EXPLANATORY MEMORANDUM TO

THE FAMILY PROCEEDINGS FEES (AMENDMENT) ORDER 2008

2008 No. 115 (L.1)

THE CIVIL PROCEEDINGS FEES (AMENDMENT) ORDER 2008

2008 No. 116 (L.2)

AND TO

THE MAGISTRATES' COURTS FEES (AMENDMENT) ORDER 2008

2008 No. 117 (L.3)

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Civil Proceedings Fees (Amendment) Order 2008 amends the Civil Proceedings Fees Order 2004 (S.I. 2004/3121) so as to –

(i) amend the description of fee 2.3 and to note numbered (ii) to that fee;

(ii) substitute any reference to 'listing questionnaire'; and

(iii) amend paragraph 2(1) in Schedule 1A in relation to the circumstances in which a person is not required to pay a fee.

2.2 The Family Proceedings Fees (Amendment) Order 2008 amends the Family Proceedings Fees Order 2004 (S.I. 2004/3114) so as to amend paragraph 2(1) in Schedule 1A in relation to the circumstances in which a person is not required to pay a fee.

2.3 The Magistrates' Courts Fees (Amendment) Order 2008 amends the Magistrates' Courts Fees Order 2005 (S.I. 2005/3444) so as to amend paragraph 2 (1) of Schedule 2 to correct a mistake in relation to the circumstances in which a person is not required to pay a fee.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The amendment in article 3(2)(b) of the Civil Proceedings Fees (Amendment) Order 2008 is made as a consequence of the point raised in the letter dated 17 October from the Joint Committee on Statutory Instruments.

3.2 The amendments made in the Magistrates' Courts Fees (Amendment) Order 2008 and The Family Proceedings Fees (Amendment) Order 2008 corrects mistakes made in an earlier Order.

3.3 As these instruments correct the defects in S.I.s 2007/2176, 2007/2175 and 2007/2619 arrangements have been made for copies of these instruments to be made available free of charge to purchasers of those instruments.

4. Legislative background

4.1 Section 92 of the Courts Act 2003 provides the Lord Chancellor with a single fee-setting power, with Treasury consent, to prescribe the fees payable in respect of anything dealt with in the Supreme Court, county courts and magistrates' courts.

5. Extent

5.1 These Fees Orders only extend to courts within England and Wales.

6. European Convention on Human Rights

6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy Background

7.1 The Civil Proceedings Fees (Amendment) Order 2008 amends paragraph (ii) in the notes to fee 2.3 in Column 1 of Schedule 1 to the Civil Proceedings Fees Order 2004 (S.I. 2004/3121). The amendment clarifies the date when a refund of a hearing fee is due. The existing Fees Order states both 75% and 50% of the fee can be refunded if the court is notified on the 14th.day. The policy intention was that 50% of the hearing fee should be refunded.

7.2 The Civil Proceedings Fees (Amendment) Order 2008 amends the description of fee 2.3(c)(vi) in Column 1 of Schedule 1 to the Civil Proceedings Fees Order 2004 (S.I 2004/3121). The amendment removes the upper limit in the description of fee 2.3(c)(vi). So where the court has exercised power to allocate a case where the sum claimed exceeds £5,000 to be heard in the small claims track, the policy intention is that the parties should pay the hearing fee appropriate to the track on which the case is decided regardless of the sum involved.

7.3 The Civil Proceedings Fees (Amendment) Order 2008 substitutes any reference to 'listing questionnaire' with 'pre-trial check list (listing questionnaire)' to bring it in line with the wording used in the Civil Procedure Rules.

7.4 The Civil Proceedings Fees (Amendment) Order 2008 amends paragraph 2(1) in Schedule 1A in relation to the circumstances in which a person is not required to pay a fee.

7.5 The Family Proceedings Fees (Amendment) Order 2008 amends paragraph 2(1) in Schedule 1A to the Family Proceedings Fees Order 2004 (S.I. 2004/3114) in relation to the circumstances in which a person is not required to pay a fee.

7.6 The Magistrates' Courts Fees (Amendment) Order 2008 substitutes paragraph 2(1) in Schedule 2 to the Schedule to the Magistrates' Courts Fees Order 2005 (S.I. 2005/3444).

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 There is no impact on the public sector.

9. Contact

9.1 Cara Mitchell-Langford, Fees Branch, Civil Law and Justice Division, Her Majesty's Courts Service, e-mail Cara.MitchellLangford@hmcourts-service.gsi.gov.uk telephone: 020 7210 8979 can answer any queries regarding the instruments.