

**EXPLANATORY MEMORANDUM TO**  
**THE IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT) (NO. 2)**  
**REGULATIONS 2020**

**2020 No. 294**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by The Home Office and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 These Regulations amend the Immigration and Nationality (Fees) Regulations 2018 (“the 2018 Regulations”). They remove fees for services and immigration routes which are no longer available; introduce fee exceptions, and a fee waiver, in specific circumstances, in respect of applications for British Citizenship and entry clearance to enter the Isle of Man; and introduce new fees for entry clearance to enter the Isle of Man and the Bailiwick of Guernsey in support of changes to their respective immigration rules and policy.

**3. Matters of special interest to Parliament**

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

- 3.1 None.

*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)*

- 3.2 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 the same as the provisions of the 2018 Regulations which it amends. The amendments therefore extend to England and Wales, Scotland and Northern Ireland, but the amendments made by Regulations 3, 5 and 10 also extend to the Isle of Man and the amendments made by Regulation 11 also extend to the Bailiwick of Guernsey.
- 4.2 The territorial application of this instrument is the same as its extent.

**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 This instrument includes provisions to support the reform of the Tier 1 (Entrepreneur) and Tier 1 (Graduate Entrepreneur) routes currently operating in the Isle of Man, under the Isle of Man Immigration Rules. Those rules are being amended to replace these

routes with two new routes which will open on 6 April 2020. It also supports the introduction, under the Bailiwick of Guernsey's Work Permit policy, of new Temporary Work Permit arrangements. These Regulations introduce fees for these three new routes and, in the case of the Isle of Man, removes fees for the routes which are closing. These Regulations also introduce fee exceptions for applications for entry clearance to enter the Isle of Man under Appendix EU (Family Permit) to the Isle of Man Immigration Rules, and for applications for entry clearance to enter the Isle of Man for the purposes of an application under Appendix EU to those Rules. Those Appendices make provision in relation to the United Kingdom's withdrawal from the European Union (see paragraph 7.2).

- 6.2 These Regulations also remove the fee for the Tier 1 (Graduate Entrepreneur) route in the UK, which was closed to new applicants in 2019, and fees for providing premium services to sponsors for a period of three months (because these services are no longer available). Further, these Regulations introduce fee waiver and exception provisions in the light of successful legal challenges to aspects of the British Nationality Act 1981 ("the 1981 Act") and in line with amendments to the 1981 Act made by the British Nationality Act 1981 (Remedial) Order 2019 (SI 2019/1164).

## **7. Policy background**

### *What is being done and why?*

#### The Isle of Man

- 7.1 The Tier 1 (Entrepreneur) and Tier 1 (Graduate Entrepreneur) routes which operate in the Isle of Man are being closed and replaced with two new routes – "Innovator" and "Start-Up", respectively. The Isle of Man Immigration Rules are being amended to commence these changes on 6 April 2020. Application fees for entry clearance to enter the Isle of Man under the new routes are being set in these Regulations, at the same rate as those for the routes they replace and for entry clearance to enter the UK under the UK's Innovator and Start-Up routes. The Regulations also remove the existing fees for applications under the old routes, though fees for applications by dependants of individuals with existing entry clearance under those routes are retained.
- 7.2 These Regulations introduce fee exceptions in respect of applications for entry clearance to enter the Isle of Man made under Appendix EU (Family Permit) to the Isle of Man Immigration Rules and applications for entry clearance to enter the Isle of Man for the purposes of an application for leave to enter or leave to remain under Appendix EU to those Rules. (These are the EU Settlement Scheme arrangements for the Isle of Man.) We had hoped to introduce these provisions as part of a wider suite of amendments to the 2018 Regulations in March 2019, but it was not possible at the time to align our legislative process to that in the Isle of Man. To date, the relevant fees have been waived using the Secretary of State's broad power to waive any fee for entry clearance to enter the Isle of Man, but the provision introduced in these Regulations makes the position on fees clear for applicants.

#### The Bailiwick of Guernsey

- 7.3 Changes have already been made to the Bailiwick of Guernsey's Work Permit policy, to introduce a Temporary Work Permit, under their wider Work Permit arrangements, to enable temporary workers to apply for a Work Permit for a period of up to nine months. These Regulations set a fee of £244 for entry clearance to enter the Bailiwick

of Guernsey under these arrangements. This is the same as the fee for entry clearance to enter the Bailiwick of Jersey, the Isle of Man and the UK, under each respective territory's temporary worker arrangements.

*Tier 1 (Graduate Entrepreneur) (In the UK)*

- 7.4 The 2018 Regulations were amended in March 2019 to support the reform, in the UK, of the Tier 1 (Entrepreneur) and Tier 1 (Graduate Entrepreneur) routes. Both of these routes were closed to new applicants and replaced with new routes. Due to the nature of how the Graduate Entrepreneur route operated, it remained possible, at the time that the 2018 Regulations were amended, for new applicants to apply until 31 July 2019. Therefore, the fee for this route was left intact, but it is now being removed by these Regulations, as it is no longer possible for new applicants to apply. Fees for applications by dependants of individuals with existing leave as a Tier 1 Graduate Entrepreneur are, however, retained.

*Applications for British Nationality*

- 7.5 Certain applications for British citizenship are subject to the requirement to be of good character. The British Nationality Act 1981 (Remedial) Order 2019, which came into force on 25 July 2019, removed this requirement from routes where applicants were born to an unmarried British father before 1 July 2006 or to a British mother before 1 January 1983. This was as a result of court rulings which found that such a provision in the 1981 Act was incompatible with the European Convention on Human Rights.
- 7.6 These Regulations are concerned with applications under section 4F of the 1981 Act for registration as a British citizen made on the basis that the applicant would have been entitled to be registered under paragraph 4 or 5 of Schedule 2 to that Act if the applicant's mother had been married to his or her natural father at the time of their birth. These are routes which make provision for those who are stateless to register as British citizens. An individual who made such an application before the British Nationality Act 1981 (Remedial) Order 2019 came into force on 25 July 2019 and whose application was refused on the basis that they were not of good character may wish to make a new application now that the good character test has been removed by the Order. These Regulations remove the fee that would otherwise have been payable for a repeated application of this kind. This amendment is made in response to a recommendation made by the Joint Committee on Human Rights in their report 'Proposal for a draft British Nationality Act 1981 (Remedial) Order 2018', published on 31 May 2018 (see in particular paragraph 64). Applications for registration under section 4C and sections 4G to 4I are already free and a fee exception is therefore not required for these routes.
- 7.7 Children born on or after 1 July 2006 to British fathers. A child cannot acquire British citizenship through their biological father if, at the time of their birth, their mother was married to or in an opposite sex civil partnership with another man. This is because, under section 50(9A) of the 1981 Act, the child's father, for the purposes of provisions of that Act which confer British citizenship based on the status of a child's father, is the mother's husband or opposite sex civil partner at the time of the birth.
- 7.8 In a recent High Court judgment section 50(9A) of the 1981 Act was found to be incompatible with Article 14 of the European Convention of Human Rights when read in conjunction with Article 8 in this context, as such a child does not have an entitlement to be registered as a British Citizen. A child in these circumstances can

apply to be registered as a British Citizen at the Home Secretary's discretion under section 3(1) of the 1981 Act and whilst the government considers what appropriate action to take in light of the declaration of incompatibility, these Regulations provide for such a child to be able to make an application for registration without the payment of a fee.

#### Premium Services for Sponsors

- 7.9 UK Visas and Immigration offer premium service packages to licensed sponsors who employ workers under Tiers 2 and 5 of the current immigration system. It has previously been the case that sponsors could apply either for a three-month or a twelve-month package of services. The three-month packages were withdrawn on 8 April 2019, therefore these Regulations remove the fees for the provision of those packages.

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

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

### **9. Consolidation**

- 9.1 The Immigration and Nationality (Fees) Regulations are consolidated periodically.

### **10. Consultation outcome**

- 10.1 There has been no public consultation on the above changes.
- 10.2 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. Responses to this consultation were analysed and continue to be reflected in this instrument.

### **11. Guidance**

- 11.1 Home Office guidance for staff will be updated to reflect these changes. Information and guidance for members of the public will also be published when this instrument is laid in parliament.

### **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 has not been prepared for this instrument. The provisions set out in this instrument make provision in connection with recent court rulings or will simplify the fee structure for certain fees. These changes are not expected to have a significant impact. The Impact Assessment published alongside the 2018 Regulations remains valid.

### **13. Regulating small business**

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

#### **14. Monitoring & review**

- 14.1 These Regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Kevin Foster MP has made the following statement. “It is not appropriate in the circumstances to make provision for review. Fees are kept under regular review and I am satisfied that these regulations do not impact on small businesses.

#### **15. Contact**

- 15.1 Annie Wattam at the Home Office Telephone: 07557 205215 or email: [annie.wattam@homeoffice.gov.uk](mailto:annie.wattam@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Simon Cubley, Deputy Director for the Border, Immigration and Citizenship Strategy Team at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kevin Foster MP, Parliamentary Under Secretary (Minister for Future Borders and Immigration) at the Home Office can confirm that this Explanatory Memorandum meets the required standard.