

**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 more clearly the policy intention;
  - amend the wording in regulations 3 and 4 of the 2017 Regulations to properly reflect where fees can be charged to vary an application in accordance with articles 4 and 5 of the Immigration and Nationality (Fees) Order 2016;
  - 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; and
  - 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 Across the globe, online payments for UK visa and immigration services are currently accepted in 12 major currencies including pounds sterling. In-person payments are taken in local currency. Where a payment is made in a currency other than sterling, an exchange rate is applied to ensure that an applicant does not pay less than the sterling fee set out in the relevant Fees Regulations.
- 3.2 Historically the Home Office has used the Foreign and Commonwealth Office (FCO) ‘consular rate of exchange’ (CRE) in relation to each currency. The starting rate is the Financial Times (FT) exchange rate. The CRE is then usually set by FCO at 5-6% above the FT rate but can vary by up to 13% from the FT rate due to currency volatility. This process is designed to ensure that rates charged track the commercial rate on a particular day, whilst ensuring that the risk associated with fluctuating rates is kept to a minimum.
- 3.3 The intention to apply a rate of exchange in calculating the equivalents of fees paid in foreign currencies was previously prescribed by regulation 13 of the Immigration and

Nationality (Fees) Regulations 2016 (2016 No.929). However, on 11 May 2016 the Joint Committee on Statutory Instruments reported regulation 13 for defective drafting and doubt as to whether it was *intra vires* sections 68 and 69 of the Immigration Act 2014 (the enabling Act).

- 3.4 The Committee reported regulation 13 on two grounds. First, that regulation 13 failed to identify a single rate of exchange that was “objectively ascertainable”. Secondly, while the Committee did not dissent from the Department’s assertion that sections 68 and 69 of the enabling Act implicitly allows the government to collect fees in a foreign currency and to do so in a way that is ‘administratively workable’, it reported that there was doubt as to whether the level of sub-delegation being applied by officials to adjust rates in accordance with the CRE went beyond the powers in the enabling Act.
- 3.5 A link to the Joint Committee’s report can be found at <https://publications.parliament.uk/pa/jt201516/jtselect/jtstatin/148/148.pdf>.
- 3.6 As outlined by the Department in the Explanatory Memorandum that accompanied the 2017 Regulations, the Department considers that the Secretary of State’s primary fee-setting powers for immigration and nationality services, which are set out in sections 68 and 69 of the enabling Act, 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. As noted above, the Committee did not dissent from this proposition. The conversion of foreign currency into sterling by applying the FCO CRE policy has until October 2017 been the only administratively workable process available to the Secretary of State.
- 3.7 However, in light of the Joint Committee’s report and following detailed consideration by the Department, a decision has been taken to introduce a new Home Office Exchange Rate Policy (HOERP). The use of this is set out in regulation 5 of the Immigration and Nationality (Fees) (Amendment) Regulations 2017 (2017 No.885). The exchange rates set under the new policy will be 4% above the Bloomberg opening rate in respect of each foreign currency in which payments are made. Having a fixed 4% uplift ensures that payments made in a foreign currency, when exchanged, match as closely as possible the fee shown in sterling in the 2017 Regulations, while protecting the Exchequer from exchange rate fluctuations between the time the Home Office sets the exchange rates, those rates being reflected on the Home Office IT systems, the payment being taken and then, where applicable, the foreign currency being converted into sterling.
- 3.8 The Department has chosen to apply the Bloomberg opening rate in order to match that used by a number of market leaders in currency exchange and to use a rate that is transparent and readily accessible to customers. Bloomberg provide market and currency information including details of currency prices, which they update at various points in the day.
- 3.9 Under the HOERP, all exchange rates will be reviewed by the Home Office Fees and Income Planning team 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. The new rate will then be reset at 4% above the Bloomberg opening rate on the day of review.
- 3.10 New exchange rates will come into effect within 3-5 working days of the review date, due to required lead times for implementing changes to the fee levels contained within

the Department's 3 online application systems, and to ensure the changes can be quality assured through an internal process to ensure new currency rates are accurately reflected in each IT system at the same time.

- 3.11 The new policy balances the operational, financial risks and Home Office IT capabilities and sets a rate above a normal commercial rate to reflect possible exchange rate fluctuations that may occur in the 2 week period between rates being reviewed and reset. A 2 week period between reviews is considered optimal to review rates and to enable the updating of Departmental IT systems whilst ensuring rates closely track commercial exchange rates. If the Home Office were only to review rates on a monthly basis, it would need to consider setting a rate that is more than 4% above the Bloomberg opening rate in order to ensure it minimises the risk of collecting less than the fee set out in the 2017 Regulations.
- 3.12 The new HOERP is intended to provide greater transparency to customers whilst ensuring the HO operates within clear legal boundaries. 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*

- 3.13 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 (that is, where a fee is not charged);
- Fee exception at row 4.4 of Table 4 in Schedule 1 in respect of those making an application for limited leave to enter the United Kingdom, who are physically present in the United Kingdom but liable to immigration detention. The exception at 4.4 was in place to allow recourse to public funds in certain circumstances. Whilst this exception has been removed from Table 4, this is to remove duplication, and does not alter existing policy. The provision for a free

application to vary conditions continues to be provided for at row 9.9 of Table 9 in Schedule 2.

- Fee exception at row 9.8 of Table 9 in Schedule 2 in respect of an application for the initial period of limited leave to remain in the United Kingdom as a stateless person, or as the family member of a stateless person, under Part 14 of the immigration rules. A minor change has been made to show that no applications from stateless persons made under part 14 of the immigration rules require the payment of a fee, rather than just an initial application. This is to ensure the policy intention is clearly reflected.
- A reference to the immigration rules is removed in relation to the fee exception at row 9.9 of Table 9 in Schedule 2. This exception is required in respect of applications for variation of limited leave to remain in the United Kingdom to allow recourse to public funds. The amendment will have no substantive effect. The immigration rule referred to is applicable to persons with indefinite leave to remain, but the fee exceptions are there to benefit certain persons applying to vary conditions attached to limited leave to remain. The amendment has also been carried over into the fee exception at row 13.7 of Table 13 in Schedule 3 which applies to the same individuals, but in respect of the fee for taking a record of biometric information.
- Fee exception at row 13.2 of Table 13 in Schedule 3 in respect of applications for a biometric immigration document where the applicant is a child who was born in the United Kingdom to a person granted asylum or humanitarian protection. This change is being made to clarify who can qualify for and benefit from this fee exception, namely children of persons who currently hold a grant of asylum or humanitarian protection. Previous wording suggested that the exception applied to children born in the United Kingdom where a parent had previously been granted asylum, which is not correct.
- Fee exception at row 13.8 of Table 13 in Schedule 3 in respect of a fee for a biometric immigration document. This exception has been amended to delete a reference to the fee at row 10.7 in Table 10 and replace it with a reference to the fees listed under row 10.6 of Table 10. The updated reference clarifies that people making applications for evidence of confirmation of their identity, nationality or immigration status, who pay one of the fees listed under row 10.6, do not have to pay an additional fee for a biometric residence permit.

7.2 This instrument removes the fees for applications from 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 to main applicants in April 2017 but it is still possible for their dependants to apply for entry clearance to enter the United Kingdom and the Isle of Man, and for leave to remain in the United Kingdom. Therefore, the entries at row 2.1.5 of Table 2 in Schedule 1, row 7.1.3 of Table 7 in Schedule 2, and row 22.1.4 of Table 22 in Schedule 9 have been amended to enable the Home office to continue to charge a fee for these applications. The amount of the fee has not changed.

### ***Consolidation***

7.3 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.