

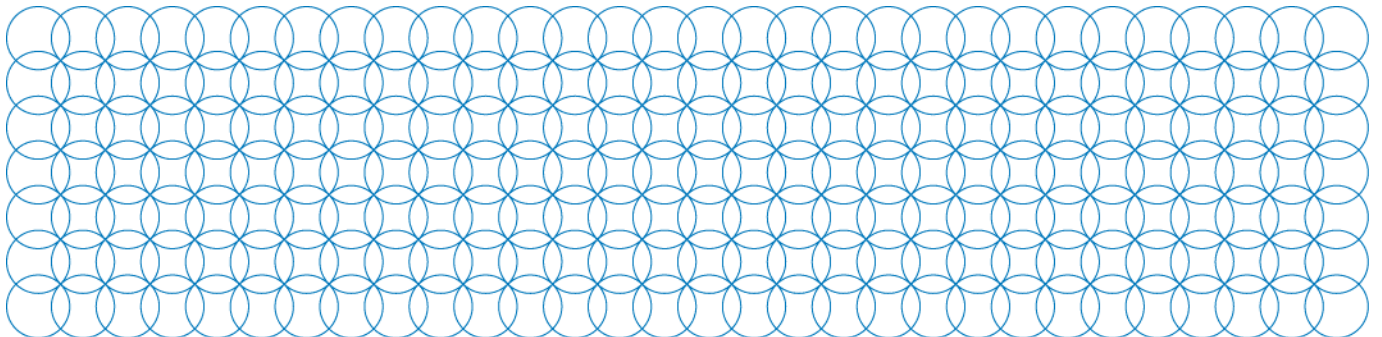


Ministry of
JUSTICE

Fees in the United Kingdom Supreme Court

Consultation Paper

Published on 10 February 2009





Ministry of
JUSTICE

Fees in the United Kingdom Supreme Court

A consultation produced by the Ministry of Justice.

**This information is also available on the Ministry of Justice website:
www.justice.gov.uk**

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Executive summary

When the UK Supreme Court opens in October 2009 it will need to have in place a system of fees and concessions.

Under Section 52 of the Constitutional Reform Act 2005 the Lord Chancellor may with the agreement of the Treasury by order prescribe fees payable in respect of anything dealt with by the Supreme Court. He is under a statutory duty to consult certain senior judges and key organisations about the fees order; the consultation is widened through this paper to ensure we gather a wide range of views on fees in the Supreme Court.

In general, Government policy is that civil court fees should be set, so far as possible, at levels that reflect the cost of progressing cases. However it was recognised that the benefits of Supreme Court rulings accrue not only to users of the Supreme Court but more widely to all users of the Civil Justice system. As a result, during the passage of the Constitutional Reform Act through Parliament, it was agreed that the civil costs in the Supreme Court should be borne by both Supreme Court users and the generality of litigants bringing civil cases in England, Wales and Northern Ireland. In addition, a contribution will also be obtained from Scotland for the usage of the court, which will be for the Scottish Parliament to determine.

This will allow fees to be set at a level that will not prohibit access to justice. Proposed fee levels are set out in this paper and your views on these are sought.

In addition the Supreme Court will acquire the Devolution jurisdiction of the Judicial Committee of the Privy Council. At present these fees are not pegged against cost and this paper proposes bringing these fees more into line with civil fees.

To ensure that access to justice is not denied to any sector of society a system of fee concessions is proposed which updates the current process and aims to bring more clarity and transparency into the system than is found at present.

Having the correct system of fees and remissions in place will be important to ensure that the Court is accessible to all and again your views on this topic are welcomed.

Introduction

This paper sets out for consultation the fees that will be charged in the new UK Supreme Court. It consults upon scale and rates of fees, exemptions from fees, reductions and whole or partial remissions. Under Section 52 of the Constitutional Reform Act 2005, the Lord Chancellor has a duty to consult the persons and bodies listed below as statutory consultees. This consultation is, however, aimed at anyone who has an interest in or may be affected by fee charges in the UK Supreme Court.

This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the code. The consultation criteria, which are set out on page 51 have been followed.

An Impact Assessment is attached at Annex D page 34 Comments on the Impact Assessment are welcome.

Copies of the consultation paper are being sent to:

Statutory Consultees

The Senior Law Lord (who will become the first President of the Supreme Court)

The Lord Chief Justice of England and Wales

The Master of the Rolls

The Lord President of the Court of Session

The Lord Chief Justice of Northern Ireland

The Lord Justice Clerk

The President of the Queen's Bench Division

The President of the Family Division

The Chancellor of the High Court

The General Council of the Bar of England and Wales

The Law Society of England and Wales

The Faculty of Advocates of Scotland

The Law Society of Scotland

The General Council of the Bar of Northern Ireland

The Law Society of Northern Ireland

Others

The Scottish Executive

The Northern Ireland Assembly

The Welsh Assembly

HM Treasury

Cabinet Office

The Crown Prosecution Service

Her Majesty's Revenue and Customs

Revenue and Customs Prosecutions Office

Serious Fraud Office

The Treasury Solicitor

The Lord Advocate

The Institute of Legal Executives.

Sheriffs Association

Sheriffs Principal

The Judicial Council for Scotland

The Legal Services Commission

The Scottish Legal Aid Board

Northern Ireland Legal Services Commission

Justice

Liberty

Equality and Human Rights Commission

Scottish Human Rights Commission

Amnesty International

Human Rights Watch

The Institute of Barristers' Clerks

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper

1. The proposals

1.1 Background and strategy

The intention to create a Supreme Court was announced on 12 June 2003 as one of a raft of constitutional changes aimed at emphasising the independence of the judiciary. The highest court in the United Kingdom is currently a committee of the House of Lords. This is confusing and anachronistic. The new Supreme Court will be housed in the former Middlesex Guildhall on Parliament Square and maintain the values and continue the work of the Appellate Committee but will be completely separate from Parliament. It will be the final court of appeal for civil cases in England and Wales, Scotland and Northern Ireland and for criminal cases in England and Wales and Northern Ireland. The Supreme Court will also assume the devolution jurisdiction currently exercised by the Judicial Committee of the Privy Council.

In line with Government policy in other areas of the Court system, the Supreme Court will be under a duty to recover the full cost of civil business in the Court. The amount recovered will need to reflect the provision of service and facilities, including the costs of Supreme Court staff, the judiciary, accommodation and administration costs.

There is however, an important difference in the application of full cost recovery to the Supreme Court. The Supreme Court, as well as being the final court of appeal, plays an important role in the furtherance and development of UK law. The Supreme Court will only select cases that have an element of wider public interest. In recognition of this it was agreed that civil costs in the Supreme Court should be borne by both Supreme Court users and the generality of litigants bringing civil cases in England, Wales and Northern Ireland.¹ This is because the benefits of Supreme Court rulings accrue not only to users of the Supreme Court, but more widely to all users of the civil justice system. A contribution will also be obtained from Scotland for the usage of the court for civil cases which the Scottish Parliament will determine. In practice this will mean that the Supreme Court will recover the cost of civil cases through a combination of fees and contributions made from Her Majesty's Courts Service, Northern Ireland Court Service and as agreed by the Scottish Parliament. This agreed policy is not itself a matter for consultation.

As the Supreme Court is a new institution, it will not be possible to use actual running costs to ascertain the cost of progressing civil cases. Therefore estimated running costs will be used. Many of the costing assumptions will be based on Appellate Committee costs with known changes to procedure, process and organisational structure factored in. The costing methodology is described in the next section.

¹ Agreed between the Chief Secretary to the Treasury and the Lord Chancellor 23 January 2004

1.2 Estimated Annual Costs of Conducting Civil Business in the new Supreme Court

It is estimated that the annual running costs of conducting civil business in the Supreme Court will be in the region of £6.6 million a year:

Cost Category	Amount
Judicial Salary	£1,800,288
Staffing	£1,012,442
Admin, utilities and building	£3,808,320
Total	£6,621,050

Given that the Supreme Court is a new institution a number of assumptions have been made concerning the proportion of the Supreme Court running costs that will be expended on conducting civil cases:

- As the Jurisdiction of the Supreme Court is relatively unchanged from the jurisdiction of the Appellate Committee it has been assumed that the workflow of the Supreme Court will be similar to that of the Appellate Committee.
- Working on the above assumption, between 2003-2007, as an average civil cases have constituted around 80% of the workload of the Appellate Committee. This is true for both the petition stage and for full leave.²
- The Law Lords do not, however, spend 100% of their time working in the Appellate Committee. Their time is shared between the Appellate Committee of the House of Lords and the Judicial Committee of the Privy Council (JCPC). In terms of the division of their time about 60% of their time is spent in the Appellate Committee and 40% on work done for the JCPC.³
- A small proportion of the Law Lords' time is also spent giving lectures, seminars, sitting in other jurisdictions, or serving on committees and

² Figures taken from the statistics produced by the Judicial Office of the House of Lords available at www.parliament.uk

³ Figures provided by the Judicial Office of the House of Lords and JCPC based on both sitting and programmed days in the House of Lords and JCPC.

inquiries. Following discussions with the Law Lords it is estimated that this averages out to around 5% of their time, which needs to be taken into account when isolating civil costs.

This means that 45.6% of their time is likely to be spent on civil work in the Supreme Court.⁴

Direct judicial support (secretaries and Judicial Assistants) have work patterns that closely follow the Law Lords to whom they are assigned. Therefore 45.6% of their salaries will also be recoverable.

The Judicial Committee of the Privy Council will be housed in the Supreme Court building at Middlesex Guildhall and there will be some staff, such as receptionists, corporate services staff and librarians who will be a resource for both organisations. It is unlikely that these posts will be involved in the work of the Justices outside of the Supreme Court or JCPC therefore 48% of their salary will be recoverable (80% x 60%).

Some posts in the general office and administrative offices do not provide support or assistance to the JCPC. We have therefore assumed that 80% of their workload would relate to Supreme Court civil work.

As stated above, the JCPC will be co-located in the Supreme Court building and therefore a proportion of administration and building cost will be attributable to them. When this is factored out, 48% of the administration and building costs are attributable to progressing civil cases.

These calculations give us the amount that it is predicted will need to be recovered in the Supreme Court⁵

1.3 Proposed Civil Fee Structure

The current civil fee structure in the House of Lords Appellate Committee is attached at Annex A. Fee levels have been unaltered since 2000. There will be some changes to current fee charging points as the proposed rules and business procedures for the Supreme Court will not be identical to the current practices. Where there is a charging point in the Supreme Court that is similar to the Appellate Committee, the current fee has been used as a benchmark and then inflated to reflect the fact that fees have been static since 2000.⁶ The fees and charging points in the Supreme Court are as proposed below.

⁴ $95\% \times 60\% \times 80\% = 45.6\%$

⁵ Breakdown of calculations contained in the regulatory impact assessment

⁶ As a basic rule where there was a directly comparable fee under the previous rules, a rate of 3.5% has been applied each year to take the fee from 2000 prices to 2010/11

APPLICATION FOR PERMISSION TO APPEAL	
File Application for Permission	£800
File notice of objection (Respondent)	£160
APPEAL	
Filing notice of intention to proceed with appeal (following grant by UKSC of permission to appeal)	£800
Filing notice of appeal (where permission granted by court below or not required)	£1600
Filing acknowledgement (respondent)	£320
Filing Statement and appendix. Filing notice of appeal is ready to list.	£4820
OTHER FEES	
Review of Registrar's decision	£1,500
Application to intervene	£800
Other procedural applications	£350
Opposition to procedural applications	£150
Copying charge (documents up to 10 pages)	£5
Copying each subsequent page	50p each
Copying to CD or other electronic format	£5
Certified documents (other than final order for which there is no charge)	£20
Application for detailed assessment of costs	2.5% Sum Claimed

The number of civil petitions entered between 2002-7 averaged 191, and full civil appeals entered averaged 74. If case flow remains reasonably unaltered in the Supreme Court an income of around £600,000 per year could be expected⁷.

prices (the Court's first full year of running). The final figures have then been rounded down to the nearest £10.

⁷ Taking into account the mandatory fees that need to be paid when applying for permission, notice and filing statements and appendix.

This would mean the balance of recoverable costs would be met by HM Court Service, Northern Ireland Court Service and the Scottish Parliament. It is intended that their contributions should be commensurate with their usage of the court. This would mean that England and Wales would provide 88% of the contribution, Scotland 8% and Northern Ireland 4% of the balance. Exact amounts are being negotiated with the relevant administrations.

Given that the Court is a new institution and assumptions have had to be made about case flow and running costs it is proposed to build in a mechanism for review of the fee levels at three year intervals. This will allow some continuity in terms of financial planning but will also mean that levels can be revisited when actual Court data is available.

Question 1. Do the civil fee levels seem equitable taking into account the fact they have not been increased since 2000?

Question 2 Do you think the proposed balance between fees charged and contributions from each jurisdiction is right given the benefits that will accrue to all users of the civil justice system?

Question 3. Do you agree that a three year cycle for reviewing the fee levels is suitable?

1.4 Fee Concessions and Access to Justice

Under Section 52(3) of the Constitutional Reform Act 2005 the Lord Chancellor must have regard to the principle that access to the courts must not be denied. It is felt that the way to meet this obligation is by setting fees at a level that is not prohibitive, but more importantly to have in place a robust system of fee exemptions and remissions for those who need them.

At present the practice directions applicable to civil cases in the Appellate Committee state:

“3.17 In circumstances where a petitioner would suffer financial hardship by the payment of fees to the House, the requirement to pay fees may be waived. Application should be made to the Judicial Office. In order to provide an objective test, and to keep in step with the courts below, the Judicial Office applies the provisions of the Civil Proceedings Fees Order 2004 to determine financial hardship for the purposes of Standing Order XIII. Waivers of fees are also granted to petitioners who have been granted a remission of fees in the court below.”

On 1 October 2007 the revised system of fee concessions was introduced by The Civil Proceedings Fees (Amendment) (No.2) order 2007 (attached at Annex B). This order has not been superseded by the Civil Proceedings Fees Order 2008 No. 1053. The system is based on three concessions.

The first concession is an automatic full remission based on receipt of one of the four means-tested benefits. The second is an automatic full remission based on a gross annual income limit that does not exceed a specified amount. The third concession is a means test for financial hardship, it involves calculating disposable income based on a persons income and expenditure. The applicant may either be required to pay a contribution towards the fee, pay the fee in full or have the full fee remitted if their disposable income is less than £50 per month.

It is proposed that the Supreme Court should mirror the system of concessions in the lower courts in England and Wales.

Question 4 Do you agree that the Supreme Court should adopt the system of concessions used by the civil courts in England and Wales, which is broadly comparable with that used in Scotland and Northern Ireland?

1.5 Devolution Cases in the Supreme Court

The Supreme Court will inherit jurisdiction over devolution cases from the Judicial Committee of the Privy Council.

Current fee levels for devolution cases are set out in Annex C. At present fee levels do not appear to be pitched against the cost of progressing the cases and the administrative and judicial time involved. In addition fees have not risen since 2003. It is therefore proposed to bring the charges into line with similar civil fees, lessening the burden of subsidy for these cases that will fall to the general taxpayer.

It is proposed that the system of concessions set out in the section above should also apply to devolution cases, to ensure that the increased fees charges are not a barrier to access to justice.

Devolution Fees	
Filing an application for permission to appeal	£800
Filing a notice of appeal	£800
Filing any other applications	£320
Filing a reference not by the court	£320
Filing notice of objection/acknowledgement in the case of a reference by a court	£320
Filing notice of objection/acknowledgement In any other case	£320
Filing of the case	£1600

Original order of the Court	£40
Office Copy of an order of the court	£20
Certificate delivered to parties	£35
Application for detailed assessment of costs	2.5% sum claimed

Question 5 Do you agree that the fee increases for devolution cases are equitable?

Question 6 Do you agree that the long term aim should be to bring these fees into line with civil fees?

Question 7 If the answer to question 6 is no what do you believe is the justification for keeping these fees lower?

1.6 Fees for Assessment of Costs in the Supreme Court

In the table for the proposed civil fee structure it can be seen that we are proposing to charge 2.5% of the sum claimed, when an application is made for assessment of costs.

At present in the Appellate Committee the costs charged for taxation (assessment of costs) are as follows:

“The fees payable upon the sums allowed by the Taxing Officer are as follows:

- “(a) where the amount allowed does not exceed £500, a flat rate of £50;
- (b) where the amount allowed exceeds £500, for every £1 or fraction of £1, an amount of 5p.

The fees payable on the withdrawal of a bill of costs (subject to written confirmation of the withdrawal from both parties to the taxation) are as follows:

- (a) in respect of bills withdrawn within 21 days of the date appointed for taxation, 1 per cent. of the agreed sum or £50, whichever is the larger;
- (b) in respect of bills withdrawn within 7 days of the date appointed for taxation, 2 per cent. of the agreed sum or £50, whichever is the larger.”

These have not been altered since 2000.

In both the JCPC and civil courts in England and Wales, once an assessment of costs has been made, the rate charged by the court is 5% of the sum

allowed by the court on assessment of costs. It is proposed that the Supreme Court charges 2.5% of the sum allowed by the Court on assessment. The charge of 2.5% upon application followed by 2.5% once assessment has been made would mean that the amount charged is proportionate to the sum that the parties are awarded.

Question 8. Do you agree with the fee proposal upon application for assessment of costs (2.5% of sum claimed) and the fee proposal once an assessment has been made (2.5% of sum allowed)? If not, what alternative do you propose?

ANNEX A Current Appellate Committee Fees

FEES AND SECURITY MONEY

JUDICIAL FEES

The following fees are payable at the time of lodgement or collection of documents:

Petitions for leave to appeal - mandatory fees

Presentation £570

Entering appearance £115

Petitions of appeal - mandatory fees

Presentation (following successful petition for leave to appeal) £570

Presentation (not following petition for leave) £1,140

Entering appearance £230

Lodging Statement and Appendix and setting down £3,420

Petitions of appeal - occasional fees

Waiver of security £115

First petition for extension of time £230

Second petition for extension £340

Third petition for extension £570

Fourth or subsequent petition for extension £1,000

Petition for leave to intervene £570

Other interlocutory petition, if agreed £230

Any interlocutory petition, if opposed £570

Appeal Committee Order or other certified document

(except Judgment Order, for which there is no fee) £12

In respect of a joint petition, only one fee is payable. Fees for presenting petitions in respect of a cross-appeal are the same as fees for petitions in respect of an appeal.

(27th July 2000)

Annex B

<http://libra.lcd.gsi.gov.uk/courtwork/fees/10387.htm>

The Civil Proceedings Fees Order 2008 No. 1053

SCHEDULE 2 Remission and part remissions

Interpretation

1.—(1) In this Schedule—

“child” means a child or young person in respect of whom the individual is entitled to receive child benefit in accordance with section 141, and regulations made under section 142, of the Social Security Contributions and Benefits Act 1992([14](#));

“child care costs” has the meaning given in the Criminal Defence Service (Financial Eligibility) Regulations 2006([15](#));

“couple” has the meaning given in section 3(5A) of the Tax Credits Act 2002([16](#));

“disposable monthly income” has the meaning given in paragraph [5](#);

“excluded benefits” means—

(a) any of the following benefits payable under the Social Security Contributions and Benefits Act 1992—

(i) attendance allowance paid under section 64;

(ii) severe disablement allowance;

(iii) carer’s allowance;

(iv) disability living allowance;

(v) constant attendance allowance paid under section 104 or paragraph 4 or 7(2) of Schedule 8 as an increase to a disablement pension;

(vi) council tax benefit;

(vii) any payment made out of the social fund;

(viii) housing benefit;

(b) any direct payment made under the Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2003([17](#)) or the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2004([18](#));

(c) a back to work bonus payable under section 626 of the Jobseekers Act 1995([19](#));

(d) any exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983([20](#));

(e) any pension paid under the Naval, Military and Air Forces etc (Disablement and Death) Service Pension Order 2006([21](#));

(f) any payment made from the Independent Living Funds; and

(g) any financial support paid under an agreement for the care of a foster child;

“the Funding Code” means the code approved under section 9 of the Access to Justice Act 1999;

“gross annual income” means total annual income, for the 12 months preceding the application for remission or part remission, from all sources other than receipt of any of the excluded benefits;

“gross monthly income” means total monthly income, for the month in which the application for remission or part remission is made, from all sources other than receipt of any of the excluded benefits;

“the Independent Living Funds” has the meaning given in the Criminal Defence Service (Financial Eligibility) Regulations 2006;

“partner” means a person with whom the party lives as a couple and includes a person with whom the party is not currently living but from whom the party is not living separate and apart;

“party” means the party who would, but for this Schedule, be liable to pay the fee required under this Order;

“restraint order” means—

(h) an order under section 42(1A) of the Supreme Court Act 1981([22](#)); or

(i) a civil restraint order under rule 3.11 of the Civil Procedure Rules 1998([23](#)) or a practice direction made under that rule.

(2) Paragraphs [2](#), [3](#) and [4](#)—

(a) do not apply to a party who is in receipt of funding provided by the LSC for the purposes of the proceedings for which a certificate has been issued under the Funding Code; and

(b) are subject to the provisions of paragraphs [10](#) (vexatious litigants) and [11](#) (exception).

Full remission of fees – qualifying benefits

2.—(1) No fee is payable under this Order if, at the time when a fee would otherwise be payable, the party is in receipt of a qualifying benefit.

(2) The following are qualifying benefits for the purposes of sub-paragraph (1)—

(a) income support under the Social Security Contributions and Benefits Act 1992;

(b) working tax credit, provided that no child tax credit is being paid to the party;

(c) income-based jobseeker's allowance under the Jobseekers Act 1995; and

(d) guarantee credit under the State Pension Credit Act 2002(24). And

(e) income-related employment and support allowance under the Welfare Reform Act 2007.

Full remission of fees – gross annual income

3.—(1) No fee is payable under this Order if, at the time when the fee would otherwise be payable, the party has the number of children specified in column 1 of the following table and—

(a) if the party is single, the gross annual income of the party does not exceed the amount set out in the appropriate row of column 2; or

(b) if the party is one of a couple, the gross annual income of the couple does not exceed the amount set out in the appropriate row of column 3.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Number of children of party paying fee</i>	<i>Single</i>	<i>Couple</i>
no children	£12,000	£16,000
1 child	£14,735	£18,735
2 children	£17,470	£21,470
3 children	£20,205	£24,205
4 children	£22,940	£26,940

(2) If the party paying the fee has more than 4 children then the relevant amount of gross annual income is the amount specified in the table for 4 children plus the sum of £2,735 for each additional child.

Full and part remission of fees – disposable monthly income

4.—(1) No fee is payable under this Order if, at the time when the fee would otherwise be payable, the disposable monthly income of the party is £50 or less.

(2) The maximum amount of fee payable is—

(a) if the disposable monthly income of the party is more than £50 but does not exceed £210, an amount equal to one-quarter of every £10 of the party's disposable monthly income up to a maximum of £50; and

(b) if the disposable monthly income is more than £210, an amount equal to £50 plus one-half of every £10 over £200 of the party's disposable monthly income.

(3) Where the fee that would otherwise be payable under this Order is greater than the maximum fee which a party is required to pay as calculated in sub-paragraph (2), the fee will be remitted to the amount payable under that sub-paragraph.

Disposable monthly income

5.—(1) A party's disposable monthly income is the gross monthly income of the party for the month in which the fee becomes payable ("the period") less the deductions referred to in sub-paragraphs (2) and (3).

(2) There are to be deducted from the gross monthly income—

(a) income tax paid or payable in respect of the period;

(b) any contributions estimated to have been paid under Part 1 of the Social Security Contributions and Benefits Act 1992 in respect of the period;

(c) either—

(i) monthly rent or monthly payment in respect of a mortgage debt or hereditament, payable in respect of the only or main dwelling of the party, less any housing benefit paid under the Social Security Contributions and Benefits Act 1992; or

(ii) the monthly cost of the living accommodation of the party;

(d) any child care costs paid or payable in respect of the period;

(e) if the party is making bona fide payments for the maintenance of a child who is not a member of the household of the party, the amount of such payments paid or payable in respect of the period; and

(f) any amount paid or payable by the party, in respect of the period, in pursuance of a court order.

(3) There will be deducted from the gross monthly income an amount representing the cost of living expenses in respect of the period being—

(a) £296; plus

(b) £228 for each child of the party; plus

(c) £150, if the party has a partner.

Resources of partners

6.—(1) For the purpose of determining whether a party is entitled to the remission or part remission of a fee in accordance with this Schedule, the income of a partner, if any, is to be included as income of the party.

(2) The receipt by a partner of a qualifying benefit does not entitle a party to remission of a fee.

Application for remission or part remission of fees

7.—(1) An application for remission or part remission of a fee must be made to the court officer at the time when the fee would otherwise be payable.

(2) Where a claim for full remission of fees is made, the party must provide documentary evidence of, as the case may be—

(a) entitlement to a qualifying benefit; or

(b) gross annual income and, if applicable, the children included for the purposes of paragraph [3](#).

(3) Where a claim for full or part remission of fees under paragraph [4](#) is made, the party must provide documentary evidence of—

(a) such of the party's gross monthly income as is derived from—

(i) employment;

(ii) rental or other income received from persons living with the party by reason of their residence in the party's home;

(iii) a pension; or

(iv) a state benefit, not being an excluded benefit; and

(b) any expenditure being deducted from the gross monthly income in accordance with paragraph [5\(2\)](#).

Remission in exceptional circumstances

8. Where it appears to the Lord Chancellor that the payment of any fee prescribed by this Order would, owing to the exceptional circumstances of the

particular case, involve undue financial hardship, the Lord Chancellor may reduce or remit the fee in that case.

Refunds

9.—(1) Subject to sub-paragraph (3), where a party has not provided the documentary evidence required by paragraph 7 and a fee has been paid at a time when, under paragraphs 2, 3 or 4, it was not payable, the fee will be refunded if documentary evidence relating to the time when the fee became payable is provided at a later date.

(2) Subject to sub-paragraph (3), where a fee has been paid at a time where the Lord Chancellor, if all the circumstances had been known, would have reduced or remitted the fee under paragraph 8, the fee or the amount by which the fee would have been reduced, as the case may be, will be refunded.

(3) No refund will be made under this paragraph unless the party who paid the fee applies within 6 months of paying the fee.

(4) The Lord Chancellor may extend the period of 6 months mentioned in sub-paragraph (3) if the Lord Chancellor considers that there is a good reason for an application being made after the end of the period of 6 months.

Vexatious Litigants

10.—(1) This paragraph applies where—

(a) a restraint order is in force against a party; and

(b) the party makes an application for permission to—

(i) issue proceedings or take a step in proceedings as required by the restraint order;

(ii) apply for amendment or discharge of the order; or

(iii) appeal the order.

(2) The fee prescribed for the application by Schedule 1 is payable in full.

(3) If the court grants the permission requested the applicant will be refunded the difference between—

(a) the fee paid; and

(b) the fee that would have been payable if this Schedule had been applied without reference to this paragraph.

Exception

11. This Schedule does not apply to fee 8.8 (fee payable on a consolidated attachment of earnings order or an administration order).

(14) [1992 c.4](#). [Back \[14\]](#)

(15) S.I. 2006/2492, to which there are amendments not relevant to this Order. [Back \[15\]](#)

(16) [2002 c.21](#). Section 3(5A) was inserted by paragraph 144 of Schedule 24 to the Civil Partnership Act 2004 (c.33). [Back \[16\]](#)

(17) S.I. 2003/762. [Back \[17\]](#)

(18) S.I. 2004/1748. [Back \[18\]](#)

(19) [1995 c.18](#). [Back \[19\]](#)

(20) S.I. 1983/686. [Back \[20\]](#)

(21) S.I. 2006/606. [Back \[21\]](#)

(22) 1981 c.54. Section 42(1A) was inserted by section 24 of the Prosecution of Offences Act 1985 (c.23). [Back \[22\]](#)

(23) S.I. 1988/ 3132, amended by S.I.2004/2072; there are other amending instruments but none is relevant. [Back \[23\]](#)

(24) [2002 c.16](#). [Back \[24\]](#)

ANNEX C

Current Devolution Fees in the Judicial Committee of the Privy Council

2003 No. 1880

JUDICIAL COMMITTEE

The Judicial Committee (Devolution Issues) Rules (Amendment) Order 2003

Made 17th July 2003

Coming into force 1st September 2003

At the Court at Buckingham Palace, the 17th day of July 2003

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 103 of the Scotland Act 1998^[1], paragraph 34(1)(c) of Schedule 8 to the Government of Wales Act 1998^[2] and section 82(3)(c) of the Northern Ireland Act 1998^[3] or otherwise in Her vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation and commencement

1. This Order may be cited as the Judicial Committee (Devolution Issues) Rules (Amendment) Order 2003 and shall come into force on 1st September 2003.

Amendment of the Judicial Committee (Devolution Issues) Rules 1999

2. The Judicial Committee (Devolution Issues) Rules 1999^[4] shall be amended as follows -

(a) in rule 5.11(1)(a), before "refuse" insert "grant or";

(b) in rules 5.27(1) and (2), 5.41(2)(b)(ii) and 5.43(1)(b), delete "15" wherever it appears and insert "17";

(c) in rule 5.33, in paragraphs (1) and (2), delete "eight" wherever it appears and insert "ten";

(d) in rule 5.61, for paragraph (2) the following paragraph shall be substituted -

" (2) The Registrar may direct that -

(a) the payment of any fee shall be remitted on grounds of hardship;

(b) the appropriate fee must be paid at the time a chargeable step is taken.";

(e) for the Table of Fees the Table set out in the Schedule to this Order shall be substituted.

A. K. Galloway
Clerk of the Privy Council

SCHEDULE

TABLE OF FEES

		£
1	Lodging -	
	(a) a petition for special leave to appeal	120.00
	(b) a petition of appeal	100.00
	(c) any other petition or motion	75.00
	(d) a reference by a court	nil
	(e) any other reference	100.00

2	Entering appearance - .	
	(a) in the case of a reference by a court	75.00
	(b) in any other case	30.00
3	Lodging Case .	300.00
4	Lodging affidavit .	25.00
5	Original Order of the Judicial Committee .	30.00
6	Office Copy of Committee Order .	10.00
7	Certificate delivered to the parties .	25.00
8	Taxing fee (including certificate) .	5% of the sum allowed.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Question 1. Do the civil fee levels seem equitable taking into account the fact they have not been increased since 2000?

Question 2 Do you think the proposed balance between fee charged and contributions from each jurisdiction is right given the benefits that will accrue to all users of the civil justice system?

Question 3. Do you agree that a three year cycle for reviewing the fee levels is suitable?

Question 4. Do you agree that the Supreme Court should adopt the system of concessions used by the civil courts in England and Wales?

Question 5. Do you agree that the fee increases for devolution cases are equitable?

Question 6. Do you agree that the long term aim should be to bring these fees into line with civil fees?

Question 7. If the answer to question 6 is no what do you believe is the justification for keeping these fees lower?

Question 8. Do you agree with the fee proposal upon application for assessment of costs (2.5% of sum claimed) and the fee proposal once an assessment has been made (2.5% of sum allowed)? If not, what alternative do you propose?

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 5 May 2009 to:

Vanessa Watling
Ministry of Justice
Supreme Court Implementation Team
7.38
102 Petty France
London
SW1H 9AJ

Tel: 0203 334 3910

Email: supremecourtprogrammesupport@justice.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.justice.gov.uk/index.htm>.

For Alternative format copies please contact

Dapo Babalola
Ministry of Justice
Supreme Court Implementation Team
7.38
102 Petty France
London
SW1H 9AJ
[Email: dapo.babalola@justice.gsi.gov.uk](mailto:dapo.babalola@justice.gsi.gov.uk)

Publication of response

A paper summarising the responses to this consultation will be published in May 2009. The response paper will be available on-line at <http://www.justice.gov.uk/index.htm>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000

(FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

ANNEX D

Impact Assessment

Department /Agency: MINISTRY OF JUSTICE	Title: Impact Assessment of Fee Charges in the UK Supreme Court	
Stage: Consultation Stage	Version:	Date:
Related Publications: Constitutional Reform Act 2005 www.opsi.gov.uk Supreme Court for the United Kingdom www.dca.gov.uk/consult/supremecourt/index.htm		

Available to view or download at:

<http://www.justice.gov.uk/publications/consultations.htm>

Contact for enquiries: Vanessa Watling

Telephone: 0203 334 3910

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

When the UK Supreme Court becomes operational in October 2009 it will need to have in place fee charges for civil and devolution cases. In line with Government policy in other areas of the court system, the Supreme Court will be under a duty to recover the full cost of civil business in the court. This will be done through a combination of fees paid by litigants and contributions from jurisdictions using the court. The consultation looks at the level of fees and the system of concessions that should be in place for cases where the fees would prohibit access to justice.

What are the policy objectives and the intended effects?

The policy objectives are to, i) Recover the cost of the civil business of the court (this will be recovered partly through fees and partly through a contribution from jurisdictions using the court) ii) Ensure the system of fee concessions is transparent and equally applicable to England and Wales, Scotland and Northern Ireland. iii) Bring devolution fees more into line with civil fees so that there is a closer match for those using the court for both civil and devolution cases. iv) Have regard to the principle that access to justice must not be denied.

What policy options have been considered? Please justify any preferred option.

During the passage of the Constitutional Reform Act recovering civil costs solely through litigants fees was considered. After negotiation with the Treasury this was rejected as the increase in fees that would be required (around a tenfold increase) would be inequitable and deny access to justice. The Treasury agreed that, as the benefits of Supreme Court rulings accrue not only to the users of the Supreme Court, but more widely to all users of the civil justice system, the Supreme Court costs should be borne by both Supreme Court users and the generality of litigants bringing civil cases.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? As the UK Supreme Court is a new institution there will be regular monitoring of the fees policy, but it is also proposed to build into the fees structure a formal review cycle every three years. As the UK Supreme Court is a new institution there will be constant monitoring of the fees policy but it is also proposed to build into the fees structure a formal review cycle of once every 3 years.

Ministerial Sign-off For consultation stage Impact Assessments:

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 Minister:

..... Date:

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Fee income is already collected in the House of Lords and JCPC so impact on the administrative cost of fee collection is negligible. Fee levels proposed require a contribution from HMCS of somewhere in the region of £5.3m per annum, already factored in to their financial plan. For Scottish Parliament around £0.48m and NI Court service £0.24m			
	One-off (Transition)		Yrs		
	£ Negligible				
	Average Annual Cost (excluding one-off)				
	£ 6m Contribution			Total Cost (PV)	£
Other key non-monetised costs by 'main affected groups'					

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' These Fees (combined with the contributions from the jurisdictions) are designed to deliver full cost recovery for civil cases (apart from the cost of remissions).			
	One-off				
	£ Nil				
	Average Annual Benefit (excluding one-off)				
	£ Nil			Total Benefit (PV)	£
Other key non-monetised benefits by 'main affected groups' Currently costs associated with progressing civil cases are hidden within the wider costs of the House of Lords. Fees are not correlated with the cost of progressing cases. The new structure, will ensure the supreme court recovers civil costs and costs will be					

Key Assumptions/Sensitivities/Risks The Supreme Court is a new institution and so assumptions have been made about case flow based on current figures from the Appellate Committee and also about the running costs of the institution. There will be some risk that case flow drops leaving a shortfall in funding.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	United Kingdom
On what date will the policy be implemented?	1 October 2009
Which organisation(s) will enforce the policy?	Supreme Ct/MOJ
What is the total annual cost of enforcement for these	£ Negligible
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	N/A

What is the value of the proposed offsetting measure per year?	£ Nil			
What is the value of changes in greenhouse gas emissions?	£ Nil			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)		
Increase of	£	Decrease	£	£
Key:	Annual costs and benefits: Constant Prices		(Net) Present Value	

EVIDENCE BASE

INTRODUCTION

1.1 The evidence is based on data collected by the Judicial Office of the House of Lords, the Supreme Court Implementation Team and discussions with staff and Law Lords about the nature of their workload

2. RUNNING COSTS FOR PROGRESSING CIVIL CASES IN THE UK SUPREME COURT

2.1 It is currently estimated that the running costs of progressing civil cases in the new Supreme Court will be in the region of £6.6m a year, although this estimate is still being refined. This is broken down as follows¹:

Table 1

Cost Category	Recoverable Amount
Judicial Salaries	£1,800,288
Direct Judicial Support	£308,112
Shared staffing	£348,783
Staff dedicated to Sup Ct work	£355,547
Admin, utilities and building	£3,808,320
Total	£6,621,050

3 CIVIL CASELOAD IN THE APPELLATE COMMITTEE

3.1 As the Jurisdiction of the Appellate Committee remains relatively unchanged by the Constitutional Reform Act it has been assumed that the workflow of the Supreme Court will be similar to that of the Appellate Committee of the House of Lords. Appeals disposed of have remained fairly steady over the past six years and it is the availability of the Law Lords that has been one of the major factors in determining how many cases have been

¹ Figures produced by Supreme Court Implementation Team January 2009.

able to be dealt with per year. Our assumptions are based on this constraint remaining constant.²

3.2 There are two main processes that come before the Appellate Committee: Petitions for leave to appeal (the preliminary stage for most people applying for permission to bring a case to the court), and full appeals, once permission has been granted.

3.3 Since 2002 the figures for petitions for leave to appeal are as follows:

Table 2 Petitions entered	2002	2003	2004	2005	2006	2007	Average
Total Petitions Entered	253	237	217	240	219	200	228
Civil Petitions	201	213	180	200	181	172	191
% Civil Petitions	79.5	90	83	83	82	86	84%

3.4 On average, there are 228 new petitions entered each year. 84% of these relate to civil work.

3.5 Each year there are a number of petitions that either do not get disposed of by the Law Lords and are carried over to the next legal year, or are cases from the previous legal year that are dealt with. From these figures we can see how many petitions were actually dealt with by the Law Lords.

Table 3 Petitions disposed	2002	2003	2004	2005	2006	2007	Average
Total Petitions Disposed of	274	198	271	255	198	199	233
Civil Petitions	209	181	221	213	160	174	193
% Civil Petitions	76	91	81	83	80	87	83%

3.6 As well as petitions for leave the court deals with full appeals. Full appeals are processed by the administrative office and then handed to the

² There has been no pressure to increase this number. In response to consultation 74% of respondents including the Law Lords felt 12 was the right number. The Law Lords felt keeping the number of Justices small was important to the quality and consistency of its decision making

Law Lords. The number of Appeals that were presented over the past six years are as follows:

Table 4 Full Appeals Presented	2002	2003	2004	2005	2006	2007	Average
Appeals presented	107	89	111	87	73	72	90
Civil Appeals	88	71	88	75	62	62	74
% Civil Appeals	82	80	79	86	84	86	82%

3.7 As with the petitions above, there are a number of appeals that get lodged but either do not get dealt with, or are carried over from the year before. Therefore the number of appeals that actually get disposed of (usually by a full hearing heard by five law lords, but sometimes seven or nine) are as follows:

Table 5 Full Appeals disposed of	2002	2003	2004	2005	2006	2007	Average
Appeals disposed of	72	65	77	102	94	82	82
Civil Appeals	51	56	66	82	75	74	67
% Civil Appeals	70	86	85	80	80	90	82%

3.8 From the above tables an assumption can be drawn that around 80% of the casework dealt with by the Appellate Committee concerns civil work.

3.9 Discussions have been held with representatives of the Law Lords and the administrative office staff to ascertain whether there is any significant, measurable difference between the cost, complexity and time taken to progress civil cases as against other types of cases such as criminal. The consensus was that by the time a case reached the Appellate Committee the simple cases will have been filtered out. Therefore there is little variance in terms of complexity, and no necessity to place any sort of weighting upon civil cases. Furthermore, any difference in administrative process in progressing cases will be diminished even further with the introduction of the new Rules for the Supreme Court that fully harmonise the procedure for both civil and criminal cases.

4. DETAILED ANALYSIS

4.1 Working on the assumption that cases before the court are all within a similar range of complexity, but assuming that running costs are split on the basis that 80% of all costs are attributable to civil cases, further adjustments must be made to ensure civil costs are accurately reflected. A more refined analysis is provided below.

JUDICIAL SALARY

4.2 Account must be taken of the work the Law Lords do outside of the Appellate Committee. The Law Lords are involved in the work of the Judicial Committee of the Privy Council, leading inquiries, providing seminars, lectures, other academic work. Much of this work is done during evenings, weekends and judicial vacation, although in 2006 43 days were taken by Law Lords to sit in the final court of appeal of Hong Kong, attend conferences and degree ceremonies. In 2007, 45 days were requested for similar duties. At present Lord Saville is also occupied on the Bloody Sunday Inquiry. We have, however, looked at the statistics as if the 12 Law Lords were available as we have been advised by representatives of the Law Lords that leading an inquiry for such a prolonged period is an exceptional set of circumstances and should not apply when the new court is operational.

4.3 There are two ways of looking at how much time the Law Lords spend in the Appellate Committee. Sitting days represent the actual time spent in Court on cases and programmed days that are estimates of time needed for cases.³ Comparing the number of programmed days and sitting days for the Appellate Committee and the JCPC provides an idea of the split of work.

Table 6 Sitting Days	2003	2004	2005	2006	Average (Per Law Lord)
Days sat Appellate committee	117	133	144	126	130
Days sat JCPC	117	101	89	103	102
TOTAL	234	234	233	229	232
% split A.Com/JCPC	50/50	57/43	62/38	55/45	56/44

³ Lawyers provide time estimates for how long they think the case will take. The Appellate Committee and the JCPC then meet together and divide up the days they require based on these estimates. They do not include preparation time for cases. We have been unable to obtain figures for 2007 at the time of writing this evidence.

Table 7 Programmed Days	2003	2004	2005	2006	Average	Average per Law Lord ⁸
Programmed Days Appellate Committee	663	708	749	713	708	142
Programmed Days JCPC	481	490	479	505	489	98
TOTAL	1144	1198	1228	1218	1197	240
% split A.Com/JCPC	58/42	59/41	61/39	59/41	59/41	59/41

4.3 It can be seen that whether you look at sitting or programmed days, the division of work amounts to around 60% for the Appellate Committee and 40% JCPC.

4.4 In addition, as discussed in para 4.2, the Law Lords also spend some of their time on activities that, whilst important to the wider legal and academic community, fall outside of both the House of Lords or JCPC work. Following discussions with Law Lords, they have estimated that around 5% of their time is spent on work outside of their normal court duties.

4.5 Therefore 95% of their time is spent on judicial work. Of this time 60% is spent in the Appellate Committee and 80% of their work in the appellate committee is civil. This means there is a duty to recover $(95\% \times 60\%) \times 80\% = 45.6\%$

4.6 Judicial Salaries⁹ = £3.95m ; **Element Recoverable through Civil Fees = 45.6% x £3.95m = £1.80m**

⁸ In table 7 programmed days appear to be higher than recorded sitting days. This is because sitting days are recorded per Law Lord whereas programmed days are recorded as the total for all the law lords who are sitting. The average for programmed days has therefore been divided by 5 (the number of Law Lords who usually sit on cases in both the Appellate Committee and JCPC) to give a direct comparison between the two figures.

⁹ This figure is higher than previously cited. For greater transparency it now includes judicial National Insurance and pension contributions. These are not new costs.

5. STAFF SALARY

5.1 For the purposes of recovering staff salary, staff may be divided into three groups:

- Direct Judicial Support Staff;
- Shared Services Staff; and
- Staff providing support solely to the Supreme Court

Direct Judicial Support Staff

5.2 Secretaries and Judicial Assistants provide direct support to the Judiciary (8 Judicial Assistants and 8.5 Secretaries). Their work patterns closely follow those of the Law Lord that they work for so the assumption is work on Civil cases will be 45.6% of their gross salary costs:

Table 9	Cost	Element Recoverable through civil fees (45.6%)
Judicial Assistants	£353,231	£161,073
Secretaries	£322,454	£147,039
Total	£675,685	£308,112

Shared Service Staff

5.3 Some staff such as receptionists, corporate services staff and librarians will be a resource for the whole building, JCPC and the Supreme Court. It is, however, unlikely that they will be involved in the Justices work outside of the Supreme Court or JCPC , meaning 48% (80% x 60%) of their salary will be recoverable:

Shared Services staff gross salary costs⁷ = £726,632. **Element Recoverable Through Civil Fees = 48% x £726,632 = £348,783.**

Staff providing support solely to the Supreme Court

5.4 Some posts in the general office and administrative offices do not provide support or assistance to the JCPC. Therefore the cost of providing this service will have to be factored slightly differently. The split of work when looking at both petitions for leave and full appeals is about 80% of the workload of the Appellate Committee. We have therefore assumed that for staff working solely on Supreme Court matters 80% of their gross salary costs would be recoverable.

Staff providing support solely to the Supreme Court gross salary costs⁸ = £444,434.

Element Recoverable Through Civil Fees = 80% x £444,434 = £355,547.

6. OTHER RUNNING COSTS ATTRIBUTABLE TO CIVIL CASES

6.1 We have already factored out the non-civil costs for salaries, which has left us with the amount of recoverable costs.

6.2 When looking at other items of expenditure such as administration costs (including security), utilities, rates and building costs we again have to look at what is attributable to running civil cases. These costs amount to £7.93m.

6.3 The Judicial Committee of the Privy Council will be co-located in the Supreme Court building and so a proportion of the running costs will be attributable to their work. If we use the split of time spent on civil cases, JCPC cases, and other work, then a 48% share of the court's other running costs

dedicated to civil cases would be $48\% \times \text{£}7.93\text{m} = \text{£}3.81\text{m}$ recoverable costs.

6.4 In conclusion the way the recoverable civil case element is worked out is: $(45.6\% \times \text{Judicial salary}) + (45.6\% \times \text{Direct Judicial support salary}) + (48\% \times \text{Shared services salary}) + (80\% \times \text{Supreme Court Support salary}) + (48\% \times \text{admin, utilities, rates and building costs}) = \text{Recoverable civil costs}$

On present figures this would mean that the recoverable costs are:

Table 10

Cost Category	Amount
Judicial Salary	£1,800,288
Staffing	£1,012,442
Admin, utilities and building	£3,808,320
Total	£6,621,050

6.5 The consultation paper on fees in the Supreme Court proposes a level for civil fee income. The remainder of the recoverable amount will come from contributions from the devolved administrations, apportioned in accordance with their usage of the court (looking at number of cases brought before the court.)

SPECIFIC IMPACT TESTS

The Ministry of Justice published a consultation paper on civil court fees on 10 December 2008 that considered the impact of fee increases on a number of sectors of society. The information provided in that consultation is also pertinent to the new Supreme Court and so that information is utilised below.

Sectors and groups affected

Users of Supreme Court will be affected. These include amongst others, companies, government departments, local authorities, charities, small

businesses and individuals. Research published by the Ministry of Justice in 2007¹⁰ suggests that fees are not a major factor in the decision making process when individuals are considering court action. In addition a system of fee concessions will be in place to ensure access to justice is protected for those people who are unable to afford court.

Equality Impact Assessment

Government policies must be assessed specifically to ensure that they do not discriminate against anyone on the grounds of race, disability, gender, sexual orientation, age, religion or belief, and caring responsibilities. Court users are not required to provide personal information about themselves so there is a lack of evidence as to how changes to court fees specifically affect diverse communities. We have set out the probable impacts below.

Race Equality Assessment

Research produced by the Department for Trade and Industry in 2002 shows that some black and minority ethnic groups' average (mean) hourly wages are significantly less than others. For example, Bangladeshi and Pakistani men earned almost 30% less per hour than the group identified as 'White'. Men identified as 'black/black British' earned 12% less than their Indian counterparts.

Ethnicity data for Jobseekers Allowance (JSA) claimants (produced by the Office of National Statistics) shows that a higher proportion of the ethnic minority working age population in England are claiming JSA compared with the white population. The paper suggests that these findings signal the "wellknown labour market disadvantage faced by ethnic minorities". International Labour Organisation unemployment rates show ethnic minorities have a higher unemployment rate compared with the overall rate (latest data for spring 2006 show ethnic minorities have an unemployment rate of 11.2% compared with 5.2% overall). Within the ethnic minority population, however, there is considerable variation. The black or black British ethnic group has the highest proportion of their working age population on the claimant count, with 10.2% of the Other Black group on JSA. Research undertaken by the Joseph Rowntree Foundation states that the income poverty rate varies substantially between ethnic groups: Bangladeshis (65%), Pakistanis (55%) and black Africans (45%) have the highest rates; black

¹⁰ *What's cost got to do with it? The impact of changing court fees on users* was carried out by Opinion Leader Research and published on 27 June 2007. It is available on the Ministry of Justice Website at <http://www.justice.gov.uk/publications/research280607.htm>

Caribbeans (30%), Indians (25%), white Other (25%) and white British (20%) have the lowest rates.

As the research above highlights, some minority ethnic groups tend to have lower incomes, be in receipt of benefits and be living in poverty. Any change in fees, therefore, would be likely to have a greater potential impact on these groups, and restrict their ability to seek justice in court. However, it is proposed that any person for whom payment of fees will cause financial hardship will be able to take advantage of the fee concession system. An applicant is eligible to receive a full remission if they either receive a specified means-tested benefit (including JSA) or if they can demonstrate that their gross annual income is below a specified threshold. Alternatively an applicant can receive a part-remission (they pay a contribution towards the fee) based on their disposable income. Because of the fee concession system we do not think that there will be an impact of these fee proposals on people because of their racial group.

Religion and beliefs

There is a lack of information concerning earnings across different religions and statistics are not collected that give a breakdown on court users' religion or beliefs. However we do not expect there to be any impact on people because of their religious or other beliefs.

Disability impact assessment

According to the UK's Office for National Statistics' *Labour Force Survey*, Sept Dec 2006, only about half of disabled people of working age are in work (50%), compared with 80% of non disabled people of working age. The same survey reports that almost half (45%) of the disabled population of working age in Britain are economically inactive i.e. outside of the labour force. Only 16% of non-disabled people of working age are economically inactive. However due to the fee concession system being designed for all those that would suffer financial hardship regardless of disability, we do not expect that these proposals will have any impact on people with disabilities.

Age

The results of the 2007 Annual Survey of Hours and Earnings (ASHE) show that the top 10 per cent of the earnings distribution earned more than £906 per week, while the bottom 10 per cent earned less than £252. Young people often earn significantly less than their older counterparts. In 2007 there were 16,000 jobs held by 16 to 17-year-olds with pay less than £3.30 per hour and 45,000 jobs held by 18 to 21-year-olds with pay less than £4.45 per hour. 231,000 jobs were held by those aged 22 and over with pay less than £5.35

per hour. Median gross weekly earnings for full-time employees were highest for 40 to 49-year-olds at £516. Earnings increased until employees reached this age group and steadily decreased thereafter. People aged over 65 are much more likely to be economically inactive – due mostly, one would expect, to retirement.

We expect, therefore, that many of those potentially affected by fees will be covered by the fee concession system. As a result the actual impact of these policies on people because of age will be neutral.

Caring responsibilities

People with caring responsibilities often work part time, which increases their likelihood of being paid below the minimum wage and thus their ability to pay fees. The National Statistics ASHE estimates for Spring 2006 show that people in part-time work were almost three times more likely than people in full-time work to be paid less than the minimum wage. A fee concession system will permit those who may suffer financial hardship from paying a fee doing so, should they qualify. Therefore, we do not expect there to be a direct impact of these fees on those with caring responsibilities

Gender

In have deleted this section as this is more relevant to the 2008 consultation on family fees than this one. =The 2001 census shows that 48.67% of the population is male and 51.34% are female. Women tend to earn less than men and so fees may have a greater impact on them.

According to the Office of National Statistics ASHE the gender pay gap for full time workers in April 2007 was 12.6 percent or 17.2 percent if mean rather than median earnings are used. The part-time gender pay gap measures female part time hourly earnings against male full time hourly earnings. In April 2007 this gap was 39.1 per cent using median hourly earnings and 35.6 per cent using mean earnings. These lower earnings leave women at greater risk of falling below the poverty line and of being worse off than men in retirement. It is expected that the fee concession system will mitigate this, allowing access to justice, and so we do not expect there to be an impact of these changes on the basis of gender.

Sexual orientation

A recent study has shown that gay men earn, on average, 6% less than their heterosexual equivalents, although lesbian women earn about 11% more than their heterosexual counterparts. This means that an increase in fees may affect gay men more than heterosexual men. However, if people cannot afford

to pay the fees, they will be covered by our fee concession system. We do not therefore expect the proposed changes to impact this segment of the population.

Environmental

There is nothing to suggest that these fee changes will have an environmental impact.

Small Firms' Impact Test

Claimants are not required to provide information that would make it possible to classify them as belonging to a particular group. It is therefore impossible to estimate the effect in isolation on the small business sector. However, during the passage of the Constitutional Reform Act contact was made with the Small Business Service about the setting up of the Supreme Court and the Regulatory Impact Assessment done at that stage states that the Small Business Service agree that the impact on small businesses will be minimal.

Competition Assessment

We consider the proposals are unlikely to have a negative impact upon competition in any market. It is unlikely there would be any markets that would face a disproportionately large impact and a detailed competition assessment is not deemed necessary.

Enforcement / Sanctions / Monitoring

Nearly all fees are paid for in advance of the service so the sanction for non-payment is that the service will not be performed.

Legal Aid / Judicial Impact test

Any Legal Aid or Judicial impact will be broadly neutral.

Administration burdens / simplification

Administrative burdens will reduce as systems become more transparent and easier to understand.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation process rather than about the topic covered by this paper, you should contact Gabrielle Kann, Ministry of Justice Consultation Co-ordinator, on 0203 334 4496, or email her at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

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If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the How to respond section of this paper at page 32

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