EXPLANATORY MEMORANDUM TO

THE COURT FEES (MISCELLANEOUS AMENDMENTS) ORDER 2020

2020 No. 720 (L. 15)

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument reduces a number of fees charged under the Non-Contentious Probate Fees Order 2004 (S.I. 2004/3120), the Family Proceedings Fees Order 2008 (S.I. 2008/1054), the Civil Proceedings Fees Order 2008 (S.I. 2008/1053), and the Magistrates' Courts Fees Order 2008 (S.I. 2008/1052). The fees are each reduced to a level that reflects an estimate of the cost of the service being provided.

2.2 This instrument also removes an obsolete fee in relation to searches of the probate index.

2.3 The table at **Annex A** sets out in full the changes to fee levels resulting from this instrument.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As this instrument is subject to the negative procedure, consideration as to whether there are other matters of interest to the House of Commons does not arise unless this instrument is prayed against.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

4.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The Court Fees (Miscellaneous Amendments) Order 2020 amends the Non-Contentious Probate Fees Order 2004 (the "2004 Order"), the Civil Proceedings Fees

Order 2008, the Family Proceedings Fees Order 2008, and the Magistrates' Courts Fees Order 2008 (the "2008 Orders").

7. Policy background

7.1 The Ministry of Justice has undertaken a review of civil and family fees against the cost of the service for 2018/19 and has undertaken an exercise to map each fee to the cost of that particular service using volume and cost data for 2018/19. HM Courts and Tribunal Service (HMCTS) planning inflation rates have been used to uprate the 2018/19 unit costs to 2020/21. This mapping exercise has identified a number of fees which have recovered above cost without the necessary Parliamentary approval.

7.2 This instrument therefore regularises the position by prescribing those fees at full cost recovery levels.

7.3 As the levels of these fees are being reduced, it is not anticipated that there would be any negative impact on the groups who would typically pay these fees.

7.4 In July 2018 certain court fees were reduced through the Court of Protection, Civil Proceedings, and Magistrates Courts' Fees (Amendment) Order 2018 (S.I 2018/812), and a refund scheme for those persons who paid those fees was subsequently launched in January 2020 and remains in operation. This action was taken as it was determined those fees were not set on the basis of a reasonable predictive estimate of the costs involved in delivering the services they relate to. The Ministry of Justice now conducts reviews of the costs of various HMCTS processes to ensure that no fee is inadvertently set above those costs.

7.5 A refund scheme will not be launched in respect of the fees that are reduced in this instrument because they were at or below a reasonable predictive estimate of costs, based on the information available at that time, and, following the cost recovery assessment for 2018/19, the Ministry of Justice has taken prompt action to reduce them. The Ministry of Justice is continuing to make improvements to its data in relation to court costs.

7.6 This instrument also removes the fee in relation to searches of the probate index. This is because digitisation has made a physical index obsolete and so the service is no longer necessary.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 It is not intended that this instrument will consolidate any other legislation. The Government is reviewing when will be appropriate to consolidate the changes to the 2004 Order and each of the 2008 Orders. Consolidated guidance is available which sets out all of the fees in the 2004 Order and the 2008 Orders and will be updated to reflect the changes made by this instrument[1].

[1] https://www.gov.uk/government/publications/fees-in-the-civil-and-family-courts-full-list-ex50a

10. Consultation outcome

10.1 The Lord Chancellor has performed his statutory obligation to consult the judiciary and the Civil Justice Council when prescribing fees, as described in sections 92(5) and (6) of the Courts Act 2003. A general public consultation on this instrument is not necessary because we are reducing fees to cost, and those who bring proceedings will not be disadvantaged by the changes.

11. Guidance

11.1 HMCTS will update its guidance on fees payable in line with these amendments. Forms and leaflets will also be amended to reflect the changes.

12. Impact

12.1 An Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. Resetting the fees in this instrument to full cost recovery is expected to reduce HMCTS's fee income by around an average of £1.3-1.6m per annum against 2020/21 costs.

12.2 This instrument reduces the fee paid for a number of services across the Civil and Family jurisdictions.

12.3 Some of these proceedings are likely to be brought by businesses, charities and voluntary bodies. To the extent that they are, these measures are expected to reduce the costs of these proceedings to those organisations. The overall impact is expected to be minimal.

13. Regulating small business

13.1 Some of the proceedings subject to this instrument may be brought by small businesses. In those cases, the fee reductions will result in a small reduction in the cost of these proceedings to small businesses.

14. Monitoring & review

14.1 Fees and the impact of any changes are monitored by way of feedback from courts and their customers and the monitoring of fee income and volumes.

14.2 The Ministry of Justice has put in place arrangements to ensure that fees are regularly reviewed against cost and senior governance oversight of this process has been strengthened.

15. Contact

15.1 Andrew Jonathan at the Ministry of Justice (telephone: 07976299488 or email: andrew.jonathan@justice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Roshnee Patel and Stephanie Hack, Deputy Directors for Legal Support and Fees Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chris Philp MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

Annex A

Fee	Description	Current	New
NON-CONTENTIOUS PROBATE FEES ORDER 2004			
4	**Caveats**		
	For the entry or extension of a caveat	£20	£3
5	**Search**		
	On an application for a standing search to be carried out in an estate, for each period of six months including the issue of a copy grant and will, if any (irrespective of the number of pages).	£10	£3
8	**Copy documents**		
8(c)	where a search of the index is required, in addition to fee 8(a) or (b) as appropriate, for each period of 4 years searched after the first 4 years.	£4	Fee to be removed
11	**Settling documents**		
	For perusing and settling citations, advertisements, oaths, affidavits, or other documents, for each document settled.	£12	£4
FAMILY PROCEEDINGS FEES ORDER 2008			
2.1	**On an application for an order under the following provisions of the Children Act 1989 or, where specified, the Social Services and Well-being (Wales) Act 2014**		
2.1(u)	paragraph 5(2) of Schedule A1 (amendment of enforcement order by reason of change of address)	£95	£72
9	**Determination of costs**		
9.1	On filing a request for detailed assessment where the party filing the request is legally aided, is funded by the Legal Services Commission or is a person for whom civil legal services have been made available under arrangements made by the Lord Chancellor under Part of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and no other party is ordered to pay the costs of the proceedings.	£200	£94
12	**Enforcement**		

Fee	Description	Current	New
12.2	On an application for a third party debt order or the appointment of a receiver by way of equitable execution. Note: Fee 12.2 is payable in respect of each third party against whom the order is sought.	£100	£77
12.3	On an application for a charging order. Note: Fee 12.3 is payable in respect of each charging order applied for.	£100	£38
12.4	On an application for a judgment summons.	£100	£73
12.5	On an application for an attachment of earnings order to secure money due under an order made in family proceedings. Fee 12.5 is payable in respect of each defendant against whom an order is sought. Fee 12.5 is not payable where the attachment of earnings order is made on the hearing of a judgment summons.	£100	£34
15	**Service**		
15.1	On a request for service by bailiff of any document except— (a) an order for a debtor to attend the adjourned hearing of a judgment summons; (b) a claim to controlled, executed or exempt goods; (c) an order made under section 23 of the Attachment of Earnings Act 1971 (enforcement provisions); (d) an order for a debtor to attend an adjourned oral examination of means; (e) an application for (and accompanying documentation), or an order for, or an application to vary, extend or discharge— (i) a non-molestation order; (ii) an occupation order; or (iii) a forced marriage protection order, under Part 4 or Part 4A of the Family Law Act 1996; (f) an application for (and accompanying documentation), or an order for, or an application to vary or discharge a female genital	£110	£45

Fee	Description	Current	New
	mutilation protection order under Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003.		
CIVIL PROCEEDINGS FEES ORDER 2008			
2	**General fees (High Court and County Court)**		
2.6	On an application for a summons or order for a witness to attend court to be examined on oath or an order for evidence to be taken by deposition, other than an application for which fee 7.2 or 8.3 is payable.	£50	£21
2.7	On an application to vary a judgment or suspend enforcement, including an application to suspend a warrant of possession. Where more than one remedy is sought in the same application only one fee is payable.	£50	£14
2.8	Register of judgments, orders and fines kept undersection 98 of the Courts Act 2003: On a request for the issue of a certificate of satisfaction.	£15	£14
3	**Companies Act 1985, Companies Act 2006 and Insolvency Act 1986 (High Court and County Court**		
3.9	On submitting a nominee's report under section 2(2) of the Insolvency Act 1986.	£50	£35
3.10	On filing documents in accordance with paragraph 7(1) of Schedule A1 to the Insolvency Act 1986.	£50	£35
11	**Fees payable in Admiralty matters in the Admiralty Registrar and Marshal's Office**		
11.1	On the issue of a warrant for the arrest of a ship or goods.	£225	£18
MAGISTRATES' COURTS FEES ORDER 2008			
	Appeals		
2.2	On commencing an appeal against a deduction from earnings order under the Child Support Act 1991	£100	£19
	Liability Orders		
4.2	Proceedings under the Child Support Act 1991 on an application for a liability order.	£40	£25

Fee	Description	Current	New
	Note: Fee 4.2 is payable in respect of each liability order applied for.		