

EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES)(AMENDMENT) ORDER 2008

2008 No. 166

1. This explanatory memorandum has been prepared by the Border and Immigration Agency of the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This order sets out applications and processes for which we intend a fee to be paid. The proposed fee levels will be specified in subsequent secondary legislation.

2.2 These applications and processes are:

- an application for a licence to sponsor migrants;
- the issue of a certificate of sponsorship to a sponsor in respect of a migrant;
- the issue of an Action Plan for a B rated sponsor to become an A rated sponsor;
- an application for a biometric identity document in relation to a person subject to immigration control;
- applications for entry clearance;
- Direct Airside Transit Visa applications;
- certificates of entitlement for the right to abode.

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

3.1 None.

4. Legislative Background

4.1 This order also aims to simplify and consolidate the Home Office's powers to set fees for immigration and nationality applications in the future. Fees for entry clearance and certificates of entitlement applications (which are made overseas) are currently set through the powers in the Consular Fees Act 1980, whilst fees for applications made in the UK use the powers in the section 51 of the Immigration, Asylum and Nationality Act 2006 (the 2006 Act) and, for those fees set over the administrative cost, section 42 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004. This order, made under section 51 of the 2006 Act, allows the Home Office to set fees for entry clearance

applications and certificates of entitlement through the same legislative framework as in-country applications.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Immigration Minister has made the following statement regarding Human Rights:

In my view the provisions of the Immigration and Nationality (Fees) (Amendment) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 During the course of 2003/04, following full public consultation, the Home Office introduced charges for a range of immigration applications to ensure that those who use and benefit from the UK system met the cost of delivering the administrative service provided.

7.2 A further public consultation exercise on charging for immigration and nationality applications was undertaken from 30 October to 22 December 2006, supported by the publication of *A consultation on a new charging regime for immigration & nationality fees*. The consultation document was made available on the Home Office website and was also sent to 3000 people. The formal Government response to the public consultation was published on 7 March 2007, and established the principle that those who benefit most from the immigration system should pay proportionately more towards the true end to end costs of the system, rather than seeking to fund improvements via general taxation.

7.3 We have recently undertaken a further, targeted consultation exercise on Points Based System and Biometric Identity Document fees from 24 October to 9 November. We have consulted key stakeholders, based around – but not limited to – the membership of the Border & Immigration Agency’s existing stakeholder taskforces which include representative bodies and umbrella organisations. We set out a number of proposals on charging for the new Points Based System and Biometric Identity Documents, and are currently considering responses received during this exercise. We will then set out our proposals on fees for these services in regulations to be laid before Parliament shortly before implementation next year.

7.4 Under the Points Based System the Border and Immigration Agency will license employers, colleges and others who benefit from migration to act as sponsors of

individual migrants. Once licensed, sponsors will be able to issue certificates of sponsorship to the migrants they wish to be in the UK, and these certificates will form an essential, (but not, conclusive) part of the migrants' visa application, or permission to remain in the UK. Migrants coming under the highly skilled Tier of the Points-Based System (Tier One), or who are visiting the UK, will not need a sponsor.

7.5 The system of sponsorship requires those who most directly benefit from migration – those who are sponsoring migrants – to play their part in ensuring that the system is not abused. As a result, in order to obtain a licence, sponsors will have to agree to fulfil certain duties. Some of these duties are generic, i.e., they will apply to all sponsors. Others are specific to sponsors who are licensed under certain parts of PBS. All sponsors will be required to:

- keep specified records or documents and make them available to officials of the Border and Immigration Agency on request;
- co-operate with the Border and Immigration Agency's sponsor management and compliance procedures by providing such documents relating to sponsored migrants as the Border and Immigration Agency considers relevant;
- report to the Border and Immigration Agency, within any time limit specified, the fact that a sponsored migrant does not turn up for his/her first day at work or does not enrol on his/her course;
- ensure that a migrant who is coming to work is legally entitled to do the job in question, and has the appropriate registration, or professional accreditation, where this is legally required;
- allow the Border and Immigration Agency's staff (including Compliance Officers and Account Managers) access to any of its premises on demand. Visits may be either prearranged or unannounced.

7.6 The Border and Immigration Agency will monitor sponsors' behaviour and compliance with their duties once they are licensed, in particular by:

- making visits, pre-arranged or not, to check compliance;
- setting review points in terms of numbers of certificates at which the Agency will review sponsor activity. These points can be "hard" i.e., certificates in respect of migrants cannot be issued until the Agency is satisfied that the sponsor activity is satisfactory, or "soft", i.e certificates in respect of migrants can continue to be issued while the checks are carried out;
- issuing civil penalties where the Border and Immigration Agency finds evidence of a compliance offence. The Agency will also refer for prosecution where appropriate.

7.7 In return, the Border and Immigration Agency will give sponsors support to help ensure that they remain compliant with the immigration laws.

7.8 All licensed sponsors will be rated **A or B**. Most sponsors will be A-rated most of the time, but in certain circumstances, according to our assessment of the risk posed by the organisation, we will award a B-rating. Sponsors that fully comply with their obligations (or, where the sponsor is registering for the first time, those who we believe will fully comply) will be A-rated. Those who do not, but whose actual or prospective

non-compliance is not deemed serious enough to justify our immediately refusing them a licence, or withdrawing one if it has already been issued, are likely to be B-rated.

- 7.9 An example of where we could B-rate might be where the sponsor has a record of poor compliance with the current Work Permit system, or if its internal communications are not good enough for it to be able to tell us when a migrant has turned up for work. A B-rating is also likely to be awarded if a sponsor receives a Civil Penalty under the illegal working provisions of the Immigration, Asylum and Nationality Act 2006, when these are commenced. The Border and Immigration Agency will publish detailed guidance on this which will appear on its website when it starts accepting applications for sponsor licences.
- 7.10 A sponsor that is B-rated will need to comply with a time-limited **action plan**, which will set out the steps it needs to take in order to gain or regain an A-rating. If it does not comply with this plan, it is likely to lose its licence altogether and so be unable to apply to sponsor non-EEA nationals for work or study in the UK. A sponsor's rating will also appear in the public version of the register of licensed sponsors, meaning that prospective employees or students of the sponsor will be aware of the rating, and will be able to take it into account when deciding which sponsor to apply to.
- 7.11 Further details of the sponsorship system under the points based system will be set out in a Statement of Intent to be published shortly.
- 7.12 Section 5 of the UK Borders Act 2007 gives the Secretary of State the power to make regulations requiring a person subject to immigration control to apply for a biometric immigration document. Next year, the Border and Immigration Agency intends to make such regulations. This order therefore includes the power to charge a fee for the application for a biometric ID card.
- 7.13 The power to charge for entry clearance, Direct Airside Transit Visa and certificate of entitlement applications is included in this order to simplify and consolidate the Home Office's fee setting powers, as set out in paragraph 4.1 above.

8. Impact

- 8.1 Regulatory Impact assessments will be prepared and published alongside the regulations that will specify the fee levels for the applications and services specified in this order.

9. Contact

- 9.1 Chris Nickson at the Border and Immigration Agency of the Home Office (Tel: 0114 2076559 or e-mail chris.nickson2@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.