

EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) ORDER 2016

2016 No. [XXXX]

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 This Order sets out the functions in connection with immigration and nationality for which the Secretary of State may charge a fee. It also sets out how fees are to be calculated and maximum fee amounts, which provides the scope to vary fees and maintain progress towards a self-financing Border, Immigration and Citizenship (BIC) system. This Instrument replaces the Immigration and Nationality (Fees) Order 2015, which is the instrument that currently sets out the applications, services and processes for which the Secretary of State may charge a fee.
- 2.2 Fees regulations specifying the details of the specific application types to be charged and the actual fee levels will subsequently be made and laid before Parliament.¹

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This Order sets out chargeable immigration functions and maximum fee amounts which provide for immigration fees to increase at a rate above inflation. It allows Parliament to consider both the nature of the chargeable functions and fee levels at the same time. Specific fee amounts will then be set, within the limits agreed by Parliament, through regulations subject to the negative resolution procedure.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland and it is not a financial instrument that relates exclusively to England, Wales and Northern Ireland.

4. Legislative Context

- 4.1 It is the Home Office's intention that this Order will sustain increases to fees set out in subsequent regulations, under the negative procedure, over the next four years. This will make use of the powers introduced by the 2014 Immigration Act, which provide for any necessary changes to specific fees to be made through regulations, within the range set by the enabling Order.

¹ Further detail on proposed fees for each application and service type can be found in the Table with further detail of indicative fees for 2016-17 available at www.homeoffice.gov.uk/

4.2 Fees set under the existing Order will remain in force until new fees, set out in regulations made in reliance on this Order, come into effect. We envisage that this will take place in April 2016.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom, except for the provisions relating to entry clearance in articles 1 to 5 of the Order which, in addition to the United Kingdom, also extend to the Isle of Man.

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6. European Convention on Human Rights

6.1 James Brokenshire, the Minister for Immigration, has made the following statement regarding human rights:

“In my view the provisions of the Immigration and Nationality (Fees) Order 2016 are compatible with the Convention rights.”

7. Policy background

What is being done and why

7.1 A key part of delivering a border and immigration system which commands public confidence is acquiring the necessary resources to fund delivery and improvements in the services offered. The Home Office currently generates over half of this funding by charging those who make applications and requests for services. Fees are charged for applications for permission to enter or remain, for British citizenship, sponsorship and other immigration functions. The remainder of the funding required to run the border and immigration system is obtained from general taxation.

7.2 Over the life of this Order (4 years), the Home Office intends to increase the level of contribution made by those who benefit from the immigration system, reducing the burden on the taxpayer and thus ensuring that we achieve a self-funding border, immigration and citizenship system.

7.3 The structure of this instrument is the same as the previous Order, but with the inclusion of some new charges. It sets out the chargeable functions relating to immigration and nationality under broad groups of application categories, the maximum fee amount for each category and the method of calculation.

7.4 The maximum fee amount has been set according to the highest individual fee for an application within each category. This figure is not an actual fee, but a ceiling limiting the fee that may be set out in subsequent fees regulations during the life of this Order. All fees regulations are subject to the negative resolution procedure.

7.5 The process for reviewing and updating fees will continue to be subject to a cross-government approval procedure. This procedure includes a formal requirement that all fee levels are agreed collectively by a Cabinet Committee and receive bilateral clearance from two Lord Commissioners of HM Treasury.

7.6 The Home Office is committed to making ongoing improvements in service levels and the range of available services, offering greater variety and choice for its customers.

To support this, the provisions in this Order have been made to allow flexibility; categories of functions are therefore defined broadly, so that new charged services may be introduced through regulations without the need to amend the Order.

- 7.7 This means that some of the maximum amounts specified have been calculated based on products and services planned for a future release, but which are not yet available.
- 7.8 The fee at 4.6 in the Order for sponsor premium services will be used to set the sponsor premium service fees available to Tier 2 sponsors (employers) and Tier 4 sponsors (licensed educational establishments) on an optional basis. These services are currently offered under the Immigration and Nationality (Fees) Regulations 2015 and are tailored to the particular sponsor's needs. The maximum amount reflects that such services may include personal account managers, tailored advice and access to priority visa services, which provide considerable benefits to those sponsors that choose to engage them.

Consolidation

- 7.9 This Order will replace the Immigration and Nationality (Fees) Order 2015, and so consolidation is unnecessary.

8. Consultation outcome

- 8.1 In January 2014, the Home Office published the formal government response to the consultation on how its charging strategy works in practice. The consultation set out proposals for how the Home Office planned to continue to charge direct users of the visa and immigration services to reduce the financial burden on the public purse. Responses were broadly supportive of the proposals and the general principle of the Home Office's charging policy. The full government response to the consultation is published on the government consultation website:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/276026/ImmigrationFeesChargingResponse.pdf

- 8.2 The provisions in the Order are consistent with the Home Office's charging policy, which remains unchanged. Further consultations will take place if the Home Office proposes to significantly alter its charging policy.

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 There is no impact on business, charities or voluntary bodies as indicated by the Impact Assessment. At this stage, there is no increase to those fees that affect sponsors under the immigration rules, which they are required to pay in order to obtain or retain their sponsor licence. Fees and Charges are out-of-scope of the Business Impact Target.
- 10.2 The impact on the public sector is explained in Annex 6 of the Impact Assessment.
- 10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 As set out in 10.1 above, the legislation does not apply to activities that are undertaken by small businesses. Changes to future negative regulations made in reliance on this Order, which are assessed to affect business, would be subject to a separate impact assessment.

12. Monitoring & review

- 12.1 The Home Office will monitor the impact of fees for the applications and services contained in this Order. The Home Office reviews fees and charges for Immigration and Nationality applications at least annually. Application volumes are monitored on a monthly basis. Analysis of application trends is reviewed to ensure that fee levels generate sufficient income to cover Home Office operating costs but do not adversely affect the UK economy.

13. Contact

- 13.1 Annie Wattam at the Home Office, Fees and Income Planning, Financial Planning Unit, Tel: 0114 207 2290 or email: Annie.Wattam@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.