

EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT) ORDER 2022

2022 No. 233

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order amends the Immigration and Nationality (Fees) Order 2016 (S.I. 2016/177) (as amended) (“the 2016 Order”). That Order specifies functions in relation to immigration and nationality for which fees are to be charged and sets the maximum amounts that may be charged for the exercise of these functions. The actual amounts charged are set by the Secretary of State in separate Regulations, currently the Immigration and Nationality (Fees) Regulations 2018 (S.I. 2018/330) (as amended) (“the 2018 Fees Regulations”).
- 2.2 This Order increases the maximum amounts that can be charged (‘maxima’) for visit visas issued for a period of six months or less, as well as for applications for entry clearance and leave to enter or remain as a student. These changes are being made in order to increase the department’s flexibility to pursue fee changes in future Regulations, as well as - in the case of visit visas - to better reflect the cost of processing applications.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the same as the provisions of the 2016 Order that it amends (determined by article 1(3) to (6)). Therefore, the amendments made by this instrument extend to England and Wales, Scotland and Northern Ireland and also to the Isle of Man and the Bailiwicks of Guernsey and Jersey.
- 4.2 The territorial application of this instrument is the same as its extent.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary (Minister for Safe and Legal Migration) has made the following statement regarding Human Rights:

“In my view the provisions of the Immigration and Nationality (Fees) (Amendment) Order 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument amends provisions of the 2016 Order, which set out the maximum that may be charged for certain functions as outlined above. These provisions in turn underpin the specific fees charged as set out in the 2018 Regulations, and the effect of

amending the provisions in the Order is to increase the department's flexibility to consider changes to fees in future amendments to Regulations. The charging powers that underpin both instruments are provided by Section 68 of the Immigration Act 2014.

7. Policy background

What is being done and why?

7.1 The purpose of this instrument is to make the following changes. In both cases outlined below, it is important to note that these changes amend the maximum amount that can be charged for these functions, rather than the fee itself. It is also the first time these maximum amounts have been amended since 2016.

7.2 The provisions in Tables 1 and 2 in the Order, which are amended by this instrument, also cover fees for entry clearance to the Isle of Man and the Bailiwicks of Guernsey and Jersey. As such, the changes detailed below also apply to the maximum amount that may be charged for entry clearance to those territories, as either a visitor for a period of six months or less, or as a student.

Increase to maximum amount for 'entry clearance as a visitor for a period of six months or less'

7.3 This change increases the maximum amount from the current level of £95 to £130, which is the current published unit cost for this service. This change will enable the department to consider changes to the fee (currently set at £95) in future Regulations, in order to better reflect costs and help support the funding of the wider borders and migration system.

Increase to maximum amount for 'entry clearance or limited leave as a student'

7.4 This change increases the maximum amount from the current level of £480 to £490, in order to provide future flexibility in relation to the fees charged for student leave to remain applications, for which the fee is currently set at £475. The new maximum amount will also apply to student leave to enter applications, for which the current fee is £348.

7.5 This change will enable a balanced approach to be taken when contemplating future fee changes and allow student fees to be considered alongside other chargeable functions, ensuring the broadest range of options can be considered. Other chargeable functions have maxima levels that allow for sufficient flexibility to consider changes to existing specific fees charged for individual products and services.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The 2016 Order and the 2018 Fees Regulations are consolidated periodically. There are no plans to consolidate the 2016 Order or the 2018 Fees Regulations at this time.

10. Consultation outcome

10.1 There was no public consultation on the above changes.

- 10.2 The Home Office conducted a targeted public consultation in November and December 2013 on how its charging strategy works in practice, to help inform and shape the approach to charging in the future. These responses were analysed and continue to be reflected in the proposals set out in Fees Regulations.
- 10.3 The provisions contained in this Order are consistent with the Government’s charging policy, which remains unchanged. Further consultations will take place if the Government proposes to alter charging policy significantly.

11. Guidance

- 11.1 There are no changes required to Home Office guidance as a result of these changes. Information and guidance for general members of the public will be published when Regulations setting out changes to the relevant fees are laid in Parliament.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 A full Impact Assessment (IA) is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. It uses a methodology in line with the 2016 Order impact assessment. It provides analysis of impacts based on indicative options for possible future changes in Standard Visit Visa and Student fees, given the changes to the fee maxima introduced by this Order. It should be noted that this Order does not change the actual level of the visa fees (set by the 2018 Fees Regulations), and therefore there are no direct impacts associated with this Order.

13. Regulating small business

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

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that the Home Office will monitor the impact of fees for the applications and services this instrument provides for. The Home Office usually reviews fees and charges for immigration and nationality applications annually.
- 14.2 This instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister for Safe and Legal Migration at the Home Office has made the following statement: “Fees for products and services provided for by this instrument are kept under regular review. I am satisfied that there is no impact on small businesses.”

15. Contact

- 15.1 Daniel Boulton at the Home Office (Telephone: 07774 770968 or email: Daniel.Boulton@homeoffice.gov.uk) can be contacted with any queries regarding this instrument.
- 15.2 Paul Darling, Deputy Director for Finance at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kevin Foster MP, Parliamentary Under Secretary (Minister for Safe and Legal Migration) at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.