EXPLANATORY MEMORANDUM TO

THE FAMILY PROCEEDINGS FEES (AMENDMENT) ORDER 2015

2015 No. 687 (L. 10)

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 instruments

2.1 This instrument amends the current fees charged for family proceedings in the courts of England and Wales, as set out in the Family Proceedings Fees Order 2008 (the "2008 Family Fees Order"). These fees were last amended by the making of the Family Proceedings Fees (Amendment) Order 2014 (S.I. 2014/877 L.20) (the "2014 Family Fees Order"). However, the amendment order contained a small number of errors and omissions which this instrument will rectify.

2.2 The instrument also inserts further provisions in the order to exempt from fees in family proceedings applications brought by the protected person under Regulation (EU) No 606/2013 of the European Parliament and of the Council on mutual recognition of protection measures in civil matters (the Protection Measures Regulation).

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

3.1 This instrument amends the notes directly under fee 3.3 in Schedule 1 to the Family Proceedings Fees (Amendment) Order 2014 (S.I. 2014/877 L.20), so as to clarify their application to Fees 3.1-3.3. This is in response to the JCSI's letter of 25 June 2014, to which the Ministry replied on 30 June 2014.

4. Legislative Context

4.1 The Family Proceedings Fees (Amendment) Order 2015 amends the Family Proceedings Fees Order 2008 (S.I. 2008/1054).

5. Territorial Extent and Application

5.1 This instrument applies to 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 2014 Family Fees Order removed the requirement under Fee 1.4 to pay court fees for applications for orders in domestic violence cases. This amendment was made to reflect the Government's policy position which is focused on protecting victims of domestic violence.

7.2 However, due to an oversight, the amendment order did not separately specify that a fee exemption would apply to domestic violence related applications under fee 1.1, which provides a fee where no other fee is specified. Nor did that order exempt from fees applications within these proceedings, such as an application to vary or discharge the order. This Instrument rectifies this and ensures that the Government's policy in relation to domestic violence cases that the original applicant should be exempt from paying a court fee in domestic violence related applications is implemented effectively.

7.3 Another amendment arises from the Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters (the "Protection Measures Regulation") coming into force on 11 January 2015, which the UK opted into and is therefore bound by.

7.4 The Protection Measures Regulation requires that any "protection measure" issued in one member state must be automatically recognised and enforceable in another member state, provided the measure has been certified. There are eight types of applications which fall within the meaning of "protection measures" under the regulation. These generally involve an obligation on a "person causing the risk" to stay away from or not contact a "protected person" and include both incoming applications (where an order has been made in another EU member state and a party is seeking for it to be recognised and/or enforced here) and outgoing applications (where an order has been made here and a party is seeking to have that recognised/and or enforced in another member state).

7.5 Having considered how to ensure that our policy to not charge applicants in domestic violence proceedings is consistently applied, amendments have been made to extend the fee exemption to all applications by "protected persons" relating to "protection measures" (as defined in the Protection Measures Regulation) within family proceedings. The exemption does not apply where the application is made by the person causing the risk.

7.6 This Order also makes a number of smaller changes in that it:

7.6.1 increases to £50 the fee for an application to make a decree nisi absolute or a conditional order final where an application for a matrimonial or civil partnership order was made before 1 July 2013;

7.6.2 removes the fee required to make an application for a maintenance order to be sent abroad for enforcement;

7.6.3 clarifies that the fee for taking an affidavit (fee 17) applies only to the High Court as originally intended; and

7.6.4 corrects a reference to Scottish benefits legislation which applies for the purpose of determining entitlement to a fee remission.

8. Consultation outcome

8.1 There has been no specific public consultation on this Order, however, the principle of exempting applicants in domestic violence related family proceedings from fees was consulted on in the original proposals on which the Lord Chancellor consulted in December 2013[1], with a majority of respondents agreeing with the proposals.

8.2 The Lord Chancellor has 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. They had no observations to make on these changes.

9. Guidance

9.1 Her Majesty's Courts and Tribunal Service will update its guidance on fees payable in line with these amendments. Forms and leaflets will also be amended to reflect the changes.

10. Impact

10.1 An Impact Assessment has not been prepared for these instruments because they are only expected to have a minimal impact, and were considered in the Impact Assessment accompanying the Family Proceedings Fees (Amendment) Order 2014.

10.2 As this Order amends certain fees payable in family proceedings, there will be no impact on businesses, voluntary organisations or public bodies.

[1] See: https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform

11. Regulating small business

11.1 This instrument does not impact on small business as family fees will be brought by individuals or groups of individuals dealing with family issues.

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

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.