

EXPLANATORY MEMORANDUM TO
THE MAGISTRATES' COURTS FEES (AMENDMENT) ORDER 2010
2010 No. 731 (L. 4)

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 The Magistrates' Courts fees order amendments are made to take account of new legislation, to rectify previous omissions to the fees orders and to remove uncertainty and confusion currently caused by an existing definition.

2.2 The Magistrates' Courts Fees (Amendment) Order 2010 amends the Magistrates' Courts Fees Order 2008 (S.I 2008/1052) as amended. It sets out amendments made to fees payable in relation to civil proceedings in the Magistrates' courts. This order makes the following changes:-

- (i) The definition of criminal proceedings in which the fees set out in Schedule 1 may be payable has been simplified to remove confusion on interpretation by staff and users of the court.
- (ii) Fee 9.1 is amended to take account of the latest legislation and replaces the reference to the Human Fertilisation and Embryology Act 1990 with the Human Fertilisation and Embryology Act 2008.
- (iii) Fees 4.1 and 17.1 are amended to rectify the omission of the business rate element of the fee for liability orders and commitment proceedings.

2.3 A table of the amendments is attached at Annex A.

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

3.1 None

4. Legislative Context

4.1 Amendment to include business rates in the fee for liability and commitment proceedings following previous omission.

4.2 To take account of the Human Fertilisation and Embryology Act 2008.

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 The Magistrates' Courts fees order amendments are made to reflect new legislation, address previous omissions and remove uncertainty as to when fees apply so to remove any confusion for staff and users of the court. The changes do not increase any of the fees stated in the current fees orders although non-payment of business rates has been added to the fee for liability orders and for a warrant of commitment following a previous omission.
- 7.2 In the case of court fees, a system of fee remissions is available to protect access to justice for the less well-off. A remission is available to anyone on a specified means tested benefit, with an income below a certain level or who may suffer financial hardship if they paid a court fee. In 2008/9, 167,830 fee remissions were granted at a value of £23.2m.

8. Consultation outcome

- 8.1 In accordance with section 92(5) and (6) of the Courts Act 2003 a letter was sent to all statutory consultees outlining the proposed 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 All the fees stated in the SI, with the exception of the business rate element of the fee for liability orders and warrants of commitments, are already in place and being recovered by courts – these amendments only clarify an existing definition, take account of new legislation and rectify previous omissions. Both the HMCS and MOJ websites will have information providing court staff and users with information about the amended fees orders.
- 9.2 The Department of Communities and Local Government (DCLG) are making amendments to the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 and to the Council Tax (Administration and Enforcement) Regulations 1992 to come into effect at the same time as the amendment to rectify the omission of Non-Domestic Rates to the fee for liability orders and commitment proceedings.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There may be an impact on the public sector in respect of the fee for liability orders and warrants of commitment for non-payment of non-domestic rates.

Any impact will be limited. Following the omission of a specific court fee a general fee has been payable for warrant of commitment applications. In addition these fees can be recovered from defendants through costs orders. DCLG are amending their regulations to ensure that the full amount of these fees can continue to be recovered via costs orders.

10.3 An Impact Assessment has not been prepared for these instruments.

11. Regulating small business

11.1 The legislation does not apply to small business.

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. 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, Head of Civil and Family Fees Policy, Ministry of Justice, email cara.mitchell-langford@justice.gsi.gov.uk. Tel: 020 334 3174 can answer any queries regarding the instrument.

Summary of changes to The Magistrates' Courts Fees Order 2008

Reference	Current Wording	Amended or New Wording
s.3(1)(a)	3.-(1) No fee is payable in respect of- (a) criminal matters (except for the supply of a document prepared for use in connection with a criminal matter but which is for use in connection with a matter which is not a criminal matter)	3.-(1) No fee is payable in respect of- (a) criminal proceedings (except for documents that were used in, or result from, criminal proceedings that are subsequently required for civil or family proceedings)".
Fee 4.1	4.1 Proceedings under the Council Tax (Administration and Enforcement) Regulations 1992 — on an application for a liability order	4.1 Proceedings under the Council Tax (Administration and Enforcement) Regulations 1992 or the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 — on an application for a liability order
Fee 9.1	9 Proceedings under the Human Fertilisation and Embryology Act 1990 9.1 On an application under section 30 (parental order)	9 Proceedings under the Human Fertilisation and Embryology Act 2008 9.1 On an application under section 54 (parental order)
Fee 17.1	17.1 Proceedings under the Council Tax (Administration and Enforcement) Regulations 1992 — on an application for a warrant for commitment.	17.1 Proceedings under the Council Tax (Administration and Enforcement) Regulations 1992 or the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 — on an application for a warrant of commitment