EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT) ORDER 2018

2018 No. [XXXX]

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'') (as amended by the Immigration and Nationality (Fees) (Amendment) Order 2017(S.I. 2017/440). The primary purpose of that Order is to set maximum amounts that maybe charged for specified immigration and nationality functions exercised by or on behalf of the Secretary of State. The setting of a maximum amount in the Order has the effect of enabling the Secretary of State to set a fee in Regulations pursuant to provision made in the Order.

2.2 Amendments are required to the 2016 Order to ensure that the charging provisions set out in the Order fully reflect current policy, scope and operational requirements.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 There is one matter of special interest to the Joint Committee on Statutory Instruments. Following further review of the circumstances in which a fee may be set in respect of the provision of biometric identity documents by GLD lawyers, it was determined that the change made by article 2(4)(a) has no effect. It purports to amend article 6 of the 2016 Order, so that a fee can be charged for an application under regulation 19(1)(a) of the Immigration (Biometric Registration) Regulations 2008 for a replacement document where the original document has been cancelled as a result of a person failing to collect it in the required period. Regulation 19(1)(a) does not in fact require an application in those circumstances. Thus, it will not allow the Home Office to charge a fee when a person fails to collect their Biometric Residence Permit (the commonly used term for these documents) within the required time limit. Though the EN states that this does have an effect it is not correct and we will be making Parliament aware of this during the debates on this draft Order. A change will need to be made to the Immigration (Biometric Registration) Regulations 2008, as amended, for us to be able to add in such a provision to the Immigration Fees 2016 Order in future.

Other matters of interest to the House of Commons

3.2 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 at 2.2, this instrument amends the 2016 Order. It does not introduce any new categories of service.

4.2 The Home Office expects to lay new Regulations which set fees subject to the maximum amounts set by the 2016 Order in 2018.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom. In addition paragraphs (2) and (8) of article 2 extend to the Bailiwick of Guernsey, the Bailiwick of Jersey and paragraph 3 of article 2 also extends to the Isle of Man.

5.2 The territorial application of this instrument is the same as its extent.

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 2018 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 changes as set out below

7.1.1 There are a number of changes to certain definitions, the purpose of which is to make clear that they apply in respect of relevant applications for entry clearance to enter the Isle of Man, in relation to which maximum fees are set (these relate to definitions of 'sponsored worker', 'unsponsored worker', 'sponsor' and 'certificate of sponsorship').

7.1.2 The maximum amount that may be set for the provision of copies of decision letters, correspondence or applications, relating to immigration or nationality status is being deleted. A fee has never appeared in regulations further to this provision and there is currently no intention to set any fees using it.

7.1.3 Provision specifying the maximum fee which may be set for dealing with an application from a student, with valid leave under Tier 4 of the Points-based system, for permission to change their sponsor or course of study, is being deleted since no further fees by regulations will be set under that provision.

7.1.4 A change is being made in relation to the consular function provision. This is to allow for circumstances where those functions are not carried out within consular premises. The UK provides services on behalf of certain commonwealth and British overseas territories in order to ensure the secure onward transition of applications. The changes are being made to allow for such activity to take place in non-consular premises, such as Visa Application Centres (VACs), which are run via commercial partners, rather than HMG employees. Whilst this amendment will provide greater flexibility when operating services outside of consular premises on behalf of other governments, it does not alter the services or fees charged to those making applications to enter the UK.

7.1.5 An update is being made in connection with the fee that may be charged by the Secretary of State when offering certain premium services to persons who wish to apply for entry clearance to enter the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man. This change is being made to reflect current operational practice.

7.1.6 The instrument also amends and expands the circumstances in which fees may be set in respect of certain premium services provided by the Home Office, or contractors on behalf of the Home Office, to individuals located in the United Kingdom.

7.1.7 The Order as currently in force (at article 9, paragraph 6.4) specifies a maximum fee of £10,500 which may be set for a Super-Premium service. This optional service is available to applicants in the United Kingdom under certain immigration routes and permits a customer, amongst other things, to submit their application at a location of their choice.

7.1.8 Front End Services transformation (FES) is a portfolio of projects aimed at consolidating commercial contracts and re-aligning how immigration applications are made. As has been the intention over recent years, UKVIs strategic aim is to shift many elements of the process online and to digitise evidence. The use of a commercial provider to deliver a front end service will apply to all straight-forward immigration applications within scope of this service – not just those applying for a mobile 'super premium' service. Submission of an application in person will be at no additional cost to users.

7.1.9 The Home Office expects that this service, in its current format, will cease to be provided in the autumn of 2018, after which, a similar service will be provided by a contracted supplier. This Order sets a new maximum hourly rate, further to which the Secretary of State will by future regulations set the fee payable in respect of such services delivered by a contractor. Under the new arrangements, a supplier will offer a similar mobile application service which will be chargeable at an hourly rate. The procurement of such suppliers will be subject to full and open competition.

7.1.10 It is anticipated that the proposed change to an hourly rate will enable increased access to the services and provide a more affordable option to customers who wish to access the service at a location of their choosing. This is because users of the service will be paying a fee which is more in line with the amount of time that the provision of the service actually takes, rather than a "one-size-fits-all" fee which is currently specified. Home Office analysis identifies that the majority of immigration customers live within close proximity of the UK's major cities where contractor agents are also likely to be based. The move to an hourly rate from a fixed fee will therefore give greater flexibility for the users of the service enabling a more responsive and proportionate service to be provided for multiple customers.

7.1.11 The proposed fee limit of £2,600 per hour is a maximum amount rather than the fee which will actually be set by regulations, currently intended to be made in October. It is envisaged that the actual fees may be lower than the maximum set out in the Order, as is the case with most immigration and nationality fees. The hourly fee is capped and set out in the Order. The maximum amount is modelled on existing costs and location (travel distance) of customers using the service currently (average time is 2 hours and for security reasons requires 2 members of staff to collect biometrics).

7.1.12 The level of the actual fee to be set by way of regulations will depend on the outcome of commercial negotiations with prospective suppliers, which are ongoing and premised on value for money principles. In setting the level of the fee by way of

regulations, the cost of suppliers' overheads will be taken into account. Those costs include costs accruing from the development of the technology required to deliver the service (biometric enrolment hardware and software; bespoke appointment-booking software; and ongoing technical support for these), staff costs, vehicle costs, and account management costs (running a team to proactively offer this service to service users and support their requirements ahead of and after the point of provision of the service).

7.1.13 UKVI's chosen commercial provider will be required to demonstrate a clear, transparent, method of calculation of the service cost, based on the applicant's location, to deliver an 'On-Demand' ("super-premium") service to a customer at a location of their choice. Contractual clauses will require a commercial partner to undertake open book accounting to allow visibility of costs/charges for services provided to customers which in turn will be reviewed by robust commercial oversight.

7.1.14 The commercial provider will be responsible for delivery of the Front End application process only – that is, the collection of biometrics, relevant supporting documents and submission of the application. The Home Office will, as is now, retain oversight and full jurisdiction in relation to decision making.

7.1.15 The Home Office will not be involved in the delivery of Front End Services to applicant's who wish to access the 'On-Demand' service. However, as advised above, the Home Office will retain full oversight and responsibility for decision making. The relevant fee will relate to the cost associated with the commercial partner travelling to the location of choice as requested by the applicant to deliver a front end service at a place that is convenient to them

7.1.16 Contractual clauses outline security standards that a commercial provider is obliged to adhere to in delivering all services on behalf of the Home Office. Security standards form an integral part of contractual reporting and oversight that a commercial provider needs to provide to Home Office commercial managers and senior management.

7.1.17 The Home Office, as now, will retain full oversight and authority in reference to decision-making. There is a clear ethical wall in place between the services a commercial provider will provide and the legal consideration that Home Office will undertake.

7.1.18 Further, when setting the amount of any fee in fees regulations, the Secretary of State may have regard to the list of considerations set out in section 68(9) of the Immigration Act 2014. One of those is the costs of exercising the function (s68(9)(a)) and another is the benefits that the Secretary of State thinks are likely to accrue to any person in connection with the exercise of the function (s68(9)(b)). In setting the fee level, the Secretary of State will ensure that there is a reasonable relationship between the cost in providing the service, the benefit to the individual in connection with this service and the level of fee charged. The final agreed fee will be the amount charged by the commercial partner, and will include the profit margin agreed by the Home Office. Under the contractual arrangements, the commercial partner will retain the associated income received and the Home Office will make no direct profit from this service.

Consolidation

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

8. Consultation outcome

8.1 There was no public consultation on the above changes.

8.2 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 (IA) was prepared for the 2016 Order, which assessed the impact of the specific fee levels set out in the Fees Regulations 2016, and the indicative plans for the Spending Review period, to be delivered within the maximum amounts set out in the 2016 Order, which we are not seeking to change. The cost of providing the service is also set out in the published Home Office annual report & accounts. Changes between the planned fee increases assumed in the original IA and the final fee increases implemented for 2017-18 were aimed at balancing the agreed Spending Review income budget.

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.

12.2 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