EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT) ORDER 2013

2013 No. [XXXX]

1. This explanatory memorandum has been prepared by the UK Border Agency of the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to amend the Immigration and Nationality (Fees) Order 2011 ("the 2011 Order"). The 2011 Order lists the applications, services and processes relating to immigration and nationality for which the UK Border Agency (acting on behalf of the Secretary of State) is permitted to charge fees. The fees themselves are specified in separate regulations[1], normally updated every April. This Order will allow new fees to be included in these regulations.

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

3.1 None

4. Legislative Context

4.1 This instrument is being made:

- To allow the UK Border Agency to set fees for providing optional arrangements for processing immigration and nationality applications (currently the cost of such services is reflected in the relevant application fee);
- To allow the UK Border Agency to set fees for providing optional premium services to organisations and individuals who sponsor migrants to come to the United Kingdom under the Points-Based System (currently these services are only available to those who apply for premium sponsor status);
- To put arrangements for charging fees for tests administered by the UK Border Agency (or those acting on its behalf) for the purposes of the immigration rules on a statutory footing.

[1] These are made under section 51(3) of the Immigration, Asylum and Nationality Act 2006 (c.13). The current regulations specifying immigration and nationality fees are the Immigration and Nationality (Fees) Regulations 2012 (S.I. 2012/ 971) and the Immigration and Nationality (Cost Recovery Fees) Regulations 2012 (S.I. 2012/813); these Regulations were amended by the Immigration and Nationality (Cost Recovery Fees)(Amendment) Regulations 2012 (S.I. 2012/2276).

- To create a separate power to charge fees for the process of enrolling biometric information (currently such fees are treated as part of the application fee).

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom.

6. European Convention on Human Rights

Mark Harper the Immigration Minister has made the following statement regarding Human Rights:

In my view the provisions of the Immigration and Nationality (Fees) (Amendment) Order 2013 are compatible with the Convention rights.

7. Policy background

- **What is being done and why**

7.1 A key part of delivering the immigration system which the public expects is acquiring the necessary resources to fund delivery and improvements in the services we offer. The UK Border Agency believes that it is right that those who benefit directly from the border and immigration system should bear a higher share of the cost of running the system and therefore reduce the contribution made by the UK tax payer.

7.2 The proposed amendments to the Order support this principle. In addition to clarifying the power under which certain existing fees are set, the UK Border Agency want to introduce new services offerings for which the agency would like to charge. The actual fees will be specified in subsequent Regulations (these Regulations are normally subject to the negative resolution procedure but where fees are set above cost Parliament must give prior approval[2]).

- **New Provisions**

7.3 The UK Border Agency is reviewing its wider premium services strategy to achieve improvements in available service offering and offer greater variety of choice for its customers. The amendments proposed will enable the agency to simplify its current charging structure for optional premium services and widen the scope to develop and offer new optional services in the future.

7.4 At present, the agency specifies fees for immigration applications based on how an application is made. An applicant may either pay the standard application fee and make their application via the post or online or

[2] See section 42 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

alternatively pay a higher application fee and make the application in person. This means that the agency specifies two application fees for many products. To simplify the regulations and improve transparency, the agency would like to set a single application fee for each product. There will then be an option to pay a separate premium fee if the applicant wishes to use an alternative application method. As well as simplifying the regulations it will make it easier for the agency to vary the service offered and to set charges for new arrangements for expediting applications.

7.5 In addition to services and fees that apply to applications from migrants, the proposed changes will also apply to services and charges to sponsors under the Points Based System. Currently certain sponsors of migrants in Tiers 2 and 5 may apply for Premium Sponsor Status. This entitles them to a range of benefits. In future, the agency wants to be able to offer those benefits as individual premium services and expand the range of optional premium services that sponsors may choose from. These changes will allow the agency to put in place fees for these services.

7.6 We are also making some minor adjustments to the existing Order. We are adding a power to charge fees for tests administered for the purposes of the immigration rules to ensure such fees are on the appropriate statutory footing. In addition we are adding a power to set fees for the process of enrolling biometrics for the purpose of issuing Biometric Residence Permits. Currently these fees are treated as an application fee, we consider that treating this as a fee for a process better fits the language used in the legislation dealing with the enrolment of biometrics.

Consolidation

7.7 This Order is the first amendment to the Immigration and Nationality (Fees) Order 2011. Should further amendments prove necessary the UK Border Agency will consider whether it is appropriate to consolidate these amendments within a future Immigration and Nationality (Fees) Order.

8. Consultation outcome

8.1 No separate consultation exercise was conducted as these proposals reflect existing immigration policy and are in line with overall UK Border Agency charging policy. The UK Border Agency published the formal Government response to its full consultation on charging on 14 January 2010 on its website at:

http://webarchive.nationalarchives.gov.uk/20100422120657/http:/www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/charging09/.

8.2 The formal Government response to a previous consultation exercise on charging for immigration and nationality applications was published on 7 March 2007, and is available on the UKBA website at:

http://webarchive.nationalarchives.gov.uk/20100422120657/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/newchargingregime/.

8.3 The UK Border Agency does not anticipate any adverse reactions to these proposals.

9. Guidance

9.1 The UK Border Agency guidance to staff will be updated to reflect these changes. Guidance to the general members of the public will be published when the Regulations setting relevant fees are laid.

10. Impact

10.1 No Impact assessment is required for this instrument as fees will be set in Regulations made in reliance upon this instrument. As a result an Impact Assessment will be prepared in conjunction with those Regulations.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on small firms employing up to 20 people, when using the powers to set fees conferred by this Order the UK Border Agency will seek to maintain its approach of charging a lower fee for small sponsors applying for a licence/status. Other fees based on this Order are unlikely to have an impact on small businesses as they affect individual applicants.

12. Monitoring & review

12.1 The UK Border Agency will closely monitor the impact of fees for the applications and services contained in this Order. The UK Border Agency reviews fees and charges for Immigration and Nationality applications annually. Application trends are monitored 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 UK Border Agency delivery costs but do not adversely impact on the UK economy.

13. Contact

Shola Akinyamoju at the UK Border Agency Charging Programme, Tel: 0208 196 0809 or email: Shola.Akinyamoju@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.