EXPLANATORY MEMORANDUM TO
THE FAMILY PROCEEDINGS FEES (AMENDMENT) ORDER 2007
SI 2007/682 (L.2)

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order amends article 3(2)(b)(ii) in the Family Proceedings Fees Order 2004 [SI 2004/3114].

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 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 Head of Civil Justice, the Deputy Head of Civil Justice and, in relation to civil proceedings the Civil Justice Council.

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 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.

7.5 This Order increases, from £15,460 to £16,017, the maximum gross annual income above which working tax credit will not be a qualifying benefit for the purposes of exemption from court fees under the 2004 Order.

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.

8.2 There is no impact on the public sector.

9. Contact

9.1 Cara Mitchell-Langford, Civil Law and Justice Division, Her Majesty's Courts Service, telephone: 020 7210 8979 can answer any queries regarding the instrument.