

EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT REGULATIONS) 2021

2021 No. 269

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 make fee provisions in connection with the introduction of a new immigration route for graduates, applications for administrative review and applications under the Hong Kong British Nationals (Overseas) Visa arrangements operating in the United Kingdom (UK) and the Crown Dependencies. The Regulations also make provision for new fee exceptions, including for applications made under legacy arrangements in the Isle of Man Immigration Rules, relating to the end of the EU implementation period and for applications for short term visit visas for attendance at the 26th United Nations Climate Change Conference of the Parties (COP26) in the UK. In addition, the Regulations makes technical changes to fee provisions in connection with the wider programme of work to simplify the UK Immigration Rules, and to reflect a change in policy under the Bailiwick of Guernsey's work permit arrangements.

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 extending to the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man. The amendments which also extend to the Isle of Man are made by regulation 7. The amendments which also extend to the Bailiwick of Guernsey and the Bailiwick of Jersey are those made by regulation 8.
- 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 These Regulations amend the Immigration and Nationality (Fees) Regulations 2018 (S.I. 2018/330) (“the Fees Regulations”). Some of these changes, where stated, relate to a Statement of Changes to the UK Immigration Rules laid before parliament on 4 March 2021.
- 6.2 These Regulations support the introduction of the new graduate route to the Immigration Rules by setting the fee for applications for leave to remain in the UK under the route. This new route, which will open at 9.00am on 1 July 2021.
- 6.3 These Regulations also support the introduction of Appendix Hong Kong British Nationals (Overseas) to the Isle of Man Immigration Rules and the introduction of Appendix HK: British National (Overseas) to the Guernsey Immigration Rules, by setting the fees for applications for entry clearance to enter the Isle of Man and Bailiwick of Guernsey, under these routes, in line with the fees for the same routes offered in the UK and the Bailiwick of Jersey. These fees will come into effect at 9.00am on 31 March 2021.
- 6.4 The current description of the fees payable for applications under the Hong Kong British National (Overseas) routes in the UK and the Bailiwick of Jersey and the provision relating to applications made by dependants, have been amended to provide greater clarity to prospective applicants.
- 6.5 These Regulations also provide a fee exception, with effect from 9.00am on 31 March 2021, for applications for entry clearance to enter the Isle of Man under Appendix ECAA Extension of Stay, to the Isle of Man Immigration Rules. This Appendix sets out the eligibility requirements for a person to apply for entry clearance to enter the Isle of Man under transitional arrangements, after the European Community Association Agreement (ECAA) with Turkey provisions ceased to have effect, at the end of the EU implementation period.
- 6.6 A fee of £80 is currently payable in the UK for administrative review of a decision made on an application for leave to enter, or leave to remain in the UK, or a decision to cancel leave to enter or leave to remain at the UK border. These Regulations extend that fee to other applications for administrative review which are currently free of charge.
- 6.7 These Regulations also provide a fee of £80 for administrative review of a decision to refuse to issue or renew, or to revoke, a frontier worker permit under the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020 (S.I. 2020/1213). Amendments are also made to provisions providing exceptions to administrative review fees and refund of such fees where the decision under review is withdrawn. These changes will come into effect at 9.00am on 6 April 2021.
- 6.8 These Regulations introduce a new fee exception in respect of applications for short-term visit visas, made by persons attending the 26th United Nations Climate Change Conference of the Parties (COP26) in 2021, who have been invited by the UNFCCC Secretariat to attend that Conference. This will come into effect on 12 May 2021. The Regulations also introduce a fee exception for persons who have been granted leave to remain in the UK under Appendix Hong Kong (British National Overseas) to the UK Immigration Rules, to enable them to make a free application to vary the conditions of their leave, thus allowing access to public funds, where the applicant is destitute or at imminent risk of destitution. This will come into effect on 6 April 2021

- 6.9 These Regulations also make a technical change as a result of simplification of the Immigration Rules in respect of overseas domestic workers, to ensure the provision continues to align with the Rules. The Regulations make a further, technical change to reflect a change of policy to the work permit arrangements set out in the Guernsey Immigration Rules, to allow for longer stays under their temporary worker arrangements. These changes will come into effect on 6 May 2021 and 31 March 2021, respectively.

7. Policy background

What is being done and why?

New UK immigration route for Graduates.

- 7.1 The Home Office is introducing a new visa route for international students who have successfully completed an eligible course as a student at a higher education provider that is a student sponsor, with a track record of compliance.
- 7.2 The fee for an application for permission to stay in the UK under this new route will be set at £700. More information about the graduate route can be found in the explanatory memorandum to the statement of changes to the Immigration Rules (HC 1248) laid before parliament on 4 March 2021, which is available to view on the gov.uk website at: <https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-1248-4-march-2021>

Hong Kong British Nationals (Overseas)

- 7.3 Amendments to the Fees Regulations in October 2020, set fees for applications made under the UK and the Jersey visa routes for Hong Kong British Nationals (Overseas) (“BNO routes”). At that time, although the UK and Crown Dependencies all planned to open their BNO routes in early 2021, neither the Isle of Man nor the Bailiwick of Guernsey were able to lay the necessary amendments to their respective Immigration Rules in time to provide a basis for setting the correct fees for entry clearance to enter those jurisdictions.
- 7.4 The necessary Rules amendments have now been made and these Regulations set the fees for applications for entry clearance to enter those jurisdictions under these routes, in line with the fees for applications under the same routes offered in the UK and the Bailiwick of Jersey. These fees will come into effect at 9.00am on 31 March 2021.
- 7.5 Following further policy development in respect of the UK’s Hong Kong BN(O) route, a new fee exception is being introduced. This exception will enable a person with leave granted under the UK’s BNO route to apply for the restriction on their access to public funds to be lifted, without payment of a fee, where that person is destitute, or at imminent risk of destitution. The practical effect will be that the person will then be able to apply to access public funds, for example Universal Credit, without having to pay a fee to change their conditions. A related exception is also being introduced to ensure that no fee is payable for the taking of biometric information in connection with such an application.
- 7.6 The current provisions for fees payable for applications under the BNO routes in the UK and the Bailiwick of Jersey, made by specified dependants, are being amended. This is because the respective Immigration Rules relating to applications made by dependants extend further than is typical for other routes (for example providing for

applications by adult “BN(O) Household Members” and their dependants). These amendments will make it easier for potential applicants to understand what fee will be payable when applying under these routes as a dependant. The new fees for applications under equivalent routes to the Isle of Man and Guernsey have been set using the same approach. Also, the newly-described fees for applications under Appendix Hong Kong British National (Overseas) to the UK Immigration Rules do not now cover applications for leave to enter the UK, because that Appendix does not provide for such applications.

- 7.7 As the existing fee descriptions for applications under Appendix Hong Kong British National (Overseas) and the corresponding Appendix to the Jersey rules are being changed to ensure that all relevant applications are caught by them, and because the new fee descriptions for the UK now omit a previously erroneous reference to applications for leave to enter, the Home Office has decided that the procedure for free issue under paragraph 3.5.20 of Statutory Instrument Practice (5th Edition, November 2017) should apply. The Department has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice to consult with the SI Registrar.

European Association Agreement (ECAA) with Turkey – Isle of Man

- 7.8 After the end of the EU implementation period, the existing Turkish ECAA arrangements, whereby Turkish businesspersons and their dependants, could apply for (among other things) entry clearance to enter the UK and entry clearance to enter the Isle of Man, without payment of a visa fee, ended.
- 7.9 Following the subsequent introduction of Appendix ECAA – Extension of Stay, to the Isle of Man Immigration Rules, these Regulations introduce a specific fee exception, in respect of these applications. This provision will commence at 9.00am on 31 March 2021.

2021 United Nations Climate Change Conference (COP26)

The 26th United Nations Climate Change Conference of the Parties (COP26) will take place in Glasgow, in November 2021. As the host country, the UK is bound by the conditions of the ‘Host Country Agreement’ which includes a requirement to provide free at the point of application visas for COP26 attendees. These Regulations introduce a specific fee exception in respect of applications for visit visas made by persons who have been invited by the UNFCCC Secretariat of the United Nations to attend the conference. This change will come into effect on 12 May 2021.

Administrative Review

- 7.10 There are long-standing provisions in the Fees Regulations, for a fee of £80 to be charged for the process of administrative review of decisions made on particular applications, where provided for in the UK Immigration Rules, for example:
- where a person who has applied for leave to remain in the UK, wishes to challenge the decision to refuse their application; and
 - where a person who has been granted leave to enter the UK or leave to remain in the UK, wishes to challenge a decision to cancel that leave at the UK border.
- 7.11 Administrative review is only available in respect of ‘eligible decisions’ which are set out in the Immigration Rules. (Typically, most decisions to refuse an application are

‘eligible’ for administrative review, except where the decision affects a person’s fundamental rights, in which case they will have a right of appeal instead.)

- 7.12 Persons who make applications overseas, for entry clearance to enter the UK, may also apply for administrative review if they wish to challenge the decision made on their application, but to date, those applications for administrative review have been free of charge. These Regulations extend the £80 fee to those applications.
- 7.13 The general rule on payment of the £80 fee for administrative review, is that if no fee was payable for the original application, then there is no fee for the administrative review of the decision on that application. Also, where the application for administrative review is decided in the applicant’s favour, if they have paid the £80 fee, it is refunded.
- 7.14 However, different rules are in force for EU Settlement Scheme (EUSS) applications for leave to remain in the UK. EUSS applications are free of charge, but if an applicant wishes to challenge the decision made on their EUSS application, they must generally pay the £80 fee. This is because EUSS applicants are permitted to submit new evidence with their administrative review application. Where the application for administrative review is decided in the applicant’s favour, the £80 fee is refunded, unless the administrative review was successful solely because of the new evidence, in which case the fee is not refunded.
- 7.15 On that basis, these Regulations also extend the £80 fee, and the same approach to refunds, to applications for the administrative review of a decision:
- made on an EUSS application for leave to enter the UK
 - to cancel EUSS leave to enter at the UK border,
 - made on an application under the S2 Healthcare Visitor route
 - made an application under the Service Providers from Switzerland route
 - to refuse to issue or renew, or to revoke, a frontier worker permit under the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020.

Together, these amendments place all administrative review applicants in the same position.

Technical changes

- 7.16 These Regulations amend the wording of an existing fee exception concerning domestic workers who are victims of modern slavery or human trafficking. This exception currently makes specific reference to a particular paragraph in the UK Immigration Rules. In support of further simplification of the Immigration Rules and the introduction of the new Appendix Domestic Worker who is a Victim of Modern Slavery, this provision is being amended in order to remain in step with the Immigration Rules.

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

- 8.1 These Regulations are not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union as it supports changes to the Isle of Man Immigration Rules in connection with the end of the implementation period.

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 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 these Regulations

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 these regulations are laid before Parliament.

12. Impact

12.1 The impact on business, charities or voluntary bodies is set out in the accompanying Impact Assessment noted below.

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

12.3 A full Impact Assessment for the new graduate route is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

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, 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.” Nevertheless, the Home Office will continue to monitor the impact of these Regulations.

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 The Minister for Future Borders and Immigration, Kevin Foster MP can confirm that this Explanatory Memorandum meets the required standard.