

**EXPLANATORY MEMORANDUM TO**  
**THE IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT) (EU EXIT)**  
**(NO. 2) REGULATIONS 2018**

**2018 No. 999**

**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 This is the latest in the series of regulations that set the charging arrangements and individual fee levels for different elements of the immigration system, where these are set under the fees provisions in the Immigration Act 2014. These regulations:

- a) make further provision relating to applications by EU citizens and others for leave to remain in the UK under the EU Settlement Scheme, including:
  - fees payable where an application is rejected as invalid;
  - fees payable for an administrative review where an application is refused; and
  - refund arrangements in respect of applications which are varied.
- b) amend and remove obsolete references and entries relating to the Isle of Man immigration system;
- c) introduce three new exceptions to the payment of a fee;
- d) restructure how fees for certain optional expediting services are set out in Schedule 6 of the Immigration and Nationality (Fees) Regulations 2018 (SI 2018/330) (“the current regulations”), including the deletion of obsolete fees and the introduction of a fee for a new optional mobile biometric enrolment service.

**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 this 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 current regulations that it amends. Therefore, the amendments made by regulations 3(2) and 4 to 6 extend to England and Wales, Scotland and Northern Ireland; and the amendments made by regulations 3(3) to (8) and 7 extend also to the Isle of Man.

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

## **5. European Convention on Human Rights**

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

## **6. Legislative Context**

- 6.1 These regulations specify fees payable where an application for leave to remain in the UK made under the EU Settlement Scheme (“the scheme”) (provided for in Appendix EU to the Immigration Rules) is rejected as invalid, and for the administrative review of a decision to refuse an application made under the scheme. They also set out the arrangements for refunds where an application made under the scheme has the effect of varying another immigration rules-based application before that application is decided.
- 6.2 The Home Office expects to make a further Statement of Changes in the Immigration Rules to come into effect on 29 October 2018, which will include the introduction of arrangements for the administrative review of a decision to refuse an application made under the scheme. These regulations anticipate this change through an amendment to the definition of “administrative review”. The effect of this change will, when the relevant Immigration Rules come into effect, extend the existing fee of £80 for an administrative review, contained in paragraph 3 of Schedule 11 in the current regulations, to applications made under the scheme.
- 6.3 These regulations also specify a fee for a new, optional mobile biometric enrolment service to be made available by a contracted supplier, and provide for exceptions to payment of existing fees in respect of applications for leave to remain in the UK, in limited circumstances, and revoke obsolete provisions. 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 Following the commencement of the Immigration and Nationality (Fees) (Amendment) (EU Exit) Regulations 2018 (SI 2018/875), these regulations introduce three further provisions in respect of applications made under the EU Settlement Scheme:
- a) Under other, non-EU Settlement Scheme application routes, it is policy that when an application is rejected as invalid, the costs incurred by the Home Office at that point are retained, and only the remainder of the application fee is refunded to the applicant. This policy is being extended to applications made under the EU Settlement Scheme. The administrative costs incurred by the Home Office up to the point at which an EU Settlement Scheme application is rejected as invalid will exceed the fee paid for making the application, therefore the Government is setting the rejection fee at the same level as the application fee (£65 or £32.50 for applicants aged under 16). In practice, this will mean that where a settlement scheme application is rejected as invalid (after contacting the applicant and giving them a reasonable opportunity to provide what is needed for the application to be valid), no refund of the application fee will be made. These regulations also include a new fee exception to the effect that no rejection fee will be charged where an application fee was not payable or paid (see paragraph 7.3 c)).

- b) Under other non-EU Settlement Scheme application routes, where an application is refused, the applicant can request an administrative review of that decision upon payment of an £80 fee which is set in paragraph 3 of Schedule 11 to the current regulations. The Home Office expects to amend the Immigration Rules shortly, to set out the administrative review process for applications made under the EU Settlement Scheme. When those changes come into effect, applicants under the scheme will also be able to request an administrative review of a decision to refuse their application and the policy is that the existing £80 fee will be payable. Therefore, these regulations amend the definition of “administrative review” in Regulation 2 of the current regulations in anticipation of that change. The Home Office will, at the earliest opportunity, amend the current regulations to refer directly to the relevant section of the Immigration Rules.
- c) The Government is amending the provision, in paragraph 5 of Schedule 2 to the current regulations, which sets out the refund policy which applies where a person has made an application under the Immigration Rules for leave to remain in the UK, but, before that application is decided, they submit a further application which has the effect of varying it. Current policy is that the Home Office retains the higher of the two fees paid and the lower fee is refunded. To ensure consistency with the Home Office’s obligations under the draft Withdrawal Agreement with the EU, where the second application is one made under the scheme, the fee for the first application will always be refunded.

7.2 These regulations also contain provisions which are not linked to the EU Settlement Scheme. Earlier this year, Tier 2 of the Points-Based system operating in the Isle of Man, under the Isle of Man immigration rules, was closed and replaced with two new immigration routes. The Government is now removing redundant fees for entry clearance to enter the Isle of Man under Tier 2 routes, which are set out in Schedule 9 to the current regulations, at 21.2.9 to 21.2.13 and at 22.1.4 in Tables 21 and 22 respectively and in paragraph 4(2)(d). These regulations also amend the associated definitions of “certificate of sponsorship”, “shortage occupation certificate of sponsorship”, “sponsor”, “sponsored worker”, “Tier 2 Migrant” (etc) and definitions of Tier 2 (Intra-company Transfer) Migrants, so that they no longer include references to the Isle of Man immigration rules.

7.3 Additionally, these regulations provide for three new exceptions to prevent a fee being payable:

- a) No fee will be payable in respect of an application made by an Afghan national for indefinite leave to remain in the United Kingdom, where the applicant worked for the UK Government and subsequently relocated to the UK under a relevant Government-sponsored scheme, in order to settle permanently in the UK. The same will apply to their dependants who relocated with them. There will similarly be no fee payable by the UK-born children of such Afghan nationals when applying for limited leave to remain in the UK in line with their parent’s limited leave or when applying for indefinite leave to remain. This provision gives effect to the Home Secretary’s announcement on 3 May 2018.
- b) No fee will be payable in respect of an application for indefinite leave to remain made by a person who does not qualify for international protection, but who has relocated to the UK as an unaccompanied child, under section 67 of the Immigration Act 2016 (unaccompanied refugee children: relocation and support – commonly referred to as “the Dubs amendment”).

- c) No fee will be payable in respect of an application or claim which is rejected as invalid prior to a decision being issued, where the fee for the application was waived, excepted or not received. This will apply to the existing £25 fee in Table 10 of Schedule 2 to the current regulations, at 10.8.1, and to the new fees described above in paragraph 7.1(a). It has never been the Home Office’s intention or practice to charge a fee where the application being rejected was not accompanied by an application fee. The introduction of a specific provision makes that position clear.
- 7.4 These regulations delete Table 17.3 from Schedule 6 to the current regulations, which contains fees for optional services that never came to fruition and have never been charged. They also restructure the way in which fees for optional expediting services are set out, to reflect a change to the way that expediting services in the UK are to be delivered from October 2018.
- 7.5 From October 2018, the way in which applications are made in the UK will change significantly under the Home Office’s Front End Services transformation programme. Under new arrangements, applicants will be required to attend by appointment at a dedicated application centre to enrol their biometric information and have their passport checked, and there will be arrangements in place for other supporting evidence to be submitted digitally.
- 7.6 During the roll-out of the new arrangements, which is expected to be completed by March 2019, both the current and the new arrangements will run in tandem, with the current arrangements scaling down, whilst the new arrangements scale up. During this period, there will continue to be an optional expediting service available whereby an application can be decided either on the same day that the applicant’s biometric information is enrolled, or the next day. Under the current arrangements, this service is offered in person at the Home Office’s Premium Service Centre (PSC) network. Under the new arrangements, an expedited decision will be made within 24 hours of an applicant enrolling their biometric information at their mandatory application centre appointment.
- 7.7 To accommodate the transition period and the new arrangements, the Government is changing the way fees are set for applicants choosing to use the current PSC expediting service, by setting a single fee of £610 for this service. This is the fee currently payable for this service but reflected in the current regulations as two separate fees of £510 and £100, where the latter fee is the fee for booking of an appointment at a PSC. This single fee of £610 will also be paid by applicants choosing to have their application expedited under the new arrangements, or under the Home Office’s existing “Super Premium” service arrangements. The Government is therefore deleting the £610 expediting fee for Super Premium service customers from Table 17.4 of Schedule 6 to the current regulations, at 17.4.2, as it is no longer required.
- 7.8 The Super Premium service will continue to be available during the roll-out period, but once the roll-out is complete, it will be withdrawn. However, there will be a new “On-Demand” service, offered through a contracted supplier. The fee charged by the contracted supplier for the On-Demand service is being set in these regulations at £650 per hour, per representative providing the service. This is in line with the provision added to the Immigration and Nationality (Fees) Order 2016 in March 2018, at 6.4A in Table 6 of Article 9. The service amounts to a mobile biometric enrolment service, whereby equipment will be made available to enable applicants to enrol their biometric information at their chosen location, instead of at an application centre.

This On-Demand service is aimed at the type applicants who have previously valued the personally-tailored service offered under the Home Office's Super Premium service arrangements.

## **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 These Regulations amend the Immigration and Nationality (Fees) Regulations 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 set in these regulations, but the Government has taken note of stakeholder feedback on wider fee levels set out in the current regulations. In respect of those relating to the EU Settlement Scheme, the scheme 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 Home Office guidance for staff and published information for members of the public will be updated to reflect the changes set out in these regulations, in tandem with these changes coming into effect. On the EU Settlement Scheme, the Government will 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 has not been prepared for this instrument because there is no cost to business. The instrument may have a very small impact on Home Office finances.

## **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 on all parties affected by them.
- 14.2 These regulations do 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 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 this 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.