EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT) ORDER 2009

2009 No. [XXXX]

1. This explanatory memorandum has been prepared by the UK Border Agency of the Home Office ("UKBA") 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 2007 (as amended by the Immigration and Nationality (Fees) Amendment Order 2008).

2.2 This Order sets out certain applications and services in connection with immigration and nationality for which a fee is to be charged. In accordance with section 51 of the Immigration, Asylum and Nationality Act 2006, the proposed fee levels will be specified in subsequent regulations.

2.3 This Order provides for a fee to be charged in respect of an application for a letter or other document issued on behalf of the Secretary of State confirming:

a) a person's current immigration or nationality status; or
b) that a person is not a British citizen.

2.4 This Order also provides for a fee to be charged in respect of the provision of the following services, when they are provided in connection any other immigration or nationality application, service or process:

a) attendance by a representative of the Secretary of State at premises other than UKBA or Consular premises; or
b) services provided by a representative of the Secretary of State outside office hours.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Context

4.1 Section 51(1) of the Immigration and Nationality Act 2006 Act (the "2006 Act") states that the Secretary of State may by Order require an application or claim in connection with immigration or nationality to be accompanied by the specified fee. Section 51(2) states that the Secretary of State may also provide for a fee to be charged in respect of a service in connection with immigration and nationality.

4.2 A draft of this Order must by virtue of section 52(4) of the 2006 Act be laid before and approved by a resolution of each House of Parliament.

4.3 The amount of the fees charged for the applications and services specified in this Order will be set out in regulations in accordance with section 51(3) of the 2006 Act.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Immigration Minister has made the following statement regarding Human Rights:

In my view the provisions of the Immigration and Nationality (Fees) (Amendment) Order 2009 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

New Applications

7.1 Some foreign nationals require proof from UKBA of their immigration or nationality status in the UK. We currently issue a status letter confirming a person's current immigration or nationality status free of charge. We intend to set a fee for this application, in order to address the costs incurred by UKBA. The fee level will be set in subsequent regulations and will be set at or below the cost to UKBA of processing the application.

7.2 Some foreign nationals are not permitted by the authorities in their home countries to hold dual nationality. If they have resided in the UK for some time, they may be required to prove that they have not been granted British Nationality when they apply for a passport from their own authorities. We currently issue a Non-Acquisition letter confirming a person is not a British Citizen free of charge. We intend to set a fee for this application, in order to address the costs incurred by UKBA. The fee level will be set in subsequent regulations and will be set at or below the cost to UKBA of processing the application.

New Services

7.3 We intend to set a fee for services that require the attendance by a representative of the Secretary of State away from the office or that are provided outside of normal working hours. Examples of this type of service would include attendance at a person's house in order to take the biometrics required for a visa application, or setting up a facility to collect biometrics from a number of people at a single location, such as an orchestra in Siberia or a number of students in Bogotá.

7.4 This type of service is already provided in certain countries overseas and the fee is currently set under consular legislation owned by the Foreign and Commonwealth Office.[1] This Order will give the Home Office the legal power to set the level of the fee for an attendance service, insofar as it relates to visa services

1 The Consular Fees Order 2008, Schedule 1, Part X, Paragraph 43.

provided to customers of UKBA. It is intended that the service will be provided at or below cost, and at the same fee level as charged under Foreign and Commonwealth Office legislation.

7.5 This Order also makes it possible to provide this service in the UK in future, by enabling UKBA to set fees to recover the costs of providing services away from UKBA premises or outside of office hours. We are currently considering the feasibility of offering the same optional visiting service in the UK, and any proposals to set fees for this service within the UK will be brought before Parliament in subsequent Regulations.

Charging for these applications and services

7.6 The applications and services in this Order are all optional, and are provided separately and in addition to the normal application process by which a migrant applies to for leave to enter or remain in the UK. They are provided to meet the requirements of those migrants who choose to use them.

7.7 We have agreement from HM Treasury regarding the charging of fees for these applications and services and have consulted with other Government departments.

7.8 We want to set fees for these applications and services in support of our wider charging policy that those who benefit from the services provided by UKBA should contribute to the cost of providing those services. The cost of providing these applications and services should not be met by the UK taxpayer alone, as is currently the case in relation to the issue of the above mentioned status letters and Non-Acquisition letters.

- ***Consolidation***

7.9 This is the third amendment to the 2007 Fees Order, and we intend to consolidate all previous changes should there be any further amendment to the Order. We are working separately to consolidate the Fees Regulations which set fee levels in reliance of this Order, to improve legibility for all stakeholders; customers, practitioners and officials.

8. Consultation outcome

8.1 During the course of 2003/04, following full public consultation, the Home Office introduced charges for a range of immigration applications to ensure that those who use and benefit from the UK system met the cost of delivering the administrative service provided.

8.2 A further public consultation exercise on charging for immigration and nationality applications was undertaken from 30 October to 22 December 2006, supported by the publication of *A consultation on a new charging regime for immigration & nationality fees*. The consultation document was made available on the Home Office website and was also sent to 3000 people. The formal Government response to the public consultation was published on 7 March 2007, and established the principle that those who use, and directly benefit from the immigration system should pay proportionately more towards the true end to end costs of the system, rather than seeking to fund improvements via general taxation. 87% of respondents agreed we should set fees flexibly to take into account wider policy objectives and

79% agreed new fees should reflect a range of factors, not only those of value to the migrant.

9. Guidance

We will publish full details of these new applications and services on the UKBA website and announce actual proposed fee levels in a Written Ministerial Statement.

10. Impact

An Impact Assessment has not been prepared for this instrument because no impact on the private, voluntary or public sector is foreseen. The applications and services contained in this Order are optional, and will be made use of by individual migrants.

11. Regulating small business

The legislation does not apply to small businesses.

12. Monitoring & review

We will closely monitor the impact of fees for the application and services contained in this Order. We review fees and charges for Immigration and Nationality applications annually, and application trends are monitored by UKBA on a monthly basis. Analysis of application trends is monitored by the cross-Whitehall fees committee to ensure that fee levels generate sufficient revenue to cover UKBA delivery costs but do not adversely impact on the UK economy.

13. Contact

Chris Nickson at the Charging Programme Tel: [0114 2072446] or email: chris.nickson2@homeoffice.gsi.gov.uk, can answer any queries regarding the instrument.