EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT) ORDER 2023

2023 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This Order amends the Immigration and Nationality (Fees) Order 2016 (S.I. 2016/177) (as amended) ("the Fees Order") and makes consequential amendments to the Immigration and Nationality (Fees) Regulations 2018 (as amended) ("the Fees Regulations"). The Fees 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 Fees Regulations set the actual amount or rate of each fee that is to be charged, including different fees and rates for different purposes.

2.2 This Order increases the maximum amounts that can be charged ('maxima') for certain visas and services connected to immigration and nationality. This Order further adds three new chargeable functions for which fees are to be charged in subsequent Fees Regulations. It also amends the description of certain existing functions in the Fees Order, removing some functions entirely and reducing the scope of others.

2.3 This Order further makes amendments to the Fees Regulations, which are consequential to the amendments to the Fees Order. The result is that a number of existing fees are removed, and others modified so that they are payable in more limited circumstances.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland. Some provisions extend also to the Bailiwicks of Jersey and Guernsey and to the Isle of Man.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland. Some provisions apply in the Bailiwicks of Jersey and Guernsey and to the Isle of Man.

5. European Convention on Human Rights

5.1 The Minister for Immigration [Robert Jenrick, MP] has made the following statement regarding Human Rights:

"In my view the provisions of the Immigration and Nationality (Fees) (Amendment) Order 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 This Order sets the maximum amount that can be charged to apply for an Electronic Travel Authorisation ("ETA") to travel to the United Kingdom within the meaning of section 11C of the Immigration Act 1971 as inserted by section 75(2) of the Nationality and Borders Act 2022. It also provides a new chargeable function with a maximum chargeable fee under the reformed Innovator Founder route and supports plans for transformation of the sponsorship system. Further it amends the maximum chargeable amounts for certain existing functions.

6.2 This Order amends the description of certain existing functions, removing some functions entirely and reducing the scope of others, and makes consequential amendments to the Fees Regulations to remove certain existing fees and modify others.

6.3 Certain amendments to the Fees Order are applicable to the Bailiwicks of Guernsey and Jersey, and the Isle of Man.

6.4 The charging powers that underpin the amendments both to the Fees Order and the Fees Regulations are provided by Section 68 of the Immigration Act 2014.

7. Policy background

What is being done and why?

Electronic Travel Authorisation (ETA) Scheme - new power to charge a fee

7.1 ETAs are a new requirement introduced in the Immigration Rules on 9 March 2023 (HC1160) for individuals (except British and Irish citizens) visiting or transiting through the United Kingdom, who do not need a visa, entry clearance or do not already have any immigration status in the United Kingdom. This requirement will be rolled out in phases from October 2023. ETAs are a permission to travel in electronic form, linked to an individual's passport, which individuals will be required to apply for and obtain in advance of their journey to the United Kingdom. Further details on the ETA Scheme can be found at the following link - Statement of changes to the immigration rules: HC 1160, 9 March 2023 - GOV.UK (www.gov.uk).

7.2 These amendments provide a power in the Fees Order to charge a maximum fee of £15 for an ETA and amend the existing provisions related to the Electronic Visa Waiver (EVW) scheme. The EVW scheme will eventually be phased out as each nationality which is currently eligible to apply for one becomes eligible to apply for an ETA instead. This Order facilitates the setting of a specific chargeable fee for ETAs in Fees Regulations at a later date to support charging from initial rollout of the scheme in October.

7.3 The provision to charge a fee for an ETA will also be extended to the Bailiwicks of Guernsey and Jersey and the Isle of Man as they will be introducing their own ETA schemes eventually on the same lines as the United Kingdom's scheme.

Innovator Founder route – a new power to charge a fee for 'contact point meetings' with endorsing bodies

7.4 Reforms to the Innovator and Start-up route were introduced in the Immigration Rules on 9 March 2023 (HC1160) which require potential applicants for leave to enter or remain in the UK under Appendix Innovator Founder to obtain a letter of endorsement from one of the three independent bodies newly appointed by the Secretary of State. Under the new arrangements, the endorsing bodies provide endorsement services under

formal commercial agreements with the Home Office, and further carry out periodic assessments by arranging 'contact point meetings' with their endorsees to assess progress against the applicant's business plan during the individual's period of leave. As part of those arrangements, the Home Office has considered it appropriate to allow those endorsing bodies to charge a fee for those services.

7.5 A fee of £1,000 was set in the Fees Regulations laid on 22 March 2023 and is payable by applicants under the reformed Innovator Founder route for an endorsement from their chosen endorsing body. These amendments introduce a new chargeable function and provide a power in the Fees Order to charge a maximum fee of £500 to undertake a contact point meeting with the endorsing bodies. This will facilitate the setting of a specific fee in the Fees Regulations for this service at a later date.

7.6 Further a provision is made to clarify that the fees charged under the Immigration and Nationality Fees (Regulations) 2018 by endorsing bodies that relate to Appendices Innovator Founder and Scale-up (for Scale-up sponsor license purpose) may be retained by the respective endorsing body.

Reformed sponsorship system – a new power to charge a fee for the function of 'sponsor a worker'

7.7 Under plans to reform the current sponsorship system, the existing process of annual allocation and issuance of a Certificate of Sponsorship (CoS) within the Sponsorship Management System (SMS) will be replaced with a new function to sponsor a worker. Under this new system, the licensed sponsor will use their on-line account to make a submission to sponsor a worker with details of the worker and the related job role and position. Once the Home Office approves the role and position, the sponsor will be required to pay a fee to receive that approval which also contains a link which the sponsor forwards to the proposed worker to apply for leave to enter or remain in the United Kingdom. The application form will be partially pre-populated using details in the submission to sponsor that worker, which will prevent duplication. The new process is part of a wider sponsorship transformation programme to make the points-based system as streamlined and digitised as possible with a faster end-to-end process from a sponsor getting a licence to an applicant coming to the UK.

7.8 The plan is to initially trial the new process in a limited private beta phase involving only a small number of sponsors and it will gradually roll out to more sponsors over the next 2 to 4 years. Until the new system and process fully replaces the current CoS and SMS system, both systems will need to co-exist during the transition period. Further details will be published in sponsorship guidance closer to the time of introducing the new system.

7.9 These amendments provide a new chargeable function for sponsoring a worker, and the fee maxima of £300, which is set at the same level as the fee maxima for a CoS. This will facilitate the setting of a fee for sponsoring a worker in the Fees Regulations at a future date to support the introduction of the new system.

Increase in fee maxima in the Fees Order

7.10 The Fees Order 2016 specifies the maximum amount which can be charged in respect of each visa or a service function, with the actual fees to be charged set in the Fees Regulations 2018. Over time, some individual fees have moved closer to the fee maximum. Further there are also some fee maxima which are either below or close to the unit costs (i.e., estimated cost of processing that application type) following a

refresh of unit costs in April 2022, which prevents the related fees in the Fees Regulations from being increased to a cost recovery level. This Order makes changes to the relevant maximum amounts in order to increase the department's flexibility to pursue fee changes in future, with details of the changes set out in the Annex to this Explanatory Memorandum below.

Fee Simplification changes

7.11 Currently the Home Office issues physical documents to evidence an individual's immigration 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, without them requiring to pay a fee. The direction of travel for fee simplification policy is to remove the fee for Transfer of Conditions (TOC) for the holders of limited leave status and the fees related to amendment of details on a Biometric Residence Permit (BRP) or Biometric Residence Card (BRC), in order to support greater consistency in the fees that are payable for maintenance of evidence of immigration status as the system moves towards full rollout of digital status by end 2024.

7.12 Though we aim to eventually remove the TOC fee completely, currently only the in-country TOC fee will be removed. We will retain the out-of-country TOC fee until such time as the appropriate IT systems are in place in overseas operations to support it. We will remove the fee for renewal of a BRP or BRC where that card evidences a settlement status in the United Kingdom, but it has an expiry date on it. However, during transition, we will retain the current fee for replacement of a BRP or BRC i.e., 'like-for-like' replacement in the event that it is lost or stolen or damaged with a view that an individual is reasonably expected to take responsibility for their physical evidence of immigration status and keep it safe. We are also removing standalone charges relating to enrolment or reuse of biometric information, which have largely already been phased out from immigration and nationality applications in order to simplify the range of fees payable in relation to an application.

7.13 These amendments remove and amend the related existing provisions in the Fees Order to support fee simplification and make further consequential amendments to the Fees Regulations to remove the relevant fees, and amend others to charge in limited circumstances, as outlined above. These fee changes will come into effect after the date the Fees Order is made, and changes in fee tables will be published closer to the commencement date on the GOV.UK website.

8. European Union Withdrawal and Future Relationship

8.1 This instrument 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 Fees Order and the Fees Regulations are consolidated periodically. There are no plans at this time to consolidate the Order or the Regulations.

10. Consultation outcome

10.1 There was no public consultation on the above changes.

10.2 The Home Office conducted a targeted 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. Responses to this consultation were analysed and continue to be reflected in this Fees Order. The provisions contained in this Fees Order are consistent with the Government's charging policy, which remains unchanged.

11. Guidance

11.1 Home Office guidance for staff will be updated to reflect the changes in this Fees Order which make consequential amendments to the fees that are charged. Information and guidance for members of the public will also be updated. These updates in the published guidance will be made closer to the commencement date of fee changes.

12. Impact

12.1 A full Impact Assessment has been produced in response to the introduction of ETA, this will be published alongside the Immigration Rules laid on 9 March 2023. A full Impact Assessment for changes to fee maxima has also been produced, and it will be published here alongside the Fees Order.

12.2 The direct impact on business, charities, or voluntary bodies as a result of the ETA changes is likely to be small, however any impacts are set out in the Impact Assessment. The main impact on the public sector is an increase in processing costs for the Home Office that results from the changes. The impacts on the public sector are also set out in the Impact Assessment.

12.3 As relates to the changes to the fee maxima there is no impact on business, charities, or voluntary bodies. There is also no, or no significant, impact on the public sector. An increase in the fee maxima grants the Home Office the ability to raise fees above their current maximum level and does not result in any changes to actual fees charged.

13. Regulating small business

13.1 There is no, or no significant, impact on activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the Home Office will monitor the impact of fees for the applications and services which are set in this Fees Order.

14.2 These Regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Robert Jenrick, MP, Minister for Immigration has made the following statement - "It is not appropriate in the circumstances to make provisions for review. Fees are kept under regular review, and I am satisfied that these regulations have no significant impact on small businesses." Nevertheless, the Home Office will continue to monitor the impact of these regulations.

15. Contact

15.1 Milind Deshpande at the Home Office can be contacted with any queries regarding the instrument on email: feesandincomeplanning.requests@homeoffice.gov.uk

15.2 Paul Darling, Deputy Director - Special Projects, Fees and Income Planning, Corporate Enablers, Finance Directorate at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Jenrick, MP, Minister of State (Minister for Immigration) can confirm that this Explanatory Memorandum meets the required standard.

Annex A

TABLES FOR CHANGES OF FEE MAXIMA

A.1 Visitors

(In respect of entry clearance or leave to enter only applicable also to the Bailiwicks of Guernsey and Jersey, and the Isle of Man)

Type of application	Method of calculation	Current maximum amount / rate	New maximum amount / rate
Visitor: Entry clearance for a period of six months or less	Fixed amount	£130	£140
Visitor: Entry clearance for a period of more than six months up to and including twelve months	Fixed amount	£200	£250
Visitor: Entry clearance for a period of more than twelve months	Annual rate	£200 per annum	£250 per annum
Visitor: Leave to remain in the United Kingdom	Fixed amount	£1,000	£1,200

A.2 Entry clearance or leave to enter or remain

(In respect of entry clearance or leave to enter only applicable also to the Bailiwicks of Guernsey and Jersey, and the Isle of Man)

Type of application	Method of calculation	Current maximum amount / rate	New maximum amount / rate
A sponsored worker, where either a certificate of sponsorship or approval as sponsor	Fixed amount	£1,500	£2,000

a worker has been issued			
Student or Child student	Fixed amount	£490	£600
On a route to settlement / indefinite leave to remain in the UK	Fixed amount	£3,250	£3,600
Indefinite leave to remain or settlement in the UK	Fixed amount	£3,250	£3,600

A.3 Other services in connection with immigration and nationality

(Applicable to the United Kingdom only)

Type of application	Method of calculation	Current maximum amount / rate	New maximum amount / rate
The review of a decision in connection with immigration or nationality	Fixed amount	£400	£450
Registration of a declaration of renunciation of British citizenship, British overseas citizenship, British Overseas Territories citizenship or of the status of British subject, British National (Overseas) or British protected person	Fixed amount	£400	£450
Amendment of a certificate of registration or naturalisation as a British citizen	Fixed amount	£250	£400

Arrangement of a citizenship ceremony	Fixed amount	£100	£150
Supply of a certified copy of a notice, certificate, order, declaration or entry given, granted or made under the 1981 Act, any of the former nationality Acts, or the 1997 Act	Fixed amount	£250	£400
Supply of a copy, or replacement, or amended version of any of the documents specified in above row of this table	Fixed amount	£250	£400

A.4 Priority service

(In respect of immigration applications only applicable also to the Bailiwicks of Guernsey and Jersey and the Isle of Man)

Type of application	Method of calculation	Current maximum amount / rate	New maximum amount / rate
Arrangements for expediting the processing (or any element of the processing) of an application or claim in connection with immigration or nationality	Fixed amount	£1,000	£1,200