EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT) ORDER 2021

2021 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.

2. Purpose of the Order

2.1 This Order amends the Immigration and Nationality (Fees) Order 2016 (S.I. 2016/177) (as amended) ("the 2016 Order"). That Order specifies functions in relation to immigration and nationality for which fees are to be charged and sets the maximum amounts that may be charged for the exercise of these functions. The actual amounts charged are set by the Secretary of State in separate Regulations, currently the Immigration and Nationality (Fees) Regulations 2018 (S.I. 2018/330) (as amended) ("the 2018 Regulations").

2.2 This Order makes amendments to the 2016 Order to the definitions of "premium services", "transfer of conditions" and the scope of charging for biometric reuse to ensure the Order reflects modern service provision. This Order also makes consequential amendments to the 2018 Regulations.

2.3 Copies of this Order will be issued free of charge to known recipients of the 2016 Order.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The powers under which this Order is made extend to England and Wales, Scotland and Northern Ireland (see section 76 of the Immigration Act 2014), and have been further extended to the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man.

4. Extent and Territorial Application

4.1 The territorial extent of this Order is England and Wales, Scotland and Northern Ireland, with certain amendments extending to the Isle of Man, Bailiwick of Jersey and the Bailiwick of Guernsey. The amendments which also extend to the Isle of Man, the Bailiwick of Jersey and the Bailiwick of Guernsey are those made by articles 2(2)(a) and 3(2).

4.2 The territorial application of this Order is the same as its extent.

5. European Convention on Human Rights

5.1 The Minister for Future Borders and Immigration has made the following statement regarding Human Rights:

"In my view the provisions of the Immigration and Nationality (Fees) (Amendment) Order 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 This Order amends provisions of the 2016 Order. Whilst it broadens the scope of existing specified premium services for which fees are charged, it does not introduce any new categories of service. The amendments this Order makes to the 2018 Fees Regulations are consequential on the amendment to the definitions of "premium services" and "transfer of conditions" in the 2016 Order.

6.2 Amendments made by this Order that do not impose duties on people or require them to adopt different patterns of behaviour come into force on the day after the Order is made. These are the amendments that clarify the scope of a function relating to the provision of premium services (see paragraph 7.10). The other amendments made by this Order come into force 21 days after the day on which the Order is made.

7. Policy background

What is being done and why?

7.1 The purpose of this Order is to make the following changes.

Digital Status

7.2 The Home Office issues physical documents to evidence an individual's status and sets a range of specific charges in relation to these documents. There is a phased approach to move towards evidencing immigration status using online platforms, through which individuals will be able to upload and maintain their own biometric information. This Order amends the definition of "transfer of conditions" to ensure it covers digital as well as physical documents.

Reuse of Biometrics

7.3 The Home Office charges £19.20 to enrol applicants' biometric information (fingerprints and facial images), where required, in the UK. This is underpinned by entry 3.2.2 in Table 3 in article 6 of the 2016 Order and entries 12.2 in Table 12 and 20.2.2 in Table 20 in the 2018 Regulations, in Schedules 3 and 8 respectively.

7.4 Historically, applicants in the UK have been required to enrol their biometric information each time they apply for a period of leave to remain, paying the fee each time. The Home Office is now able to reuse previously enrolled biometric information, which is more convenient for applicants, however as the departmental processing costs for reuse are similar to those for taking fresh biometrics the fee must remain.

7.5 In order to ensure that our legislation fully supports charging for reuse of biometrics, an amendment is being made to broaden the existing entry 3.2.2 in Table 3 in article 6 of the 2016 Order. This ensures that the same maxima of £30 can be applied to the reuse of biometrics, facilitating subsequent changes to the relevant provisions in the Regulations.

Redefining the term "premium services"

7.6 This Order amends the definition of "premium services" in the 2016 Order and adds a corresponding definition in the 2018 Regulations.

7.7 Premium services are optional services which are provided over and above any standard or basic service in connection with immigration or nationality. In the 2016 Order, the expression "premium services" is currently defined as optional premium services "in connection with immigration or nationality applications". The 2016 Order then provides (in articles 7, 9 and 9A) for fees to be charged for the provision of various categories of premium services. The current definition of "premium services" means that fees for premium services may be charged only for premium services provided in connection with immigration or nationality applications (which means applications made for, for example, a particular immigration status). This does not fully reflect the policy intent. The policy is that the definition of "premium services" should cover optional premium services in connection with immigration and nationality, for example, border force officers checking passports on carriers at sea which some carriers choose to pay for, and not just such services connected with immigration or nationality applications.

7.8 This Order therefore amends the definition of "premium services" in article 2 of the 2016 Order to reflect the full scope of premium services. The amended definition will include premium services in connection with immigration and nationality applications but will also extend to premium services in connection with immigration or nationality generally, where there is no actual immigration or nationality application. The amended definition will apply for the purposes of articles 7, 9 and 9A of the 2016 Order, which specify the various premium services for which fees are to be charged. In relation to article 9A of the 2016 Order, this includes services provided in relation to applications for entry clearance to enter the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man. The amendment to the definition will widen the scope of these fees, except where they are expressed to be limited to, or are necessarily limited to, services in connection with immigration or nationality applications.

7.9 This amendment does not alter the maximum amount of any fee which the Home Office may charge for providing premium services.

Clarification of the description of particular premium services

7.10 This Order also amends entry 6.11 in Table 6 in article 9 of the 2016 Order to make clear that the provision of immigration officers or facilities is not limited to providing additional officers or facilities at a control port. This is a clarificatory amendment. It does not change the intended scope of entry 6.11, which was amended by the Immigration and Nationality (Fees) (Amendment) Order 2017 (S.I. 2017/440) to remove a previous express reference to control ports.

Amendments to the Immigration and Nationality (Fees) Regulations 2018

7.11 Article 3 amends the 2018 Regulations. Article 3(2) adds a definition of "premium services" in regulation 2 of those Regulations and article 3(4) amends the definition of "premium services for sponsors" in Schedule 4. These amendments make clear that the expression "premium services" has the same meaning in the 2018 Regulations as it does in the 2016 Order. Article 3(3) makes amendments to the 2018 Regulations equivalent and consequential to the amendments to the definition of "transfer of conditions".

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This Order does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Immigration and Nationality (Fees) Order and the Immigration and Nationality (Fees) Regulations are consolidated periodically. There are no plans to consolidate the 2016 Order or the 2018 Fees Regulations at this time.

10. Consultation outcome

10.1 There has been no public consultation on the above changes.

10.2 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. These responses were analysed and continue to be reflected in the proposals set out in the 2018 Regulations.

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

11. Guidance

11.1 Home Office Guidance for staff will be updated to reflect these changes. Information and guidance for general members of the public will not be published for changes in this Order; however, they will be published when regulations setting out changes to actual fees are laid in Parliament.

12. Impact

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

12.2 There is no significant impact on the public sector.

12.3 It should be noted that this Order does not change the actual level of the visa fees (set by the 2018 Fees Regulations), and therefore there is no such direct impact associated with this Order.

13. Regulating small business

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

14. Monitoring & review

14.1 This Order does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Kevin Foster MP, Parliamentary Under-Secretary of State for Future Borders and Immigration at the Home Office, has made the following statement: "It is not appropriate in the circumstances to make provision for review. Fees are kept under regular review and I am satisfied that this Order does not impact on small businesses." Nevertheless, the Home Office will continue to monitor the impact of this Order.

15. Contact

15.1 Wasim Akhtar at the Home Office Telephone: 07551 675 125 or Email: wasim.akhtar10@homeoffice.gov.uk can be contacted with any queries regarding this Order.

15.2 Paul Darling, Deputy Director for the Border Immigration and Citizenship System at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister for Future Borders and Immigration, Kevin Foster MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.