

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION AND NATIONALITY (FEES) REGULATIONS 2017
2017 No. 515

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 makes 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, some of which have been reduced, frozen or increased above the rate of inflation. More detail is set out in section 7 of this memorandum.
- 3.2 The Joint Committee reported the Home Office when laying the Immigration and Nationality (Fees) Regulations 2016 (the “2016 Regulations”), which these regulations revoke and replace, concerning the rate of exchange used for immigration applications where payment is made in a currency other than pounds sterling.
- 3.3 The Home Office has been reviewing its policy concerning the currency exchange rate applied where payments for immigration and nationality applications and services are made in a foreign currency.
- 3.4 Across the globe, online payments are currently accepted in 12 major currencies, including pounds sterling, and in-person payments are taken in local currency. Where a payment is made in a foreign currency, an exchange rate is applied to ensure that the Home Office receives no less than the value in sterling of the fee set out in these regulations.
- 3.5 The current practice is to use the Foreign and Commonwealth Office (“FCO”) “consular rate of exchange” (“CRE”). The CRE is the rate that a customer will pay when paying in foreign currency. The process is designed to ensure that the rates charged reflect the commercial rate on a particular day whilst ensuring that the risk associated with fluctuating rates are kept to a minimum.
- 3.6 In light of the Joint Committee’s report on the 2016 Regulations a decision was taken to refer to the CRE in regulation 15 as the rate of exchange being applied where fees are paid in a foreign currency. Information as to how a fee is calculated using the

CRE is provided below. This information also shows how any discretion to adjust the rates is applied and the breadth of that discretion.

- 3.7 As outlined by the Department previously, we continue to consider that the Secretary of State's powers in sections 68 and 69 of the Immigration Act 2014 give rise, by necessary implication, to a power to collect fees in a foreign currency and to do so in a way that is administratively workable. Converting foreign currency into sterling by way of the CRE is as the only administratively workable process available to the Secretary of State currently.
- 3.8 In order to calculate the sum payable in a foreign currency, the FCO sets a CRE in relation to each currency. The rate that the government uses and the starting point for the purposes of regulation 15, is the FCO Corporate Rate which is set within 3% of the Financial Times ("FT") exchange rate. The FCO conducts regular reviews in order to ensure that the Corporate rates track the FT rates of exchange. In particular, on the last calendar date of the month, as a matter of course, the FCO check the FT rates of exchange for the majority of currencies, review the Corporate rate for each currency and reset it (where necessary). If a divergence of more than 3% occurs during the month (between the Corporate rate and the FT rates) the rate is re-adjusted before the 'normal' monthly review occurs. Further, where there has been a rapid change in the valuation of a currency which is not yet reflected in the FT rates of exchange, overseas posts use the spot rate (this being the highest legally available rate in local banks) in that country and use this rate of exchange in all their business until the FT rates of exchange have caught up such that the Corporate rate can be reset in the normal way.
- 3.9 The CRE is set by FCO Consular sections to calculate a local currency fee equivalent to the full sterling fee. It is the government's intention to ensure that the CRE rates reflect commercial exchange rates, to ensure that fees paid in foreign currency are as close to the equivalent sterling charge as possible. To that end, the FCO takes steps to ensure that the CRE does not fall below the corporate rate of exchange or exceed it by more than 10%.
- 3.10 Since June 2016, the Home Office has been considering options for addressing the points raised by the Joint Committee, engaging closely with operational, IT system, strategy and FCO leads to understand the strategic, operational, financial and legal implications of each option. The interim conclusion was that there is no solution which fully addresses strategic and customer requirements, and which could be implemented without risk of the Home Office regularly acting beyond the terms of a revised exchange rate policy. An Accounting Officer Assessment will be required to enable a final decision to be taken. Regrettably this is not yet complete. However, the Home Office intends to publish and implement a new exchange rate policy when agreed, and to lay an amendment to the current regulations to ensure the policy is transparent in supporting legislation.
- 3.11 The Home Office takes parliamentary scrutiny very seriously and always plans to ensure that House conventions are abided by and that compliance with the 21 day rule is achieved. However on this occasion it regrets that it has not been possible to give the usual 21 days' notice before this instrument takes effect.
- 3.12 Following a breach of the 21 day rule in respect of the Immigration and Nationality (Fees) Regulations 2015, the Home Office reviewed its planning process in respect of delivering further fees regulations. In order to deliver these regulations in a timely

manner, a detailed project plan was agreed, with additional time built in to mitigate for any short delays which may occur. Despite the Home Office's best attempt to plan for and mitigate delays, it was not possible to deliver these regulations in time to meet the 21 day rule.

- 3.13 The Home Office has given serious consideration as to whether it should break the 21 day rule in respect of this instrument. For example there are operational dependencies in respect of IT system changes which have been lined up to implement new fees on the common commencement date and the requirement on the Home Office to meet its income target for 2017-18. Any delay in implementing the new fees would result in a loss of income that the Home Office is dependent on to balance its budget. The Home Office is also concerned about the potential for confusion for customers if the regulations commence on a date other than the common commencement date. Regrettably, it therefore concluded that it has no option other than to bring this instrument into effect on 6 April.

Other matters of interest to the House of Commons

- 3.14 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 which were both subject to affirmative resolution and made on 12th February 2016 and 14th March 2017 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(5) and (6) applies to the Isle of Man and the Channel Islands (comprising the Bailiwick of Guernsey and the Bailiwick of Jersey) respectively.
- 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 In the Government's 2015 Spending review, the Home Office set out an objective that the border, immigration and citizenship (BIC) system will become self-funded by 2019-20, thus relieving the burden on the taxpayer. The Home Office plans to achieve this by increasing income and investing in streamlined, automated processes to reduce costs, over the Spending Review period.
- 7.2 The first step was an increase to fees for immigration and nationality applications and services in 2016-17. Those increases have, to date, generated additional income in the

region of £100m in 2016-17, meaning that the BIC system is now approximately 70% funded by income from fees charged for its services.

- 7.3 These regulations are the next step towards further reducing the burden on the taxpayer. The routes most strongly associated with economic growth (workers, visitors and full-time students) will increase by 2% (rounded to the nearest pound). This is a reflection of the Home Office's objective to protect routes most associated with economic growth from more significant fee increases. We are also limiting increases to applications for registration and naturalisation as a British citizen, to 4%.
- 7.4 Fees for settlement, residence routes, other low volume routes and most optional premium services will increase by 18 to 23% (rounded to the nearest pound). Fees relating to sponsorship will be held at existing rates.
- 7.5 It is estimated that these increases will raise in the region of an additional £130m income in 2017-18.
- 7.6 Where the fees in this instrument are set above cost recovery, this is a reflection of either the value of the benefits and entitlements conferred by a successful application, or a contribution to the wider costs of providing other immigration functions, or both. The available benefits and 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 option, at a later date, to apply for settlement in the UK
- 7.7 For a small number of applications, we are making a 5% increase (rounded to the nearest pound) or reflecting changed unit costs. These include changes ranging from reductions of 28% to increases of 18% for certain documents, consular functions and a small number of visas.
- 7.8 The Home Office will publish indicative unit costs for the 2017-18 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 to see which fees are set over, or under cost, and by how much.

Consolidation

- 7.9 These regulations do not amend any existing fees regulations and therefore consolidation is unnecessary.

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 2% in 2017-18.
- 8.5 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 not been prepared for this instrument. This is because an Impact Assessment was prepared for the Immigration and Nationality (Fees) Order 2016, which assessed the impact of fee increases broadly similar to those set out in these regulations. An explanatory note to the impact assessment has been submitted with these regulations to support minor, and mainly technical changes to the 2016 Order, via the Immigration and Nationality (Fees) (Amendment) Order 2017. However those changes do not impact on the maximum amount that can be charged for any fee, as set out in the 2016 Order or on the broad strategy for charging fees. The Impact Assessment can be found via the following link:
http://www.legislation.gov.uk/ukia/2016/10/pdfs/ukia_20160010_en.pdf

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.
- 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, because there has been no change in approach to small businesses through these

regulations. The Impact Assessment set out that there was no additional impact to businesses as there will be no changes to sponsor fees 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.