

*Draft Order laid before Parliament under section 74(2) of the Immigration Act 2014, for approval
by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

2017 No.

IMMIGRATION

The Immigration (Health Charge) (Amendment) Order 2017

*Made - - - - - ****

Coming into force in accordance with article 1(1)

The Secretary of State makes the following Order in exercise of the powers conferred by sections 38(1) and (3) and 74(8) of the Immigration Act 2014⁽¹⁾.

In accordance with section 74(2) of that Act, a draft of this Order was laid before and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Immigration (Health Charge) (Amendment) Order 2017 and comes into force on the twenty-first day after the day on which it is made.

(2) In this Order, “the Principal Order” means the Immigration (Health Charge) Order 2015⁽²⁾.

Amendments to Article 6 of the Principal Order

2.—(1) Article 6 (consequences of a failure to pay a charge) of the Principal Order is amended as follows.

(2) For paragraph (4), substitute—

“(4) Paragraph (5) applies where—

- (a) a person has been refused entry clearance or leave to remain;
- (b) a condition in paragraph (4A) is met; and
- (c) a condition in paragraph (4B) is met.

(4A) The conditions are that—

- (a) the Secretary of State has refunded all or part of the amount of the charge under article 8;

(1) 2014 c. 22.

(2) S.I. 2015/792, as amended by S.I. 2016/400.

- (b) the Secretary of State has waived payment of all or part of the charge under article 8;
 - (c) an entry clearance officer or the Secretary of State, as applicable, did not, in respect of a person required by article 3 to pay a charge but who did not do so, request that the person pay that charge under article 6(1)(a).
- (4B) The conditions are that the decision to refuse entry clearance or leave to remain is subsequently—
- (a) withdrawn because of a case working error under Appendix AR of the immigration rules or otherwise by the Secretary of State;
 - (b) found to be unlawful by a competent court or tribunal.”.
- (3) In paragraph (5)—
- (a) in sub-paragraph (a), for “charge” substitute “charge or part of the charge”; and
 - (b) in sub-paragraphs (b) and (c), for “the charge” substitute “that amount”.
- (4) After paragraph (5) insert—
- “(6) Paragraph (7) applies where—
- (a) a person has applied for entry clearance or leave to remain for a particular period;
 - (b) entry clearance or leave to remain is granted for a shorter period than that for which the application was made (“the reduced period of leave”);
 - (c) the Secretary of State has refunded all or part of the charge under article 8; and
 - (d) the Secretary of State or a competent court or tribunal subsequently determines that entry clearance or leave to remain for a longer period than the reduced period of leave is to be granted (“the additional period of leave”).
- (7) Where this paragraph applies—
- (a) an entry clearance officer or the Secretary of State, as applicable, may request that the person pays the amount of the charge for the additional period of leave calculated in accordance with article 4 (“the additional amount”);
 - (b) the person must pay the additional amount within 10 working days beginning with the date when the request for payment under sub-paragraph (a) is sent in writing or made by telephone or in person;
 - (c) if the additional amount is not paid within the period mentioned in sub-paragraph (b), the additional period of leave must not be granted.”.

Amendments to Schedule 2 to the Principal Order

- 3.—(1) Schedule 2 to the Principal Order is amended as follows.
- (2) In paragraph 1(b), for “entry clearance” substitute “entry clearance or leave to remain”.
 - (3) Omit paragraph 1(c).
 - (4) For paragraph 1(g), substitute—
 - “(g) for leave to remain for a Trafficking Convention reason, or under paragraph 159I of the immigration rules as a domestic worker who is the victim of slavery or human trafficking, where the applicant has received a positive conclusive grounds decision from a competent authority;”.
 - (5) In paragraph 1(i), for “sub-paragraph (c), (e), (f), (g) or (h)” substitute “sub-paragraph (e), (f), (g) or (h)”.
 - (6) After paragraph 3, insert—

“4. In this Schedule—

“competent authority” means a designated competent authority of the United Kingdom for the purposes of the Trafficking Convention;

“positive conclusive grounds decision” means a decision made by a competent authority that the applicant is either—

- (a) a victim of human trafficking, or
- (b) a victim of slavery, servitude or forced or compulsory labour;

“Trafficking Convention” means the Council of Europe Convention on Action against Trafficking in Human Beings⁽³⁾;

“Trafficking Convention reason” means a reason, in accordance with the United Kingdom’s obligations under the Trafficking Convention, that the applicant’s stay in the United Kingdom is necessary—

- (a) because of the applicant’s personal situation,
- (b) because the applicant is co-operating with a police investigation or criminal proceedings, or
- (c) in order to pursue a claim for compensation against the applicant’s trafficker or modern slavery facilitator.”.

Transitional provision

4. The amendments to the Principal Order made by this Order do not apply in relation to applications for entry clearance or leave to remain made before the coming into force of this Order.

Home Office
Date

Name
Minister of State

(3) Done at Warsaw on 16th May 2005.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Immigration (Health Charge) Order 2015 ([S.I. 2015/792](#)) (“the Principal Order”) which requires a person who applies for entry clearance for a limited period, or for limited leave to remain in the United Kingdom, to pay an immigration health charge.

Article 2 amends article 6 of the Principal Order, which sets out the consequences of a failure to pay a charge, in relation to a case where an application for leave or entry clearance is refused and the immigration health charge has either not been requested or has been refunded. If the refusal is subsequently overturned by the Secretary of State or a competent court or tribunal and the application is granted, an entry clearance officer or the Secretary of State may request payment of the charge or part of the charge. It also makes provision for cases where entry clearance or leave to remain is granted for a lesser period than that requested by the applicant and the Secretary of State has refunded part or all of the charge. If on appeal or otherwise a longer period of leave is to be granted, the Secretary of State may request payment of the charge for the additional period of leave. The applicant must then pay within the time specified in article 6(1) of the Principal Order or the additional period of leave cannot be granted.

Article 3 amends Schedule 2 to the Principal Order which sets out the situations in which applicants for entry clearance or leave to remain are exempt from paying the immigration health charge. Article 3(2) provides that an applicant for leave to remain under Appendix V of the immigration rules (visitor rules) is exempt. Article 3(3) and (5) removes the exemption which applies to an applicant (and the dependants of such an applicant) for entry clearance or leave to remain under paragraphs 245G to 245GE of the immigration rules (a Tier 2 Intra-company Transfer Migrant). Article 3(4) and (6) extends the exemption for an application which relates to the applicant’s identification as a victim of human trafficking to also include the applicant’s identification as a victim of slavery.

Article 4 makes transitional provision so that the amendments made to the Principal Order by this Order do not apply to an application for entry clearance or leave to remain made before the Order comes into force.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is submitted with the Explanatory Memorandum which is available alongside the instrument at www.legislation.gov.uk.