

**EXPLANATORY MEMORANDUM TO**  
**THE IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT)**  
**REGULATIONS 2017**

**2017 No. 885**

**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 The purpose of this negative instrument is to make the following changes to provisions contained in the Immigration and Nationality (Fees) Regulations 2017 (S.I. 2017/515) (“the 2017 Regulations”):
- removal of a redundant fee exception;
  - amendments to the description of certain fee exceptions to express better the policy intention;
  - amendment to regulations 3 and 4 of the 2017 regulations to clarify the position on applications for a variation of leave to enter and leave to remain;
  - removal of fees for entry clearance to enter the United Kingdom and the Isle of Man, and for limited leave to remain in the United Kingdom, under the Tier 2 (Intra-Company Transfer) Short-term Staff route which is now closed to main applicants. Fees for dependants are being preserved;
  - introduce a Home Office Exchange rate Policy.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 The Joint Committee reported the Home Office when laying the Immigration and Nationality (Fees) Regulations 2016 (“the 2016 Regulations”), concerning the rate of exchange applied where payment is made in a foreign currency for immigration applications.
- 3.2 As outlined by the Department previously, we continue to consider that the Secretary of State’s powers in sections 68 and 69 of the Immigration Act 2014 give rise, by necessary implication, to a power to collect fees in a foreign currency and to do so in a way that is administratively workable. Converting foreign currency into sterling by applying the Foreign and Commonwealth Office Consular Rate of Exchange has until now been the only administratively workable process available to the Secretary of State.
- 3.3 In light of the Joint Committee’s report on the 2016 Regulations, a decision has been taken to introduce a new Home Office Exchange Rate Policy (HOERP). The exchange rates underpinning the new policy will track more closely commercial rates, and as such will be based on a figure which is 4% above the Bloomberg opening rate.

All Home Office exchange rates will be reviewed on a fortnightly basis and only adjusted if they have changed beyond an agreed tolerance of 3-5% away from the Bloomberg rate. Any adjustment will also only mirror the % change in the Bloomberg rate. New exchange rates will come into effect with 3-5 working days of a change being agreed. The new policy balances the operational, financial risks and Home Office IT capabilities. Full details of the HOERP can be found at <https://www.gov.uk/government/publications/exchange-rate-policy>.

#### *Other matters of interest to the House of Commons*

- 3.4 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### **4. Legislative Context**

- 4.1 This instrument serves only to amend existing provisions in the 2017 Regulations, and it does not introduce any new fees (although fees are being preserved for dependants of Tier 2 (Intra-Company Transfer) Short Term Staff migrants, the fee amount for such applications is not changing.).

#### **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is the same as the provision which it amends, which is the United Kingdom and in respect of certain provisions, the Isle of Man.
- 5.2 The application of this instrument is the same as its extent.

#### **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

#### **7. Policy background**

##### *What is being done and why*

- 7.1 This instrument makes amendments to the following fee exceptions;
- 4.4. This exception has been removed as it has ceased to serve any purpose; the policy intention behind it is now delivered by other exceptions.
  - 9.8. This change is being made to ensure that the current policy intention is adequately expressed.
  - 9.9 and 13.7. These exceptions include an erroneous reference to the immigration rules which is to be removed. The removal will have no effect as the reference quoted concerns persons with indefinite leave to remain, but the fee exceptions are there to benefit certain persons applying for limited leave to remain.
  - 13.2. This change is being made to remove any doubt as to who can benefit from the exception.
  - 13.8. There are incorrect cross-references to fees which are being corrected. There has been no operational impact as a result of this error.
- 7.2 This instrument also amends regulations 3 and 4 of the 2017 Regulations, to properly express where Schedules 1 and 2 may include fees for variation of an application.

- 7.3 This instrument removes the fees for applications as a main applicant, for entry clearance to enter and leave to remain in the United Kingdom and for entry clearance to enter the Isle of Man, as a Tier 2 (Intra-Company Transfer) Short term Staff Migrant. This route was closed in April 2017 and it is no longer possible for main applicants to apply. Fees for dependants are being preserved.

#### *Consolidation*

- 7.4 There are currently no plans to consolidate the relevant legislation.

### **8. Consultation outcome**

- 8.1 The Home Office conducted a targeted public consultation in November and December 2013 on how it's charging strategy works in practice to help inform and shape the approach to charging in the future. The government response was published on the gov.uk website at <https://www.gov.uk/government/consultations/fees-and-charging-immigration-and-visas-consultation>.
- 8.2 A further consultation by the Home Office has not been conducted as the responses received in 2013 continues to be reflected within the Fees Regulations, including the 2017 Regulations, which this statutory instrument amends.

### **9. Guidance**

- 9.1 Full details of the Home Office Exchange Rate Policy will be published on the GOV.uk website.

### **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument. This is because an Impact Assessment was prepared for the Immigration and Nationality (Fees) Order 2016, which assessed the impact of the fee levels set out in the 2017 Regulations, which this instrument amends.

### **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

### **12. Monitoring & review**

- 12.1 The Home Office reviews fees and charges for immigration and nationality applications annually. The Home Office also monitors application trends and officials from all relevant Government departments consider proposals to amend fee levels to ensure they do not adversely impact on the UK economy.

### **13. Contact**

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