EXPLANATORY MEMORANDUM TO

THE CIVIL PROCEEDINGS FEES (AMENDMENT) ORDER 2005
2005 No. 3445 (L.31)

AND

THE FAMILY PROCEEDINGS FEES (AMENDMENT No. 2) ORDER 2005
2005 No. 3443 (L.29)

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 amends both the Civil Proceedings Fees Order 2004 [SI 2004/3121] and the Family Proceedings Fees Order 2004 [SI 2004/3114] and provides for some increases to Supreme Court and County Court fees.

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

3.1 Under HM Treasury Guidelines (paragraph 2.1 of HM Treasury's *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 The Fee Income target for 2005 – 06 has been set at £397 million. Fee income is currently projected to be £376 million, leaving a shortfall of £21 million. The proposed fees increases are required not only to reduce this shortfall but will go a long way towards achieving the required full cost recovery target. It is projected that the increased family court fees will recover 62% of costs (the SR2004 target is 66% recovery) and all other civil court fees are projected to achieve the 100% cost recovery target.

3.3 Where fees fail to recover cost in full the shortfall must be met from within the Department's overall settlement. This places a strain on the limited resources available to the Department as a whole. Concern has been expressed about the levels of funding and investment in the civil and family courts. When the courts recover their costs in full they will no longer have to compete against other Government priorities for scarce resources. These proposals go along way to achieving are aim of full-cost recovery. Further efficiencies will be needed in the future to reflect investment and service improvement.

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 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) Volume 594 Column WA176). Namely —

(i) fees should not prevent access to justice;
(ii) protection must be provided for litigants of modest means;
(iii) fees should match the cost of the service for which they are charged;
(iv) the pay-as-you-go system should be extended without deterring access to justice;
(v) flat rate fees reflecting the cost of the stage or application should be paid at other charging points;
(vi) issue and enforcement fees should reflect the value of the claim;
(vii) flat rate fees should be set on the basis of average not actual costs;
(viii) fees should be paid by the claimant, or where a specific application is made, by the party who made that application; and
(ix) fees should be paid in advance.

4.3 Fee increases are in accordance with Government policy referred to when the Courts Act 2003 was passed.

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

7. Policy Background

7.1 An initial Regulatory Impact Assessment did not indicate that any groups were likely to be particularly affected by the proposed increases. The proposals are unlikely to lead to additional costs for businesses, charities or the voluntary sector, or on the public sector. The fee increases are designed to ensure that Her Majesty's Court Service charge fees, which reflects the cost to the courts of providing that service.

Civil Proceedings

7.2 The increases would bring the fees back to 100% cost recovery (discounting exemptions and remissions). However, the increases are proportionate and absolute amounts are fairly small. The increases are concentrated on those fees that were not increased in January 2005, and the increases are no more than inflation since the affected fees last went up.

7.3 However, some of the increases fall on smaller issue fees and this cuts across the Departments' longer-term strategy of re-balancing fees away from issue and onto trials and other down stream processes which generate most of the cost.

Family Proceedings

7.4 These increases would bring the fees to 62% cost recovery in a full year. The Department's SR2004 commitment is to increase cost recovery in family proceedings in the higher courts from less than 40% to 66% by 2007/08, and to make equivalent increases in the Magistrates' Courts. This target assumes 100% recovery for most private law family cases, but recognises the policy constraints on increasing fees for domestic violence, adoption and child care cases. The current proposal does not touch fees in these sensitive areas.

7.5 Provision has been extended to cover applications for the dissolution or annulment of a civil partnership or for the legal separation of civil partners under the Civil Partnership Act 2004, which come into effect on 5 December 2005. Provision will also be made to the new Adoption and Children Act 2002, which comes into effect on 30 December 2005, but no fee increase is proposed.

7.6 The key proposals for fee increases made in the recent consultation (Consultation Paper CP(L) 24/05) which are being introduced in order to bring the respective fees closer to cost are set out in the Explanatory Note to the Order.

8. Impact

8.1 An Initial Regulatory Impact Assessment was prepared and attached to the Consultation Paper on Civil and Family Court Fee Increases.

9. Contact

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