

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION AND NATIONALITY (REPLACEMENT OF TIER 2 AND FEES) (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 1147

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 The purpose of this instrument is to make fee provisions in connection with the further rollout of the United Kingdom's new immigration system and for applications under new routes in connection with the end of the EU implementation period. It also introduces fees for a new route for Hong Kong British National (Overseas) (BN(O)) citizens to come to live, work and study in the UK and the Bailiwick of Jersey, and for a new optional service for sponsor licence applicants. In addition, it makes technical changes to fee provisions in connection with the wider programme of work to simplify the United Kingdom (UK) Immigration Rules and to reflect a change in policy under the Bailiwick of Jersey's Work Permit arrangements. It also removes two legacy fees.
- 2.2 This instrument also amends the Immigration and Asylum Act 1999 (Part V Exemption: Licensed Sponsors Tiers 2 and 4) Order 2009, to reflect the replacement of certain "Tier 2" immigration routes with new routes under the United Kingdom's new immigration system. It also further amends this Order in respect of Student Sponsors, to ensure a previous amendment remains in step with a further change to the UK Immigration Rules.

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 England and Wales, Scotland and Northern Ireland, with certain amendments to the Immigration and Nationality (Fees) Regulations 2018 extending to Jersey and the Isle of Man. The amendments which also extend to the Isle of Man are made by regulations 6(3), 6(5), 6(7), 6(8), 6(12), 6(13) and 12. The amendments which also extend to the Bailiwick of Jersey are made by regulation 13.

4.2 The territorial application of this instrument is the same as the 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 makes a number of amendments to the Immigration and Nationality (Fees) Regulations 2018 (“the Fees Regulations”). The laying of this instrument coincides with the laying before parliament of a wide-ranging Statement of Changes to the UK Immigration Rules, and the changes detailed in this instrument support those changes to the Rules, unless otherwise stated.

6.2 These changes support the introduction of the new Skilled Worker, Intra-Company Transfer and Intra-Company Graduate Trainee routes in the UK, which replace the existing Tier 2 (General), Tier 2 (Intra-Company Transfer) – Long Term Staff and Tier 2 (Intra-Company Transfer) – Graduate Trainee routes. The amendments to the Fees Regulations include setting fees for applications under these new routes, setting fees for associated Sponsor Licences and Certificates of Sponsorship (CoS) and removing fees relating to the Tier 2 routes which will be replaced.

6.3 When describing the fee payable for applications on certain routes, applications by dependent partners and dependent children are excluded. This is because dependants’ fees are set separately in existing paragraph 3 of Schedule 1 and paragraph 3 of Schedule 2 to the Fees Regulations. This instrument also makes provision preserving the fees for applications made by dependants of existing Tier 2 migrants under the Tier 2 routes which will be replaced.

6.4 In addition, to reflect wider policy changes to the arrangements for Short-Term Students, this instrument removes fees for entry clearance to enter the UK as a Short-Term Student for a period of up to six months. This is because the rules for Standard Visitors will change such that study for up to six months will be a ‘permitted activity’ under new UK Immigration Rules.

6.5 This instrument also amends the Immigration and Asylum Act 1999 (Part V Exemption: Licensed Sponsors Tiers 2 and 4) Order 2009. The 2009 Order provides an exemption (in particular circumstances) for licensed sponsors of Tier 2 migrants and Students, under the UK Immigration Rules, from the prohibition under section 84(1) of the Immigration and Asylum Act 1999. That section prohibits a person who is not a qualified person (within the meaning of that section) from providing immigration advice or immigration services. This instrument makes amendments to the 2009 Order to exempt sponsors of applicants under the new Skilled Worker and Intra-Company routes, and under the routes in new Appendix T2 Minister of Religion and Appendix T2 Sports person, from the prohibition in section 84(1). It also makes other consequential amendments to the 2009 Order to reflect the replacement of Tier 2 routes and to reflect a further, technical change to the UK Immigration Rules, which has a consequential effect on changes previously made in respect of the new Student routes.

6.6 This instrument also makes amendments to the Fees Regulations related to two new Citizens’ Rights Agreements routes in connection with the end of the EU implementation period. The “S2 Healthcare Visitor” visa will be for EU nationals (and

their family members), whose home Government agreed, before the end of the implementation period, to fund a period of private healthcare provided in the UK. The “Service Providers from Switzerland” visa will allow persons employed in Switzerland, by companies providing services to UK clients, where that contract was agreed before the end of the implementation period, to continue to come to the UK to service that contract. This instrument provides for free applications under both of these routes. In addition, this instrument provides fee exceptions for applications by persons eligible to apply for entry clearance to enter or leave to remain in the UK under transitional arrangements, after the existing European Community Association Agreement (ECAA) with Turkey provisions cease, at the end of the EU implementation period. (The current arrangements enable certain Turkish nationals to apply for a visa to come to the UK or the Isle of Man, without payment of a fee, and to make applications for further leave to remain, without payment of a fee.)

- 6.7 This instrument also introduces fees for the new Hong Kong BN(O) Visa route. As signalled by the UK government earlier this year, a new route will open on 31st January 2021 for Hong Kong BN(O) citizens and their dependants, to come to the UK and ultimately be eligible to apply for settlement. There will be two visa options – a 30-month visa or a five-year visa. Similar arrangements are being provided for applicants wishing to apply to enter the Bailiwick of Jersey, through a change to their Immigration Rules introducing a similar route. The Bailiwick of Guernsey and the Isle of Man expect to lay their respective Immigration Rules later this year. In the absence of those Rules, the correct fees for applications to enter either of those jurisdictions cannot be set. However, transitional arrangements will be put in place, such that those applicants will ultimately pay the same fees as those applying under the UK and the Bailiwick of Jersey arrangements.
- 6.8 This instrument introduces a fee for a new optional premium service for the expediting of Sponsor Licence applications. This service will be made available from 12 November 2020 to a limited number of applicants each day. (There is no corresponding change to the Immigration Rules as the rules do not govern optional premium services.)
- 6.9 This instrument makes technical changes connected with the wider project to simplify the UK Immigration Rules and the fact that the Fees Regulations make numerous references to certain parts of, and definitions within those Rules, which are being revised. It also removes two fees for legacy immigration routes which are no longer open for applications. In addition, a small change is being made to reflect a change of policy to the Work Permit arrangements set out in the Jersey Immigration Rules, to allow for longer stays under their low-skilled worker arrangements.

7. Policy background

What is being done and why?

Changes Relating to the UK’s New Immigration System.

- 7.1 The Home Office is introducing new visa routes for workers. The Tier 2 (General), Tier 2 (Intra-Company Transfer) - Long Term Staff and Tier 2 (Intra-Company Transfer) – Graduate Trainee routes will be closed, and replaced with new Skilled Worker, Intra-Company Transfer and Intra-Company Graduate Trainee routes.

- 7.2 This instrument removes existing fees for entry clearance to enter and leave to remain in the UK under the legacy Tier 2 routes and sets fees for applications made by individuals and their dependants under the new routes, including under the Health and Care visa arrangements. (Fee arrangements for dependants of individuals who have leave under the routes which are being closed are being preserved.) It also sets fees for applications for Worker Sponsor licences from employers wishing to sponsor overseas workers; for Certificates of Sponsorship (CoS) issued by licensed sponsors and for the provision of premium services to Worker Sponsors. Fees for applications under the new routes will be the same as for those they replace. The same principle applies to fees for sponsor licences, CoS and other services.
- 7.3 All of these changes will come into effect at 9.00am on 1st December 2020.

Changes in Connection With the end of the EU Implementation Period

- 7.4 The Citizens' Rights Agreements with the EU, the other EEA states and Switzerland require two new routes of entry into the UK to be made available - the "S2 Healthcare Visitor" route and the "Service Providers from Switzerland" route.
- 7.5 The S2 Healthcare Visitor route will provide a route of entry into the UK for persons who, before the end of the implementation period (23:00 GMT on 31 December 2020), had requested authorisation from their home state to receive a course of planned healthcare treatment provided by the NHS under the 'S2 route'. The arrangement will also apply to any person accompanying a patient for the purpose of providing them with care and support during the course of their planned treatment. This instrument provides for applications for entry clearance to enter and leave to remain in the UK under this route to be exempt from the payment of a fee. This change will come into effect at 0900 GMT on 1st December 2020
- 7.6 The Service Providers from Switzerland route is for individuals, working either independently (if Swiss) or for an employer, established in Switzerland, who will provide services to a UK client under a contract that was signed, dated and commenced before 2300 GMT on 31 December 2020. This instrument provides for entry clearance applications under this route to exempt from the payment of a fee. This change will come into effect at 0900 GMT on 1st December 2020.
- 7.7 After the end of the implementation period, the existing Turkish ECAA arrangements, whereby Turkish businesspersons and their dependants, can apply for entry clearance to enter and leave to remain in the UK, will cease (other than for children aged under 21). New UK Immigration Rules will make transitional provisions for all persons who have been granted entry clearance or leave to remain under the ECAA arrangements, based on an application made on or before 23.00 GMT on 31st December 2020.
- 7.8 This instrument makes provision for those persons entitled to transitional protection to be able to continue to make applications for limited leave to remain in the UK, without payment of a fee. In addition, it will allow for their dependant children aged under 21, to come to join them in the UK, without payment of a visa fee. These changes will come into effect at 11.00pm on 31st December 2020.
- 7.9 The Turkish ECAA arrangements also operate in the Isle of Man. However, it is not possible to make mirror provisions in this instrument, for the transitional arrangements for children under the age of 21, to be able to continue to apply for entry clearance to enter the Isle of Man without payment of a fee. This is because the Government of the Isle of Man is unable to make the necessary changes to its

Immigration Rules until later in the year. This means that any such application will require payment of an existing £516 “catch-all” fee. (This fee is payable for any application for entry clearance to enter the Isle of Man, where no other fee is specified in the Fees Regulations.)

- 7.10 Application volumes are expected to be very low. The Secretary of State has a general power to waive fees for entry clearance to enter the Isle of Man, and the policy is to exercise that power until such time that the Fees Regulations are next amended, when a bespoke provision will be made.

Short-Term Study Route

- 7.11 The current Short-Term Study route in the UK Immigration Rules allows for persons coming to the UK either for up to six months, or up to eleven months, to undertake courses of study. Whilst the 11-month Short-Term Study visa arrangements, and current fee will remain, the six-month route will be closed. This is because the Visitor Rules are being amended to enable applicants to study for a period of up to six months in the UK, as a visitor. This SI removes the £97 application fees for six-month Short-Term Study visas; in future, applicants coming to study in the UK for up to six months will apply for a Standard Visit Visa, for which a £95 application fee already exists in the Fees Regulations. This change will come into effect at 0900 GMT on 1st December 2021

New Fees

- 7.12 A new optional Priority Service is being introduced by UK Visas and Immigration. This new service will offer expedited processing of a Sponsor Licence application within ten working days. (The current standard service level is eight weeks.) This instrument sets a fee for this service of £500. Initially, the service will be limited to ten applicants per day, with a view to increasing that limit, should there be a demand, and capacity for the standard service level can be maintained. This change will come into effect on 12 November 2020.
- 7.13 This instrument also sets fees for the new Hong Kong BN(O) Visa route. There will be two options for persons applying for entry clearance to enter the UK, of a period of either 30 months or five years. The same options will be available to persons applying for limited leave to remain in the UK. This instrument sets fees of £180 for the 30-month option and £250 for the five-year option. The same fees apply regardless of whether the application made is for entry clearance to enter or leave to remain in the UK. These changes will come into effect on 31st January 2021.
- 7.14 The same provision is also being made in respect of fees for applications for entry clearance to enter the Bailiwick of Jersey, in line with similar arrangements being introduced to the Jersey Immigration Rules, to commence on the same date.
- 7.15 The Bailiwick of Guernsey and the Isle of Man both plan to introduce similar routes from 31st January 2021, through their respective Immigration Rules. However, neither jurisdiction is able to lay their Immigration Rules until later this year. This means that when their routes open, any application to either jurisdiction will require payment of an existing £516 “catch-all” fee. (This fee is payable for any application for entry clearance to enter the Isle of Man or the Bailiwick of Guernsey, where no other fee is specified in the Fees Regulations.).

- 7.16 Application volumes are expected to be very low, and the collective governments' preference is for the same arrangements to be in operation across the whole of the UK and the Crown Dependencies. Therefore, using the Secretary of State's power to refund all or part of any fee, the policy is that any person applying under the arrangements in operation in the Bailiwick of Guernsey and the Isle of Man, where the £516 fee must be paid, will be refunded the difference, dependent upon whether they applied for the 30-month or five-year visa. The correct fees of £180 and £250 will be set in the Fee Regulations at the next available opportunity.

Technical Changes

- 7.17 This instrument makes a small amendment to the description of the fee for entry clearance to enter the Bailiwick of Jersey under the unskilled seasonal work permit employment arrangements in the Jersey Immigration Rules. The current fee is set for applications for entry clearance to enter the bailiwick for a period of up to nine months for the purposes of unskilled seasonal work permit employment. Following a policy change, it will be possible to apply for entry clearance for up to 12 months for the purposes of low-skilled work permit employment, and the existing fee will apply to such applications.
- 7.18 This instrument makes several technical changes as a consequence of wide-ranging changes to the UK Immigration Rules, under the programme of work to simplify those Rules, and the introduction of the UK's new immigration system. These changes to the Rules are included in the Statement of Changes being laid on the same date as this instrument.
- 7.19 For example, names will be changed on some routes, such as the remaining Tier 2 work routes for Sportspeople and Ministers of Religion, and all of the Tier 5 work routes. For example, "Tier 2 Sportspeople" becomes "T2 Sportspeople" and so forth. Also, content which was previously set out within the body of the Rules has been moved to Appendices as a step on the way to a new consolidated structure, and the Rules have been re-written in simplified language, with updated definitions to support those changes.
- 7.20 Numerous provisions in the Fees Regulations rely upon cross-references to certain parts of, and definitions used in, the Immigration Rules. The changes described above require consequential changes to be made to the Fees Regulations, and in some cases, a change of approach in how fees are described. For example, fees for applications made by "a Tier 2 (Sportspeople) Migrant" become fees for applications made "under Appendix T2 Sportspeople" to the Immigration Rules.
- 7.21 In addition, the way in which the changes to the Rules provide for applications made by dependants under the work and study routes impacts on how fees are expressed in the Fees Regulations in respect of the new routes in the Rules. Fees for applications for entry clearance to enter and leave to remain by dependants are currently set (with some exceptions) by general provisions in paragraph 3 of Schedule 1 and paragraph 3 of Schedule 2 to the Fees Regulations (and similar provisions for the bailiwicks of Jersey and Guernsey, and the Isle of Man). These provide that the fee for an application by a dependant is (generally speaking) the same as the fee expressly specified for the main applicant's application. The amendments made by this instrument maintain that approach. New specified fees for entry clearance and leave to remain therefore expressly exclude applications by dependants under the various new Appendices, and the fees for dependants' applications continue to be set by

paragraph 3 of Schedule 1 and paragraph 3 of Schedule 2 to the 2018 Regulations by reference to those specified fees. This means that, in most cases, the fee payable by a dependant will be the same as the fee expressly specified for the main applicant's application. Saving provisions are also made to preserve the existing fees payable by dependants of persons with valid leave under a route which is closing.

- 7.22 This instrument also removes fees for applications for entry clearance to enter and leave to remain in the UK as the dependant of a Tier 1 (General) migrant, as it is no longer possible to apply under this route. In addition, the fee for entry clearance to enter the UK as the dependant of a Tier 1 (Post-Study Work) migrant is being removed for the same reason.

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) 2018, but relates to the withdrawal of the United Kingdom from the European Union as it supports changes to the UK Immigration Rules in connection with the end of the implementation period.

9. Consolidation

- 9.1 The Immigration and Nationality (Fees) Regulations are consolidated periodically. There are no plans to consolidate the Immigration and Asylum Act 1999 (Part V Exemption: Licensed Sponsors Tiers 2 and 4) Order 2009.

10. Consultation outcome

- 10.1 There has been no public consultation on the above changes.
- 10.2 The Home Office conducted a target 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 before Parliament.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is set out in accompanying Impact Assessments, noted below.
- 12.2 The impact on the Public Sector is set out in accompanying Impact Assessments, noted below.
- 12.3 An impact assessment is submitted with this memorandum for the introduction of the Skilled Worker route and is published alongside the Explanatory Memorandum.
- 12.4 A separate impact assessment for the introduction of the new Hong Kong BNO route is also submitted with this memorandum and published alongside the Explanatory memorandum.
- 12.5 There is no, or no significant, impact on charities or voluntary bodies.

12.6 There is no, or no significant, impact on the public sector.

13. Regulating small business

13.1 The impact on small businesses is set out in the accompanying Impact Assessments noted above.

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, Kevin Foster MP, Parliamentary Under-Secretary of State for Future Borders and Immigration at the Home Office, 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 can be contacted with any queries regarding the instrument.

15.2 Paul Darling, Deputy Director - Special Projects / Fees and Income Planning, Border, Immigration and Citizenship System Finance at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kevin Foster at the Home Office can confirm that this Explanatory Memorandum meets the required standard.