EXPLANATORY MEMORANDUM TO

THE FAMILY PROCEEDINGS FEES (AMENDMENT) ORDER 2008

2008 No. 2856 (L.22)

THE MAGISTRATES' COURTS FEES (AMENDMENT) ORDER 2008

2008 No. 2855 (L.21)

THE NON-CONTENTIOUS PROBATE FEES (AMENDMENT) ORDER 2008

2008 No. 2854 (L.20)

THE CIVIL PROCEEDINGS FEES (AMENDMENT) ORDER 2008

2008 No. 2853 (L.19)

1 This explanatory memorandum has been prepared by Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2 Purpose of the instrument

2.1 This Order amends the Civil Proceedings Fees Order 2008 [SI 2008/1053], Family Proceedings Fees Order 2008 [SI 2008/1054], Magistrates' Courts Fees Order 2008 [SI 2008/1052] and the Non-Contentious Probate Fees Order 2004 [SI 2004/3120].

2.2 The civil and family courts in England and Wales are self-funding and court fees are generally set to reflect the actual costs of the service provided. New fees are therefore introduced as a result of changes to the Civil Procedure Rules and the introduction of the Children and Adoption Act 2006. Schedules are amended to include new provisions introduced under the Welfare Act 2007 and the Forced Marriage (Civil Protection) Act 2007.

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

3.1 None.

4 Legislative Context

4.1 The Welfare Act 2007 came into force on the 27 October 2008 and the Forced Marriage (Civil Protection) Act 2007 will come into force on 25 November 2008. The Children and Adoption Act 2006 comes into force on 08 December 2008. The amended fees orders will take effect on 26 November 2008. It was decided that one amendment of all the fees orders was the most efficient solution to reduce the administrative burden of reflecting the new provisions of these three legislative changes.

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 Amendments are being made, firstly, due to the introduction of primary legislation or amendments to the Civil Procedure Rules, and secondly, to remove uncertainty and confusion caused by the current fees orders.

7.2 The amended Fees Orders come into force on 26 November 2008 except for those provisions relating to the Children and Adoption Act 2006 that come into force on 8 December.

7.3 New fees are included in the Family Proceedings Fees Order 2008 No. 1054 and the Magistrates' Courts Fees Order 2008 No. 1052 as a result of the implementation of the Children and Adoption Act 2006.

7.4 Amendments are made to some fees in the Family Proceedings Fees Order 2008 No. 1054 to take account of new proceedings under the Forced Marriage (Civil Protection) Act 2007.

7.5 Further amendments to the Courts' Fees Orders are required to allow for the introduction of income-related employment and support allowance as an additional welfare benefit, receipt of which entitles a party to concession 1 of the fee remissions system. The allowance is created by the Welfare Reform Act 2007.

7.6 All Fees Orders are subject to some minor corrections and clarification of definitions that are causing confusion.

7.7 The fees that have been introduced as a result of the new legislation are aligned to similar existing proceedings.

- **Consolidation**

7.8 As public consultation is set to begin on increasing court fees to full cost levels in 2009, these fees amendment orders will be consolidated into new statutory instruments as new fees are introduced.

8 Consultation outcome

8.1 A letter was sent to all statutory consultees outlining the changes, and seeking their approval. The consultees included the Lord Chief Justice, Master of the Rolls, President of the Queen's Bench Division, President of the Family Division, Chancellor of the High Court, Head of Civil Justice, Deputy Head of Civil Justice, Civil Justice Council and the Family Justice Council. All the responses received were content for the changes to be made.

9 Guidance

9.1 Once the amended fees orders are laid before parliament, guidance will be sent by email to all court managers explaining the changes. This allows court managers three weeks to ensure that staff understand the amendments and the implications to their day to day working procedures.

9.2 Prior to implementation, general user information and guidance will be distributed and the website of Her Majesty's Court Service (HMCS) will be updated.

10 Impact

10.1 There is no impact on business, charities or voluntary bodies.
10.2 There is no impact on the public sector.
10.3 An Impact Assessment has not been prepared for this instrument.

11 Regulating small business

11.1 The legislation will not apply specifically to small business, but to all users of the courts and will clarify definitions in the Fees Orders for those users.

12 Monitoring & review

12.1 Fees and the impact of any changes are constantly monitored by way of feedback from courts and customers and the monitoring of fee income and volumes. Court fees must be responsive to the needs of the business. Policy officials meet regularly and fees orders are reviewed every six months. The legislation may then be amended accordingly.

13 Contact

13.1 Cara Mitchell-Langford, Civil Law and Justice Division, Ministry of Justice, telephone: 020 3334 3174 can answer any queries regarding the instrument.