

EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY AND IMMIGRATION SERVICES COMMISSIONER (FEES) (AMENDMENT) REGULATIONS 2022

2022 No. 296

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 These Regulations make provisions consequential to the changes made by the Statement of Changes to the UK Immigration Rules (HC 1118) (“the Statement of Changes”) and the Immigration and Nationality (Fees) (Amendment) Order 2022 (“the amendment Order”). In addition, they provide new and amended fee waivers and exceptions, introduce fees for new immigration routes in the UK and the Isle of Man, remove certain fees and increase certain fees. They also amend The Immigration Services Commissioner (Application Fee) Order 2011.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 These Regulations increase fees payable by persons wishing to register and to continue their registration as an immigration advisor, with the Office of the Immigration Services Commissioner (OISC). Fees currently payable under this legislation have not changed since 2011. The rise in fees is representative of inflation uprating from when the fees were last increased in 2011, to bring the fees closer towards cost recovery. We intend to undertake a review of the charging structure of the fees within the next year, which may introduce further changes to the amount payable by immigration advisers.
- 3.2 These Regulations make an amendment to the Immigration Services Commissioner (Application Fee) Order 2011 to amend the definition of registration. This is to address a report of defective drafting in the 26th Joint Committee on Statutory Instruments report from 2010-12. The amendment removes a reference to paragraphs (b) and (ba) of section 84(2) of the Immigration and Asylum Act 1999 from the definition of “registration” in the Order because those paragraphs do not provide for or refer to registration. This reference was meaningless and had no legal effect. The Department has not followed the free issue procedure because it appears very unlikely that the erroneous reference will have caused any misunderstanding and the Department considers it disproportionate to apply the procedure given the nature of the correcting provision and the very small proportion that it represents of these amending Regulations as a whole. The Department has consulted the SI Registrar in accordance with paragraph 4.7.6 of Statutory Instrument Practice.
- 3.3 These Regulations also increase the fee payable for the optional Priority Visa Service (for expediting visa applications) made overseas, by more than the rate of inflation

since the fee was last amended in 2019. This is to bring the fee closer to the equivalent fee charged in the UK, as well as to generate sufficient revenue to address wider costs and pressures. Other fee increases are otherwise below the cumulative rate of inflation since those fees were last amended.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland, and Northern Ireland. The amendments made by regulations 1, 3 and 10, and paragraphs 1 and 5 of Schedule 1 extend to the Isle of Man. The amendments made by regulation 1 and regulation 3(b), and paragraphs 1 and 6 of Schedule 1 extend to the Bailiwick of Jersey and the Bailiwick of Guernsey.
- 4.2 The territorial application of this instrument is the same as its extent.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 These Regulations amend the Immigration and Nationality (Fees) Regulations 2018 (S.I. 2018/330) (“the Fees Regulations”). The changes detailed in paragraphs 6.2 to 6.4 below, include changes related to the Statement of Changes which will be laid before Parliament on 15 March 2021. More information can be found in the Explanatory Memorandum to the Statement of Changes to the UK Immigration Rules on the gov.uk website HC 1118, 15 March 2022 – www.gov.uk
- 6.2 These Regulations support the introduction in the UK, of the new Global Business Mobility, High Potential Individual and Scale-up immigration routes, by setting fees for applications for entry clearance to enter and limited leave to remain in the UK, under these routes, and for Sponsor Licenses and Certificates of Sponsorship under the Scale-up route. (The Global Business Mobility changes will come into effect on 11 April 2022. The High Potential Individual change will come into effect on 30 May 2022. The Scale-Up change will come into effect on 22 August 2022) They also support the recent introduction to the Isle of Man Immigration Rules, of a new route for temporary seasonal workers.
- 6.3 These Regulations make new and amended provisions to waive or except payment of application fees in certain circumstances, in respect of applications for indefinite leave made by non-UK, discharged members of HM Forces and where the Secretary of State varies an application for indefinite leave to remain, to an application for limited leave to remain. They also make new provision to waive the payment of an application fee where Home Office maladministration has occurred, and the optimal remedy, as deemed by the Secretary of State for the Home Department, is for an individual to make a further application, where it would be unfair to charge for that application.
- 6.4 These Regulations amend the existing provision to except payment of fees in respect of applications for limited leave to remain in the UK, made by survivors of the Grenfell Tower tragedy, to also include applications for indefinite leave to remain. In addition, following further simplification of the Rules they update certain fee and fee waiver provisions, to ensure they remain in step with the Rules.

- 6.5 These Regulations also remove fees where the Home Secretary will no longer charge for certain administrative applications and processes; increase fees for entry clearance and leave to remain applications, and for the overseas, optional Priority Visa Service. They also re-set the fee for applications made overseas by non-UK discharged members of HM Forces, where an historical anomaly has previously led to an incorrect fee being charged.
- 6.6 These Regulations amend the Immigration Services Commissioner (Application Fee) Order 2011. Paragraph 5 (1) of Schedule 6 of the Immigration and Asylum Act 1999 allows the Secretary of State to specify by Order the fees for registration and continued registration for persons providing immigration advice or services on the register maintained by the OISC.
- 6.7 These Regulations introduce an increase to the fees charged to advisers for registration and continued registration with the OISC. The amendments made by these Regulations to this Order also address legislative inconsistencies introduced by EU exit legislation, as well as making corrections to the definition of registration and relevant advisers, that are applied for the purpose of calculating fees due. These changes do not introduce any changes in who is liable to pay fees or impact the current fees structure.

7. Policy background

What is being done and why?

New & Closed Immigration Routes

- 7.1 The new Global Business Mobility route as set out in the Statement of Changes, will replace the existing Intra-Company Transfer and Intra-Company Graduate Trainee routes, provision within the Temporary Worker – International Agreement route for Contractual Service Suppliers and Independent Professionals, and existing provisions for “sole representatives” within the Representative of an Overseas Business route. It will also introduce new provision for Secondment Workers.
- 7.2 Application fees for visas and sponsor licenses under these routes will broadly match those under the routes they replace, and those charged more widely where employers may only sponsor workers for a short period of time. In real terms this means a reduction to visa and sponsorship fees under the new Graduate Trainee arrangements, where visa application fees are reduced from £482 to £259, Sponsor licence fees are fixed at £536 and the Certificate of Sponsorship fee is reduced from £199 to £21. This change reflects the current policy aim to charge fees at these levels, where employers can only sponsor workers for short periods of time.
- 7.3 Fees for the High Potential Individual and Scale-up routes are set at £715 which is comparable to fees for other visas where successful applicants are allowed to take similar employment for similar periods of time.
- 7.4 As the Scale-up route will require visa applicants to be sponsored for their first 6 months of employment, Sponsorship fees have been set to match those already paid by other employers who can only sponsor workers for a short period of time. The sponsor licence fee is set at £536 and the fee for a Certificate of Sponsorship is set at £21.

- 7.5 These Regulations also set a fee £259 for entry clearance to enter the Isle of Man, under their new arrangements for temporary seasonal workers. This matches the fees payable under similar routes in the UK, and the bailiwicks of Jersey and Guernsey.

Removal of Certain Fees and Fee Increases

- 7.6 These Regulations introduce a package of changes aimed at simplifying the range of fees payable in relation to making an application in the UK, as part of a wider programme of simplification being considered by the department. They remove the £229 fees for applications made by persons who have indefinite leave to remain in the UK who need to upgrade an outdated, paper document which evidences their immigration status, to a biometric document. Changes to Home Office policy over time, mean these legacy paper documents are no longer acceptable as proof of status, for example where an employer is required to check whether a person has permission to work in the UK. Removing this fee will enable anyone who needs to upgrade their document, to do so free of charge. This change also encompasses those with indefinite leave to remain making applications for an amended biometric immigration document to reflect changes in personal details.
- 7.7 These Regulations also remove the requirement for some applicants to pay a separate fee of £19.20 for the enrolment or reuse of their biometric information, in connection with an application for leave to remain in the UK, or an application for British Citizenship. This change reduces the number of separate fees that are payable in relation to an application for leave to remain and citizenship, helping to increase transparency and support an improved customer experience.
- 7.8 These Regulations also include a number of fee increases. All fees for entry clearance to enter the UK, the Isle of Man and the bailiwicks of Jersey and Guernsey, and for leave to remain in the UK are increased by £15, with the exception of short term visit visas, which are increased by £5 to align with the historical rate of increases on this route (£10 increase between 2015 and 2019). Fees for visa applications made by Short Term Students and persons visiting the UK for private medical treatment, and applications for leave to remain in the UK as a visitor are increased by less than £15 as that would exceed the maximum permitted by the Immigration and Nationality (Fees) Order 2016. Instead, these fees are increased to that maximum amount. The fee for visa applications made by adult dependant relatives remains unchanged as that fee is already charged at the maximum permitted amount. Fees for Hong Kong British National Overseas (BNOs) and Refugee Dependant Relatives are also unchanged, reflecting that the existing fees are set at or close to the published unit cost. Fees for transit visas are also unchanged.
- 7.9 The fee for the optional Priority Visa Service for customers applying on work, study and visit routes overseas, which offers expedited processing of applications within 5 days on available routes, is increased by £30 from £220 to £250. This brings the fee closer to the equivalent fee charged in the UK. This change will come into effect from 10 May 2022.
- 7.10 These fee increases will also be applied to saved fee provisions in respect of applications made by dependants of persons with existing leave to remain under legacy routes which have been replaced under the Future Borders and Immigration System programme of changes. This will ensure that the Home Office policy of dependants paying the same application fees as their 'lead applicant' is maintained.

7.11 The Impact Assessment published alongside this Explanatory Memorandum estimates that the increases to entry clearance and leave to remain fees will generate c. £33m in additional revenue in 22/23, with the increase to overseas priority visa service fee estimated to generate c. £13m in 22/23. This additional revenue will offset the cost of removing fees for biometric enrolment and applications to replace or amend documents as described in paragraph 7.6, as well as meeting wider costs and pressures within the borders and migration system. This contributes to the overall objective of ensuring that the system is sustainably funded through fee income, reducing reliance on the taxpayer.

New Fee Waivers and Exceptions

- 7.12 Since the Grenfell fire tragedy, survivors have been able to make free applications for limited leave to remain by virtue of a fee exception. As some survivors will become eligible to apply for indefinite leave to remain this year, these Regulations extend that provision, to enable those applications to also be made free of charge.
- 7.13 These Regulations introduce a new fee waiver in relation to applications for indefinite leave, made by non-UK servicepeople immediately prior to, or upon discharge from Her Majesty's Armed Forces. Any non-UK service person who has served for six or more years, or who has been medically discharged as a direct result of their service will be able to make a free application for indefinite leave. This application may be made at any point from 18 weeks prior to their discharge to two years after the date of their discharge. It will also enable veterans already in the UK who meet the qualifying criteria, but who have never applied for indefinite leave, to do so free of charge.
- 7.14 To support this change, the fee payable for applications made overseas, by ex-servicepeople is amended, to correct an historical anomaly. It has always been possible to make such an application and a very small number of individuals have done so over recent years. However, this anomaly has resulted in applicants being charged a lower fee than was intended and which is lower than that paid by their own dependants and their contemporaries applying for indefinite leave in the UK. This correction will place all ex-servicepeople on the same footing and it remains that the majority of applicants are expected to benefit from the new fee waiver.
- 7.15 These Regulations introduce a new fee exception to enable a more seamless outcome where Home Office maladministration has occurred. At present, in such circumstances, it is occasionally the case that the best way forward is for that individual to make an immigration application. However, it is sometimes the case that there is no power within the Regulations, to except or waive payment of the required fee, which means it must be paid. The Home Office then issues a compensatory payment to the individual concerned, to the amount of the fee paid. This new provision will enable persons in these very limited circumstances, to make the necessary application free of charge.
- 7.16 The Statement of Changes sets out new arrangements for the administration of applications for indefinite leave to remain (ILR) on the Innovator and Hong Kong British National (Overseas) ("BNO") routes, and Family and Private Life routes.
- 7.17 These Regulations make clear that when an ILR application is varied by the Secretary of State, to an application for limited leave to remain, no further fee is payable for the varied (limited leave) application.

Simplification of the Rules

- 7.18 These Regulations also make several technical changes to various provisions where specific paragraphs of the Rules are mentioned, but where further simplification of the Rules means those paragraphs have been renumbered. This will enable the Regulations to remain in step with the Rules.

Amendments to the Immigration Services Commissioner (Application Fee) Order 2011.

- 7.19 The amendments made by these Regulations to this Order bring changes to increase the fees payable by those applying to register and applying to continue their registration with the OISC. This is to bring the OISC fees closer towards cost recovery. There has been no action to increase fees since they were increased by the Order in 2011. The rise is representative of inflation uprating from when the fees were last increased in 2011. The amendments come into force on 24th May to allow sufficient time to notify advisers of the increase.
- 7.20 The amendments made by these Regulations to this Order also address legislative inconsistencies introduced by EU exit legislation, as well as making corrections to the definition of registration and relevant advisers for the purpose of calculating fees due. These changes do not introduce any changes in who is liable to pay fees or impact the current fees structure.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

- 9.1 The Immigration and Nationality (Fees) Regulations and the Immigration Services Commissioner (Application Fee) Order 2011 are consolidated periodically.

10. Consultation outcome

- 10.1 A public consultation was conducted jointly by the Home Office and the Ministry of Defence to seek views on a policy proposal to exempt payment of fees for applications for indefinite leave made by non-British nationals, at the end of their military service in HM Forces, if they have completed 12 years of service or have been medically discharged due to an illness or injury attributable to their service. It also asked for views on whether there should be an alternative service length to be eligible for the fee waiver, and whether enough support was provided for dependants of non-UK Service Personnel and how the Government could support veterans who have not yet regularised their status to do so. The consultation ran from 26 May to 7 July 2021 and received significant interest. Following careful consideration of the 6,389 responses, a new policy was agreed as set out in regulations 5(5)(b) and 6(4)(c) of these Regulations. The full consultation document and written response is available on the gov.uk website at <https://www.gov.uk/government/consultations/immigration-fees-public-consultation>
- 10.2 The Home Office conducted a targeted 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. Responses to this consultation were analysed and continue to be reflected in these Regulations.

10.3 The Home Office has engaged with the OISC regarding the changes to the registration fees for their advisers.

10.4 No other consultation has taken place on the remaining changes above.

11. Guidance

11.1 Home Office guidance for staff will be updated to reflect the changes to the Fees Regulations. Information and guidance for members of the public will also be published when these Regulations are laid before Parliament.

12. Impact

12.1 The impact on business, charities or voluntary bodies is unlikely to be significant, however any impacts are set out in the accompanying Impact Assessment noted below.

12.2 The impact on the public sector is also set out in the accompanying Impact Assessment noted below. The main impact on the public sector is the net increase in visa fee revenue that results from the package of changes aimed at simplifying the range of fees payable in relation to making an application in the UK.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

12.4 An impact assessment was not undertaken in relation to the changes made to the Immigration Services Commissioner (Application Fee) Order 2011 given the minimal likely impact of the changes.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small business immigration advisers (employing up to 50 people), the approach taken in relation to those wishing to register and continue their registration with the OISC is that the fees charged are calculated according to the number of advisers working for an organisation.

14. Monitoring & review

14.1 These Regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Kevin Foster MP, Minister for Safe and legal Migration at the Home Office, has made the following statement: “It is not appropriate in the circumstances to make provision for review. Fees are kept under regular review and I am satisfied that these Regulations do not impact on small businesses.” Nevertheless, the Home Office will continue to monitor the impact of these Regulations.

14.2 The changes to the Immigration Services Commissioner (Application Fee) Order 2011 do not require a review clause under the Small Business, Enterprise and Employment Act 2015. It is considered it would not be appropriate to include a review clause in the circumstances given the minimal likely impact of the measure and as there are no factors that would make this appropriate. We intend to undertake a review of the charging structure of the fees within the next year, which may introduce further changes to the amount payable by immigration advisers.

15. Contact

- 15.1 Annie Wattam at the Home Office Telephone: 07557 205215 or email: annie.wattam@homeoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Paul Darling, Deputy Director - Special Projects, Fees and Income Planning, Corporate Enablers, Finance Directorate at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister for Safe and Legal Migration, Kevin Foster MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.