EXPLANATORY MEMORANDUM TO

THE MAGISTRATES' COURTS FEES ORDER 2005

2005 No. 3444 (L.30)

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 This Order replaces sections 137 and 138 of, and Schedule 6 to, the Magistrates' Courts Act 1980 (c.43) and specifies the fees payable in magistrates' courts and provides for some fee increases.

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

3.1 Under HM Treasury Guidelines (paragraph. 2.1 of *HM Treasury's Fees and Charges Guide*) Departments and Agencies are normally expected to meet full-cost recovery of services through fees, although there may be cases in which Ministers agree a service should recover less than full cost. For the provision of proceedings in the Magistrates' Courts, allowance has been made for automatic exemption for those on means-tested benefits or remission where hardship would otherwise result. Together these provisions protect access to justice.

Civil Proceedings Fees

3.2 The majority of fees charged for civil work undertaken in the Magistrates' Courts have been increased to either harmonise with work that is identical or of a similar nature as that undertaken in the Supreme Court or County Court. The proposed increases are proportionately high, but the absolute amounts are fairly low. Magistrates' Court fees have not been increased since 1993.

3.3 The proposed increases to fees will bring cost recovery closer to 100%. A new costing model is being developed as part of the Department's long-term fee strategy that will provide a better matching of the price of a service with its cost. The development of the new costing model may result in further increases to ensure the full cost recovery target is met.

Family Proceedings Fees

3.4 The fees have been increased to harmonise with fees charged in family proceedings in the High Court and County Courts. The proposed fee increases will go a long way to meeting the Department's SR2004 commitment for family fees. Cost recovery would increase from around 5% to about 40% as a result of the implementation of these proposals.

3.5 The proposed increases support plans for a Unified Family Service, with family centres, integrated administration, and more effective allocation of cases to the lowest appropriate judicial tier. Common fees will simplify the administration and avoid the risk of criticism where a higher County Court fee was paid but the case immediately transferred for hearing in the Family Proceedings Court and vice versa.

Licensing Fees

3.6 Betting and gaming license fees have not been reviewed, as this work will be, transferred to the Local Authorities over the next few years. Licensing for alcohol has already transferred to Local Authorities with effect from 24 November 2005.

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 Fee increases are necessary to improve the overall cost recovery and are being introduced in accordance with the Lord Chancellor's key principles announced in Parliament on 19 November 1998 (source – Hansard 1998 (House of Lords Debate) Volume 594 Column WA176). Namely —

(i) fees should not prevent access to justice;
(ii) protection must be provided for litigants of modest means;
(iii) fees should match the cost of the service for which they are charged;
(iv) the pay-as-you-go system should be extended without deterring access to justice;
(v) flat rate fees reflecting the cost of the stage or application should be paid at other charging points;
(vi) issue and enforcement fees should reflect the value of the claim;
(vii) flat rate fees should be set on the basis of average not actual costs;
(viii) fees should be paid by the claimant, or where a specific application is made, by the party who made that application; and
(ix) fees should be paid in advance.

4.3 Fee increases are in accordance with Government policy referred to when the Courts Act 2003 was passed.

5. Extent

5.1 This fees order only extends 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 An initial Regulatory Impact Assessment did not indicate that any groups were likely to be particularly affected by the proposed increases. The proposals are

unlikely to lead to additional costs for businesses, charities or the voluntary sector, or on the public sector. The fee increases are designed to ensure that Her Majesty's Courts Service charge fees, which reflects the cost to the courts of providing that service.

7.2 Fees in Magistrates' Courts were last increased in April 1993. As a result of inflation the proportion of cost that is recovered has fallen to 30% overall and are considerably less than fees charged for identical or similar proceedings in other courts. The increase in fees improve the levels of cost recovery and move towards harmonisation of fees with those charged in the County Courts in particular.

7.3 The key proposals for fee increases made in the recent consultation (Consultation Paper CP(L) 24/05) which are being introduced in order to bring the respective fees closer to cost are set out in the Explanatory Note to this Order.

8. Impact

8.1 An Initial Regulatory Impact Assessment was prepared and attached to the Consultation Paper on Civil and Family Court Fee Increases.

9. Contact

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