant on manual identification.

59. There are three main fees being increased that are paid solely by local authorities. These are the fee for public law/supervision order cases (Application for proceedings under Section 31 of Act - Care or supervision proceedings instigated by Local Authorities), the fee for application for a placement order under Section 22 and the fee for request for an order to recover a specified road traffic debt.

60. The fee for public law/supervision order cases (Application for proceedings under Section 31 of Act - Care or supervision proceedings instigated by Local Authorities) is being increased by 7.8%, from £2,055 to £2,215 (an increase of £160). The proposed inflated fee continues to be substantially below its unit cost. The increase to this fee is consistent with the increases of the remaining 128 fees being considered, which are paid by all litigants, including individuals, private companies, or public bodies. The inflated fee is estimated to cost local authorities an additional £2.4m (with optimism bias of 20%) to £3m (without optimism bias) p.a. from 2022/23 (£1.2m-£1.5m in 2021/22, assuming implementation in October 2021).

61. The fee for application for a placement order under Section 22 is being increased by £35, from £455 to £490, and is estimated to cost an additional £70k to £90k p.a. from 2022/23. Other fees in the Family Proceedings Fees Order are estimated to cost local authorities an additional c. £140k to £180k p.a. from 2022/23.

62. The fee to request an order to recover a specified road traffic debt is being increased by £1, from £8 to £9 and is estimated to cost an additional £2m to £2.5m p.a. from 2022/2023. This fee can be recovered from the debtor.

63. During the consultation period we undertook an exercise to match HMCTS electronic payment data to fees paid by local authorities, police and fire services, using the 'account name' to identify whether the payment was from a Local Authority or Police or Fire Services, and found that an additional c. £0.4m to £0.5m p.a. from 2022/23 could be incurred in court fees (this already includes fees in the Family Proceedings Fees Order referenced in paragraph 61 and is in addition to the fees in paragraphs 60 and 62).¹⁶

Better Regulation

¹⁶ It should be noted that the data in this analysis comes mostly from HMCTS data on payments on accounts for 2019/20, which has the following several limitations: a) will not cover fees paid by other routes/methods of payment such as Internet Fee Accounting System (IFAS), cheque or credit card payment; b) local authorities, police and fire services have been identified via a manual search of account names; c) does not cover all the 128 fees included in the consultation (covers c. 113 fees); d) data does not always include information on fee code.

64. This measure is not classed as a regulatory provision under the Small Business Enterprise and Employment Act 2015 and so does not score against the department's business impact target.

H. Enforcement and Implementation

65. All fees are payable in advance of the service being provided. The sanction for non-payment in most jurisdiction is that the service will not be provided and the application would not be permitted to proceed. This would continue to apply under the options being considered.

I. Monitoring and Evaluation

66. Fees are regularly reviewed as part of the MoJ's internal ongoing monitoring process.

Annex A: Schedule of fees to apply inflationary increases, with current and proposed fees

Civil Proceedings Fees Order 2008

The fees in scope in the Civil Proceedings Fees Orders include small claims hearing fees, copy fees for documents, fees relating to notice of summons, fees relating to other remedies, and fees relating to the issue of certificates or specific orders.

SI Ref ID	Description	Current	Proposed	Increase
1.5CC	Any other remedy (County Court)	£308	£332	£24
1.5HC	Any other remedy (High Court)	£528	£569	£41
1.6	Filing proceedings against an unnamed party	£55	£59	£4
1.8a	Permission to issue proceedings	£55	£59	£4
1.8b	Assessment of costs (under Part 3, Solicitors Act 1974)	£55	£59	£4
2.1a	Hearing fee: Multi track case	£1,090	£1,175	£85
2.1ci	Hearing fee: Small claims case (does not exceed £300)	£25	£27	£2
2.1cii	Hearing fee: Small claims case (exceeds £300 but not £500)	£55	£59	£4
2.1ciii	Hearing fee: Small claims case (exceeds £500 but not £1,000)	£80	£85	£5
2.1civ	Hearing fee: Small claims case (exceeds £1000 but not £1500)	£115	£123	£8
2.1cv	Hearing fee: Small claims case (exceeds £1,500 but not £3,000)	£170	£181	£11
2.1cvi	Hearing fee: Small claims case (exceeds £3000)	£335	£346	£11
2.2	Appellant's/respondent's notice (High Court)	£240	£259	£19
2.3a	Appellant's/respondent's notice (County court small claims)	£120	£129	£9

2.3b	Appellant's/respondent's notice (County court other claims)	£140	£151	£11
2.4(a)	General application (on notice) excl HA'97 & Court Fund Pay Out	£255	£275	£20
2.4(b)	General application (on notice) Harassment Act 1997 & Court Fund Pay Out	£155	£167	£12
2.5(a)	General application (by consent/without notice) excluding Harassment Act 1997 & Court Fund Pay Out	£100	£108	£8
2.5(b)	General application (by consent/without notice) HA'97 & Court Fund Pay Out	£50	£54	£4
3.1b	Petition for bankruptcy (presented by creditor/other person)	£280	£302	£22
3.2	Petition for an administration order	£280	£302	£22
3.3	Any other petition	£280	£302	£22
3.4a	Request for a certificate of discharge from bankruptcy	£70	£75	£5
3.4b	Copy of a certificate of discharge from bankruptcy	£10	£11	£1
3.11	Application within proceedings (by consent/without notice)	£25	£26	£1
3.12	Application within proceedings (with notice)	£95	£99	£4
4.1a	Copy of a document (10 pages or less)	£10	£11	£1
4.2	Copy of a document in electronic form (for each copy)	£10	£11	£1
5.1	Where the party filing the request is legally aided	£220	£237	£17
5.2a	Costs up to £15000	£369	£398	£29

5.2b	Costs £15000 - £50000	£743	£801	£58
5.2c	Costs £50000 - £100000	£1,106	£1,192	£86
5.2d	Costs £100000 - £150000	£1,480	£1,595	£115
5.2e	Costs £150000 - £200000	£1,848	£1,992	£144
5.2f	Costs £200000 - £300000	£2,772	£2,988	£216
5.2g	Costs £300000 - £500000	£4,620	£4,980	£360
5.2h	Costs Above £500000	£6,160	£6,640	£480
5.3	Issue of default costs certificate - Civil	£66	£71	£5
5.4	Appeal (detailed assessment proceedings) – Civil	£231	£249	£18
5.5	Request/application to set aside a default costs certificate	£121	£130	£9
6.1	On the filing of a request for detailed assessment for Court of Protection	£85	£87	£2
6.2	Appeal against a Court of Protection costs assessment decision	£65	£70	£5
7.1	Sealing a writ of control/possession/delivery (High Court)	£66	£71	£5
7.2	Order requiring a judgement debtor or other person to attend court	£55	£59	£4
7.3a	Third party debt order or the appointment of a receiver by way of equitable execution	£110	£119	£9
7.3b	Application for a charging order	£110	£119	£9
7.4	Application for a judgement summons	£110	£119	£9
7.5	Register a judgement or order, or for permission to enforce an arbitration award,	£66	£71	£5

	or for a certificate or a certified copy of a judgment or order for use abroad			
8.3	Application to require judgement debtor to attend court	£55	£59	£4
8.4a	Application for a third party debt order	£110	£119	£9
8.4b	Application for a charging order	£110	£119	£9
8.5	Application for a judgement summons	£110	£119	£9
8.6	Issue of a warrant of possession/warrant of delivery	£121	£130	£9
8.7	Application for an attachment of earnings order - Civil	£110.00	£119	£9
8.9	Application for enforcement of an award of a sum of money or any other decision made by any court, tribunal, body or person	£44	£47	£3
8.10	Request for an order to recover a specified road traffic debt	£8	£9	£1
8A.1	Service by a bailiff of an order to attend County Court for questioning	£110	£119	£9
10.1	Bills of sale	£28	£30	£2
10.2	Official certificate of the result of a search (for each name)	£50	£54	£4
10.3	Search, in person, of court records (per 15 minutes)	£11	£12	£1
12.1	Affidavit	£12	£13	£1
13.1a	Application - permission to appeal/extension of time	£528	£569	£41
13.1b	Permission to appeal is not required or has been granted	£1,199	£1,292	£93

13.1c	Appellant/respondent filing an appeal questionnaire	£1,199	£1,292	£93
13.2	On filing a respondent's notice	£528	£569	£41
13.3	On filing an application notice	£528	£569	£41

Family Proceedings Fees Order 2008 No 1054

The fees in scope in the Family Proceedings Fees Order include fees such as cases brought forward under the Children Act 1989, fees relating to divorce, copies of documents and issue fees for certificates or warrants.

SI Ref ID	Description	Current	Proposed	Increase
1.2	Filing an application for a divorce, nullity or civil partnership dissolution	£550	£593	£43
1.8	Application for parental order	£215	£232	£17
2.1a	Parental responsibility (section 4(1)(c) or (3), 4A(1)(b) or(3))	£215	£232	£17
2.1b	Parental responsibility (section 4ZA(1)(c) or (6))	£215	£232	£17
2.1c	Guardians (section 5(1) or 6(7))	£215	£232	£17
2.1d	Section 8 orders (section 10(1) or (2))	£215	£232	£17
2.1e	Enforcement orders (section 11J(2))	£215	£232	£17
2.1f	Compensation for financial loss (section 11O(2))	£215	£232	£17
2.1g	Change of child's surname or removal from jurisdiction while residence order in force (section 13(1))	£215	£232	£17
2.1h	Special guardianship orders (section 14A(3) or (6)(a), 14C(3) or 14D(1))	£215	£232	£17
2.1i	Secure accommodation order (section 25) – England	£215	£232	£17
2.1ia	Secure accommodation order (section 25) – Wales	£215	£232	£17
2.1j	Change of child's surname or removal from jurisdiction while care order in force (section 33(7))	£215	£232	£17
2.1k	Contact with child in care (section 34(2), (3), (4) or (9))	£215	£232	£17
2.1l	Education supervision order (section 36(1))	£215	£232	£17
2.1m	Variation or discharge etc of care and supervision orders (section 39)	£215	£232	£17
2.1n	Child assessment order (section 43(1))	£215	£232	£17
2.1o	Emergency protection orders (sections 44, 45 and 46)	£215	£232	£17

2.1p	Warrant to assist person exercising powers under emergency protection order (section 48)	£215	£232	£17
2.1q	Recovery order (section 50)	£215	£232	£17
2.1s	Warrant to assist person exercising powers to search for children or inspect premises (section 102)	£215	£232	£17
2.1t	Applications in respect of enforcement orders (paragraph 4(2), 6(2), 7(2) or 9(2) of Schedule A1)	£95	£102	£7
2.1v	Financial provision for children (paragraph 1(1) or (4), 2(1) or (5), 5(6), 6(5), (7) or (8), 8(2), 10(2), 11 or 14(1) of Schedule 1)	£215	£232	£17
2.1w	Approval of court for child in care of local authority to live abroad (paragraph 19(1) of Schedule 2) - England	£215	£232	£17
2.1wa	Approval of court for child in care of local authority to live abroad (paragraph 19(1) of Schedule 2) - Wales	£215	£232	£17
2.1x	Extension of supervision order (paragraph 6 of Schedule 3)	£215	£232	£17
2.1y	Extension or discharge of education supervision order (paragraph 15(2) or 17(1) of Schedule 3)	£215	£232	£17
2.1z	Paragraph 8(1) of Schedule 8 (appeals concerning foster parents)	£215	£232	£17
2.2	Application for proceedings under Section 31 of Act	£2,055	£2,215	£160
3.1	Application/permission to apply for adoption	£170	£183	£13
3.2	Application for a placement order (under Section 22)	£455	£490	£35
3.3	Application to the High Court	£170	£183	£13
4.1	Application for warning notice to be attached to a contact order	£50	£54	£4
5.1	Application (without notice)	£50	£53	£3
5.2	Application for decree nisi, conditional order, separation order (no fee if undefended)	£50	£54	£4
5.3	Application (on notice) (unless otherwise listed)	£155	£167	£12
5.4	Application for a financial order	£255	£275	£20
8.1a	Copy of a document (10 pages or less)	£10	£11	£1
8.2	Copy of a document in electronic form (for each copy)	£10	£11	£1
9.3	Issue of default costs certificate - Family	£60	£65	£5
12.1	Application to question a judgement debtor or other person	£50	£54	£4
13.3	Issue for a warrant of possession or a warrant of delivery	£110	£119	£9

Magistrates Courts Fees Order 2008 No 1052

The fees in scope from the Magistrates Courts Fees Order include fees such as application fees, hearings fees, copy fees, issue fees for documents or fees for the issue of warrants.¹⁷

SI Ref ID	Description	Current	Proposed	Increase
2.1	Application to state a case for the opinion of the High Court	£135	£137	£2
2.3	Appeal - proceedings under Schedule 5, Licensing Act 2003	£60	£62	£2
2.4	Appeal (no other fee specified)	£60	£62	£2
3.2	Request for a certificate of satisfaction	£15	£16	£1
5.1a	Copy of a document (10 pages or less).	£10	£11	£1
5.2	Copy of a document in electronic form (for each copy)	£10	£11	£1
6.1	Request for licence/consent/authority (no other fee specified)	£25	£27	£2
6.2	Application for renewal/variation of an existing licence	£25	£27	£2
6.3	Application for the revocation of licence (no other fee specified)	£25	£27	£2
7.1	On taking attestation of a constable or special constable	£10	£11	£1
7.2	For every oath (etc) where no other fee is specified.	£25	£27	£2
8.2a	Application for leave/permission to commence proceedings (no other fee specified)	£116	£125	£9
8.2b	Proceedings where leave/permission has been granted	£116	£125	£9
9.1	Application for a warrant of entry	£20	£22	£2
9.2	Application for any other warrant (no other fee specified).	£75	£81	£6
10.1	Application for a warrant of commitment	£245	£264	£19
10.2	Warrant of commitment (Child Support Act 1991)	£40	£41	£1

Court of Protection Fees Order 2007 No 1745

The fees in scope from the Court of Protection Fees Order include the fee to apply for action under, a hearing under or to appeal a decision made under the Mental Capacity Act 2005.

SI Ref ID	Description	Current	Proposed	Increase
4	Application fee (Article 4)	£365	£371	£6

¹⁷ Please note, Help with Fees is not available for copy fees

5	Appeal fee (Article 5)	£230	£234	£4
6	Hearing fees (Article 6)	£485	£494	£9