

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION AND NATIONALITY (FEES) (No.2) REGULATIONS 2010
2010 No. [XXXX]

1. This explanatory memorandum has been prepared by the UK Border Agency of the Home Office 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 These regulations set the fees for some of the applications, processes and services for which the Secretary of State has stated in the Immigration and Nationality (Fees) Order 2007 (S.I. 2007/807), as amended by the Immigration and Nationality (Fees) (Amendment) Order 2008 (S.I. 2008/166), as amended by the Immigration and Nationality (Fees) (Amendment) Order 2009 (S.I. 2009/420), known as the “Fees Order 2007”, that he intends to charge a fee.

- 2.2 These regulations also set out the consequences of failing to pay the specified fees.

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

- 3.1 The fees specified in these regulations are in respect of those matters specified in the Fees Order 2007, for which:

- a) the fee will be set at an amount above the administrative cost of making the application, in reliance of section 42(1) (as amended by section 20 of the UK Borders Act 2007 (‘the 2007 Act’)) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (‘the 2004 Act’); or for which:
- b) the fee will contain an element of cross subsidisation of other applications which are to be charged below the administrative cost, in reliance of section 42(2A) (as inserted by section 20 of the 2007 Act) of the 2004 Act.

3.2 These regulations specify fees above the administrative cost of an application, process or service in line with the Government's charging model. By charging above the administrative costs of the service on the application types referred to in this instrument, the Home Office is able to set fees for other application types at or below cost recovery in support of wider Government objectives, particularly where it is believed that a cost recovery fee would be so high as to damage international competitiveness in this area (e.g. for tourist visas).

3.3 Fees for the matters specified in the Fees Order 2007 which will be charged at or below the administrative cost are set separately, in regulations subject to the negative resolution procedure.

4. Legislative Context

4.1 Section 51(3) of the Immigration, Asylum and Nationality Act 2006 provides that where an Order under that section provides for a fee to be charged, regulations made by the Secretary of State shall specify the amount of the fee.

4.2 Section 42(1) of the 2004 Act enables the Secretary of State, when prescribing a fee under section 51 of the 2006 Act, to prescribe an amount which is intended to:

- a) exceed the administrative costs of determining the application or undertaking the process and;
- b) reflects the benefits that the Secretary of State thinks are likely to accrue to the person who makes the application, to whom the application relates or by or for whom the process is undertaken, if the application is successful or the process is completed.

4.3 Section 42(2A) of the 2004 Act enables the Secretary of State to cross subsidise between applications made for entry clearance, leave to remain, transit visas, certificates of entitlement to the right of abode in the UK, letters which confer status of the migrant in the UK, or other claims, services, applications processes set out in an order made under section 51 of the 2006 Act.

4.4 Section 51(3) of the 2006 Act enables the Secretary of State to, amongst other things, provide for exceptions and make provision about the consequences of failure to pay a fee. Section 52(3) also enables the Secretary of State, to make different provision for different cases or circumstances.

4.5 A draft of these Regulations must by virtue of section 42(7) of the 2004 Act be laid before and approved by resolution of each house of Parliament.

4.6 The Secretary of State has, in prescribing fees for the applications covered by these regulations, in reliance on section 41(1) of the 2004 Act, prescribed an amount intended to exceed the normal administrative costs of determining an application and reflect the benefits that he thinks are likely to accrue to the applicant or the person to whom the application relates, if the application is successful.

4.7 In prescribing the fees for leave to remain, entry clearance, sponsorship licences and certificates of sponsorship, the Secretary of State has, in reliance on section 42(2A) of the 2004 Act (which was inserted as of 31 January 2008 by section 20 of the 2007 Act), prescribed an amount that is intended to cross subsidise the fees that are set at levels below the administrative cost of such applications:

- a) in the case of leave to remain applications, other applications for leave to remain;
- b) in the case of entry clearance applications, other applications for entry clearance;
- c) in the case of sponsorship licences, other applications for sponsorship licences;
- d) in the case of Tier 2 certificates of sponsorship, other applications for certificates of sponsorship or confirmation of acceptance for studies and sponsorship licences.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister of State for Immigration has made the following statement regarding Human Rights:

“In my view the provisions of the Immigration and Nationality (Fees) (No.2) Regulations 2010 are compatible with the European Convention on Human Rights.”

7. Policy background

- *What is being done and why*

7.1 The fees contained in these regulations are set above the administrative cost of providing the application, process or service in line with the Government's flexible charging model. By charging above the administrative cost of delivery on the application types referred to in this instrument, the UK Border Agency is able to generate sufficient revenue to secure the border and control migration for the benefit of the UK. This enables us to fund the necessary improvements to the immigration service, and also to set fees for certain application types below cost recovery in support of wider Government objectives. (e.g. for tourist visa applications where it is believed that a cost recovery fee would be so high as to damage international competitiveness in this area).

7.2 In summary our proposals are to better align the fee paid by main visa applicants overseas, with those paid when leave entitlements are extended in the UK on economic routes. This is consistent with our strategy to reduce volumes through economic routes; and, to better align the fee paid for dependent applications in-country (to one fifth to one third of main application fee) with those paid for dependent applications overseas (where dependents generally pay the same fee as the main applicant). We believe it is right that the cost of processing multiple applications and the benefits accrued by dependants are paid for by those who are benefited by them.

7.3 Our overall aim is to ensure our fees make an appropriate contribution to the end-to-end costs of the immigration system in terms of the price paid for consideration of the application with respect to the interests of the general UK taxpayer, who will continue to support the immigration system that brings benefits and enrichment to this country. Our method of fee setting will continue to help to protect some routes from significant fee increases and will contribute to the additional revenue needed to fund enforcement and other necessary improvements to the immigration system.

7.4 Fees are set over cost to reflect the benefits that the Secretary of State thinks are likely to accrue to the person who makes the application, if the application is successful or the process is completed. Those benefits are the various entitlements which each route would bring if their application were successful. For Tier 1 for example, there is the entitlement

to access the UK labour market without the need for a sponsor, a route to apply for settlement, the ability to bring in dependants who can also work without restriction, etc. Tier 5 does not bring the same entitlements to applicants (no route to settlement, sponsor required etc.) and is priced accordingly. We propose focused increases on those areas where there are major benefits to the applicant.

7.5 We believe these proposals are in the best interests of the UK. Securing the border brings with it an irreducible core of cost, especially as we seek to maintain the level of customer service in our visa functions: something which other Government Departments and customers tell us is key to the lifeblood of the UK economy. Nevertheless, the Chancellor's Emergency Budget set out publicly the state of the nation's finances and demonstrated the very difficult choices that must be made as a result.

7.6 We have also published indicative unit costs for each application for 2010/11. The unit cost is the estimated average cost to UK Border Agency of processing each application. We have provided these costs to Parliament to ensure transparency. Although our unit costs are not fixed over the course of the financial year, publishing unit costs in this way will enable applicants to see which fees we set over cost and by how much. Full details, are available at <http://www.ukba.homeoffice.gov.uk/>

7.7 The tables below set out the current fee levels and the new proposed fees, for products that are set above cost, by these regulations:

VISA FEES

Non PBS Visas				
Products	Unit Cost	Current Fees	New Fee	Dependant Fee
Visit visa - long 2 year	£140	£230	£245	£245
Visit visa - long 5 year	£141	£420	£450	£450
Visit visa - long 10 year	£155	£610	£650	£650
Settlement	£249	£644	£750	£750
Other Visa	£115	£230	£245	£245
PBS Visas				
Tier 1 (Gen, Investor, Ent)	£332	£690	£750	£750
Tier 1 (Gen & Ent) CESC	£332	£629	£700	£750
Tier 2	£197	£270	£350	£350
Tier 2 CESC	£196	£250	£300	£350

IN UK – Leave to Remain and Nationality Fees

Nationality Applications - Migrants In UK					
Products	Unit Cost	Current Fee	Current Dep Fee	New Fee	New Dep Fee
Naturalisation 6 (1) Single	£208	£655	N/A	£700	N/A
Naturalisation 6 (1) Joint	£231	£770	N/A	£850	N/A
Naturalisation 6 (2)	£208	£655	N/A	£700	N/A
Nationality Registration Adult	£208	£470	N/A	£500	N/A
Nationality Registration Single Minor	£208	£470	N/A	£500	N/A
Nationality Registration Multiple Minors	£255	£567	£97	£600	£150
Non- PBS Routes - Migrants in the UK					
Products	Unit Cost	Current Fee	Current Dep Fee	New Fee	New Dep Fee
ILR Postal	£341	£840	£129	£900	£250
ILR PEO	£256	£1,095	£154	£1,250	£350
ILR Postal CESC	£341	£767	£121	£850	£250
ILR PEO CESC	£256	£992	£144	£1,100	£300
ILR Dependant Relative PEO	£256	£1,930	N/A	£2,050	N/A
LTR Non Student Postal Main	£419	£475	£92	£500	£150
LTR Non Student PEO Main	£348	£730	£118	£800	£200
FLR (IED) (Postal)	£210	£400	£85	£500	£150
FLR (IED) (PEO)	£210	£650	£110	£800	£200
FLR (IED) (BUS)	£210	£800	£125	£850	£250
Transfer of Conditions PEO	£341	£578	£57	£600	£150
Employment LTR outside PBS Postal	£419	£475	£92	£500	£150
Employment LTR outside PBS PEO	£348	£730	£118	£800	£200

IN – UK PBS FEES

PBS Routes - Migrants In UK					
Products	Unit Cost	Current Fee	Current Dep Fee	New Fee	New Dep Fee
Tier 1 General, Investor & Ent - Postal	£317	£840	£129	£850	£250
Tier 1 General, Investor & Ent PEO	£288	£1,095	£154	£1,150	£300
Tier 1 General/Ent - Postal CESC	£317	£767	£121	£770	£250
Tier 1 General/Ent PEO CESC	£288	£992	£144	£1,000	£300
Tier 1 (Post Study) - Postal	£317	£550	£100	£550	£150
Tier 1 (Post Study) - PEO	£325	£800	£125	£850	£250
Tier 1 Transition Postal	£259	£408	£85	£500	£150
Tier 1 Transition PEO	£275	£663	£111	£700	£200
Tier 2 - Postal	£344	£475	£92	£500	£150
Tier 2 - PEO	£330	£730	£118	£800	£200
Tier 2 - Postal CESC	£344	£434	£88	£450	£150
Tier 2 - PEO CESC	£330	£669	£111	£700	£200
Tier 4 - PEO	£374	£628	£107	£650	£150
Tier 5 - PEO	£369	£578	£57	£600	£150
Tier 5 - PEO CESC	£380	£521	£52	£550	£150

Long term visit / Other Visas

7.8 Long term visit visas are issued to frequent travellers, and entitle the applicant to visit the UK as often as they like over the two, five or 10 year period granted, staying for a maximum of six months on any single visit. Applicants benefit from the convenience of not having to make multiple visa applications, each requiring their biometrics to be taken.

7.9 We believe this route continues to offer excellent value to the customer. We believe that fees of £245 / £450 / £650 better reflect that value.

7.10 The 'Other' visa category includes dependants of applicants who entered under old employment visas, business visitors, parents of an EEA national child. The 'Other' visa fee still compares well to other visa routes. We propose an increase from £230 to £245 to better reflect the value of this route to successful applicants.

Settlement Visa

7.11 We propose an increase to family settlement visa fee from £644 to £750. Where settlement visa applicants are not immediately granted indefinite leave, we still believe it is right to set the fee at this level. This better reflects the accelerated route to settlement under this category of visa, whereby the majority of applicants need not apply for further temporary leave to remain in the UK, before settlement. This fee will also better align with fees we charge on economic routes, where applicants pay separately for a visa and any further leave to remain in the UK.

Tier 1 and Tier 2 Applications

7.12 Tier 1 applications are from migrants who are highly skilled and therefore do not require a sponsor. They have unlimited access to the labour market. Tier 2 migrants are sponsored skilled workers who come to the UK to work for a named sponsor.

7.13 We propose increasing the fee for a Tier 1 visa from £690 to £750 and an in-UK application from £840 to £850. We also propose increasing the Tier 2 visa fee from £270 to £350 and the fee for an in UK application from £475 to £500.

7.14 These increases, are in line with our broader policy to better align our fees structure overseas and in the UK and to better reflect the benefits of the route where the entitlements, such as the ability to come and work in UK and the eligibility to bring in dependants who will have unlimited access to the labour market.

Nationality Applications

7.15 Nationality applications are for migrants who want to claim British Nationality. We propose increasing the fee for Nationality applications in line with our strategic policy to help spread the overall contribution of fee increases across all routes. Fees for these applications are charged at levels above normal cost recovery, reflecting the entitlements and benefits Nationality brings. Applicants under these routes obtain a good set of entitlements, such as the right to vote in General elections and eligibility to apply for a British passport.

7.16 Before 1 January 1983, children born to British fathers automatically became British citizens by descent. By contrast, children born to British mothers could not acquire citizenship by descent. This situation was rectified by the British Nationality Act 1981 which provided for **both** British men and women to be able to pass on British citizenship by descent to children born to them after 1 January 1983. However, this change to nationality law did not capture those who had been born to British mothers before 1 January 1983. Section 4C was introduced into the British Nationality Act 1981 in April 2003 to allow persons born before 1983 that had been denied British nationality at birth when born to a British mother, to apply to register as British Citizens .

7.17 We propose introducing a fee waiver where a person makes an application for a Nationality registration in reliance upon section 4C of the British Nationality Act 1981 to better align the position of those applicants to that of applicants born to British fathers Registering as British Citizens.

Indefinite & Limited Leave Applications

7.18 The Indefinite leave to remain applications are for migrants currently in one of the eligible immigration categories (i.e. Tier 1, Tier 2 etc) and have been living in the UK in a relevant category for five years. Nationality applications are for migrants who want to claim British Nationality.

7.19 We propose increasing the fee for ILR and LTR applications in line with our strategic policy to help spread the overall contribution of fee increases across all routes. Fees for these applications are charged at levels above normal cost recovery, reflecting the entitlements and benefits LTR or ILR brings. Applicants under these routes obtain a good set of entitlements, such as limited or indefinite leave to remain in the UK.

Applications made at a Public Enquiry Office of the UK Border Agency

7.20 We propose an increase to the fees for applications made in person at a Public Enquiry Office in the UK. We believe the increases reflect the added benefit customers receive from this optional service, that enables them to get a quicker decision than if they applied by post. The proposal is in line with our strategic approach to help spread the overall burden of fee increases across all routes.

Dependants Applying to Extend their Leave in the UK.

7.21 At present dependants pay approximately 10% of the main applicants' fee, if they are submitted at the same time as the main application. We propose to increase this ratio to approximately between one fifth to one third of the main applicant fee. This continues our agreed policy to better align UK-based fees structure with that applied at visa posts overseas (where all dependants pay the full fee). This is to reflect the fact that each individual within any given application bears a processing cost to us (as well as sometimes an independent set of entitlements for the individual).

7.22 The majority of respondents to our consultation were not in favour of charging an additional, separate fee for each dependant, with only a third in favour. We think it is fair to just increase their contribution between one fifth to one third of the main applicant's fee. This helps to reduce the amount of cross-subsidy and then over time we would look

to further align our dependant charging in the UK with the visa model overseas, but we plan keep volumes under close review to manage this transition carefully.

Fees for Sponsorship under the Points Based System

7.23 We recognise the importance of keeping direct costs to sponsors under the Points Based System as low as possible, particularly in the current economic climate. As such we propose to continue to hold the fees for acting as a sponsor and the certificate of sponsorship fee at the same level, whilst also maintaining our existing concessions for small businesses, charities, education providers and the arts and entertainment sectors. This is in line with our approach to set fee levels flexibly to take account of the UK's international competitiveness. This is a challenging time for the global economy; and particular pressure is being felt by UK industry at this time.

Council of Europe Social Charter Fee Reductions

7.24 For certain work routes, we have set new reduced fees for nationals of countries that have ratified the Council of Europe Social Charter 1961 (the CESC), for applications for leave to remain in the UK under work routes.

7.25 These reduced fees will apply to nationals of Croatia, the Former Yugoslav Republic of Macedonia, and Turkey.

Migration Impact Fund (MIF)

7.26 For certain routes, since April 2009, the fees incorporated a contribution to a fund to manage the transitional impacts of migration; this was in accordance with the previous Government's policy to create a fund to help local service providers deal with transitional pressures of migration.

7.27 The fees no longer include a contribution to the MIF as this is being suspended by the Department for Communities and Local Government, with effect from 1 October 2010. Whilst the Government will no longer consider new bids for funding, the UK Border Agency will continue to support current projects already committed to by continuing to raise funds after the 1 October up until these regulations come into force.

- **Consolidation**

7.28 There have been no amendments to the Immigration and Nationality (Fees) Regulations 2010.

7.29 These Regulations revoke and replace the Immigration and Nationality (Fees) Regulations 2010 (S.I. 2010/778) to improve their legibility for all stakeholders, customers, practitioners and officials.

8. Consultation outcome

8.1 We published a full public consultation on Charging for Immigration and Visa Applications on 1 September 2009 and contacted over 30,000 stakeholders. The consultation ran for 12 weeks till 1 December 2009 and we received a total of 98 responses. This represents the lowest response rate on a charging consultation, despite a high level of engagement and communication on the UK Border Agency's behalf.

8.2 In response to our consultation, an overwhelming majority of respondents who replied (over 90%) agreed that UK Border Agency should continue to set fees flexibly by taking into account wider policy objectives, such as attracting specific groups of migrants that are beneficial to the UK.

8.3 The formal Government response to the public consultation was published on 14 January 2010 at the UK Border Agency website

<http://webarchive.nationalarchives.gov.uk/20100422120657/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/charging09/>

8.4 A targeted consultation exercise on fees and charges to support the Points Based System and for biometric identity documents was held from 24 October to 9 November 2007. We consulted key stakeholders, based around – but not limited to – the membership of the UK Border Agency's existing stakeholder taskforces which include representative bodies and umbrella organisations. We set out a number of proposals in a letter sent to 493 bodies and individuals which received 132 written responses. We met with 119 individuals at consultation meetings. Further details are available on request. Feedback

from this exercise was used to set fees for the new services provided to migrants and sponsors under the Points Based System in 2008.

8.5 A public consultation exercise on charging for immigration and nationality applications was undertaken from 30 October to 22 December 2006, supported by the publication of *A consultation on a new charging regime for immigration & nationality fees*. The consultation document was made available on the Home Office website and was also sent to 3,000 people. The formal Government response to the public consultation was published on 7 March 2007, and is published at: <http://webarchive.nationalarchives.gov.uk/20100422120657/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/newchargingregime/>

8.6 The consultation established the principle that from April 2007 onwards, UK Border Agency will operate a flexible pricing approach to setting fees for immigration services. This allows fees to be set in order to maintain competitiveness where needed, but also to ensure that the immigration system overall generates the revenue needed, rather than seeking to fund necessary improvements via general taxation. 87% of respondents to the consultation agreed we should set fees flexibly to take into account wider policy objectives and 79% agreed that new fees should reflect a range of factors, not only those of value to the migrant.

8.7 During the course of 2003/04, following full public consultation, the Home Office introduced charges for a range of immigration applications to ensure that those who use and benefit from the UK system met the cost of delivering the administrative service provided.

9. Guidance

9.1 We will publish full details of the new fee levels and their commencement dates in a Written Ministerial Statement. Full details of each fee and guidance to customers on how to apply under each route will be published on the UK Border Agency website.

10. Impact

10.1 A full Impact Assessment is attached at Annex A to this Explanatory Memorandum and will also be published at www.ukba.homeoffice.gov.uk.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 We will closely monitor the impact of fees for the application and services contained in these Regulations. We review fees and charges for Immigration and Nationality applications annually, and application trends are monitored by UK Border Agency on a monthly basis. Analysis of application trends is monitored by the cross-Whitehall fees committee to ensure that fee levels generate sufficient revenue to cover UK Border Agency delivery costs but do not adversely impact on the UK economy. We would seek to amend these fee levels were there evidence of such adverse impact.

13. Contact

13.1 Samantha Layne at the Charging Programme of the UK Border Agency, [Tel: 0208 604 6658 or email: Samantha.Layne2@homeoffice.gsi.gov.uk] can answer any queries regarding the instrument.