



Ministry
of Justice

The Right Honourable
Robert Buckland QC MP
Lord Chancellor & Secretary of
State for Justice

Sir Robert Neill MP
Chair of the Justice Committee
House of Commons
SW1A 0AA

MoJ Ref: 86872

8 April 2021

Dear Bob,

GENDER RECOGNITION PANEL FEES AND BREATHING SPACE AMENDMENTS TO COURT RULES AND FEES

I am writing to inform you about the two Statutory Instruments my Department are introducing to support the effectiveness of wider government policy.

As you may know, the Government intends to introduce protection to individuals with problem debt through the implementation of the breathing space scheme under the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 ("the Breathing Space Regulations").

Additionally, the Government Equalities Office launched a consultation in 2018 seeking views on how best to reform the process for individuals wishing to change their legal gender, as set out in the Gender Recognition Act 2004. The consultation included questions about whether the £140 tribunal application fee for the Gender Recognition Panel was a barrier to applying for legal recognition. Although the Minister for Women and Equalities in the Government response to the consultation on 21 September 2020, stated that there would be no amendment to the Act itself, she did state that Government would seek to reduce the fee to a nominal amount.

To support these wider Government priorities, my Department is seeking to amend the Civil Proceedings Fees Order 2008 and the Gender Recognition Application Fees Order 2006 through a single statutory instrument by way of negative statutory procedure. These amendments will create a new £5 court fee for a new County Court application arising from the Breathing Space Regulations, as well as reduce the Gender Recognition Panel application fee from £140 to £5.

In addition to new procedures in the County Court, my Department is also amending the Magistrates' Court Rules 1980 to provide for procedures to allow local authorities to seek the court's permission to take a step to enforce a Council Tax Liability Order during the debt moratorium. The amendment to these Rules will be made by way of negative statutory procedure.

The Civil Proceedings and Gender Recognition Application Fees (Amendment) Order 2021

The Courts Act 2003 confers upon me, in exercising my role as Lord Chancellor, a duty to ensure an efficient and effective court and tribunal system. In order to ensure this, the system must be properly funded so that it has the necessary resources to deliver its much-needed services. At the same time, we must protect access to justice, making sure those who need to access the courts and tribunals can do so. As a result, the proposed amendments are designed to achieve the appropriate balance between these two essential policy objectives.

Under the Breathing Space Regulations debt advisors enter the debtor's details on an electronic register which will contain basic details to enable a creditor to be able to identify the debtor. The register will have details such as the debtor's name, date of birth, and their usual residential address. A debtor may request that their residential address be withheld from the register on the basis that its disclosure to creditors could expose the debtor, or those who reside with them, to a reasonable risk of physical harm.

Should the debt advisor refuse to withhold the residential address from disclosure, their client may appeal this decision in the County Court under regulation 38(9) of the Breathing Space Regulations. Taking into consideration that applicants will be facing financial hardship and the importance of the application acting as a safeguard from potential harm, I have decided to propose that the court fee for this application should be £5. To introduce this fee, the Civil Proceedings Fees Order will need to be amended.

As mentioned above, this instrument will also amend the Gender Recognition Application Fees Order and reduce the Gender Recognition Panel fee from £140 to £5 in accordance with Government Equalities Office policy.

Magistrates' Courts Act 1980 (Breathing Space Orders) Rules 2021

Certain debt enforcement takes place in magistrates' courts. In particular, under the Local Government Finance Act 1992 (Schedule 4) and the Council Tax (Administration and Enforcement) Regulations 1992, if a monthly council tax payment is missed and no payment made after a reminder then the individual becomes liable to pay the entire annual sum. If that is not paid, the authority will send a complaint (i.e. an application) for a summons to a magistrates' court.

Council Tax Liability Orders are qualifying debts for the purposes of the Breathing Space Regulations. The protections afforded under the debt respite scheme apply to qualifying debts and prevent creditors from taking enforcement action. The protections apply for 60 days or where a debtor is in a Mental Health Crisis Moratorium, for the duration of their crisis treatment and then for a further 30 days.

The amendment to the Magistrates' Court Rules 1980 is intended to provide magistrates' courts with the powers to deal with applications made by a creditor in the circumstances set out in Regulation 7(2) of the Regulations, which states that during a moratorium period a creditor may not, in relation to any moratorium debt, take any steps unless a court where legal proceedings concerning the debt have been or could be issued or started has given permission for the creditor to take the step.

Amendments have been made to the Civil Procedure Rules for creditors to make applications to the County Court or High Court where proceedings are before those courts, but a statutory instrument is needed to make similar provision in the Magistrates' Courts to cover enforcement action that takes place there.

I am placing a copy of this letter in the Libraries of both Houses.

Yours ever

A handwritten signature in black ink that reads "Robert Buckland". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

RT HON ROBERT BUCKLAND QC MP