

2011 No. 2344

TRIBUNALS AND INQUIRIES, ENGLAND AND WALES

**The Upper Tribunal (Immigration and Asylum Chamber)
(Judicial Review) (England and Wales) Fees Order 2011**

<i>Made</i>	- - - -	<i>22nd September 2011</i>
<i>Laid before Parliament</i>		<i>26th September 2011</i>
<i>Coming into force</i>	- -	<i>17th October 2011</i>

The Lord Chancellor makes the following Order in exercise of the powers conferred by section 42 of the Tribunals, Courts and Enforcement Act 2007(a).

The Lord Chancellor has consulted the Senior President of Tribunals and the Administrative Justice and Tribunals Council in accordance with section 42(5) of that Act before making this Order and has obtained the consent of the Treasury in accordance with section 42(6) of that Act.

Citation, commencement, interpretation and extent

1.—(1) This Order may be cited as the Upper Tribunal (Immigration and Asylum Chamber) (Judicial Review) (England and Wales) Fees Order 2011 and shall come into force on 17 October 2011.

(2) In this Order —

“fresh claim proceedings” means judicial review proceedings which call into question a decision of the Secretary of State not to treat submissions as an asylum claim or a human rights claim within the meaning of Part 5 of the Nationality, Immigration and Asylum Act 2002(b) wholly or partly on the basis that they are not significantly different from material that has previously been considered, and which have been begun in or transferred to the Upper Tribunal pursuant to a direction made by the Lord Chief Justice of England and Wales for the purposes of section 18(6) of the 2007 Act (c);

“LSC” means the Legal Services Commission established under section 1 of the Access to Justice Act 1999(d); and

“the Tribunal” means the Upper Tribunal.

(3) This Order extends to England and Wales only.

(a) 2007 c. 15.

(b) 2002 c. 41. An “asylum claim” and a “human rights claim” are defined in section 113 of the 2002 Act. Amendments to those definitions made by section 62(1) of the Immigration, Asylum and Nationality Act 2006 have not been commenced.

(c) The Lord Chief Justice’s direction for the time being in force can be found at <http://www.judiciary.gov.uk/publications-and-reports/practice-directions/tribunals/tribunals-pd>.

(d) 1999 c.22.

Fees payable

2. Where fresh claim proceedings are issued in or transferred to the Tribunal, the fees set out in column 2 of Schedule 1 are payable in respect of items described in column 1 in accordance with and subject to the directions specified in that column.

3. Where by any convention, treaty or other instrument entered into by Her Majesty with any foreign power it is provided that no fee is required to be paid in respect of any proceedings, the fees specified in this Order are not payable in respect of those proceedings.

Remissions and part remissions

4. Schedule 2 applies for the purpose of ascertaining whether a party is entitled to a remission or part remission of a fee prescribed by this Order.

Signed by authority of the Lord Chancellor

McNally
Minister of State
Ministry of Justice

22nd September 2011

We consent

James Duddridge
Brooks Newmark

21st September 2011

Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE 1

Article 2

Fees to be taken in fresh claim proceedings

Number and description of fee	Amount of fee
1. Starting proceedings	
1.1 For permission to apply for judicial review.	£60
Where the Tribunal has made an order giving permission to proceed with an application for judicial review, there is payable by the applicant within 7 days of service on the applicant of that order:	
1.2 If the judicial review procedure has been started.	£215
1.3 If the claim for judicial review was started otherwise than by using the judicial review procedure.	£60
2 Other Fees charged	
2.1 On an application on notice where no other fee is specified.	£80
2.2 On an application by consent or without notice where no other fee is specified.	£45
Fee 2.2 is not payable in relation to an application by consent for an adjournment of a hearing where the application is received by the Tribunal at least 14 days before the date set for that hearing.	
2.3 On an application for a summons or order for a witness to attend the Tribunal.	£40
3. Copy Documents	
3.1 On a request for a copy of a document filed for the purposes	

of fresh claim proceedings in the Tribunal (other than where fee 3.2 applies):	
(a) for ten pages or less;	£5
(b) for each subsequent page.	50p
Note: The fee payable under fee 3.1 includes:	
where the Tribunal allows a party to fax to the Tribunal for the use of that party a document that has not been requested by the Tribunal and is not intended to be placed on the Tribunal's file;	
where a party requests that the Tribunal fax a copy of a document from the Tribunal's file;	
the Tribunal provides a subsequent copy of a document which it has previously provided.	
3.2 On a request for a copy of a document on a computer disk or in other electronic form, for each such copy.	£5

SCHEDULE 2

Article 4

Remissions and Part Remissions

Interpretation

1.—(1) In this Schedule—

“child” means a child or young person in respect of whom a party 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(a);

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

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

“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 2009(d) or the Community Care,

(a) 1992 c.4.

(b) S.I. 2006/2492, to which there are amendments not relevant to this Order.

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

(d) S.I. 2009/1887.

Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2011(a);

- (c) a back to work bonus payable under section 26 of the Jobseekers Act 1995(b);
- (d) any exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983(c);
- (e) any pension paid under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pension Order 2006(d);
- (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 individual who would, but for this Schedule, be liable to pay the fee required under this Order;

(2) Paragraphs 2, 3 and 4 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.

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

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—

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- (a) S.I. 2011/831.
 - (b) 1995 c.18. Section 26 has been amended but none of those amendments are relevant to this Order.
 - (c) S.I. 1983/686.
 - (d) S.I. 2006/606.
 - (e) 2002 c.16.
 - (f) 2007 c.5.

- (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.

Number of children of party paying fee	<i>Single</i>	Couple
no children	£13,000	£18,000
1 child	15,930	£20,930
2 children	£18,860	£23,860
3 children	£21,790	£26,790
4 children	£24,720	£29,720

(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 £2,930 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 security, 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) £315; plus
- (b) £244 for each child of the party; plus
- (c) £159, 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 Lord Chancellor 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.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prescribes the fees payable where “fresh claim” judicial review proceedings are issued in or transferred to the Upper Tribunal (Immigration and Asylum Chamber) from the High Court in England and Wales.

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STATUTORY INSTRUMENTS

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