

**EXPLANATORY MEMORANDUM TO**  
**THE FAMILY PROCEEDINGS FEES (AMENDMENT No. 2) ORDER 2008**  
**2008 No. 3106 (L. 27)**

**1** This explanatory memorandum has been prepared by Ministry of Justice and is laid before Parliament by Command of Her Majesty.

**2 Purpose of the instrument**

2.1 This Order amends the Family Proceedings Fees (Amendment) Order 2008 (S.I. 2008/2856 (L. 22)) so as to correct a mistake in it. That Order, article 5 of which comes into force on 8th December 2008, makes amendments to the fees prescribed in the Family Proceedings Fees Order 2008 (S.I. 2008/1054).

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

3.1 This instrument contravenes the 21-day which requires that instruments subject to annulment should normally not be brought into force until 21 days after laying, for the following reason: –

3.2 An error was identified in the Order. The amendment is being made in article 5 (2), on page 2, following an administrative error. Fee values (£175) for enforcement orders and compensation for financial loss (new provisions introduced with the Children and Adoption Act 2006) were inadvertently left off the fees amendment order.

3.3 The Department considers that it is preferable and less confusing to the public and to court users to amend the family order as quickly as possible, so as to correct this mistake. In order to do this it is necessary to contravene the 21-day rule. The Department apologises for this error.

3.4 As this instrument corrects the defects in S.I.s 2008/1054 and 2856, arrangements have been made for copies of this instrument to be made available free of charge to purchasers of that instrument.

**4 Legislative Context**

4.1 The Family Proceedings Fees (Amendment) Order 2008 (S.I. 2008/2856) takes effect on 26 November 2008. Article 5 of that order comes into force on 8th December 2008 when the Children and Adoption Act 2006 comes into force.

4.2 The Family Proceedings Fees (Amendment No. 2) Order 2008 , inserts the inadvertently omitted fee values against the fee descriptions of two fees introduced on 8<sup>th</sup> December 2008 for provisions under the Children and Adoption Act 2006.

**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 This minor amendment is being made, following an administrative error and the omission of two fee values from the fee descriptions of section 2.1 (2) of The Family Proceedings Fees (Amendment) Order 2008.

### **• Consolidation**

7.2 As public consultation is set to begin on increasing court fees to full cost levels in 2009, these fees amendment orders will be consolidated into new statutory instruments as new fees are introduced.

## **8 Consultation outcome**

8.1 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. These consultees have been notified of the omission and the need to amend the Family Proceedings Fees (Amendment) Order 2008.

## **9 Guidance**

9.1 Information and guidance about the fee changes were circulated to court staff on 7 November 2008 and sets out the correct fee to be charged.

## **10 Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11 Regulating small business**

11.1 The legislation will not apply specifically to small business, but to all users of the courts and will clarify the fee payable in the Fees Orders for those users.

## **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. Court fees must be responsive to the needs of the business. 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, Civil Law and Justice Division, Ministry of Justice, telephone: 020 3334 3174 can answer any queries regarding the instrument.