EXPLANATORY MEMORANDUM TO

THE MAGISTRATES' COURTS FEES (AMENDMENT) ORDER 2014

2014 No. 875 (L. 18)

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 instrument

2.1 This instrument changes existing fees in the Magistrates' Courts Fees Order 2008. It also removes the fees included in that order charged in family proceedings to reflect changes resulting from the creation of the single family court on 22 April 2014.

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

3.1 As a result of the creation of the single family court, a number of fees charged in family proceedings heard in the Magistrates' Court which will now only be heard in the family court. This instrument removes those fees. The fees have been added to the Family Proceedings Fees Order where they were not already included (see also Family Proceedings (Amendment) Order 2014). The fees are:

- fee 2.2(a) – this is now fee 6.2 in the Family Order;
- fee 6.1 – now fee 11.1 in the Family Order;
- fee 7.1 – is now incorporated within fee 1.3(b) in the Family Order;
- all fees at 8.1 and 8.2 – now fees 2.1 and 2.2 in the Family Order (note that existing fee 8.2(b) is not in the Family Order as this fee will no longer be charged);
- fee 9.1 – now fee 1.8 in the Family Order;
- fees 10.1 and 10.2 – now fees 3.1 and 3.2 in the Family Order;
- fee 11.1 – now fee 4.1 in the Family Order;
- fee 12.1 and 12.2 – now fees 5.1 and 5.3 in the Family Order;
- fee 18.1 – this fee does not appear in the Family Order as a policy decision has been made to no longer charge a fee for non-molestation and prohibited steps orders.

3.2 Changes to some fee levels are intended to ensure that the fees for similar processes across all courts are aligned, to provide greater clarity for court users and staff. Therefore the fee for copy documents (either paper or electronic) is standardised at £10 (an increase from £5).

3.3 Some fees have increased to ensure that the fee charged reflects the full cost of the type of proceedings to which it relates. The cost is calculated by adding the actual cost of the staff and judicial time to process this type of application, and a portion of the costs of the overheads (e.g. IT and estates) of the civil court system. For the purpose of setting fees we have grouped together similar activities across the courts (e.g. issuing a case, or hearings) to give an average cost. Most of the remaining fees in the Magistrates' Order were already at full cost and have therefore been increased only by a rate of 2.7% (the consumer price index rate of inflation) to reflect anticipated increases to the overall cost base from 12/13 to 13/14 (See paragraph 7 below for further policy background).

3.4 The table at annex A sets out in full the changes to fee levels resulting from this instrument.

4. Legislative context

4.1 The Magistrates' Courts Fees (Amendment) Order 2014 amends the Magistrates' Courts Fees Order 2008 (S.I. 2008/1052).

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 Changes to Fees: The civil court system includes the civil, family and probate jurisdictions, the Court of Protection and the Court of Appeal (Civil Division). For many years, fees have been charged to access these courts. In recent years it has been the government's aim that the revenue from court fees should meet the costs of providing the civil courts system, excluding the cost of the remissions system, which provides a full or partial fee waiver for those unable to afford fees. In 2012/2013 the Ministry of Justice recovered only four-fifths of the cost of the civil court system, with a deficit of £125m[1]. At a time when the Government has made reducing the fiscal deficit a top priority, and when the Ministry of Justice is committed to reducing its budget by a third in real terms by 2014/15, the Government felt it vital that options for reducing public spending were considered.

[1] Re-stated figure from 2012/13 HMCTS annual accounts using revised costing approach set out in consultation document and uplifted to 2013/14 prices so as to align with the accompanying Impact Assessment.

7.2 It is within this context that part one of the Government's public consultation, *Court Fees: Proposals for reform,* entitled "Cost recovery" set out proposals to recover close to the full cost of the civil court system through fees, transferring more of the cost to the user and reducing the cost to the general taxpayer. It also sought to continue to simplify and rationalise the fees charged across the courts, so that similar processes attracted similar fees, making the fee system easier for users of the courts, and for court staff, to understand. The consultation ran from 3 December 2013 to 21 January 2014 and its response was published on 1 April 2014 https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform The consultation followed a wide-ranging review of the costs of the civil court system and contained detailed proposals for fee changes to recover more of the cost of the courts. This Order implements those fee changes for fees charged in the Magistrates' Court.

7.3 The Government continues to offer a system of fee remissions (full or partial fee waivers) for those unable to afford fees to ensure that those with limited financial means are not denied access to the justice system. The Government consulted on changes to the fee remission system in operation in the courts and most tribunals in 2013, introducing a scheme which operated across a wide range of fee levels on 7 October 2013.

7.4 Creation of the single family court: In its response to the Family Justice Review, published in February 2012, the Government accepted the recommendations that a single family court should be created to deal with family proceedings, replacing the current three tiers of court structure, with the High Court retaining exclusive jurisdiction for certain matters. In order to achieve this, primary legislation was required and provision for the establishment of a family court for England and Wales was made in the Crime and Courts Act 2013. The 2013 Act makes a large number of changes to primary legislation required to enable the family court to be set up, with further consequential changes in a number of Orders. The single family court will commence on 22 April 2014.

7.5 Currently family proceedings, and proceedings for the variation or enforcement of orders made in family proceedings, can be heard in a magistrates' court, a county court or the High Court.

7.6 When the new family court is commenced, the new court will be able to deal with all family proceedings, except for a limited number of matters which will be exclusively reserved to the High Court. Family proceedings courts will cease to exist and magistrates' courts and the new single county court will not be able to deal with family proceedings. This instrument therefore changes the Magistrates' Courts Fees Order 2008 to remove the family fees previously charged in the Magistrates' Courts. The Family Proceedings Fees (Amendment) Order 2014 includes those fees for family proceedings, previously only charged in the Magistrates' Courts to the Family Court.

8. Consultation

8.1 Before making this instrument, the Lord Chancellor has consulted those persons and bodies required by section 92(5) and (6) of the Courts Act 2003 (c. 39). Their responses are considered, alongside others received to the public consultation, in the consultation response.

8.2 The setting up of a single family court was a recommendation of the independently chaired Family Justice Review. The Review Panel's public consultation found there was overwhelming support for the single Family Court – 309 (75%) out of 412 respondents agreed a single Family Court should be established, including members of the public and family justice professionals. The Review Panel's final report can be accessed at: https://www.gov.uk/government/publications/family-justice-review-final-report.

8.3 The Government has not carried out a separate consultation on the changes required to this Order resulting from the creation of the single family court as they do not alter the nature of the fees charged.

9. Guidance

9.1 Her Majesty's Courts and Tribunal Service will update its guidance on fees payable in line with these amendments.

10. Impact

10.1 The impacts of the combined fee changes being implemented across the civil court system are set out in the attached impact assessment. The combined fee changes across the civil court system are expected to deliver additional income of around £105m per annum. This income estimate is net of remissions, is presented in 2013/14 prices and assumes no behavioural changes as a result of fee changes.

10.2 This instrument changes the fees payable by the public sector where they use the magistrates' courts. However, the majority of cases brought by the public sector in the Magistrates' Courts are in Council tax proceedings (fee 4.1), where the fee level has not changed. The impact of the proposals on all court users is set out in the impact assessment.

11. Regulating small business

11.1 This instrument will impact on small businesses that use the courts. The impact on small businesses of the overall fee changes is considered in the impact assessment. The impact assessment has been granted a "fit for purpose" rating by the Regulatory Policy Committee.

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

13.1 Jane Sigley, Head of Fees Policy at the MOJ Fees Policy Team Tel: 020 3334 5442 or email: jane.sigley@justice.gsi.gov.uk can answer any queries regarding the instrument.

Annex A – Magistrates' Courts Fees

		Current	New	Further information
1.1	Application for JP to perform function not on court premises	£50	£50	
	APPEALS			
2.1	Application to state a case for the opinion of the High Court	£500	£515	
	Appeal (Section 20, Child Support Act 1991)			deleted
2.2	Appeal (deduction from earnings order)	£95	£100	
2.3	Appeal - proceedings under Schedule 5, Licensing Act 2003	£400	£410	
2.4	Appeal (no other fee specified)	£200	£205	
	CERTIFICATES AND CERTIFIED DOCUMENTS			
3.1	Request for certificate of refusal to state a case	£100	£105	
3.2	Request for a certificate of satisfaction	£15	£15	
3.3	Request for a certified copy of a memorandum of conviction	£60	£60	
3.4	Request for certificate/certified document (no fee specified)	£60	£60	
	LIABILITY ORDERS			
4.1	Council tax proceedings	£3	£3	
4.2	Application for liability order (Child Support Act 1991)	£40	£40	For each liability order
	COPY DOCUMENTS			
5.1(a)	Copy of a document (10 pages or less)	£5	£10	
5.1(b)	For each subsequent page	50p	50p	
5.2	Copy of a document in electronic form (for each copy)	£5	£10	
	Application for an order for financial provision			deleted
	Application for a declaration of parentage			deleted
	PROCEEDINGS UNDER THE CHILDREN ACT 1989			Whole section deleted

	Parental responsibility (section 4(1)(c) or (3), 4A(1)(b) or(3))			
	Parental responsibility (section 4ZA(1)(c) or (6))			
	Guardians (section 5(1) or 6(7))			
	Section 8 orders (section 10(1) or (2))			
	Enforcement orders (section 11J(2))			
	Compensation for financial loss (section 11O(2))			
	Change of child's surname, or removal from jurisdiction while residence order in force (section 13(1))			
	Special guardianship orders (section 14A(3) or (6)(a), 14C(3) or 14D(1))			
	Secure accommodation order (section 25)			
	Change of child's surname, or removal from jurisdiction while care order in force (section 33(7))			
	Contact with child in care (section 34(2), (3), (4) or (9))			
	Education supervision order (section 36(1))			
	Variation or discharge etc of care and supervision orders (section 39)			
	Child assessment order (section 43(1))			
	Emergency protection orders (sections 44, 45 and 46)			
	Warrant to assist person exercising powers under emergency protection order (section 48)			
	Recovery order (section 50)			
	Cancellation, variation or removal or imposition of condition of registration of child minder or day carer (section 79K)			
	Applications in respect of enforcement orders (paragraph 4(2), 6(2), 7(2) or 9(2) of Schedule A1)			
	Amendment of enforcement order by reason of change of address (paragraph 5(2) of Schedule A1)			
	Warrant to assist person exercising powers to search for children or inspect premises (section 102)			
	Financial provision for children (paragraph 1(1) or (4), 2(1) or (5), 5(6), 6(5), (7) or (8), 8(2), 10(2), 11 or 14(1) of Schedule 1)			

	Approval of court for child in care of local authority to live abroad (paragraph 19(1) of Schedule 2)			
	Extension of supervision order (paragraph 6 of Schedule 3)			
	Extension or discharge of education supervision order (paragraph 15(2) or 17(1) of Schedule 3)			
	Appeals concerning foster parenting (paragraph 8(1) of Schedule 8)			
	Application for proceedings under Section 31 of Children Act 1989			
	Hearing for proceedings under Section 31 of Children Act 1989			
	Application for a parental order			deleted
	ADOPTION AND CHILDREN ACT 2002			
	Application/request for permission to apply			deleted
	Application for a placement order (section 22)			deleted
	CHILDREN AND ADOPTION ACT 2006			
	Application for a warning notice to be attached to a contact order			deleted
	FAMILY PROCEEDINGS			
	Application (on notice) (no other fee specified)			deleted
	Application (without notice/by consent) (no other fee specified)			deleted
	LICENCES			
6.1	Request for licence/consent/authority (no other fee specified)	£25	£25	
6.2	Application for renewal/variation of an existing licence	£25	£25	
6.3	Application for the revocation of licence (no other fee specified)	£25	£25	
	OATHS			
7.1	On taking attestation of a constable or special constable	£10	£10	

7.2	For every oath (etc) where no other fee is specified	£25	£25	
	OTHER CIVIL PROCEEDINGS			
8.1	Commencing proceedings where no other fee is specified	£200	£205	
8.2(a)	Application for leave/permission to commence proceedings (no other fee specified)	£100	£105	
8.2(b)	Proceedings where leave/permission has been granted	£100	£105	
8.3	Contested hearing	£500	£515	
	WARRANTS			
9.1	Application for a warrant of entry	£18	£20	
9.2	Application for any other warrant (no other fee specified)	£75	£75	
	COMMITMENT			
10.1	Application for a warrant of commitment	£240	£245	
10.2	Warrant of commitment (Child Support Act 1991)	£240	£245	
	Application for non-molestation/occupation order			deleted