EXPLANATORY MEMORANDUM TO

THE NON-CONTENTIOUS PROBATE FEES (LONDON TERRORIST BOMBINGS) ORDER 2005

2005 No. 3359

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 relates to fees payable on an application for a grant of probate or administration of a deceased person's estate. It provides that the fees for such a grant in respect of those who died as a result of the bombings that took place in London on 7 July 2005, and of a police operation following the attempted bombings in London on 21 July 2005, shall be waived and that where such fees have already been paid they shall be refunded. It does not effect the existing exemption powers in the Non-Contentious Probate Fees Order 2004.

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

3.1 Under HM Treasury Guidelines (para. 2.1 of HMT Fees and Charges Guide) departments and agencies are normally expected to meet full cost recovery of services through fees. However, there may be cases in which Ministers agree that a service should recover less than its full cost. This can apply to non-contentious probate proceedings and the fees payable on the application for a grant of representation.

4. Legislative Background

4.1 Section 92 of the Courts Act 2003 provides that the Lord Chancellor may with the consent of the Treasury by order prescribe fees payable in respect of anything dealt with by the Supreme Court. This includes probate matters. Orders may also provide for fee reductions, exemptions and remissions.

4.2 The probate fees order currently in force is the Non-Contentious Probate Fees Order 2004 (S.I. 2004/3120). Article 4 of the order provides for the exemption, reduction, remission and refunding of fees where, owing to the exceptional circumstances of a particular case, the applicant may suffer undue

financial hardship. However, it does not provide for the Lord Chancellor to remit fees for other applicants where application is made in respect of a death occurring as a result of a terrorist attack. For the Lord Chancellor to remit fees in those circumstances he must make a new Order.

4.3 Before making any order pursuant to section 92 of the Courts Act 2003, the Lord Chancellor must obtain the consent of the Treasury and consult with the following;

The Lord Chief Justice
The Master of the Rolls
The President of the Family Division
The President of the Queen's Bench Division
The Vice Chancellor
The Head of Civil Justice
The Deputy Head of Civil Justice (if there is one)
The Civil Justice Council.

5. Extent

5.1 This order only applies to applications for a grant of representation made in 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 Following the 7 July terrorist bombings in London and the action taken by the police following the attempted bombings on 21 July 2005 the Lord Chancellor decided that he would assist where appropriate the survivors and the relatives of the victims of the two events.

7.2 The Department for Constitutional Affairs (DCA) is waiving probate fees in respect of applications related to victims of the 7 July terrorist bombings and the victim of a police operation following the attempted terrorist bombings on 21 July 2005. The waiving of fees is a humanitarian act which will allow those persons who have obtained a death certificate for the victims to obtain probate without unnecessary hindrance. Waiving the probate fees will bring benefits to those who would normally obtain an exemption from fees under Article 4 of the Non-Contentious Probate Fees Order 2004 ("the 2004 Order"), because they will not have to prove to the court their own financial hardship. For other applicants it will remove some of the red tape required to obtain probate at an emotional and sensitive time. The DCA believes that waiving the fees will provide some emotional support to the survivors.

7.3 Applicants wishing to benefit from the waiving of fees for the 7 July terrorist bombings and the police operation following the attempted terrorist bombings on 21 July 2005 will have to submit suitable qualifying evidence in support of their application for probate. The evidence should show that the deceased had died as a result of the 7 July terrorist bombings or the police operation following the attempted terrorist bombings on 21 July 2005.

7.4 Applicants who cannot produce such evidence will not benefit from the fee waiver.

7.5 The waiver will not affect the application of Article 4 of the 2004 Order in respect of any other applications.

7.6 The number of victims of the 7 July bombings who have died is 52 (of whom it is believed about 37 were British citizens), and one further person has died as a result of a police operation following the attempted bombings on 21 July 2005.

7.7 There is therefore the potential for between 37 and 53 applications. Probate fees are currently £90 for a personal application and £40 for a solicitor application. Taking the higher figure there is a potential loss of between £3,420 and £4,770 in fees to the Probate Service.

7.8 The Lord Chancellor has obtained the consent of the Treasury and he has consulted with those listed above and they agree to this order being made.

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 The impact on the public sector is that those applying for a grant of representation as a consequence of the 7 July terrorist bombings and the police operation following the attempted terrorist bombings on 21 July will not have to pay the probate fee.

9. Contact

Chris Morter or Kirsty Milliam at the Department for Constitutional Affairs can answer any queries regarding the instrument.

Chris Morter: Tel: 020 7210 0787 or e-mail: Chris.Morter@hmcourts-service.gsi.gov.uk
Kirsty Milliam: Tel: 020 7210 1318 or e-mail: Kirsty.Milliam@hmcourts-service.gsi.gov.uk