EXPLANATORY MEMORANDUM TO

THE CIVIL PROCEEDINGS FEES (AMENDMENT) ORDER 2005

2005 No. 473 (L.9)

THE FAMILY PROCEEDINGS FEES (AMENDMENT) ORDER 2005

2005 No. 472 (L.8)

1. This explanatory memorandum has been prepared by the Department for 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. The Civil Proceedings Fees (Amendment) Order 2005 amends section 4(2)(b)(ii) of the Civil Proceedings Fees Order 2004 and section 2 of Schedule 1 of the same Order. The Family Proceedings Fees (Amendment) Order 2005 amends section 3(2)(b)(ii) of the Family Proceedings Fees Order 2004.

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

3.1. There are no matters of special interest to the Joint Committee.

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. Subsection (2)(b) of the Act, in particular, makes provision as to exemptions from fees. The exercise of the Lord Chancellor's power to set the criteria for exemption and remission is subject to wide consultation with the Heads of Division, the Head and Deputy Head of Civil Justice and, in relation to civil proceedings the Civil Justice Council.

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. The Government's overarching concern to maintain access to justice for those who are less well-off and are in receipt of means-tested benefits. The criteria for automatic exemption are based on receipt of qualifying benefits or Tax Credits.

7.2. Until 1997, automatic exemption was confined in civil (non-family) proceedings to recipients of Income Support. In November 1997 the Lord Chancellor extended this to include income-based Jobseeker's Allowance, Family Credit and Disability Working Allowance.

7.3. The Lord Chancellor negotiated with the Treasury in 1998 for a special subsidy for certain types of family applications to ensure that people were not inhibited from beginning proceedings in the interests of children and the victims of domestic violence.

7.4. In 1999, the criteria were updated to include recipients of Working Families Tax Credit and Disabled Person's Tax Credit at the same income level. On 6 April 2003, Working Families Tax Credit and Disabled Person's Tax Credit were abolished and replaced by two New Tax Credits, Working Tax Credit and Child Tax Credit. In October 2003 the criteria were further revised to reflect the introduction of the Pensions Credit.

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.

9. Contact

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