

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION AND NATIONALITY (FEES) ORDER 2011

2011 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.

2. **Purpose of the instrument**
 - 2.1 This Order enables the Secretary of State to make regulations charging fees for the processing of applications and the provision of services and processes relating to immigration and nationality. This Order replaces the Immigration and Nationality (Fees) Order 2007, which currently sets out the applications, services and processes for which the Secretary of State may make regulations requiring fees to be paid. In addition the order will allow fees regulations to a) specify a number of new types of charge and b) deal with consular fees connected with immigration and nationality (consular fees are currently dealt with in separate legislation).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None

4. **Legislative Context**
 - 4.1 This instrument is being made to allow for changes to the current regime for immigration and nationality fees.

 - 4.2 The statutory regime for immigration and nationality fees is set out in two sets of regulations, the Immigration and Nationality (Fees)(No.2) Regulations 2010 and the Immigration and Nationality (Cost Recovery Fees)(No.2) Regulations 2010. These regulations were made under section 51(3) of the Immigration, Asylum and Nationality Act 2006 (the “2006 Act”).

 - 4.3 Section 51(1) and (2) of the 2006 Act stipulate that regulations under section 51(3) may only set charges if an Order specifying the applications, services and processes that may be charged for is made beforehand. This Order is being made in order to allow new fees to be introduced (the specific provisions enabling new fees to be charged are Article 3(2)(d), (i), (k), (o) and (u) and Article 4(h).

 - 4.4 This Order will also allow the regulations implementing the new fees to set fees for consular services relating to immigration and nationality. These fees are currently dealt with in the Consular Fees Order 2010, made under section 1 of the Consular Fees Act 1980.

4.5 There is an existing Order, the Immigration and Nationality (Fees) Order 2007 (the “2007 Order”), which has allowed regulations to be made under section 51(3) of the 2006 Act setting immigration and nationality fees since 2007 (including the existing fees regulations referred to above in paragraph 4.2). The new Order will incorporate the provisions of the 2007 Order in order to produce one consolidated fees Order. Once this new Order has been passed, consolidated regulations will be made under section 51(3) setting out the existing fees and implementing the new fees.

4.6 The existing fees regulations will continue to operate until the new regulations under section 51(3) setting the amount of fees covered by this Order are made.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Damian Green the Immigration Minister has made the following statement regarding Human Rights:

In my view the provisions of the Immigration and Nationality (Fees) Order 2011 are compatible with the Convention rights.

7. Policy background

- **What is being done and why**

7.1 A key part of delivering the immigration system which the public expects is acquiring the necessary resources to fund delivery and improvements in the services we offer. We believe that it is right that those who benefit most from the border and immigration system should bear a higher share of the cost of running the system and therefore reduce the contribution made by the UK tax payer.

7.2 The existing fees regime is based on the principle that those who benefit from the border and immigration system should bear a higher share of the cost of running the system. A number of new fees are being introduced to ensure that the contribution the UK tax payer is asked to make continues to fall. The actual fees will be specified in subsequent Regulations. These fees may be set:

- a) at or below the administrative cost of making the application (in which case the regulations setting the fees are subject to the negative resolution procedure)

b) at an amount above the administrative cost of making the application (in which case the regulations setting the fees are subject to the affirmative resolution procedure¹); or

c) can contain an element of cross subsidisation of other applications which are charged below the administrative cost (in which case the regulations setting the fees are again subject to the affirmative resolution procedure²).

- **New Provisions**

7.3 Section 1 (3A) of the 1981 British Nationality Act allows persons joining the armed forces who are not British citizens to register their children as British citizens, provided those children were born in the UK. This Order will enable fees to be imposed for these requests.

7.4 Section 4D of the 1981 British Nationality Act provided a route to British citizenship for children born outside the UK to a foreign or Commonwealth parent who is serving outside of the UK as a member of the Armed Forces at the time of the birth, the Order will enable fees to be imposed for these requests.

7.5 Students who were granted Tier 4 leave between 31 March 2009 and 4 October 2009 are currently required to advise UK Border Agency when they are seeking to change their institution. These requests are considered and approved or refused accordingly. This is currently done free of charge, the Order will enable fees to be imposed for these requests.

7.6 Certain persons hold the status of British Protected Person through their connection with a former British protectorate, protected states, mandated territory or trust territory. Although that status can no longer be obtained automatically a person can apply for this form of British nationality if he or she has always been stateless, and certain criteria are met. The Order will enable fees to be imposed for processing applications for, or renunciation of, this status.

7.7 Certain sponsors can apply for Highly Trusted Sponsor status. The Order contains a provision dealing separately with fees for these applications (Article 3(1)(u) of the Order), which were charged previously under the provision in the 2007 Order dealing with fees for sponsorship licences (see Article 3(1)(p) of that Order).

7.8 We are in addition taking the power in this Order to move fees relating to immigration and nationality matters from the Consular Fees Order 2010 into Regulations made under section 51(3) of the 2006 Act.

7.9 The Consular Fees Order 2010 specifies the fees for receiving, outside the United Kingdom, applications for entry clearance to the Crown

¹ See section 42(1) and (7) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

² See section 42(2A) and (7) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

Dependencies and applications for certificates of entitlement to the right of abode in the Crown Dependencies.

7.10 The Consular Fees Order 2010 specifies the fee for preparing or forwarding, or both, any letter, certificate, declaration or other document which may be required by an authority in any country or territory in connection with an application for or the issue or renewal of an entry clearance (for a country or territory for which the consular officer does not himself have authority to issue entry clearance), a residence permit or identity card or forwarding any other certificate or document (except a Home Office travel document and applications for registration and naturalisation).

7.11 The Consular Fees Order 2010 also specifies the fee for receiving an application for entry clearance to a Commonwealth country or British overseas territory.

7.12 Sometimes people request an amendment to a previously issued Nationality Certificate. This is currently done free of charge. This Order will enable fees to be charged for this.

- **Consolidation**

7.13 This Order revokes and replaces the Immigration and Nationality (Fees) Order 2007 so that moving forward there will only be one fees Order under s.51 in force. This will improve 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 until 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 Prior to this a number of consultation exercises took place on a range of issues relating to charging for immigration and visa services. In 2007 a targeted consultation exercise on fees and charges to support the Points Based System and for biometric identity documents was held. 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 In 2006 a public consultation exercise on charging for immigration and nationality applications was undertaken that established the principle that from April 2007 onwards, UK Border Agency would 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. It also established that the UK Border Agency should set fees flexibly to take into account wider policy objectives and that new fees should reflect a range of factors, not only those of value to the migrant. 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 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 immigration and nationality fees that this Order will allow to be introduced when the Regulations setting these fees are laid.

10. Impact

10.1 No Impact assessment is required for this instrument as fees will be set in Regulations made in reliance upon this instrument. As a result an Impact Assessment will be prepared in conjunction with those Regulations.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on small firms employing up to 20 people, not all the fees detailed in subsequent regulation will impact small business and we will seek to maintain our approach of charging a lower fee for small sponsors applying for a licence/status.

12. Monitoring & review

12.1 We will closely monitor the impact of fees for the application and services contained in this Order. 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.

13. Contact

Jane Fairclough of Charging Policy at the UK Border Agency Tel: 0114 207 5982 or email: Jane.Fairclough5@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.