EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) ORDER 2015

2015 No. [DRAFT]

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 instrument

2.1 This Order sets out the functions in connection with immigration and nationality for which the Secretary of State may charge a fee. The fees will be specified in separate regulations. It replaces the Immigration and Nationality (Fees) Order 2011, as amended by the Immigration and Nationality (Fees) (Amendment) Order 2013 and 2014, which currently sets out the applications, services and processes for which the Secretary of State may charge a fee.

2.2 This Instrument sets out the categories of functions that may be charged, how fees are to be calculated, and maximum amounts which can be charged. Fees regulations specifying the details of the application types to be charged and the actual fee levels will be made and laid before Parliament subsequently.[1]

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Immigration and nationality fees are reviewed and amended annually. Where a new type of charged application or service is introduced, this may require an amendment to the fees order as well as to the regulations that set the relevant fee. In such cases, under the previous legislative framework, Parliament would first consider the fees order where the scope of debate would be limited to the nature of the charged function. Shortly after, Parliament would consider the draft affirmative fees regulations, where the scope of debate would be limited to fee amounts for fees charged above cost. This arrangement has been criticised, because separating consideration of chargeable functions and fees does not support effective scrutiny.

3.2 This Order sets out chargeable immigration functions and maximum fee amounts. Parliament may therefore consider both the nature of the chargeable functions and fee levels at the same time, including cost-recovery fees. Specific fee amounts will then be set through regulations subject to the negative procedure, within the limits agreed by Parliament.

4. Legislative Context

[1] Further detail on indicative fees for each application and service type can be found in the *Table with further detail of indicative charges for 2015/16* available at www.homeoffice.gov.uk/

4.1 This is the first fees order made under the fees provisions in the Immigration Act 2014. The current fees order is an affirmative instrument, which provides the Secretary of State with a power to make regulations setting fees for immigration and nationality applications and services. There are two sets of regulations made under the current fees order: a negative instrument setting out cost-recovery fees; and an affirmative instrument setting out all other fees.

4.2 Fees set under the existing legislation will remain in force until new fees, set out in regulations made under the Immigration Act 2014 ('The Act') and in reliance on this Order, come into effect. We envisage that this will take place on 6th April 2015.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

James Brokenshire the Immigration and Security Minister has made the following statement regarding human rights:

In my view the provisions of the draft Immigration and Nationality (Fees) Order 2015 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 A key part of delivering an immigration system which commands public confidence is acquiring the necessary resources to fund delivery and improvements in the services offered. The Home Office generates over half of this revenue by charging those who make applications and requests for services. Fees are charged for applications for permission to enter or remain in the UK for British citizenship, sponsorship and other immigration functions. The remainder of the funding required to run the immigration system is obtained from general taxation. The Home Office believes that it is right that those who benefit directly from the border and immigration system should bear a share of the cost of running the system and therefore reduce the contribution made by the UK tax payer.

7.2 The Act introduced some changes to the existing fees legislative structure. The changes introduced by sections 68 and 69 of the Act simplify the way charged functions in relation to immigration and nationality may be specified within the legal framework. The Act confers powers to enable more clarity about where such functions may be delivered and by whom. It provides for the power to charge contained within primary legislation to be exercised as it is now, by a fees order subject to the affirmative resolution procedure, and specifies that such an order must also state how fees will be set and include a maximum fee level to be charged.

7.3 These changes enable the Secretary of State to introduce or amend fees more quickly, without the need for a new affirmative instrument unless it is a new type of service, or the proposed fee is outside the range previously agreed by Parliament. This will facilitate the introduction of new, charged optional premium services in response to customer demands and changes to fee levels to reflect the government's policy.

7.4 The structure of the Immigration and Nationality (Fees) Order 2015 is similar to that of the previous fees order. It details the chargeable functions relating to immigration and nationality under the following broad application categories:

- Entry clearance to enter or leave to remain as a visitor, worker, student or for any other purpose;
- Documents and administrative activities in connection with immigration or nationality;
- Sponsorship related functions;
- Consular functions provided by the Home Office;
- Provision of optional premium services;
- Nationality related functions.

7.5 The Order specifies the types of applications that have been grouped under each broad category and how a fee, to be set in fees regulations, is to be calculated. A proposed maximum fee has been set according to the highest individual fee for an application within each category. This figure is not an actual fee, but a ceiling limiting the amount that may be charged in fees regulations. Fees regulations will be subject to the negative resolution procedure. They will set out specific fees, exemptions, and when relevant, provisions for the timing of payments and for the administration of rejected and withdrawn applications.

7.6 The process for reviewing and updating fees will continue to be subject to the cross-government approval procedure. This procedure includes a formal requirement that all fee levels are agreed collectively by a Cabinet Committee and receive bilateral clearance from two Lord Commissioners of HM Treasury.

7.7 The Home Office is committed to making ongoing improvements in service levels and the range of available services, offering greater variety and choice for its customers. To support this, the provisions in this Order have been made to allow flexibility to innovate and extend customer-facing processes and services to support agreed, wider departmental and government objectives.

Consolidation

7.8 This Order will replace the previous Immigration and Nationality (Fees) Order 2011, and so consolidation is unnecessary.

8. Consultation outcome

8.1 In January 2014, the Home Office published the formal government response to the consultation on how its charging strategy works in practice. The consultation set out proposals on how the Home Office planned to continue to charge for visa and immigration services to reduce the financial burden on the public purse. Responses were broadly supportive of the proposals and the general principles of charging. The full government response to the consultation is published on the government consultation website:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/276026/ImmigrationFeesChargingResponse.pdf

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 relevant fees are laid.

10. Impact

10.1 This instrument is not expected to directly affect charities and voluntary bodies as no new regulatory burden is being introduced. It is estimated that there will be no direct regulatory costs to business as explained in the full impact assessment published alongside this Explanatory Memorandum.

10.2 The impact on the public sector is explained in Annex 6 of the impact assessment.

11. Regulating small business

11.1 This instrument is enabling legislation and does not directly apply to small business. A reduction in migrant workers as a result of the fees proposals may affect small firms. However, the volumes expected to be deterred from coming to the UK are very small and we expect any impacts on firms and sectors to be nil or negligible.

12. Monitoring & review

12.1 The Home Office will closely monitor the impact of fees for the applications and services contained in this Order. The Home Office reviews fees and charges for Immigration and Nationality applications at least annually. Application volumes are monitored on a monthly basis. Analysis of application trends is monitored by a cross-Whitehall fees committee to ensure

that fee levels generate sufficient revenue to cover Home Office delivery costs but do not adversely impact on the UK economy.

13. Contact

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