

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT) (EU EXIT)
REGULATIONS 2018

2018 No. 875

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 Committee on the UK's exit from the European Union.

2. Purpose of the instrument

- 2.1 This measure addresses the fees element of the EU Settlement Scheme. In parallel, Parliament has before it an affirmative procedure measure on biometric enrolment^[1] and – laid in parallel today – a corresponding Statement of Changes in the Immigration Rules. Together these measures align with the Government's Statement of Intent on the EU Settlement Scheme, published on 21 June 2018^[2]. This measure will specify fees for applications in the United Kingdom under a new Appendix EU to the Immigration Rules and provide for exceptions in respect of those fees. The new Appendix EU will provide for applications by resident EU citizens and others for leave to remain in the United Kingdom.

3. Matters of special interest to Parliament

Matters of special interest to the Committee on the UK's exit from the European Union

- 3.1 Appendix EU to the Immigration Rules will provide a basis on which resident EU citizens and their family members, and the family members of certain British citizens, can apply for leave to remain in the UK under UK immigration law. Where resident EU citizens and their family members are concerned, this is in line with the draft Withdrawal Agreement with the European Union published on 19 March 2018^[3] and will not affect their existing rights derived from EU law.
- 3.2 A draft of Appendix EU was published on 21 June 2018 as part of a Statement of Intent on the EU Settlement Scheme. The scheme will provide the mechanism for resident EU citizens and their family members, and the family members of certain British citizens, to apply on a voluntary basis for the UK immigration status which they will require to remain in the UK beyond the end of the planned post-exit implementation period on 31 December 2020. As regards EU citizens and their family members, this is consistent with Articles 17 and 17a of the draft Withdrawal Agreement. As the law currently stands, an individual who is entitled to remain in the UK under EU law is not required to have leave to remain (see section 7(1) of the

^[1] The Immigration (Provision of Physical Data) (Amendment) (EU Exit) Regulations 2018

^[2] <https://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent>

^[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/691366/20180319_DRAFT_WITHDRAWAL_AGREEMENT.pdf

Immigration Act 1988). Appendix EU will enable individuals to apply for leave to remain but will not override existing rights so long as they apply, and any leave granted under Appendix EU will not supersede existing rights.

- 3.3 Where a person chooses to apply for leave to remain under Appendix EU, the changes made by these Regulations will specify the fee (if any) applicable to their application. Appendix EU to the Immigration Rules has also been laid before Parliament today, under section 3(2) of the Immigration Act 1971, and is available at: <https://www.gov.uk/government/collections/immigration-rules-statement-of-changes#statement-of-changes-to-the-immigration-rules:-2018>
- 3.4 Appendix EU will come into force on 28 August 2018. These Fees Regulations will also come into force on 28 August 2018. Once Appendix EU is in effect, it will be available at: <https://www.gov.uk/guidance/immigration-rules>.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.5 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 These Regulations amend the Immigration and Nationality (Fees) Regulations 2018 (SI 2018/330) which specify fees for the exercise of functions in connection with immigration and nationality. These Regulations specify fee levels, and provide for exceptions in respect of these, for applications for leave to remain in the UK under Appendix EU to the Immigration Rules. The fees are set under the powers in section 68 of the Immigration Act 2014 and within the limits set in the Immigration and Nationality (Fees) Order 2016 (SI 2016/177).

7. Policy background

What is being done and why?

- 7.1 In line with the draft Withdrawal Agreement with the EU, the Immigration Rules for the EU Settlement Scheme contained in Appendix EU provide that:
- EU citizens and their family members who, by 31 December 2020, have been continuously resident in the UK for five years will be eligible for ‘settled status’ (indefinite leave to remain in the UK).

- EU citizens and their family members who arrive by 31 December 2020, but will not yet have been continuously resident here for five years, will generally be eligible for ‘pre-settled status’ (five years’ limited leave to remain in the UK), enabling them to stay until they have reached the five-year threshold. They can then also apply for settled status.
 - Close family members (a spouse, civil partner, durable partner, dependent child or grandchild, and dependent parent or grandparent) living overseas will be able to join an EU citizen resident here after the end of the implementation period, where the relationship existed on 31 December 2020 and continues to exist when the person wishes to come to the UK. Future children are also protected.
- 7.2 In addition, the Government has decided, as a matter of domestic policy, that a family member of a British citizen who is lawfully resident in the UK by the end of the implementation period on 31 December 2020 by virtue of regulation 9 of the Immigration (European Economic Area) Regulations 2016 (SI 2016/1052) (“the EEA Regulations”), will be eligible to apply for status under the EU Settlement Scheme contained in Appendix EU.
- 7.3 These Regulations set the fee levels, and provide for exceptions in respect of these, for applications by resident EU citizens and their family members, and by the family members of certain British citizens, for leave to remain in the UK under Appendix EU to the Immigration Rules. These are consistent, where resident EU citizens and their family members are concerned, with the draft Withdrawal Agreement with the EU which, in Article 17(1)(g) and (h), provides that:
- Documents evidencing residence status in line with the agreement will be issued free of charge or for a charge not exceeding that imposed on citizens of the host State for the issuing of similar documents, which in the case of the UK is a UK passport (currently £75.50 for a standard online application).
 - Holders of a valid permanent residence document issued in line with the Free Movement Directive (Directive 2004/38/EC) (that is, in the UK, under the EEA Regulations), and beneficiaries of the Withdrawal Agreement who hold a valid domestic immigration document conferring a permanent right to reside in the host State (such as indefinite leave to remain in the UK), will be able to exchange this free of charge for a document evidencing residence status in line with the agreement, subject to verification of identity, a criminality and security check and confirmation of ongoing residence.
- 7.4 These Regulations make the following provision:
- The fee for an application under the EU Settlement Scheme contained in Appendix EU will be £65 (the same as the current fee for a permanent residence document issued under the EEA Regulations) for a person aged 16 or over. The fee for those aged under 16 will be £32.50. The income from these fees will part-fund the cost of the scheme. To charge a lower fee than the current £65 fee EU citizens are charged in applying for a permanent residence document would disadvantage those who have already paid that fee to acquire such a document. Alternatively, to have recommended charging more than that fee would have disadvantaged those who have followed the Government advice’s since the referendum in June 2016 that there was generally no need for them to apply for a permanent residence document.

- There will be no application fee for settled status (indefinite leave to remain) where the grounds on which the applicant is applying are that condition 1 in paragraph EU11 of Appendix EU is met, namely that the applicant has previously been issued a permanent residence document (that is a document certifying permanent residence or a permanent residence card, issued by the UK under the EEA Regulations) and this permanent residence status:
 - has not lapsed or has done so through absence from the UK for a period of more than two consecutive years (as set out in the Free Movement Directive) but not more than five consecutive years (as set out in the draft Withdrawal Agreement in Articles 10 and 14(3)); and
 - has not been lost (for example because a deportation order has been made in relation to the person).
- There will be no application fee for settled status (indefinite leave to remain) where the grounds on which the applicant is applying are that condition 2 in paragraph EU11 of Appendix EU is met, namely that the applicant has previously been granted indefinite leave to enter or remain in the UK (as evidenced by a biometric residence permit, other valid document or endorsement issued by the Home Office or Home Office records) and this status has not lapsed (through absence from the UK for more than two consecutive years) or been revoked or invalidated.
- There will be no requirement for an application fee where a child (a person under the age of 18) is being 'looked after' by a local authority.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it supports implementation of the EU Settlement Scheme.

9. Consolidation

- 9.1 This Regulation amends the Immigration and Nationality (fees) Regulation 2018. Fees Regulations are consolidated periodically.

10. Consultation outcome

- 10.1 The Home Office has not undertaken a full public consultation on the fee levels for the EU Settlement Scheme, but the policy has been discussed with its internal and external stakeholders, such as groups representing EU citizens in the UK, Consulates and community organisations, and account has been taken of those discussions.

11. Guidance

- 11.1 We will publish guidance on the EU Settlement Scheme and continue to liaise with our partnership groups and organisations representing EU citizens and their family members through stakeholder events and communications and publications on Gov.UK.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment is submitted with this Explanatory Memorandum and published alongside it on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is for the Home Office to monitor the impact of these Regulations and of the policy on EU citizens and family members.
- 14.2 These Regulations does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Rt. Hon. Caroline Nokes MP, Minister of State for Immigration at the Home Office, has made the following statement: “Fees are kept under regular review and I am satisfied that these Regulations do not impact on small businesses.”

15. Contact

- 15.1 Melissa Jones at the Home Office Telephone: 07769648066 or email: Melissa.jones@homeoffice.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Tirth Benning at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rt. Hon. Caroline Nokes MP, Minister of State for Immigration at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.