

*Draft Order laid before the House of Commons under section 102(5) of the Finance (No.2) Act 1987,
for approval by resolution of that House.*

DRAFT STATUTORY INSTRUMENTS

2005 No.

FEES AND CHARGES

The Immigration (Application Fees) Order 2005

<i>Made</i>	- - - -	<i>2005</i>
<i>Coming into force</i>	- -	<i>2005</i>

Whereas a draft of this Order has been approved by resolution of the House of Commons in pursuance of section 102(5) of the Finance (No.2) Act 1987⁽¹⁾;

Now, therefore, in exercise of the powers conferred on him by sections 102(3) and (4) of that Act, the Secretary of State hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Immigration (Application Fees) Order 2005 and shall come into force on the day after it is made.

(2) In this Order –

“the 1987 Act” means the Finance (No.2) Act 1987;

“the 1999 Act” means the Immigration and Asylum Act 1999⁽²⁾;

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002⁽³⁾.

Functions to be taken into account in fixing fees for leave to remain applications and variation of leave to enter or remain applications

2.—(1) In relation to each of the powers to fix fees specified in paragraph (2), the functions listed in paragraph (3) are hereby specified for the purposes of section 102(3) of the 1987 Act as functions, the costs of which are to be taken into account in determining the amount of those fees.

(2) The powers to fix fees are those in –

(a) section 5(1)(a) of the 1999 Act to prescribe fees for leave to remain applications; and

(b) section 5(1)(b) of the 1999 Act to prescribe fees for applications for the variation of leave to enter or remain.

(1) 1987 c.51.
(2) 1999 c.33.
(3) 2002 c.41.

(3) The functions are the functions of operating an appeals system in respect of decisions for which application fees are prescribed under the powers in paragraph (2) including, without prejudice to the generality of the foregoing –

- (a) handling and processing appeals, including preparation for and presentation of cases; and
- (b) providing and running the appeals system.

Matters to be taken into account in fixing fees for all relevant applications

3.—(1) In relation to any functions, the costs of which fall to be taken into account in the exercise of each of the powers to fix fees listed in paragraph (2), the recovery of any deficits incurred before as well as after the date when this Order was made, is hereby specified for the purposes of section 102(4) of the 1987 Act as a matter to be taken into account in determining the amount of those fees.

(2) The powers to fix fees are those in –

- (a) section 5(1)(a) of the 1999 Act to prescribe fees for leave to remain applications;
- (b) section 5(1)(b) of the 1999 Act to prescribe fees for applications for the variation of leave to enter or remain;
- (c) section 5(1)(c)(4) of the 1999 Act to prescribe fees for the transfer of limited or indefinite leave stamps to a new document;
- (d) section 122(1) of the 2002 Act to prescribe fees for applications for immigration employment documents;
- (e) section 41(2)(5) of the British Nationality Act 1981(6) to make provision for fees in connection with any applications made under that Act; and
- (f) section 1 of the Consular Fees Act 1980(7) and section 10 of the 2002 Act to prescribe fees for a certificate showing that the applicant has a right of abode in the United Kingdom.

Home Office
2005

Minister of State

(4) As amended by section 43 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c.19).
(5) As amended by S.I. 1986/948, and section 3 and Schedule 1, paragraphs 3 and 5(a) and (b) of the 2002 Act.
(6) 1981 c.61.
(7) 1980 c.23.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies functions and matters which may be taken into account by the Secretary of State in the determination of fees relating to certain immigration applications. In particular, article 2(3) allows the Secretary of State to recover the costs of appeals when setting the fees relating to applications for leave to remain and applications for variation of leave to enter or remain. The Order also extends the range of matters which may be taken into account in setting the fees for all of the applications specified in article 3(1), to allow for the recovery of past deficits.