EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT) ORDER 2017

2017 No. xxx

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 This instrument amends the Immigration and Nationality (Fees) Order 2016 (S.I. 2016/177) ("the 2016 Order"), which, amongst other things, sets the maximum amount that the Secretary of State may charge for the provision of certain immigration and nationality-related services and products.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is made under provision in the Immigration Act 2014 ("the 2014 Act") which empowers the Secretary of State to specify immigration and nationality-related functions in respect of which a fee may be charged, and permits the Secretary of State to prescribe maximum fee amounts for the provision of such, set out in broad categories.

3.2 The Secretary of State, by way of the Immigration and Nationality (Fees) Order 2015 (S.I. 2015/746) ("the 2015 Order") and the Immigration and Nationality (Fees) Regulations 2015 (S.I. 2015/768) has previously sought to exercise these powers in respect of applications for entry clearance to enter the Bailiwick of Jersey and the Bailiwick of Guernsey ("the Channel Islands"). But, when the 2016 Order was before the Joint Committee for informal, pre-laying scrutiny, it noted that the enabling powers in the 2014 Act had not been extended to the Channel Islands by way of Orders in Council. This was in contrast to the position in relation to the Isle of Man, in respect of which the 2014 Act provisions had been extended by the time the 2016 Order was made.

3.3 The Home Office considered then, and still does, that the Secretary of State is entitled to exercise the order-making powers in sections 68 to 70 of the 2014 Act in respect of the Channel Islands, without extending Orders in Council having been made first. But in light of the Committee's comments, the Home Office ultimately decided not to exercise the powers in respect of the Channel Islands when making the 2016 Order. It instead opted to preserve the effect of the provision in the 2015 Order and accompanying Regulations which permitted the continuance of that power to charge fees in respect of applications for entry clearance to enter the Channel Islands. This approach did not lead to a report from the Committee and was not commented upon during either of the Parliamentary debates.

3.4 Orders in Council have recently been made, extending the relevant provisions in the 2014 Act to the Channel Islands. As such, the Secretary of State is taking this opportunity to amend the 2016 Order.

Other matters of interest to the House of Commons

3.5 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland, and is not a financial instrument that relates exclusively to England, Wales and Northern Ireland.

4. Legislative Context

4.1 As outlined above, this instrument amends a number of provisions in the 2016 Order, particulary by extending certain provisions in that Order to the Channel Islands. The legislative context is otherwise set out in section 3 above.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom. In addition, Article 1 and paragraphs (1) to (6) of Article 2 extend to the Isle of Man, and Article 1 and paragraphs (1) to (5) of Article 2 extend to the Channel Islands.

5.2 The territorial application of this instrument is the whole of the United Kingdom, the Isle of Man and the Channel Islands.

6. European Convention on Human Rights

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

"In my view the provisions of the Immigration and Nationality (Fees) (Amendment) Order 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The purpose of this instrument is to make a limited number of modest changes to the 2016 Order.

7.2 In particular, it sets the maximum fee which the Secretary of State may charge a person who applies for entry clearance to enter the Channel Islands. The actual fees will be set in subsequent regulations. Until those regulations come into effect, the current fees set under the 2015 Fees Regulations for entry clearance to the Channel Islands apply.

7.3 It removes the reference to 'control ports' in relation to the context in which the Home Office can charge for the provision of Immigration Officers or facilities to provide above-basic services. This amendment aligns the definition with the provisions in section 26 of the Immigration and Asylum Act 1999. It will allow the Home Office to set fees for all above basic services provided by Border Force in subsequent regulations.It amends the definition of "Electronic Visa Waiver" in order to describe more clearly the nature of such a waiver. The effect of the amendment is to clarify that such a waiver authorises a person to travel to the United Kingdom for the purpose of entry, rather than authorising entry itself.

7.4 It introduces a specific power to enable a fee to be set in subsequent regulations for an Approval Letter, in connection with applications for entry clearance to enter the Isle

of Man as a Tier 1 (Exceptional Talent) migrant. As detailed below in paragraph 7.5, this letter is a constituent part of an application for entry clearance to enter the United Kingdom or the Isle of Man as a Tier 1 (Exceptional Talent) migrant under the Points-Based System for immigration, and it is this direct link that has been relied upon to date for the power to charge in the Isle of Man. This amendment makes better use of the available power to set a fee in regulations, by extending the scope of the 2016 Order as it applies to the Isle of Man.

7.5 An application for a Tier 1 (Exceptional Talent) visa is in two stages. First, the applicant must apply to a relevant competent body, for an Approval Letter. If that application is successful, they can then make an application for entry clearance, with the Approval Letter being a constituent part of the evidence required to support that application. A definition of an Approval Letter is contained in the Immigration and Nationality (Fees) Regulations 2016 (S.I. 2016/226.)

7.6 It amends provisions relating to the supply of optional premium services to reflect revised contractual arrangements with a third party supplier and to make a distinction between services offered via a third party supplier ("a contractor") and other services offered directly by the Home Office. The unamended provision in the 2016 Order at Article 9, entry 6.12 in Table 6, sets maximum fees which the Home Office may charge in respect of optional premium services offered in connection with the provision of 'advice, assistance or training in relation to functions in connection with immigration or nationality'. The method of calculation for the maximum fees that can be charged in the 2016 Order in this regard is expressed as a per minute rate.

7.7 This instrument amends the entry at 6.12 in Table 6 enable the use of two different methods for calculating fees in respect of the provision of 'advice, assistance and training', because the variety of services offered cannot be accommodated with a single method of calculation. Accordingly, once amended, services provided electronically by a contractor (via "webchat" and email) will be charged at a fixed rate. Where such services are provided by a contractor by telephone or in person, the charge is based on a per-minute rate. Services provided by the Home Office will continue to be charged at a per-minute rate (and express provision is made for this in the new entry at 6.14 in Table 6). Furthermore, the definition of 'advice, assistance or training' is being expanded to include the provision of 'information'. This will enable more clarity around the types of service being offered when describing them in subsequent regulations which set actual fees.

7.8 This instrument does not increase any maximum fee in the 2016 Order. It does however make provision for a maximum £6.25 fixed fee in relation to electronic services offered by a contractor. This reflects the assumption that the actual time spent by the contractor in preparing an email, or interacting with the customer via a webchat session is estimated to be 2.5 minutes per email or per webchat. The previous £2.50 per minute fee has therefore been multiplied by the 2.5 minutes duration to set a fixed fee maximum of £6.25. Telephone and in-person services provided by a contractor will continue to be charged on a per minute basis. Actual fees for all of these services may be amended, or introduced through subsequent regulations.

Consolidation

7.9 There are no plans to consolidate the 2016 Order at this time.

8. Consultation outcome

8.1 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. The responses were analysed and results were reflected in the proposals set out in the Fees Regulations 2016.

8.2 The consultation document was made available to the general public on the Home Office website. Key interest groups from professional bodies, legal practitioners, education sector representatives, aviation and hospitality trade associations and travel and retail groups were also notified of the consultation and a number of face-to-face meetings took place during the consultation period.

8.3 Responses to the consultation were almost universally constructive:

- Stakeholders expressed appreciation for the opportunity to provide feedback.
- Positive feedback was provided where respondents felt the current charging strategy was successful, such as the availability of and charging at above-cost for premium services.

8.4 Some respondents emphasised the need to ensure that changes to fees were not detrimental to the Government's aim of attracting the 'brightest and best' to work and study in the UK. The Home Office sought to address this in the Fees Regulations 2016 by limiting fee increases for the majority of student, worker and visitor applications to 2% in 2016-17.

8.5 The government response to the consultation was published on the gov.uk website at https://www.gov.uk/government/consultations/fees-and-charging-immigration-and-visas-consultation.

8.6 The provisions contained in this Order are consistent with the Home Office's charging policy, which remains unchanged. Further consultations will take place if the Home Office proposes to significantly alter its charging policy.

9. Guidance

9.1 The Home Office guidance to staff will be updated to reflect these changes. Guidance to general members of the public will also be published when regulations setting changes to relevant fees are laid in Parliament.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument. This is because an Impact Assessment was prepared for the 2016 Order, which assessed the impact of the fee levels set out in the Fees Regulations 2016, and this Order does not impact on the fee levels.

11. Regulating small business

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

12. Monitoring & review

12.1 The Home Office will closely monitor the impact of fees for the applications and services contained in this instrument. The Home Office reviews fees and charges for immigration and nationality applications annually. The Home Office also monitors application trends, and officials from all relevant Government departments consider proposals to amend fee levels to ensure they do not adversely impact on the UK economy.

13. Contact

13.1 Annie Wattam at the Home Office, Fees and Income Planning, Financial Planning Unit, Telephone: 0114 207 2290 or email: Annie.Wattam@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.