

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION AND NATIONALITY (FEES) REGULATIONS 2018
2018 No. 330

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Home Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to specify fees for certain functions in connection with immigration and nationality in the United Kingdom, and to make limited provision for fees related to applications to enter the Isle of Man and the Channel Islands. It also specifies the circumstances in which certain fees might be reduced or waived, and sets out a number of exceptions to the obligation to pay some of the fees specified. It also makes consequential amendments to the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 These regulations contain fees which have been reduced, frozen or increased above the rate of inflation. More detail is set out in section 7 of this memorandum.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative resolution process, and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 These regulations specify fee levels for immigration and nationality applications and services. The fees are set within the limits set in the Immigration and Nationality (Fees) Order 2016; as amended by the Immigration and Nationality (Fees) (Amendment) Order 2017; and the Immigration and Nationality (Fees) (Amendment) Order 2018, which were all subject to affirmative resolution and which were made on 11th February 2016, 14th March 2017 and 8th March 2018 respectively.

5. Extent and Territorial Application

- 5.1 The entirety of this instrument extends to the whole of the United Kingdom. Additionally, the provision specified at regulations 1(4) and (5) applies to the Isle of Man and the Channel Islands (comprising the Bailiwick of Guernsey and the Bailiwick of Jersey) respectively. The revocations made by regulation 18 (revocation of the Immigration and Nationality (Fees) Regulations 2017 (subject to specified

savings) and the Immigration and Nationality (Fees) (Amendment) Regulations 2017) have the same extent as the regulations they revoke.

5.2 The territorial application of this instrument is the same as its extent.

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

What is being done and why

- 7.1 Increases to immigration and nationality fees are required to deliver the level of income required from these charges, to meet the Home Office budget plans in 2018-19. The additional income received through fee increases will also contribute to the Home Office's ambition for a border, immigration and citizenship system that is funded by income from fees and charges paid by those who use it.
- 7.2 When setting fees, the Home Office considers a number of factors, including the cost of processing the application, the wider cost of running the Immigration system, the benefits the Home Office believes an applicant is likely to accrue from a successful application, international agreements and the promotion of economic growth. The Home Office does not make a profit from fees charged above the estimated cost to process the application. Any income generated above the estimated unit cost is used to contribute to the wider operation of the Immigration system.
- 7.3 Fees for applications under the routes most strongly associated with economic growth (workers, visitors and full-time students), will increase by 4% (rounded to the nearest pound).
- 7.4 We are also applying a 4% increase (rounded to the nearest pound) for settlement, residence routes, registration and naturalisation as a British Citizen, other low-volume routes and the majority of premium services.
- 7.5 The fee for the overseas, optional 'Priority Visa' service for entry clearance will increase by 15%. This increase is a step towards reducing the gap between fees for similar services offered both in and outside of the United Kingdom.
- 7.6 Sponsors licence fees (payable by employers and education providers wishing to recruit overseas, skilled workers or offer full-time education to overseas students) will not be increased for the fourth year in succession.
- 7.7 It is estimated that these increases will raise in the region of an additional £60 million income in 2018-19. Where the fees in this instrument are set above cost recovery, this either reflects the value of the entitlements conferred by a successful application, or represents a contribution to the wider costs of performing other immigration functions, or both. The available entitlements may, depending on the type of application, include:
- unrestricted access to the UK labour market;
 - the ability to bring dependants to the UK who also have unrestricted access to the UK labour market;
 - unrestricted access to state education for their dependants;
 - the ability, or an option, at a later date, to apply for settlement in the UK.

- 7.8 For a small number of applications, we are making a 5% increase (rounded to the nearest pound) or reflecting changed unit costs. The Home Office will publish indicative unit costs for the 2018-19 financial year. The unit cost is the estimated average full cost to the Home Office of providing each service. This information is provided to Parliament to ensure transparency. Published unit costs enable applicants and the general public to see which fees are set over, or under cost, and by how much.
- 7.9 In addition to changes to fee amounts, we have removed redundant provisions and amended a small number of the waivers and exceptions so that they are more clearly focussed only on the application routes to which they apply. The latter is in line with an ongoing review of all such provisions to ensure they remain up-to-date and are applied in a coherent way, in line with the requirements of other legislation, or policies. More specific changes in respect of other individual waivers and exceptions are set out below. The definition of a dependant has also been updated so that it dovetails neatly with the definition of a child.
- 7.10 We are amending a fee waiver which applies to applications under the terms of the European Communities Association Agreement (ECAA) with Turkey. The ECAA was set up under the Ankara Agreement on 12 September 1963 with the general aim of promoting economic relations between Turkey and the European Economic Community and the eventual accession of Turkey to the European Economic Community. The UK became an automatic signatory to the ECAA when it joined the Community in 1973. Under the Agreement and its associated Protocols, there are specific provisions (commonly referred to as the “standstill clause”) made for rights of access to the labour market for Turkish workers, and rights to establish a business, with conditions which are more favourable than those afforded to other third country nationals.
- 7.11 Last year, the Upper Tribunal (Immigration and Asylum Chamber) held that the ECAA standstill clause does not apply to applications for indefinite leave to remain, made by Turkish businesspersons and their dependants (see *R (on the application of Aydogdu) v Secretary of State for the Home Department [2017] UKUT 00167 (IAC)*). We have therefore amended the waiver accordingly (see entry 9.7 in Table 9 in Schedule 2 to the regulations).
- 7.12 We are introducing new arrangements for those affected by the Grenfell Tower tragedy who are applying for leave to remain (see entry 9.12 in Table 9 in Schedule 2 to the regulations), under the Grenfell Tower Immigration Cases Policy. These arrangements will enable those who have already been granted a period of leave under the Grenfell Tower Immigration Cases Policy, and those who would have qualified if they had come forward before the deadline under that Policy of 31st January 2018 (and any child born in the UK to such a person after that date), to apply for leave to remain without being required to pay a fee. The Grenfell Tower Immigration Cases Policy document is available on the GOV.UK website at www.gov.uk/government/publications/grenfell-tower-fire-handling-immigration-cases.
- 7.13 We are amending a fee waiver which currently enables stateless persons and their family members, to benefit from an exception to the payment of a fee for an application for limited leave to remain. This exception will now also apply to applications for indefinite leave to remain (see entry 9.8 in Table 9 in Schedule 2 to the regulations). Further amendments will also enable stateless persons to apply for a

replacement biometric identity document without having to pay a fee (see entry 13.1(e) in Table 13 in Schedule 3 to the regulations).

- 7.14 We are making changes in respect of how the regulations deal with fees payable for optional premium services, in connection with applications for entry clearance to enter the Bailiwick of Jersey, the Bailiwick of Guernsey and/or the Isle of Man. Fees for these optional services are now set out alongside the respective fees for entry clearance to enter each of these Crown Dependencies (in Schedules 9 and 10 respectively). We have also introduced fees for entry clearance to enter the Isle of Man under their new work routes which are expected to replace the existing Tier 2 routes, following the updating of Isle of Man Immigration Rules. (These changes are happening in line with the commencement date for these regulations.)
- 7.15 We have made a change to the description of the fees in respect of charges for consular functions (see entry at 16.2.1 in Table 16.2 in Schedule 5); specifically, for receiving, preparing and forwarding documents in respect of applications where the Secretary of State does not have the authority to issue a visa. (The UK provides services on behalf of certain countries in order to ensure the secure onward transition of applications.) Previously, the fee was described in the context of a consular officer not having authority to issue a visa. This change is being made to allow for the receiving, preparing and forwarding of such applications to take place at Visa Application Centres (VACs), which are run by commercial partners, under contract to the Home Office and therefore the activity is not conducted by consular officers. This allows greater flexibility when operating services outside of consular premises on behalf of other governments, and does not affect the availability of these services.
- 7.16 We have removed the fees for the Keep my Passport Whilst Applying service and for making an appointment outside office hours, at a Visa Application Centre. Both of these are optional, overseas services, and are offered by commercial partners who operate the global network of visa application centres. The requirement to provide both services will be removed from the contractual arrangements going forward, but they will continue to be offered where local demand is identified by the commercial partner, with fees set at local rates which do not need to be included in these regulations.
- 7.17 We are re-balancing the fees paid by applicants under the Tier 1 (Exceptional Talent) route, where the applicant must first apply for an ‘approval letter’ from a designated competent body. The current position is that where an applicant is required to obtain an approval letter, the total fee payable is split 50:50 between the approval letter application and any subsequent application for a visa. We are moving to a 75:25 split to reflect the fact that the majority of the overall cost to the Home Office lies in the approval process (see entries 1.3.1 in Table 1 in Schedule 1, 6.2.1 in Table 6 in Schedule 2 and 21.2.8 in Table 21 in Schedule 9, to the regulations). This change will enable the Home Office to recoup a greater amount of costs already incurred in cases where an application for an approval letter is refused and the applicant cannot then go on to apply for a visa.
- 7.18 Finally, we are specifying a fee for applications to remain in the United Kingdom as a visitor (see entry 6.3.3 in Table 6 in Schedule 2 to the regulations). A fee has always been payable for such an application, however, in previous years, the fee payable has been the generic leave to remain fee payable by applicants under a wide variety of routes, specified at 6.1.1 in table 6.1 of Schedule 2. The 4% increase to that generic fee, taking it to £1,033, remains within the maximum amount of £2,000 permitted by

the Immigration and Nationality (Fees) Order 2016 for all the routes where it is currently applied, except for leave to remain as a visitor. This is because the Order makes separate provision in respect of leave to remain applications made by visitors, with a maximum amount set at £1,000. As a result, we are not increasing the fee for leave to remain as a visitor, but to continue charging for these applications at the current rate, we must specify that fee as a separate charge for the first time in these regulations.

- 7.19 Copies of the documents referred to in this Explanatory Memorandum and Regulations can be obtained from the Home Office, Fees and Income Planning Team, Vulcan House, Sheffield, S3 8NU.

Consolidation

- 7.20 These regulations do not amend any existing fees regulations and therefore consolidation is unnecessary. There are no current plans to consolidate the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011, which these regulations amend.

8. Consultation outcome

- 8.1 The Home Office conducted a targeted public consultation in November and December 2013 on how its charging strategy works in practice, to help inform and shape the approach to charging in the future. These responses were analysed and reflected in the proposals set out in these regulations.
- 8.2 The consultation document was made available to the general public on the Home Office website. Key interest groups from professional bodies, legal practitioners, education sector representatives, aviation and hospitality trade associations, and travel and retail groups were also notified of the consultation and a number of face-to-face meetings took place during the consultation period.
- 8.3 Responses to the consultation were almost universally constructive:
- Stakeholders expressed appreciation for the opportunity to provide feedback.
 - Positive feedback was provided where respondents felt the current charging strategy was successful, such as the availability of and charging at above-cost for premium services.
- 8.4 Some respondents emphasised the need to ensure that changes to fees were not detrimental to the Government's aim to attract the 'brightest and best' to work and study in the UK. The Home Office has sought to address this in these regulations by limiting fee increases for worker, visitor and full-time student applications to 4% per annum, until 2019-20. The Government response to the consultation was published on the gov.uk website at <https://www.gov.uk/government/consultations/fees-and-charging-immigration-and-visas-consultation>.

9. Guidance

- 9.1 Guidance is not being prepared specifically on this instrument. Full details of each fee and guidance to general members of the public on how to apply under each route are available on the gov.uk website and will be updated to reflect the revised fees in time for the commencement of these regulations. The Home Office guidance to staff will be updated to reflect these changes.

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 been prepared for this instrument to assess the ongoing impact of changes in immigration and nationality fee levels planned for 2018-19. It builds on the Impact Assessment prepared for the Immigration and Nationality (Fees) Order 2016, which assessed the impact of fee increases over the Spending Review period 2016-17 to 2019-20. It also builds on changes set out in an explanatory note submitted with the Immigration and Nationality (Fees) Regulations 2017, following minor changes to the fee increases assumed in the original Impact Assessment. The Impact Assessment, which is laid with these regulations, sets out that there is no additional impact to businesses, charities or voluntary bodies, as there will be no changes to fees paid by sponsors in these regulations.
- 10.4 The proposed changes to fees for immigration and nationality products and services are all within the maximum amount that can be charged for any fee, as set out in the 2016 Order, as amended, and are in accordance with the broad strategy for charging fees for immigration and nationality functions. The costs and benefits described in the Impact Assessment laid with these regulations align with those set out in the Impact Assessment for the 2016 Order. The current Impact Assessment laid with these regulations can be found via the following link: <http://www.legislation.gov.uk>.
- 10.5 The Home Office wishes to ensure that the fees it charges for immigration and nationality services are set at appropriate levels to contribute towards the costs of running the border, immigration and citizenship system. The financial constraints on public spending mean the Home Office needs to continue to keep fees under review to ensure sufficient revenue is generated to contribute to the Home Office's ambition for a border, immigration and citizenship system that is funded by income from fees and charges paid by those who use it.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of these regulations on small businesses (employing up to 50 people), the approach taken is to specify a lower fee for an application for a sponsor licence where the applicant is a small or charitable sponsor than the fee payable by non-small or charitable sponsors (see Table 14 in Schedule 4 to the regulations).
- 11.3 The basis for the final decision on what action to take to assist small businesses is not addressed in the Impact Assessment to the Immigration and Nationality (Fees) Order 2016, as amended, because there has been no change in approach to small businesses through these regulations. The Impact Assessment, to be laid with these regulations, sets out that there is no additional impact to businesses as there will be no changes to fees paid by sponsors in these regulations.

12. Monitoring & review

- 12.1 The Home Office will closely monitor the impact of fees for the applications and services contained in these regulations. The Home Office reviews fees and charges for immigration and nationality applications annually. The Home Office also monitors application trends, and officials from all relevant Government departments consider

proposals to amend fee levels to ensure they do not adversely impact on the UK economy.

13. Contact

- 13.1 Annie Wattam at the Home Office, Fees and Income Planning team, Financial Planning Unit, Telephone: 0114 207 2290 or email: annie.wattam@homeoffice.gsi.gov.uk, can answer any queries regarding the instrument.