EXPLANATORY MEMORANDUM TO

THE CIVIL PROCEEDINGS AND FAMILY PROCEEDINGS FEES (AMENDMENT) ORDER 2015

2015 No. [DRAFT]

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. Purpose of the instrument

2.1 This instrument provides for fees to be prescribed for certain proceedings which exceed the costs of those proceedings (known as "enhanced fees").

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

3.1 This instrument is the first occasion on which the Lord Chancellor has used his powers to prescribe enhanced fees.

4. Legislative Context

4.1 Section 92 of the Courts Act 2003 provides the Lord Chancellor with a power to prescribe fees for court proceedings. Section 180 of the Anti-social Behaviour Crime and Policing Act 2014 provides the Lord Chancellor with a power to prescribe a fee of an amount which is intended to exceed the cost of anything in respect of which the fee is charged. It also requires certain matters to be taken into consideration when exercising the power. These include:

- the financial position of the courts and tribunals; and
- the competitiveness of the legal services market.

4.2 The income from enhanced fees must be used to finance an efficient and effective system of courts and tribunals.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Justice, Shailesh Vara, has made the following statement regarding Human Rights:

"In my view the provisions of The Civil Proceedings and Family Proceedings Fees (Amendment) Order 2015 are compatible with the Convention Rights".

7. Policy background

7.1 The normal rule where public authorities charge fees for services is that those fees should be set at a level designed to recover the full costs, but no more, of providing the service.[1] The civil and family courts have operated on this basis for many years, and following the fee increases made on 22 April 2014, fees are now broadly at full cost levels (less the costs of remissions which are borne by the taxpayer).

7.2 The Government decided to take a power to charge fee income from courts above the full level of cost for certain proceedings. It did so to make sure that the courts are adequately funded in order that access to justice is protected. It also wanted to reduce the cost of the courts borne by the taxpayer.

7.3 A consultation exercise was undertaken setting out the Government's detailed proposals for using this power (further details of the consultation are set out in section 8 below). Having considered the responses to the consultation and having had regard to the statutory duties (see paragraph 4.1 above), and the objectives of the policy, the Government has decided to introduce an enhanced fee to commence certain proceedings for the recovery of money.

7.4 The Order provides a new fee for money claims with a value of £10,000 or more. The fee to start proceedings is 5% of the value of the claim, with a maximum fee of £10,000. The percentage in respect of claims of £10,000 or more filed electronically via the County Court Business Centre or Money Claim OnLine is 4.5%. The fees for a claim with a value of less than £10,000 remain unchanged.

7.5 There are also three fees currently charged in civil and family proceedings which are inadvertently at a level which exceeds cost. These are:

7.5.1 the fee for an application for a divorce - £410;

7.5.2 the fee for a hearing of a case allocated to the fast track - £545; and

7.5.3 the fee for a case allocated to the multi-track - £1,090.

7.6 This is the result of a change in the way that HMCTS's costs are apportioned. Under the new model, a unified approach is taken to civil, family and probate matters. Overhead costs (such as IT, estates, finance and human resources) are now included in the costs of commencing proceedings, so that they are shared equally by all who use the courts. As a consequence, the costs attributed to the

[1] See *Managing Public Money*, Her Majesty's Treasury, July 2013. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212123/Managing_Public_Money_AA_v2_-_chapters_annex_web.pdf

proceedings set out in paragraph 7.5 above are now lower than the current fee. In the current financial climate, the Government does not believe that it would be justified to reduce the fee for these proceedings to the cost recovery level. But to avoid any doubt about the legality of these fees, this Order remakes them at their current level, explicitly using the powers to charge enhanced fees under section 180 of the Anti-social Behaviour Crime and Policing Act 2014.

8. Consultation outcome

8.1 A consultation ran from December 2013 to January 2014, covering two sets of proposals. The first, in Part 1 of the consultation, set out the Government's proposals to achieve full cost recovery within existing powers. In the second, the Government sought views on proposals to charge enhanced fees.

8.2 The Government Response to Part 1 of the consultation was published on 1 April 2014, following which the Civil Procedure Fees (Amendment) Order 2014 was made. The Government Response to Part 2 of the consultation, confirming the Government's intention to implement enhanced fees for money claims, was published on [16 January 2015].

8.3 The Government Response also confirmed that the Government has decided not to increase the fee for a divorce, as proposed in the original consultation, nor to take forward either of the options for charging higher fees for commercial proceedings: by either:

8.3.1 applying a higher maximum fee, set at either £15,000 or £20,000 to these cases; or alternatively

8.3.2 introducing a daily hearing fee of £1,000 for the trial of these cases.

8.4 The Response also sets out alternative proposals for increasing court fees to make good the shortfall in income from the decision not to increase the divorce fee.

8.5 Further details are set out in the Government Response, a copy of which can be found at: https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform.

8.6 The Lord Chancellor has also consulted the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division, the Chancellor of the High Court, the Deputy Head of Civil Justice and the Civil Justice Council ("the statutory consultees") in accordance with section 92 (5) and (6) of the Courts Act 2003. In their responses, the statutory consultees set out their continuing concerns about the potential impact of enhanced fees and the practical difficulties in their implementation. Most of the points they raised reflected the concerns they expressed in their responses to the consultation exercise. The Government has considered these submissions and we have set out our response in the Government Response.

8.7 We understand that the statutory consultees intend to publish their responses on the Judiciary website.[2]

9. Guidance

9.1 Her Majesty's Courts and Tribunal Service will update its guidance on fees payable in line with these amendments.

10. Impact

10.1 Some proceedings to which these fee changes apply may involve businesses, charities, voluntary bodies or public sector organisations. We do not routinely collect information on people and organisations involved in court proceedings and we are not therefore able to calculate the impact that the fee increases are likely to have on these organisations.

10.2 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk. Overall, we estimate that the fee increases will generate additional income of £120 million per annum. The Impact Assessment includes, at Annex A, a table comparing current fees charged for money claims, and those that will payable following these fee increases.

11. Regulating small business

11.1 Some proceedings to which these fees relate will be initiated by small businesses. We do not have detailed information on the characteristics of those who bring money claims before the courts; how many of these proceedings may be initiated by, or against small businesses; and the types and value of claim they typically make. We do not therefore know what the impact of these fee increases is likely to be on small businesses.

12. Monitoring & review

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

13. Contact

13.1 Bill Dowse at the Ministry of Justice Tel: 020 3334 6099 or email: bill.dowse@justice.gsi.gov.uk can answer any queries regarding the instrument.

[2] www.judiciary.gov.uk