

EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT) REGULATIONS 2022

2022 No. 581

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 These Regulations deliver the changes below –
 - Remake existing fee provisions for applications made by children seeking to register as British Citizens and introduce a discretionary affordability-based fee waiver as well as a fee exception for children who are looked after by a local authority and a related exception from the fees payable for the arrangement of a citizenship ceremony or administration of a citizenship oath and pledge.
 - Provide specific fee exceptions for the applications under the Ukraine Schemes introduced by the UK and Crown Dependencies by adding to their respective immigration rules.
 - Provide a fee for applications for leave to remain in the UK on the new High Potential Individual (“HPI”) route.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 These Regulations break the 21-day rule in one respect. The provisions setting a specific fee for applications for leave to remain in the UK under the new HPI route come into force on 30 May 2022, which is the day on which that new immigration route opens. A fee of £715 was agreed across Government in March this year, for both applications from overseas for entry clearance and applications made in the UK for leave to remain under the new route. The new route was introduced by the Statement of Changes in Immigration Rules laid before Parliament on 15 March 2022 (HC 1118). The fee for entry clearance applications was set by the Immigration and Nationality and Immigration Services Commissioner (Fees) (Amendment) Regulations 2022 (SI 2022/296), also laid on 15 March 2022. However, the agreed equivalent leave to remain fee was inadvertently not set in those Regulations, due to an error of omission. These Regulations now address this error, providing for this fee to be effective from 9.00 a.m. 30 May 2022, when the HPI route opens.
- 3.2 The Home Office regrets this breach of the 21-day rule and gave careful consideration to whether this would be justified. Unfortunately, it was not possible to make regulations earlier to set this fee due to pressures on the Parliamentary timetable. However, bringing the specified fee into force on 30 May is to the benefit of applicants. The effect of bringing the specified fee into force on 16 June in these Regulations rather

than on 30 May would have been that the higher, default fee of £1,048 for applications for limited leave to remain would have applied to these applications until 16 June, subject only to the possibility that the fee might be partially refunded at the Secretary of State's discretion. Setting the fee at a different level for a limited period of time in the department's application systems would have also required the diversion of technical resource from other priority work designed to benefit customers. To bring the fee in force on 30 May 2022 is, therefore, a necessary and proportionate response to the issue which will safeguard the operation of this new immigration route and most importantly, will benefit applicants by ensuring they can be lawfully charged the agreed fee from the date the route opens.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland, and Northern Ireland. The amendments made by regulations 2(5) also extend to the Isle of Man. The amendments made by regulation 2(6) also extend to the Bailiwick of Jersey and the Bailiwick of Guernsey.
- 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 Regulations") which set fees for the exercise of various functions in connection with immigration and nationality.
- 6.2 These Regulations substitute the existing fee provisions for applications made by children seeking to register for British Citizenship with provisions setting fees at the same level. They further introduce a discretionary affordability-based fee waiver as well as a fee exception for children who are looked after by a local authority, and a related exception from the fees for arranging a citizenship ceremony or administering a citizenship oath and pledge. These changes have been made following a review of the relevant fees, with particular consideration given to the Secretary of State's duty under section 55 of the Borders, Citizenship and Immigration Act 2009 ("BCIA 2009").
- 6.3 These Regulations provide fee exceptions for applications for entry clearance and leave to remain under the Ukraine Scheme in view of changes to the UK Immigration Rules laid before Parliament on 29 March 2022 (HC 1220). They further provide a fee for leave to remain applications on the HPI route provided for by the changes to the UK Immigration Rules laid before Parliament on 15 March 2022 (HC 1118). More information can be found in the Explanatory Memorandum to the related Statements of Changes in Immigration Rules on www.gov.uk.
- 6.4 Having consulted the SI Registrar in accordance with paragraph 4.7.6 of Statutory Instrument Practice, the Home Office has decided that it is appropriate to follow the free issue procedure in respect of the amendments adding a new fee for the HPI route and the substitution of the child citizenship fees. In the Home Office's view, the Regulations were defective for these purposes insofar as they included the child citizenship fees which were the subject of the judicial review proceedings mentioned

below; and SI 2022/296 was defective insofar as it omitted a specific fee for leave to remain applications on the HPI route. Copies of these Regulations will, therefore, be issued free of charge to known recipients of the Regulations and SI 2022/296.

- 6.5 Fee exceptions similar to those in relation to the UK's Ukraine Scheme are also introduced by these Regulations for applications for entry clearance to enter the Crown Dependencies under Ukraine schemes provided for by changes to the Crown Dependencies' own immigration rules.
- 6.6 The fee for applications for limited leave to remain under the HPI route will come into effect at 9.00 a.m. on 30 May 2022, when that route will be open. All other changes will be effective from 16 June 2022.

7. Policy background

What is being done and why?

Amendments to child citizenship fees, new fee waiver and new fee exceptions

- 7.1 A fee of £1,012 for applications made in respect of children applying to register as British Citizens was set in the Regulations in 2018. In common with other fees, this fee was set in line with section 68(9) of the Immigration Act 2014, which details the factors that the Secretary of State may consider when setting fees. These include the costs of exercising a function (such as processing an application and making a decision), the benefits that are likely to accrue to any person in connection with the exercise of that function, and the costs of exercising wider immigration and nationality functions. Within this legislative framework, the Government's approach has been one of progressively increasing the role that fees play in funding the borders and migration system with a policy aim that those who benefit from the system contribute to its effective operation and maintenance, while reducing reliance on taxpayer funding.
- 7.2 However, as section 71 of the Immigration Act 2014 makes clear, this does not limit the Secretary of State's duty under section 55 of the BCIA 2009 to make arrangements to ensure that immigration and nationality functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK. The Court of Appeal in *R (Project for the Registration of Children as British Citizens and O) v. Secretary of State for the Home Department* [2021] EWCA Civ 193, found that the Secretary of State had breached the duty under section 55 of the BCIA 2009 in setting this fee in the Regulations 2018 (and in previous fees regulations in 2017). Furthermore, the department has become increasingly aware of concerns regarding the impact of this fee on some children's ability to register as a British Citizen and consequential impacts on their individual rights both in childhood and later adulthood, and on their wider wellbeing. Consequently, the Secretary of State has undertaken a review of this fee in line with her duties under section 55 of the BCIA 2009.
- 7.3 These Regulations make changes reflecting the outcome of this review by substituting the related fee provisions, and by further introducing a specific affordability-based fee waiver for child citizenship applications, and a fee exception for children who are looked after by a local authority. They also include an exception to the fees for arrangement of a citizenship ceremony or administration of a citizenship oath and pledge for individuals benefiting from that waiver or exception, who have turned 18 before their application decision is communicated.

- 7.4 By introducing these changes, the policy aim is to ensure that the fee does not serve as a barrier to the acquisition of British citizenship for eligible children who cannot afford to pay the fee, whilst also continuing to protect the funding of a borders and migration system that is critical to delivery of the Government's key objectives. The guidance setting out how the affordability waiver is to be administered will be placed on the GOV.UK website on laying these Regulations. The fee exception will also serve to relieve an administrative and financial burden from local authorities, while enabling them to work more proactively to register children under their care, who are eligible and where it is in their best interests.

Fee exception for the Ukraine Scheme

- 7.5 As a prompt response to the crisis in Ukraine, arrangements were made outside the Immigration Rules for the nationals of Ukraine and their family members to come to or stay in the UK by enabling them to make fee-free applications. Under these arrangements we are currently relying on general powers available to the Secretary of State to waive payment of fees under exceptional circumstances affecting a number of individuals. Now that arrangements for applications for entry clearance and leave to remain have been formalised under Appendix Ukraine Scheme to the UK's immigration rules, these Regulations introduce specific fee exceptions for any application made for entry clearance or limited leave to remain in the UK under that part of the UK Immigration Rules.

Crown Dependencies - Fee exception for the Ukraine Scheme

- 7.6 The Crown Dependencies have adopted arrangements similar to the UK's scheme for the Ukrainian nationals and their family members into their immigration rules with some variations. These Regulations therefore introduce a similar specific fee exception in respect of the applications to come to the Isle of Man, the Bailiwick of Jersey and the Bailiwick of Guernsey under their respective Ukraine schemes with reference to the related parts of their immigration rules.

Fee for leave to remain applications on the High Potential Individual route

- 7.7 The new HPI route as set out in the Statement of Changes to Immigration Rules (HC 1118) and laid before Parliament on 15 March 2022 will be open on 30 May 2022. These Regulations now provide the specific fee for applications for leave to remain in the UK on this route, which will be made effective from the date the route opens.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 The Immigration and Nationality (Fees) Regulations are consolidated from time to time.

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 the changes to the Regulations. 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 unlikely to be significant. However any impacts are set out in the accompanying Impact Assessment noted below.
- 12.2 The main impact on the public sector is an increase in processing costs for the Home Office that results from the changes aimed at introducing fee waiver and fee exception for children applying to register as British Citizen. These costs arise due to the additional cost of processing fee waiver applications and due to an expected rise in the number of child citizenship applications due to the fee waiver. Additionally, there will be a cost in the form of a fall in revenue as some applicants eligible for the fee waiver may otherwise have applied for child citizenship in the absence of this amendment. The impacts on the public sector are also set out in the accompanying Impact Assessment noted below.
- 12.3 A full Impact Assessment of the changes to child citizenship fees is submitted with this Explanatory Memorandum and published alongside it on the legislation.gov.uk website.
- 12.4 An impact assessment was not undertaken in relation to other changes in these Regulations given the minimal likely impact of the changes.

13. Regulating small business

- 13.1 There is no, or no significant, impact on 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, Minister for Safe and legal Migration 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 Milind Deshpande at the Home Office can be contacted with any queries regarding the instrument on email: feesandincomeplanning.requests@homeoffice.gov.uk
- 15.2 Paul Darling, Deputy Director - Special Projects, Fees and Income Planning, Corporate Enablers, Finance Directorate at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister for Safe and Legal Migration, Kevin Foster MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.