

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT)
ORDER 2014

2014 No. [XXXX]

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 instrument amends the Immigration and Nationality (Fees) Order 2011 ('the 2011 Order') that enables the Secretary of State to make Regulations charging fees for the processing of applications and the provision of services and processes relating to immigration and nationality. The 2011 Order, as amended by the Immigration and Nationality (Fees) (Amendment) Order 2013, sets out the applications, services and processes for which the Home Office acting on behalf of the Secretary of State may make regulations requiring fees to be paid.

2.2 The amendments will allow fees regulations to specify a number of new types of charge. The fees themselves are specified in separate regulations¹, normally updated in April.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 This instrument is being made:

- To allow the Home Office to set fees for the provision of an extended range of optional 'premium' services - added-value discretionary services and processes relating to immigration or nationality applications in the UK, at the border, and overseas;
- To enable the Secretary of State to charge fees for the process of conducting a review of a refusal decision on request;
- To enable the Secretary of State to charge fees for the provision of certain documents issued to European Economic Area (EEA) nationals and their non EEA family members under the Immigration (EEA) Regulations 2006.

¹ These are made under section 51(3) of the Immigration, Asylum and Nationality Act 2006 (c.13). The current regulations specifying immigration and nationality fees are the Immigration and Nationality (Fees) Regulations 2013 (S.I. 2013/ 749) and the Immigration and Nationality (Cost Recovery Fees) Regulations 2013 (S.I. 2013/617).

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom.

6. European Convention on Human Rights

Mark Harper the Immigration Minister has made the following statement regarding Human Rights:

In my view the provisions of the Immigration and Nationality (Fees) (Amendment) Order 2014 are compatible with the Convention rights.

7. Policy background

- **What is being done and why**

7.1 A key part of delivering the immigration system which the public expects is acquiring the necessary resources to fund delivery and improvements in the services we offer. The Home Office believes that it is right that those who benefit directly from the border and immigration system should bear a higher share of the cost of running the system and therefore reduce the contribution made by the UK tax payer.

7.2 The new powers support this principle. In addition to extending its process and service offerings and being able to charge accordingly, the Home Office also wants to clarify the basis on which certain fees are charged. This instrument amends existing powers enabling fees to be set for applications, services and processes. The actual fees will be specified in subsequent regulations.

- **New Provisions**

7.3 The Home Office is committed to making improvements in the available services and offering greater variety of choice for its customers. We made amendments last year to simplify the charging structure for optional premium services and widen the scope to develop and offer new optional services in the future. This year, the new powers sought build on this foundation, and will enable the Home Office to expand the services it can offer to applicants.

7.4 Currently the fees for premium services are limited to certain application types. The new powers will mean that the Home Office will have the flexibility to offer and charge for providing an optional premium service for any application type where it is able to offer the service. Also, the Home Office may choose to offer this service at an alternative location other than at one of its Premium Service Centres, formerly known as Public Enquiry Offices. An example of such an alternative location may be at a business premises or University campus. This will make it easier for the Home Office to vary the service offered and to charge for arrangements for expediting applications.

7.5 The Home Office has been reviewing its approach to the charging regime in relation to services provided by commercial partners to support visa services overseas. From April, optional charges for services and processes in connection with immigration and nationality are to be reflected within the Home Office fees regulations. This means that adjustments are required to the Order to allow the Home Office to specify fees for these services within subsequent regulations.

7.6 Similarly, the Home Office is proposing to set out certain Border Force charges within the fees regulations for consistency. We are making changes to the Order to facilitate this. The powers that we are seeking relate to charging for optional premium added-value services provided by Border Force, such as the Registered Traveller scheme. Fees will be specified in subsequent regulations in due course.

7.7 We are also making some adjustments to the Order to enable the Home Office to introduce charging for the process of conducting a review of a refusal decision for certain applications. We envisage that requests for such reviews will increase as a result of changes to the current appeals process being proposed under the 2014 Immigration Bill. The proposals in the Immigration Bill will limit the range of immigration decisions which attract a right of appeal and the grounds on which an appeal may be sought. The Home Office proposes to extend existing processes for reviewing refusal decisions. We want to be able to charge for conducting this review.

7.8 Finally, the Home Office is making some adjustments in the Order to enable charging for residence and registration documentation issued to European Economic Area (EEA) nationals, their non EEA family members and other non EEA nationals with a derivative right of residence in the UK under the 2006 Immigration (EEA) Regulations.

Consolidation

7.9 This Order is the second amendment to the Immigration and Nationality (Fees) Order 2011, previously amended by the Immigration and Nationality (Fees) (Amendment) Order 2013. The Home Office envisage that subject to the successful passage through Parliament of the Immigration Bill, a further, comprehensive Order will be required in autumn 2014 in reliance on the new fee powers to be introduced. For this reason, we are not seeking to consolidate the existing Order.

8. Consultation outcome

8.1 No separate consultation exercise was conducted as these proposals reflect existing immigration policy and are in line with overall Home Office charging policy. The 2014 Immigration Bill contains provisions to give the Home Office greater flexibility over how it uses its powers to determine and amend fees. The Home Office conducted a targeted public consultation

between 12 November and 3 December 2013 to help set priorities for how to use this flexibility. The Government response to the consultation will be published on the Government consultation website. Any changes to products or fees introduced as a result of the consultation will be reflected within subsequent fees regulations.

9. Guidance

9.1 The Home Office guidance to staff will be updated to reflect these changes. Guidance to general members of the public will also be published when regulations setting relevant fees are laid.

10. Impact

10.1 No Impact Assessment is required for this instrument as fees will be set in regulations made in reliance upon this instrument. As a result an Impact Assessment will be prepared in conjunction with those regulations.

11. Regulating small business

11.1 This instrument is enabling legislation and does not directly apply to small business. Subsequent regulations will be supported by a full Impact Assessment.

11.2 To minimise the impact of the requirements on small firms employing up to 20 people, when using the powers to set fees conferred by this Order the Home Office will seek to maintain its approach of charging a lower fee for small sponsors applying for a licence/status. Other fees based on this Order are unlikely to have an impact on small businesses as they affect individual applicants.

12. Monitoring & review

12.1 The Home Office will closely monitor the impact of fees for the application and services contained in this Order. The Home Office reviews fees and charges for Immigration and Nationality applications annually. Application trends are monitored on a monthly basis. Analysis of application trends is monitored by the cross-Whitehall fees committee to ensure that fee levels generate sufficient revenue to cover Home Office delivery costs but do not adversely impact on the UK economy.

13. Contact

Shola Akinyamoju at the Home Office, Operational Finance, Performance and Finance Directorate, Tel: 0208 196 0809 or email: Shola.Akinyamoju@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.