

IMMIGRATION ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Miscellaneous

Section 68: Fees

432. *Subsection (1)* provides for the Secretary of State to charge fees for the exercise of functions in connection with immigration and nationality. The term “functions” includes, but is not limited to, the specified functions listed in section 51 of the 2006 Act (applications, claims, services and processes). Use of the term simplifies the legislation, ensuring that there is no longer a need to decide which category a particular activity falls into. Functions can be delivered overseas, at the border or within the UK. They can be delivered by the Secretary of State, her officers, agents, commercial partners or any person acting on her behalf.
433. *Subsections (2) to (7)* provide that the existing legislative structure consisting of a power contained in primary legislation and exercised by way of a fees order and fees regulations is maintained. Chargeable functions will be set out in a fees order; and fee amounts set out in fees regulations (subsections (7) and (8)) which will be subject to the negative resolution procedure. A fees order made under section 68 is subject to the affirmative resolution procedure (see section 74).
434. *Subsection (4)* provides that the fees order must also specify the way that fees will be set. Fees must be charged either as a fixed amount; calculated using an hourly rate; as a combination of these; or by way of another factor.
435. *Subsection (5)* provides that the order must also specify the maximum amount that may be charged in respect of the fixed element of the fee. A minimum level of fixed fee may also be specified for particular functions.
436. *Subsection (6)* provides that where fees are set by reference to an hourly rate or other factor (subsection (4)(b)) the fees order must specify how the fee or fee part is to be calculated. Consistent with subsection (5), a maximum rate or other factor must be specified and a minimum rate or other factor may be specified for particular fees.
437. *Subsection (7)* confirms that fees for all functions will be set out in fees regulations. Where the fee is set as a fixed amount, this amount will be set out in regulations (most immigration and visa fees are set in this way). Where the fee is to be calculated by reference to an hourly rate or other factor, or where it comprises more than one element, the amounts and rates will be set out in regulations.
438. *Subsection (8)* provides that the fee amounts and rates set out in fees regulations must not exceed the maxima or be less than any minima set out in a fees order. Consistent with existing powers in the 2004 and 2006 Acts, it also provides that the fee for the exercise of a function may exceed the cost of exercising that function.
439. *Subsection (9)* consolidates the matters that may already be taken into account when setting certain fees – administrative costs, benefits and the costs of other functions

*These notes refer to the Immigration Act 2014 (c.22)
which received Royal Assent on 14 May 2014*

- and extends these to include international comparisons (fees set by other countries for similar functions), the promotion of economic growth and mutual or reciprocal arrangements with other countries. It also ensures that these matters may be considered in relation to fees for all relevant functions. Costs may include the costs of the Secretary of State or any other person performing a function (for example a commercial provider exercising functions pursuant to a contract with the department). Subsection (9) ensures that those who use the immigration and nationality system continue to pay their fair share towards its continued running and that fees and any future fee changes can be targeted to promote economic growth, including reducing fees in some categories or offering fast-track services for visitors and economically valuable migrants.
440. *Subsection (9)(c)* confirms that fees can be set to take account of the cost of exercising any function in connection with immigration or nationality. This ensures that individual fees may be set at a level that reflects the cost of operating the immigration system, by applying cross-subsidy powers to the full range of functions rather than, as at present, being limited to specific chargeable functions.
441. *Subsections (9)(d) to (f)* provide that fees can be set with regard to economic and international considerations. For example, application fees may be set at a level to attract tourists or economically valuable migrants to the UK. Premium service fees may be set at a level to ensure that premium services may be made available to commercially important people, and those the UK considers will support international trade and economic growth.
442. *Subsection (10)* ensures that powers in relation to exceptions, discretion etc. are carried forward from section 51 of the 2006 Act.
443. *Subsection (12)* confirms the definition of ‘costs’, including those of commercial providers exercising immigration functions, and states that it applies to this section as well as sections 69 and 70.
444. *Subsection (13)* ensures that it is possible to charge a different amount for the same function in different circumstances, for example where the Government wants to offer a concession to encourage applications in a particular route or for a particular group to promote economic growth. This applies to any function specified in this section and section 70.