

EXPLANATORY MEMORANDUM TO
THE FAMILY PROCEEDINGS FEES (AMENDMENT) ORDER 2014

2014 No. 877 (L. 20)

- 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 This instrument changes existing fees and introduces new fees in the Family Proceedings Fees Order 2008. The fee changes are being brought as part of a wider review of fees across the civil court system to ensure that the income they generate more closely matches the cost of the service being provided. The new fees have been moved from the Magistrates' Courts Fees Order 2008. They have been moved into the Family Order to reflect the creation of the single family court on 22 April 2014.

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

- 3.1 Family proceedings previously heard in the Magistrates' Court will now only be heard in the family court. These are:
- 2.1(r) which was previously fee 8.1(r) in the Magistrates' Order;
 - 2.1(z) which was previously fee 8.1(z) in the Magistrates' Order;
 - 4.1 which was previously fee 11.1 in the Magistrates' Order;
 - 6.2 which was previously fee 2.2(a) in the Magistrates' Order;
 - 11.1 which was previously fee 6.1 in the Magistrates' Order.
- 3.2 The wording of fee 1.4 has been amended to reflect the policy decision that a fee will no longer be charged for an occupation order or non molestation order in domestic violence cases.
- 3.3 The fee for a hearing in public law cases following an application under s31 of the Children Act has been removed following the policy decision that a single application fee will now only be charged in such cases.
- 3.4 The notes to fees 5.1 and 5.3 (applications made in existing proceedings) have been amended to reflect the policy decision that applications made within existing proceedings under parts of the Children Act 1989 should bear the same fee as other applications on notice or without notice or by consent.

- 3.5 The wording of the fee at 6.1 (appeals) has been amended to reflect the creation of the single family court.
- 3.6 The fee to be found at 13.2 in the existing order has been removed as section 97 of the County Courts Act 1984 was repealed by paragraph 74 of Schedule 13 of the Tribunal Courts and Enforcement Act 2007, which was commenced on 6 April 2014.
- 3.7 Changes to some fee levels are intended to ensure that the fees for similar processes across all courts are aligned, to provide greater clarity for court users and staff. Therefore the fee for copy documents (either paper or electronic) is standardised at £10 (an increase from £5), the fee for affidavits standardised at £11 (an increase from £6) and the fee for applications without notice or by consent and for applications on notice is standardised at £50 (increase from £45) and £155 (increase from £80) respectively.
- 3.8 The table at annex A sets out in full the changes to fee levels resulting from this instrument.

4. Legislative context

- 4.1 The Family Proceedings Fees (Amendment) Order 2014 amends the Family Proceedings Fees Order 2008 (S.I. 2008/1054).

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 Changes to Fees: The civil court system includes the civil, family and probate jurisdictions, the Court of Protection and the Court of Appeal (Civil Division). For many years, fees have been charged to access these courts. In recent years it has been the government's aim that the revenue from court fees should meet the costs of providing the civil courts system, excluding the cost of the remissions system, which provides a full or partial fee waiver for those unable to afford fees. In 2012/2013 the Ministry of Justice recovered only four-fifths of the cost of the civil court system, with a deficit of £125m¹. At a time when the Government has

¹ Re-stated figure from 2012/13 HMCTS annual accounts using revised costing approach set out in consultation document and uplifted to 2013/14 prices so as to align with the accompanying Impact Assessment.

made reducing the fiscal deficit a top priority, and when the Ministry of Justice is committed to reducing its budget by a third in real terms by 2014/15, the Government felt it vital that options for reducing public spending were considered.

- 7.2 It is within this context that part one of the Government's public consultation, *Court Fees: Proposals for reform*, entitled "Cost recovery" set out proposals to recover close to the full cost of the civil court system through fees, transferring more of the cost to the user and reducing the cost to the general taxpayer. It also sought to continue to simplify and rationalise the fees charged across the courts, so that similar processes attracted similar fees, making the fee system easier for users of the courts, and for court staff, to understand. The consultation ran from 3 December 2013 to 21 January 2014 and its response was published on 1 April 2014 <https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform>. The consultation followed a wide-ranging review of the costs of the civil court system and contained detailed proposals for fee changes to recover more of the cost of the courts, including the family courts. While a policy decision has been made to protect many family fees from fee rises, some fees are changing. This Order implements those fee changes for fees charged in family proceedings.
- 7.3 The Government continues to offer a system of fee remissions (full or partial fee waivers) for those unable to afford fees to ensure that those with limited financial means are not denied access to the justice system. The Government consulted on changes to the fee remission system in operation in the courts and most tribunals in 2013, introducing a scheme which operated across a wide range of fee levels on 7 October 2013.
- 7.4 Creation of the single family court: In its response to the Family Justice Review, published in February 2012, the Government accepted the recommendations that a single family court should be created to deal with family proceedings, replacing the current three tiers of court structure, with the High Court retaining exclusive jurisdiction for certain matters. In order to achieve this, primary legislation was required and provision for the establishment of a family court for England and Wales was made in the Crime and Courts Act 2013. The 2013 Act makes a large number of changes to primary legislation required to enable the family court to be set up, with further consequential changes in a number of Orders. The single family court will commence on 22 April 2014.
- 7.5 Currently family proceedings, and proceedings for the variation or enforcement of orders made in family proceedings, can be heard in a magistrates' court, a county court or the High Court.
- 7.6 When the new family court is commenced, the new court will be able to deal with all family proceedings, except for a limited number of matters which will be exclusively reserved to the High Court. Family proceedings courts will cease to exist and magistrates' courts and the new single county court will not be able to deal with family proceedings. This instrument therefore amends the Family

Proceedings Fees Order 2008 to include family fees previously charged in the magistrates' courts only.

8. Consultation

- 8.1 Before making this instrument, the Lord Chancellor has consulted those persons and bodies required by section 92(5) and (6) of the Courts Act 2003 (c. 39). Their responses are considered, alongside others received to the public consultation, in the consultation response.
- 8.2 The setting up of a single family court was a recommendation of the independently chaired Family Justice Review. The Review Panel's public consultation found there was overwhelming support for the single Family Court – 309 (75%) out of 412 respondents agreed a single Family Court should be established, including members of the public and family justice professionals. The Review Panel's final report can be accessed at: <https://www.gov.uk/government/publications/family-justice-review-final-report>
- 8.3 The Government has not carried out a separate consultation on the changes resulting from the creation of the single family court as they do not alter the nature of the fees charged.

9. Guidance

- 9.1 Her Majesty's Courts and Tribunal Service will update its guidance on fees payable in line with these amendments.

10. Impact

- 10.1 The impacts of the combined fee changes being implemented across the civil court system are set out in the attached impact assessment. The combined fee changes across the civil court system are expected to deliver additional income of around £105m per annum. This income estimate is net of remissions, is presented in 2013/14 prices and assumes no behavioural changes as a result of fee changes.
- 10.2 This instrument changes to the fees payable by the public sector in the form of local authorities who bring public law proceedings. The Government estimates that the new simplified fee structure for the fees at 2.2 (section 31 care cases) to local authorities will deliver a saving of around £39m. However, the Government cannot quantify the impact of changes to the fees under the Children Act Section 2.1 or fees 5.1 and 5.3 (general application fees) but would expect it to be very low in comparison to the savings outlined above.

11. Regulating small business

- 11.1 This instrument does not impact on small business as family fees will be brought by individuals or groups of individuals dealing with family issues.

12. Monitoring & review

12.1 Fees and the impact of any changes are constantly monitored by way of feedback from courts and their customers and the monitoring of fee income and volumes.

13. Contact

13.1 Jane Sigley, Head of Fees Policy at the MOJ Fees Policy Team Tel: 020 3334 5442 or email: jane.sigley@justice.gsi.gov.uk can answer any queries regarding the instrument.

Annex A - Family Proceedings Fees

		Current	Proposed
	ISSUE FEES		
1.1	Where no other fee is specified	£245	£245
1.2	Application for divorce/nullity of marriage or civil partnership	£410	£410
1.3	Application for matrimonial or civil partnership order	£365	£365
1.4	Forced marriage protection order	£75	£75
1.5	Amendment of application for matrimonial/civil partnership order	£95	£95
1.6	Answer to application for matrimonial/civil partnership order	£245	£245
1.7	Application for an order of assessment of costs	£40	£50
1.8	Application for parental order	£215	£215
	PROCEEDINGS UNDER THE CHILDREN ACT 1989		
2.1(a)	Parental responsibility (section 4(1)(c) or (3), 4A(1)(b) or(3))	£215	£215
2.1(b)	Parental responsibility (section 4ZA(1)(c) or (6))	£215	£215
2.1(c)	Guardians (section 5(1) or 6(7))	£215	£215
2.1(d)	Section 8 orders (section 10(1) or (2))	£215	£215
2.1(e)	Enforcement orders (section 11J(2))	£215	£215
2.1(f)	Compensation for financial loss (section 11O(2))	£215	£215
2.1(g)	Change of child's surname, or removal from jurisdiction while residence order in force (section 13(1))	£215	£215
2.1(h)	Special guardianship orders (section 14A(3) or (6)(a), 14C(3) or 14D(1))	£170	£215
2.1(i)	Secure accommodation order (section 25)	£180	£215
2.1(j)	Change of child's surname, or removal from jurisdiction while care order in force (section 33(7))	£180	£215
2.1(k)	Contact with child in care (section 34(2), (3), (4) or (9))	£180	£215
2.1(l)	Education supervision order (section 36(1))	£180	£215
2.1(m)	Variation or discharge etc of care and supervision orders (section 39)	£180	£215
2.1(n)	Child assessment order (section 43(1))	£180	£215
2.1(o)	Emergency protection orders (sections 44, 45 and	£180	£215

	46)		
2.1(p)	Warrant to assist person exercising powers under emergency protection order (section 48)	£180	£215
2.1(q)	Recovery order (section 50)	£180	£215
2.1(r)	Cancellation, variation or removal or imposition of condition of registration of child minder or day carer (section 79K)	£180	£215
2.1(s)	Warrant to assist person exercising powers to search for children or inspect premises (section 102)	£180	£215
2.1(t)	Applications in respect of enforcement orders (paragraph 4(2), 6(2), 7(2) or 9(2) of Schedule A1)	£95	£95
2.1(u)	Amendment of enforcement order by reason of change of address (paragraph 5(2) of Schedule A1)	£95	£95
2.1(v)	Financial provision for children (paragraph 1(1) or (4), 2(1) or (5), 5(6), 6(5), (7) or (8), 8(2), 10(2), 11 or 14(1) of Schedule 1)	£215	£215
2.1(w)	Approval of court for child in care of local authority to live abroad (paragraph 19(1) of Schedule 2)	£180	£215
2.1(x)	Extension of supervision order (paragraph 6 of Schedule 3)	£180	£215
2.1(y)	Extension or discharge of education supervision order (paragraph 15(2) or 17(1) of Schedule 3)	£180	£215
2.1(z)	paragraph 8(1) of Sch 8 (appeals concerning foster parents)£180	£180	£215
2.2	Application for proceedings under Section 31 of Act	£3,320	£2,055
	Hearing for proceedings under Section 31 of Act	£2,155	Fee removed
2.3	Appeal relating to 2.1(a) to 2.1(s) (v) to (y) and 2.2)	£215	£215
	Appeal relating to 2.1(h)	£170	Fees removed - merged to 2.3
	Appeal relating to 2.1(i) to 2.1(r), 2.1(v) to 2.1(x) and 2.2	£180	
2.4	Appeal against a contribution order	£180	£215
	ADOPTION AND WARDSHIP		
3.1	Application/permission to apply for adoption	£170	£170
3.2	Application for a placement order (under Section 22)	£455	£455
3.3	Application to the High Court	£170	£170
	PROCEEDINGS UNDER THE CHILDREN		

	AND ADOPTION ACT 2006		
4.1	Application for warning notice to be attached to a contact order	£50	£50
	APPLICATIONS IN PROCEEDINGS		
5.1	Application (without notice)	£45	£50
5.2	Application for decree nisi, conditional order, separation order	£50	£50
5.3	Application (on notice) (unless otherwise listed – see notes in order)	£80	£155
5.4	Application for a financial order	£255	£255
	APPEAL		
6.1	Filing an appeal notice from a district judge, one or more lay justices, a justices' clerk or an assistant to a justices' clerk	£125	£125
6.2	Appeal (Section 20, Child Support Act 1991)	£160	£165
	SEARCHES		
7.1	Search of central index of decrees absolute/final orders	£65	£65
7.2	Search of central index of parental responsibility agreements	£45	£45
7.3	Search of index of decrees absolute/final orders	£45	£45
	COPY DOCUMENTS		
8.1(a)	Copy of a document (10 pages or less)	£5	£10
8.1(b)	For each subsequent page	50p	50p
8.2	Copy of a document in electronic form (for each copy)	£5	£10
	DETERMINATION OF COSTS		
9.1	Where the party filing the request is legally aided	£195	£200
	Where the amount of the costs claimed:		
9.2(a)	Amount does not exceed £15,000	£325	£335
9.2(b)	Exceeds £15,000 but does not exceed £50,000	£655	£675
9.2(c)	Exceeds £50,000 but does not exceed £100,000	£980	£1,005
9.2(d)	Exceeds £100,000 but does not exceed £150,000	£1,310	£1,345
9.2(e)	Exceeds £150,000 but does not exceed £200,000	£1,635	£1,680
9.2(f)	Exceeds £200,000 but does not exceed £300,000	£2,455	£2,520
9.2(g)	Exceeds £300,000 but does not exceed £500,000	£4,090	£4,200
9.2(h)	Exceeds £500,000	£5,455	£5,600
9.3	Issue of default costs certificate	£60	£60
9.4	Appeal (detailed assessment proceedings)	£205	£210

9.5	Request/application to set aside a default costs certificate	£105	£110
	REGISTRATION OF MAINTENANCE ORDERS		
10.1	Application for a maintenance order to be sent abroad	£45	£50
10.2	Application for a maintenance order to be registered under the Maintenance Orders Act 1950 or the Maintenance Orders Act 1958	£45	£50
	FINANCIAL PROVISION		
11.1	Application for an order for financial provision	£215	£215
	ENFORCEMENT		
12.1	Application to question a judgment debtor or other person	£50	£50
12.2	Application for a third party debt order/appointment of a receiver	£100	£100
12.3	Application for a charging order	£100	£100
12.4	Application for a judgment summons	£100	£100
12.5	Application for an attachment of earnings order	£100	£100
	ENFORCEMENT IN THE FAMILY COURT		
13.1	Application for enforcement of a judgment or order	£100	£100
13.2	Request for attempt at execution of a warrant at a new address	£30	£30
13.3	Issue for a warrant of possession or a warrant of delivery	£110	£110
	ENFORCEMENT IN THE HIGH COURT		
14.1	Sealing a writ of execution/possession/delivery	£60	£60
14.2	Request/application to register a judgement or order	£60	£60
	Permission to enforce an arbitration award		
	Certified copy of a judgement or order for use abroad		
	SERVICE		
15.1	Request for service by a bailiff of document (see order for exceptions)	£110	£110
	SALE		
16.1	Removing goods to a place of deposit	*	*
	Advertising a sale by public auction	*	Fee removed

16.2	Appraisement of goods	*	*
16.3	Sale of goods	*	*
16.4	No sale – execution withdrawn, satisfied or stopped	*	*
AFFIDAVITS			
17.1	Taking an affidavit/affirmation/attestation upon honour	£10	£11
17.2	For each exhibit referred to and required to be marked	£2	£2