EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT) ORDER 2024

2024 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. Declaration

2.1 Seema Malhotra MP, Minister for Migration and Citizenship at the Home Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Nicola Sills, Deputy Director – Strategic Finance and Risk, Corporate and Delivery, Finance Directorate, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Ben Foyle at the Home Office can be contacted with any queries regarding this instrument by email: feesandincomeplanning.requests@homeoffice.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order provides the power to charge a fee for the assessment of an overseas qualification for the purpose of demonstrating compliance with English language proficiency and qualification requirements for certain immigration and nationality routes. It sets a maximum fee of £400 that can be charged for each of these services.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland. The provisions specified at 2(3) additionally extend to the Isle of Man and the Bailiwicks of Jersey and Guernsey.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the same as its extent.

5. Policy Context

What is being done and why?

5.1 The Home Office immigration rules require an applicant applying for a visa to demonstrate proficiency in English Language at a specified level. This can be demonstrated in a number of ways, one of which is to use an academic qualification obtained in English awarded by a university or an educational establishment outside of the UK[1]. Certain individuals making applications under Appendix Skilled Worker or

[1] https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-english-language

Appendix High Potential Individual are required by the Immigration Rules to obtain verification that their qualification meets the required standard, using a service operated by a third party supplier on behalf of the Home Office. This supplier currently charges applicants a fee for that service and retains the income from those fees.

5.2 The assessment of an overseas qualification (the "Equivalency and Proficiency Service") can also be used as part of an application to become a British Citizen and by students undertaking a short-term period of study in the United Kingdom as part of a degree level study programme in the United States of America.

5.3 Following a review of the current charging arrangements for the Equivalency and Proficiency Service, it has been identified that it is a legal requirement that, for fees to be charged, the fees for these services need to be set within the department's fees legislation. This is due to the mandatory nature of the requirement to use the Equivalency and Proficiency Services in relation to applications on certain routes, and consequently the mandatory nature of the fee.

5.4 We are therefore, required by section 68(1) of the Immigration Act 2014 to make an amendment to the Immigration and Nationality (Fees) Order 2016 (The Order) which will set a power to charge a fee and the maximum fee that can be charged by the Home Office (the Fee Maxima). This amendment will allow for fees to be put on a statutory footing in Regulations later this year.

5.5 The fee maxima is being set at £400 for each service and is based on the fees that are currently charged to customers using this service, which is operated by a third party supplier on behalf of the Home Office. These are £140 +VAT for English language proficiency and £210+VAT for qualification equivalency assessments (in some circumstances this service will include English Language proficiency assessment). Setting the maxima at £400 will ensure that the Home Office is able to recover the cost of providing these services while ensuring a reasonable degree of headroom in respect of the fee charged if, for instance, there is an increase in those costs.

5.6 The actual fee level will be set in separate legislation, the Immigration and Nationality (Fees) Regulations 2018, at the earliest opportunity after this Order comes into effect. The fee that will be charged for English language proficiency and qualification equivalency assessments will be kept under review.

6. Legislative and Legal Context

How has the law changed?

6.1 The Immigration and Nationality (Fees) (Amendment) Order 2016 amends the Immigration and Nationality (Fees) Order (S.I. 2016/177) in respect of the power to charge a fee for services relating to immigration and nationality.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation was carried out on the changes we are making through this Order, as these changes are limited in nature and will not materially impact on requirements for users of the migration and borders system.

8. Applicable Guidance

8.1 Where the Home Office requires visa and nationality applicants to use the Equivalency and Proficiency Service, this is clearly set out on gov.uk[2] and in the Immigration Rules[3].

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full impact assessment has not been completed for this instrument as no, or no significant, impact on business, charities or voluntary bodies is foreseen. An Economic Note is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. The Economic Note assesses the theoretical impact of charging for the service in terms of income generated to the government based on current levels of service demand, and that this impact is approximately £17.7m per annum based on current service rates (exclusive of VAT), of which an estimated £1.6m per annum are treated as a transfer between UK residents and the government. This gives an overall Net Present Social Value (NPSV) of £139.1m across a ten year appraisal period. However, as the fee is not being set at this point, this should be regarded as indicative and detail on the impact of the specific fee will be set out in the EM that accompanies the relevant Regulations.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this Order is not creating any new requirements for any of these sectors. This Order will allow the Home Office to set a fee for the Equivalency and Proficiency Service.

9.3 The legislation does not impact small or micro businesses.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the Home Office will keep this Order under review.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Seema Malhotra, MP, Minister for Migration and Citizenship, has made the following statement:

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[2] https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-english-language
https://www.gov.uk/skilled-worker-visa/knowledge-of-english
https://www.gov.uk/english-language/degrees-in-english

[3] https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-english-language
https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-high-potential-individual

"It is not appropriate in the circumstances to make provision for review. This Order is 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.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Seema Malhotra MP, Minister for Migration and Citizenship, has made the following statement regarding Human Rights:

"In my view the provisions of the Immigration and Nationality (Fees) (Amendment) Order 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").