This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament on 27th June 2011 and published on 30th June 2011. It is being issued free of charge to all known recipients of that draft Statutory Instrument.

Draft Order laid before Parliament under section 49(5) and (6)(c) of the Tribunals, Courts and Enforcement Act 2007, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2011 No.

TRIBUNALS AND INQUIRIES

The First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011

Made - - - - ***

Coming into force in accordance with article 1

The Lord Chancellor makes the following Order in exercise of the powers conferred by section 42 of the Tribunals, Courts and Enforcement Act 2007(**a**).

The Lord Chancellor has consulted the Senior President of Tribunals and the Administrative Justice and Tribunals Council in accordance with section 42(5) of that Act before making this Order and has obtained the consent of the Treasury in accordance with section 42(6) of that Act.

In accordance with section 49(5) and (6)(c) of that Act, a draft of this Order was laid before and has been approved by a resolution of each House of Parliament.

Citation and commencement

1. This Order may be cited as the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011 and shall come into force on the day after the date on which it is made.

Interpretation

2. In this Order—

"an immigration or asylum matter" means a matter in respect of which functions are allocated to the Immigration and Asylum Chamber of the First-tier Tribunal under article 5 of the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010(**b**);

"appellant" means any person identified in the notice of appeal as appealing in relation to an immigration and asylum matter to the First-tier Tribunal;

(**a**) 2007 c. 15
(**b**) S.I. 2010/2655

"BACS" means the method of payment known as "Banks Automated Clearing System" by which money is transferred from one bank in the United Kingdom to another by means of an automated system;

"international money transfer" means a method of payment by which money is transferred from a bank account outside the United Kingdom to a bank account in the United Kingdom by means of an automated system;

"the Tribunal" means the Immigration and Asylum Chamber of the First-tier Tribunal;

"the 1971 Act" means the Immigration Act 1971(**a**);

"the 1999 Act" means the Immigration and Asylum Act 1999(**b**);

"the 2002 Act" means the Nationality, Immigration and Asylum Act 2002(**c**).

Fees for appeals

3.—(1) A fee is payable in respect of an appeal to the First-tier Tribunal where the appeal relates to an immigration or asylum matter and the decision against which the appeal is made was taken on or after the coming into force of this Order.

(2) The fee is payable by or in respect of each appellant on the date on which the Notice of Appeal is given.

(3) The fee payable is—

(a) where the appellant consents to the appeal being determined without a hearing, £80; or

(b) where the appellant does not consent to the appeal being determined without a hearing, £140.

(4) Subject to paragraph (5), where after making payment in accordance with paragraph (3)(a), the appellant withdraws their consent to the appeal being determined without a hearing, the difference between the amounts specified in subparagraphs (a) and (b) of paragraph (3) ("the balance") becomes payable on the withdrawal of that consent.

(5) The balance referred to in paragraph (4) ceases to be payable if the Tribunal decides that the appeal can be justly determined without a hearing.

(6) This article is subject to articles 5, 6 and 7.

Method of paying fee

4.—(1) The fee payable must be paid by one of the following methods—

(a) credit card;

(b) debit card;

(c) BACS; or

(d) international money transfer.

(2) For the purposes of enabling payment to be made by or in respect of the appellant —

(a) authorisation to take payment and details of the credit or debit card, or

(b) an undertaking by or on behalf of each appellant to pay by BACS or an international money transfer,

must be provided at the same time as the giving of the notice of appeal or the subsequent withdrawal of their consent to the appeal being determined without a hearing (as the case may be).

(**a**) 1971 c. 77.
(**b**) 1999 c. 33.
(**c**) 2002 c. 41.

Exemption from fees

5.—(1) No fee is payable for—

(a) an appeal against a decision made under—

(i) section 2A of the 1971 Act(**a**) (deprivation of right of abode);

(ii) section 5(1) of the 1971 Act (a decision to make a deportation order);

(iii) paragraphs 8, 9,10, 10A or 12(2) of Schedule 2 to the 1971 Act(**b**) (a decision that an illegal entrant, any family or seaman and aircrew is or are to be removed from the United Kingdom by way of directions);

(iv) section 40 of the British Nationality Act 1981(**c**) (deprivation of citizenship);

(v) section 10(1) of the 1999 Act(**d**) (removal of certain persons unlawfully in the United Kingdom);

(vi) section 76 of the 2002 Act (revocation of indefinite leave to enter or remain in the United Kingdom);

(vii) section 47 of the Immigration, Asylum and Nationality Act 2006(**e**) (removal: persons with statutorily extended leave);

(viii) regulation 19(3) of the Immigration (European Economic Area) Regulations 2006(**f**) (a decision to remove an EEA national or the family member of such a national); or

(b) an appeal to which Part 2 of the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005(**g**) applies.

(2) No fee is payable where, at the time the fee would otherwise become payable, the appellant is, under the 1999 Act—

(a) a "supported person" as defined in section 94(1); or

(b) provided with temporary support under section 98.

(3) No fee is payable where, for the purpose of proceedings before the Tribunal, the appellant is in receipt of—

(a) funding provided by the Legal Services Commission, established under section 1 of the Access to Justice Act 1999(**h**), as part of the Community Legal Service;

(b) legal aid under Part 2 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(**i**); or

(c) civil legal aid or advice and assistance under the Legal Aid (Scotland) Act 1986(**j**).

(4) No fee is payable where the appellant is the person for whose benefit services are provided by a local authority under section 17 of the Children Act 1989(**k**).

(**a**) 1971 c. 77; section 2A was inserted by section 57(1) of the Immigration, Asylum and Nationality Act 2006 (c.13).

(**b**) 1971 c.77; paragraph 8 was amended by S.I. 1990/2227 and S.I. 1993/1813; section 114(3) of, and paragraph 4 of Schedule 7 to the Nationality, Immigration and Asylum Act 2002(c.41); and by section 10 of, and paragraph 9 of the Schedule to, the Immigration Act 1988(c.14). Paragraph 9 was amended by section 12(1) of, and paragraph 6 of Schedule 2 to, the Asylum and Immigration Act 1996(c.49). Paragraph 10 was amended by section 10 of, and paragraph 9 of the Schedule to, the Immigration Act 1988(c.14). Paragraph 10A was inserted by section 73(1) of the Nationality, Immigration and Asylum Act 2002(c.41). Paragraphs 12(2) was amended by section 39(6) of, and paragraph 2 of Schedule 4 to, the British Nationality Act 1981(c.61).

(**c**) 1981 c. 61; section 40 was substituted by section 4(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41) and amended by section 56(1) of the Immigration, Asylum and Nationality Act 2006(c. 13).

(**d**) 1999 c.33; section 10(1) was amended by sections 73(2) and (3),74, 76(7) and 161 of, and Schedule 9 to, the Nationality, Immigration and Asylum Act 2002(c.41).

(**e**) 2006 c. 13.

(**f**) S.I 2006/1003; regulation 19(3) was substituted by S.I 2009/1117.

(**g**) S.I 2005/560.

(**h**) 1999 c. 22; section 1 was amended by S.I 2011/1191 S.I.2005/3429.

(**i**) S.I. 1981/228.

(**j**) 1986 c. 47.

(**k**) 1989 c.41; section 17 has been amended several times but none of the amendments are relevant to this Order.

(5) Where by any convention, treaty or other instrument entered into by Her Majesty with any foreign power it is provided that no fee is required to be paid in respect of any proceedings, the fees specified in this Order are not payable in respect of those proceedings.

Power to defer payment in certain cases

6. The Lord Chancellor may defer payment of a fee where the appeal is brought on the grounds that the removal of the appellant from, or a requirement for the appellant to leave, the United Kingdom would breach the United Kingdom's obligations under either—

(a) the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention; or

(b) article 21 of Directive 2004/83/EC of the European Parliament and Council of 29 April 2004.

Reduction or remission of fees

7. A fee specified in this Order may be reduced or remitted where the Lord Chancellor is satisfied that there are exceptional circumstances which justify doing so.

Certificate of fee satisfaction

8.—(1) The Lord Chancellor must issue a certificate of fee satisfaction if satisfied that—

(a) the appropriate fee payable under article 3 has been paid;

(b) in view of an undertaking given by or on behalf of the appellant, payment will be promptly made by BACS or an international money transfer;

(c) no fee is payable;

(d) payment is to be deferred in accordance with article 6; or

(e) the appellant has, at the time a fee would otherwise be payable under article 3, applied for the fee to be reduced or remitted in accordance with article 7.

(2) The issuing of such a certificate is without prejudice to the power to recover the amount of any payable fee or part of such fee which remains unpaid and unremitted.

(3) The Lord Chancellor may revoke a certificate of fee satisfaction and if a certificate is revoked, the Tribunal shall be notified accordingly.

Refunds

9.—(1) Subject to paragraph (2) —

(a) where the fee payable under article 3(3)(b) has been paid but the appeal is determined without a hearing, the difference between the amounts specified in article 3(3)(a) and 3(3)(b) may be refunded; and

(b) where a fee has been paid which the Lord Chancellor, if all the circumstances had been known, would have reduced or remitted under article 7, the fee or the amount by which the fee would have been reduced, as the case may be, shall be refunded.

(2) No refund will be made under this article unless the appellant applies in writing to the Lord Chancellor within 6 months of the date the fee becomes payable.

(3) The Lord Chancellor may extend the period of 6 months mentioned in paragraph (2) if the Lord Chancellor considers there is a good reason for the application being made after the end of the period of 6 months.

Signed by authority of the Lord Chancellor

Name
Parliamentary Under Secretary of State

Date Department

We consent

Name
Name
Date Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order introduces fees for appeals heard in the Immigration and Asylum Chamber of the First-tier Tribunal. The fee for each person, where they consent to the appeal being determined without a hearing, is £80. Where they do not consent to the appeal being determined without a hearing, the fee is £140 per person. The Order also provides for fees not to be payable for certain types of appeal, and for fees to be deferred, reduced, remitted or refunded in certain circumstances.

An Impact Assessment has been prepared and can be viewed alongside the Explanatory Memorandum for this Order on the website www.legislation.gov.uk.

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