EXPLANATORY MEMORANDUM TO THE

CIVIL PROCEEDINGS FEES ORDER 2004

SI 2004 No. 3121 (L. 23)

1. This explanatory memorandum has been prepared by the Department of Constitutional Affairs 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 This Order replaces both the Supreme Court Fees Order 1999 [SI 1999/687] and the County Court Fees Order 1999 [SI 1999/689] with a combined Civil Proceedings Fees Order and provides for some fee increases to Supreme Court and county court fees. It also provides for some new fees both in the Supreme Court and in the county court.

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

3.1 Under HM Treasury Guidelines (para. 2.1 of HMT Fees and Charges Guide) departments and agencies are normally expected to meet full cost recovery of services through fees. However, there may be cases in which Ministers agree that a service should recover less than its full cost. This applies to the provision of civil court proceedings, where allowance is made for automatic exemption for those on certain means-tested benefits and remission of fees where payment would cause undue financial hardship. The balance of cost should then be recovered through fees charged.

3.2 All fees are set on the basis of the staff and judicial time (with their share of overheads) spent performing tasks related to the proceeding for which the fee is charged. The Department for Constitutional Affairs (DCA) continues to examine how to address the problem of reduced demand for civil litigation as part of a longer-term programme. Any fee increases following the wider programme will be the subject of future consultation.

3.3 For 2003-04 it was recognised that the DCA would have difficulty in achieving full cost recovery for civil and family courts, after exemption and remission and areas of business where it has been agreed DCA will not seek to recover full cost. DCA met the cash target of £328,791,000. The aim of the latest increases is not to achieve a cash target or full cost recovery but to make further progress towards the latter. This takes into account £25m of investment, principally in the new IT infrastructure that will take place during 2004-05. Gross income (with credit for remission and exemption) is expected to increase by 9% improving the level of cost recovery from 79% to 86%.

3.4 When section 92 of the Courts Act 2003 (single fee setting power for, in particular, fees in the Supreme Court and the county court) is brought into force, section 130 of the Supreme Court Act 1981 (fee making power for fees in the Supreme Court) and section 128 County Courts Act 1984 (fee making power for fees in the county court) will be repealed. The repeal of these sections will also repeal all orders made under the respective sections unless saved. Some of those orders however were also made under sections 414 and 415 of the Insolvency Act 1986 and section 128 of the Finance Act 1990. It is necessary therefore, as these sections will not be repealed, to use the power in section 108(6) of the Courts Act 2003 to revoke some Supreme Court and County Court Fees Orders (see Schedule 2 to the Order) to the extent that they were made under sections 414 and 415 of the Insolvency Act 1986 and section 128 of the Finance Act 1990.

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.

4.2 This section therefore, enables the Lord Chancellor to combine court fees for both the Supreme Court and county courts in one fees order rather than, as at present, in two fees orders for the benefit of the users for both courts who will now be able to access information on court fees from one source.

4.3 Fee increases are necessary to improve the overall cost recovery and the fee increases that are being introduced are in accordance with the Lord Chancellor's key principles announced in Parliament on 19 November 1998 (source: Hansard 1998 (House of Lords Debate) Vol 594 Col WA176). Namely:

- Fees should not prevent access to justice
- Protection must be provided for litigants of modest means
- Fees should match the cost of the service for which they are charged
- The pay-as-you-go system should be extended without deterring access to justice
- Flat rate fees reflecting the cost of the stage or application should be paid at other charging points
- Issue and enforcement fees should reflect the value of the claim
- Flat rate fees should be set on the basis of average not actual costs
- Fees should be paid by the claimant, or where a specific application is made, by the party who made that application

- Fees should be paid in advance

4.3 Fee increases are in accordance with government policy referred to when the Courts bill was passed.

5. Extent

5.1 This fees order only extends to courts within England and Wales.

6. European Convention on Human Rights

6.1 Not applicable

7. Policy Background

7.1 Paragraphs 6 to 15 of the Regulatory Impact Assessment set out the policy risk and rationale for fee setting.

7.2 The proposed fee increases means that the fees paid by the vast majority of litigants will not increase or if they do the increase will be minimal

7.3 The increase in fees partly reflects increases in cost, improvement in overall level of cost recovery, and financial investment. Paragraphs 20 to 30 of Regulatory Impact Assessment show the overall net income for the civil courts.

7.4 The key proposals for fee increases made in the recent consultation (Consultation Paper CP 10/04) which are being introduced are :

The amalgamation of Supreme Court and county court fees –

7.5 With a single set of Civil Procedures Rules (CPR) it is not logical to have separate fees orders for the Supreme Court and county court.

7.6 The High Court does not deal with bulk issue cases (CPC) so the income generated from this in the county courts has a distorting effect on income levels when it's income is compared with the income generated by the High Court.

7.7 Debt work transferred from the High Court as a result of CPR reforms to the county courts has had a distorting effect on High Court income so that some levelling out of fees across the entire court system is appropriate in order to ensure that fees in all courts should be set at an affordable level.

7.8 A proportion of those cases resolved in the county courts also benefit from the decisions taken on appeal in other cases that are by their nature disproportionately costly thus it would be unreasonable and would restrict access to justice if those claimants whose cases are resolved in the High Court were required to meet the full costs individually, despite the fact that some other litigants benefit from those decisions.

Increasing issue fees for claims over £50k

7.9 The fee band in the Supreme Court has extended from four to seven. The fee band begins at £400 for claims not over £50k and ends with a fee of £1,700 for claims over £300k

7.10 The fee band in the county court has extended from nine to twelve. There is no change in the fees for claims up to £50k. The fees and fee structure is the same as for the Supreme Court for those claims over £50k.

7.11 The new fees have been set to ensure that full cost recovery is aimed at those claims that tend to be heard in the Supreme Court as well as maintain a common scale of fees on issue of money claims. Consultees responded positively to the proposal recognising that the increase related to those cases most likely to be contested thereby avoiding the need to increase issue fees for the vast majority of claims.

Up rating of insolvency fees

7.12 The increase in insolvency fees of Debtor's Petition to £150, Creditor's Petition to £190, Petition for Administration Order to £150 and any other Petition to £190 is expected to increase the level of cost recovery from 95% to 100% (after allowing for remission and exemptions). As there were no general application fees specifically related to insolvency the introduction of the two new fees £30 (application without notice) and £60 (application on notice) will make it easier to attribute income correctly.

7.13 Some of those responding to the consultation favoured the introduction of a fee band structure and this is being investigated. The outcome of that investigation will inform future revision of fees.

Increasing the discount from £7 to £10 for bulk issue in the county court

7.14 The Claims Production Centre will receive an improved discount (increased from £7 to £10). The aim (of the reduction) is to encourage users to use the most efficient method of processing work. The improved discount has also taken into account that claims dealt with through the Claims Production Centre cost less to process, and a much higher proportion settle very quickly. The discount applies to all fees up to £100,000.

Increasing fees for non-money claim

7.15 Fees on non-money claims have been increased to bring fees closer to cost as income remains well below the typical cost of dealing with non-money claims. The increases are - £180 to £400 in the Supreme Court and £130 to £150 in the county court.

Allocation for trial and listing

7.16 The fee in the Supreme Court has been increased from £120 to £200 and from £80 to £100 in the county court. Fees in both courts have been increased to bring fees closer to cost.

7.17 Having taken into account the consultation responses the threshold for charging on allocation to track in the county court has been increased to £1,500 (from £1,000).

Detailed assessment of costs

7.18 Fees in the Supreme Court have been increased from £250 to £600, in the county court from £160 to £300 to bring fees closer to cost in each area. In the last fees consultation exercise a number of respondents said they thought the fees on detailed assessment of costs hearings were too low. An extensive survey of detailed assessment hearings was carried out during 2003 involving nearly all courts in England and Wales. This confirmed that much higher fees were needed in all jurisdictions if these fees were to recover cost in full. Consultees welcomed the increase and some suggested alternative fees structures. The latter will be investigated when fees are revised and consulted upon in the future.

Judicial Review

7.19 Having taken into account the consultation responses it was agreed that the original fee structure would remain but that there would be some fee increase to bring fees closer to cost namely.

- A fee of £50 (increase from £30) is payable when an application for permission is made.

- A fee of £50 is payable when judicial review was commenced otherwise than by using the judicial review procedure.

8. Impact

8.5 A Partial Regulatory Impact Assessment was prepared and attached to the Consultation Paper on Civil Court Fees. Attached is a copy of the Final Regulatory Impact Assessment (RIA).

9. Contact

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