

EXPLANATORY MEMORANDUM TO
THE FAMILY PROCEEDINGS FEES ORDER 2008

2008 No. 1054 (L.6)

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. **Description**

- 2.1 The Civil Proceedings Fees Order 2008 revokes, replaces and consolidates the Civil Proceedings Fees Order 2004 (S.I. 2004/3121) as amended. It specifies the fees payable in relation to civil proceedings in the Supreme Court and the county courts.

- 2.2 The Family Proceedings Fees Order 2008 revokes, replaces and consolidates the Family Proceedings Fees Order 2004 (S.I. 2004/3114). In addition to minor, drafting and uprating amendments, this order makes the following changes of substance –

- (i) In schedule 1, an incremental fee is introduced in relation to proceedings for a care or supervision order under section 31 of the Children Act 1989 (fee 2.2). The first fee is paid on an application for such an order. The second fee is payable if an issues resolution hearing or pre-hearing review is listed, the third fee is payable if a final hearing is listed, both the second and third fee are payable at least 14 days before the hearing. Provisions are made for refunds in certain circumstances.
- (ii) The fee for an application for a placement order under section 22 of the Adoption and Children Act 2002 is increased from £140 to £400 (fee 3.2). The fees for all other applications under the 2002 Act are unchanged at £140.

- 2.3 The Magistrates' Courts Fees Order 2008 revokes, replaces and consolidates the Magistrates' Courts Fees Order 2005 (S.I. 2005/3444) as amended. It specifies all the fees payable in the Magistrates' Court's. In addition to minor, drafting and uprating amendments, this order makes the following changes of substance –

- (i) In Schedule 1, fee 10 is amended so as to introduce a £150 for applications under the following provisions of the Children Act to

align with fees currently charged in the Family Proceedings Fees Order.

- (ii) In schedule 1, an incremental fee is introduced in relation to proceedings for a care or supervision order under section 31 of the Children Act 1989 (fee 2.2). The first fee is paid on an application for such an order. The second fee is payable if an issues resolution hearing or pre-hearing review is listed, the third fee (is payable if a final hearing is listed, both the second and third fee are payable at least 14 days before the hearing. Provisions are made for refunds in certain circumstances.
- (iii) The fee for an application for a placement order under section 22 of the Adoption and Children Act 2002 is increased from £140 to £400 (fee 3.2). The fees for all other applications under the 2002 Act are unchanged at £140.

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

3.1 See section 7

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.

5. Extent

5.1 These Fees Orders only extend to courts within England and Wales.

6. European Convention on Human Rights

6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy Background

7.1 The civil and family courts in England and Wales are mostly funded through fees paid by users of the service. The total cost of running these is currently some £600 million a year.

7.2 Her Majesty's Courts Service is implementing a strategy, agreed by Ministers, to develop and reform the court fee system to ensure that it is fair and sustainable.

The overall objectives of the strategy are to ensure that the system:

- Meets financial targets for cost recovery and net expenditure;
- Protects access to justice through a well-targeted system of fee concessions for the less well-off;
- Remains viable when the patterns of demand change, by achieving as close a match between income and costs within the system as reasonably practicable.

7.3 These changes represent the next stage in Her Majesty's Courts Service's fee strategy for developing the fee system and were subjected to a full public consultation. The consultation published on 19 December 2007 and the consultation closed on 11 March 2008. 111 responses were received from local authorities, law professionals, the judiciary and other stakeholder bodies.

7.4 The biggest and main change is to increase fees for child care proceedings to reflect the average cost of over £4,000. This is achieved by way of an incremental payment system which means that those cases that are resolved sooner by requiring less hearings will pay lower fees.

7.5 These fees are paid by local authorities. The change is a result of the need to transfer the large subsidy towards the full cost of these court proceedings from Her Majesty's Courts Service to the authorities that initiate the cases. This reflects the Government's general fee-charging policy, which is intended to provide greater visibility of and accountability for, the cost of providing services.

7.6 The two main themes that emerged from the responses to the consultation was that Local Authorities did not have sufficient funding. As a result confirmation was announced by Department for Communities and Local Government Minister in a WMS on 24 January 2008 that local government finance settlements had been adjusted to reflect specifically the transfer of around £40 million for public law cases from April 2008.

7.7 The £40 million transferred to Local Authorities is likely to exceed the total fees payable because it assumes that the maximum fee is paid in each case. In reality, the new 'Public Law Outline' procedure (see next paragraph) should mean that some cases will be resolved without going through all possible stages.

7.8 From April 2008, revised judicial case management procedures were set out in a Public Law Outline (PLO), which is introduced in all family

courts and replaces the existing Protocol for Judicial Case Management. The PLO will also be underpinned by revised statutory guidance to local authorities in England & Wales to assist them in preparing public law (child care) applications to the court.

- 7.9 The PLO is intended to discourage unnecessary or premature use of care proceedings, encourage better case preparation, improve case management by the courts and provide court fast-track court processes for appropriate cases. The proposed fees are designed to support the objectives of these reforms. It is envisaged that cases identified as suitable for an early Final Hearing under the PLO would pay significantly less in fees than those cases that have to go through all the possible stages.
- 7.10 The second main theme of the responses was that authorities would be improperly influenced by financial considerations and would not always act in the best interests of children. Local authorities are under a statutory duty to protect children at risk of significant harm. Both the Local Government Association and the Association of Directors of Children's Services, in their responses to the consultation, confirmed that local authorities are not influenced by cost considerations in their approach to initiating proceedings or in their decisions about appropriate pre-proceedings work.
- 7.11 These fee increases are necessary to ensure that the family courts are properly funded and are designed to fit with wider reforms on child protection proceedings. They are a further step in the Government's strategy of ensuring that the system of court fees is fair and sustainable, and they reflect the long-standing that statutory fees should generally be set at a level that recovers the cost of the service provided (but no more).

8. Impact

- 7.12 An Impact Assessment of the effect that this instrument will have on the costs of business is available in the Public Law Family Fees Consultation on the Ministry of Justice website at www.justice.gov.uk/publications/cp3207.htm. That impact assessment also relies on the Impact Assessment prepared for the Review of Care Proceedings System in England and Wales (May 2006). This identified potential cost savings from reducing delay and / or increasing the number of cases that are addressed without recourse to court this can be found using link www.dca.gov.uk/publications/reports_reviews/childcare_ps.pdf

9. Contact

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7210 8979 can answer any queries regarding the instruments.