EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) REGULATIONS 2013

2013 No. XXXX

1. This explanatory memorandum has been prepared by the UK Border Agency of the Home Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The purpose of this instrument is to specify fees for applications, services and processes relating to immigration and nationality where those fees exceed the administrative cost of dealing with the application or providing the process or service. They replace the Immigration and Nationality (Fees) Regulations 2012 and come into force on 6 April 2013.

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

3.1 These regulations contain some fee increases above the rate of inflation. More detail in set out in sections 7.8 to 7.22 of this memorandum.

4. Legislative context

4.1 These regulations follow on from the Immigration and Nationality (Fees) Order 2011, as amended by the Immigration and Nationality (Fees) (Amendment) Order 2013, which sets out those applications, processes and services relating to immigration and nationality for which fees can be charged. These regulations will replace the Immigration and Nationality (Fees) Regulations 2012, which together with the Immigration and Nationality (Cost Recovery Fees) Regulations 2012[1], have specified immigration and nationality fees since 6 April 2012.

4.2 There are two sets of fees regulations because regulations setting fees exceeding the administrative cost of dealing with applications or providing the relevant processes or services must be approved in draft by Parliament before they are made. Currently, those fees are to be found in the Immigration and Nationality (Fees) Regulations 2012, which these regulations will replace. Fees set at or below cost do not require prior parliamentary approval. Such fees are currently specified in the Immigration and Nationality (Cost Recovery Fees) Regulations 2012, which will also be replaced by a new set of

[1] Which were amended in October 2012 by the Immigration and Nationality (Cost Recovery Fees) (Amendment) Regulations 2012.

regulations laid under the negative procedure, which are also due to come into force on 6 April 2013.

5. Territorial extent and application

5.1 This instrument extends to the United Kingdom. The regulations also set fees for entry clearance to enter the Channel Islands.

6. European Convention on Human Rights

6.1 Mark Harper MP, the Immigration Minister, has made the following statement regarding human rights:

"In my view the provisions of the Immigration and Nationality Fees Regulations 2013 are compatible with the European Convention on Human Rights."

7. Policy background

What we are doing and why:

7.1 The fees contained in these regulations are set above the administrative cost of providing the application, process or service in line with the government's flexible charging model. Charging fees above the cost of administration helps raise the revenue required to fund the immigration system and to cross-subsidise fees set below cost for immigration routes where a lower fee supports government objectives. As a direct result of the fees referred to in this instrument, the UK Border Agency is able to generate sufficient income to support the immigration system, maintain public confidence and ensure that migration is controlled for the benefit of the UK.

7.2 The UK Border Agency aims to generate an appropriate contribution to its agreed running costs from the income generated from visa, nationality and immigration applications. By doing this, the Agency seeks to reduce the financial obligation on the UK taxpayer to subsidise the immigration system. It is also able to protect certain routes from significant fee increases while generating the additional revenue needed to fund enforcement and other necessary improvements to the immigration system.

7.3 Fees are set above cost to reflect the value of the products in terms of the benefits and entitlements that would accrue to a successful applicant. The Agency takes into account the different rights and entitlements applicable for each application route. For example, some routes give a successful applicant valuable entitlements such as access to the UK labour market without the need for a sponsor, leave that qualifies for settlement, and the ability to bring dependants to the UK who can also work without restriction and access benefits. The fee charged for such routes are set at a higher level to reflect

these valuable entitlements. In comparison, other routes may not attract entitlements of the same level and are therefore priced accordingly. Where fees are set higher for certain routes, it enables the Secretary of State to minimise fee increases in others, including those considered to be the most economically sensitive (for example visitors, workers, students and businesses).

7.4 This year, the UK Border Agency is proposing a flat rate 3% increase across the majority of application routes. In addition, targeted increases to some application types are proposed to meet strategic charging policy objectives and prevent greater increases across all fees. For example, the concession on fees paid by dependants applying in country has been reduced from 50% to 25% of the main applicant's fee; the fee for Indefinite Leave to Remain (ILR) has been aligned with the fee for other applications where entitlements to a successful applicant are significant; and nationality registration application fees have been increased to better reflect entitlements.

7.5 The Agency is reviewing its premium services strategy and intends to expand and improve services to give customers greater flexibility, particularly if they need to travel urgently or prefer face-to-face services. To support this, the charging structure for optional premium services has been reviewed and simplified.

7.6 The Agency has published indicative unit costs for each application for the financial year 2013-14. Full details are available at http://www.ukba.homeoffice.gsi.gov.uk. The unit cost is the estimated average cost to the agency of processing each application. These costs are provided to Parliament to ensure transparency. Although they are not fixed over the course of the financial year, published unit costs will enable applicants to see which fees are set over cost and by how much, and which fees are set under cost and by how much.

7.7 The tables below set out the current fee levels and the new proposed fees, for products that are set above cost or included in these regulations:

VISA FEES

PRODUCTS	2012-13 Fees (£)	Estimated Unit Cost for 13-14 (£)	Proposed Fee for 13-14 (£)
Non PBS Visas			
Long term visit visa (up to 2 years)	270	136	278
Long term visit visa (up to 5 years)	496	136	511
Long term visit visa (up to 10 years)	716	136	737
Extended Student Visit Visa (between 6 & 11 months)	140	136	144
Settlement visa	826	407	851
Settlement visa – Armed Forces Dependant	810	407	810

Settlement Visa - Dependant Relative	1,850	407	1,906
Other visa	270	207	278
Media Representative	480	207	494
PBS Visas			
Tier 1 (Entrepreneur, Investor, Exceptional Talent), main applicant	816	295	840
Tier 1 (Entrepreneur, Investor, Exceptional Talent), all dependants	816	295	840
Tier 1, CESC, main applicant	734	295	756
Tier 1 (Graduate Entrepreneur), main applicant	NEW	295	298
Tier 1 (Graduate Entrepreneur), all dependants	NEW	295	298
Tier 1 (Graduate Entrepreneur), CESC, main applicant	NEW	295	268
Tier 1 (Post Study Work), dependants	483	295	498
Tier 2 (General), ICT – Long term staff, Sport & MOR, main applicant	480	207	494
Tier 2 (General), ICT – Long term staff, Sport & MOR, all dependants	480	207	494
Tier 2 (General), ICT – Long term staff, Sport & MOR, CESC, main applicant	432	207	445
Tier 2 (ICT Short term staff, Graduate Trainee or Skills Transfer), main Applicant	400	207	412
Tier 2 (ICT Short term staff, Graduate Trainee or Skills Transfer), all dependants	400	207	412
Tier 2 (ICT Short term staff, Graduate Trainee or Skills Transfer), CESC, main applicant	360	207	371
Tier 4 (main applicant)	289	244	298
Tier 4 (dependant)	289	244	298
CESC = Council of Europe Charter reduction *ICT=Intra Company Transfer*		*MOR=Minister of religion*	
Applications to the Channel Islands under Employment and Study routes attract Tier 2 & Tier 4 fees and costs respectively.			

IN UK – Leave to Remain and Nationality Fees

PRODUCTS	2012-13 fees (£)	Estimated unit cost for 2013-14 (£)	Proposed fees for 2013-14 (£)	Dependants fee (£)
NON PBS ROUTES - Migrants in UK				
ILR standard, main applicant	991	403	1,051	788
ILR standard, CESC, main applicant	893	403	946	788
LTR Other, standard, main applicant	561	281	578	433
Mobile case working (Premium+)	6,000 + premium fee	2,211	6,000 + standard fee + AIP fee	N/A
Residual FLR IED standard, main applicant	561	281	578	433
Residual FLR BUS standard, main applicant	1,020	281	1,051	788
Employment LTR outside PBS, standard	561	281	578	433
Application in person fee*	N/A	N/A	375	375
Appointment booking fee*	N/A	N/A	100	100
Additional Out of Hours Premium**–, main applicant	300	N/A	300	225
Nationality applications - Migrants in UK				
Naturalisation (UK Citizenship), single application***	851	187	874	N/A
Naturalisation (UK Citizenship), joint application***	1,317	281	1,550	N/A
Naturalisation (UK Citizenship) spousal application ***	851	187	874	N/A
Nationality Registration, adult ***	631	187	753	N/A
Registration as a British subject/British Overseas Territories Citizen, adult	551	187	568	N/A
Nationality Registration, minor,	551	187	673	N/A
Nationality Registration, multiple minor	827	281	1,178	505

ILR=Indefinite Leave to Remain
LTR=Limited Leave to Remain
PEO=Public Enquiry Office
IED=Immigration Employment Document
FLR =Further Leave to Remain
PBS=Points Based System

**For applications made in person (e.g. at a public enquiry office) the total fee is the relevant standard fee plus £375 per person (this includes the £100 appointment fee, which may be retained should the applicant fail to attend their appointment without good reason).*

***Out of Hours Premium fee payable is payable in addition to standard fee and application in person fee*

**** Includes additional £80 per applicant is payable to cover the ceremony fee.*

PBS routes – Migrants in UK

PRODUCTS	2012-13 fees (£)	Estimated unit cost for 2013-14 (£)	Proposed fees for 2013-14 (£)	Dependants fee (£)
PBS ROUTES – Migrants in UK				
Tier 1 (General), standard, main applicant	1,500	336	1,545	1,159
Tier 1 (General), CESC, standard, main applicant	1,350	336	1,391	1,159
Tier 1 (Entrepreneur, Investor, Exceptional Talent), standard, main applicant	1,020	351	1,051	788
Tier 1 (Entrepreneur, Investor, Exceptional Talent), CESC, standard, main applicant	918	351	946	788
Tier 1 (Graduate Entrepreneur), standard, main applicant	700	482	406	305
Tier 1 (Graduate Entrepreneur), CESC, standard main applicant	630	482	365	305
Tier 2 (General, ICT long term staff, Sport & MOR), standard, main applicant	561	225	578	434
Tier 2 (General, ICT long term staff, Sport & MOR) CESC, standard, main applicant	505	225	520	434
Tier 2 (ICT short term staff, Graduate trainee or Skills Transfer), standard main applicant	400	187	412	309
Tier 2 (ICT short term staff, Graduate trainee or Skills Transfer), CESC, standard, main applicant	360	187	371	309
Tier 4 standard, main applicant	394	238	406	305
Application in person fee*	N/A	N/A	375	375
Appointment booking fee*	N/A	N/A	100	100
Priority Service fee**	N/A	N/A	275	275
Additional Out of Hours Premium,***– main applicant	300	N/A	300	225

CESC = Council of Europe Charter reduction
ICT =Intra company transfer
PEO=Public Enquiry Office
MOR=Minister of religion

**For applications made in person (e.g. at a public enquiry office) the total fee is the relevant standard fee plus £375 per person (this includes the £100 appointment fee, which may be retained should the applicant fail to attend their appointment without good reason).*

***To use the priority service, the total fee is the relevant standard fee plus £275 per person. Initially offered for Tier 2 applications only..*

**** Out of Hours Premium fee payable is payable in addition to standard fee and application in person fee*

PBS Sponsorship Products

PRODUCTS	2012/13 Fees (£)	Estimated Unit Cost for 13/14 (£)	Proposed 13/14 fees (£)
Premium sponsor service, large sponsors	25,000	N/A	25,000
Premium sponsor service, small sponsors	8,000	N/A	8,000
Premium sponsor service, Tier 4	N/A	N/A	8,000
Tier 2 Large Sponsor licence	1,500	1,545	1,545*****
Tier 2 Certificate of Sponsorship	179	154	184
** These fees are set at cost but included in these regulations for ease of reference.*			

7.8 Fee increases have been limited to 3% for most routes. The following paragraphs explain the key exceptions and reasons.

Dependants applying to extend their leave in the UK

7.9 The UK Border Agency has reviewed the way fees are set for applications from dependants applying to extend their leave in the UK. Last year, we maintained the fee at 50% of the main applicant's fee where a dependant applies at the same time as the main applicant. We propose to reduce this concession to 25%. This fee structure is closer to that in place for visas, where all people applying for the same category of leave pay the same individual fee. The UK Border Agency believes this is the right approach because each application creates an additional processing cost for the agency and provides a successful applicant with an independent set of rights and entitlements.

Indefinite Leave to Remain (ILR) applications

7.10 The Agency proposes increasing the fee for applications for indefinite leave to remain in the UK from £991 to £1051. We believe the right to stay indefinitely in the UK is the most valuable entitlement offered by the Agency. Therefore, the fee for this route should not be lower than the fee charged for other routes with lesser entitlements. This increase brings the fee for ILR applications to a level where it is not exceeded by other routes for migrants who are in the UK on a temporary basis.

Routes to British citizenship

7.11 Naturalisation (Nationality) applications are for migrants who want to become British citizens. The fees charged for these applications are set at levels above cost recovery to reflect the entitlements and benefits available to applicants. For example, successful applicants under this route have the ability to apply for a British passport that provides them with free movement rights within the

European Economic Area (EEA) and allows them to live and work in any part of the European Union (EU).

7.12 Registration as a British citizen confers similar entitlements to naturalisation. Therefore, the Agency is proposing a higher increase for registration applications, from £551 to £673 (plus an additional £80 to cover the citizenship ceremony fee) to reduce the price differential between these two application types. A fee of £794, up from £771 (plus the ceremony fee) will apply to naturalisation applications. A lower fee of £568, up from the previous level of £551, will apply to applications for alternative statuses such as British subject or British Overseas Territories Citizen, where there are fewer entitlements for successful applicants.

Tier 1 routes

7.13 Last year, a new sub-category, Graduate Entrepreneur, was added to the Tier 1 in-country route. This year, the Agency is extending this route to allow applications from overseas and to permit MBA graduates from UK business schools who have a strong business proposal to remain in the UK. A fee of £298 is proposed for overseas applications and £406 for applications made in the UK. This will align Tier 1 Graduate Entrepreneur fees with Tier 4 student fees. Successful applicants will be able to engage in business, undertake supplementary work and bring their dependants to the UK.

7.14 Changes are also being introduced to the Tier 1 Exceptional Talent route. This route caters for exceptionally talented individuals in the field of science, humanities engineering and the arts, who wish to come to the UK to work. To encourage further take up in this route, the way in which applications are processed is being changed. Applicants will initially pay a portion of the fee (£420) for the designated competent body to consider endorsing their application. If this stage is completed successfully, the rest of the fee is then payable for the leave to enter (£420) or leave to remain (£631) aspect of the application to be processed. A successful applicant in this route will have free access to the UK labour market and may qualify to meet the criteria for permanent residence in the UK.

Tier 4 visa (student)

7.15 The Agency proposes an increase in the Tier 4 visa fee to £298, an increase of 3% from the previous level of £289. Although this increase is the same as has been applied across most routes, it brings the fee for this route to a level that exceeds the estimated unit cost. This is consistent with the fee for Tier 4 applications in the UK, which is already higher than cost.

7.16 Careful consideration has been given to this fee. Tier 4 is a key route for the UK Border Agency, the education system in general, and for the broader economy. However, we do not believe there is a direct relationship between marginal visa fee increases and visa demand. Research has shown that visa pricing is a marginal consideration for students and the price of a Tier 4 visa

represents less than 1% of the total cost of coming to study in the UK for three years.

Fees for sponsorship under the Points Based System

7.17 Last year, we introduced a new, optional premium sponsor status category for Tier 2 and 5 sponsors. The Agency will now offer the benefits that this status entitled sponsors to as a service. This better reflects the nature of the service provided and provides greater flexibility in respect of customer service. For example, if a sponsor no longer qualified for, or wished to withdraw from the premium service the Agency could refund the proportion of the fee from the time they wish to cease premium service and the time their period of premium service was due to end. If the fee is charged purely to consider the application for premium status this flexibility is not an option.

7.18 In addition, from 1 July, the Agency will offer a similar service to Tier 4 sponsors for a fee of £8,000. For this, education providers will receive benefits including access to a named account manager, priority consideration of post-licence casework, monthly information reports on certificate allocations and access to student eligibility checks. The service has been offered free of charge during 2012 and was well received by sponsors, who indicated they would be willing to pay for the service.

Migrant premium services

7.19 The UK Border Agency is planning to improve and expand the availability of its optional premium services, and to offer greater choice for its customers. The Agency has made some changes to the way it sets fees and introduced some new services to support this. Rather than setting several different application fees for each application, depending on whether it was made by post, or online, or at a UK Border Agency Public Enquiry Office, the agency will now set one standard application fee for each application type. Applicants will then be able to pay an additional, separate fee if they want to buy any additional premium services.

7.20 Therefore, from 6 April 2013, applicants who choose to make an application in person will pay the standard application fee that applies to their application type plus a single premium uplift fee of £375. Making this change will simplify the regulations, improve consistency and offer greater flexibility to the benefit of customers. For example, by specifying applications made in person, the Agency will have more scope to deliver premium face-to-face services at different locations to meet customer and business needs.

7.21 We appreciate how difficult it can be to get appointments at Public Enquiry Offices. On too many occasions appointments are not kept and we are not always able to reallocate them to other applicants. There have also been significant problems with spurious, block booked appointments. To help address this, the £375 fee for an application made in person will comprise two components: a fee of £100 will apply for the arrangement of an in-person

appointment; while the remainder of the £375 in-person fee will be for expedited processing of the application. The £100 fee may be retained by the UK Border Agency if an appointment is subsequently cancelled without good reason and not rebooked, or if an application is withdrawn before the appointment happens.

7.22 Finally, the Agency is also introducing a new optional priority service for applicants who want an expedited decision but do not want to attend a public enquiry office in person. The proposed fee for this service is £275, paid in addition to the standard application fee that applies for a given application type. This service will offer an expedited online or postal application service. From April, it will be open to selected Tier 2 in-UK applicants and we intend to make the service available to remaining temporary and permanent migration routes later. A free trial of the service was introduced on 8 October 2012 and was praised by users, particularly the quick turnaround times and high level of customer service received.

8. Consultation outcome

8.1 The UK Border Agency ran a full public consultation on 'Charging for Immigration and Visa Applications' between 1 September 2009 and 1 January 2010. Over 90% of respondents agreed that the UK Border Agency should continue to set fees flexibly by taking into account wider policy objectives, such as attracting specific groups of migrants that are beneficial to the UK. The UK Border Agency published the formal government response to the consultation on 14 January 2010 on its website at http://webarchive.nationalarchives.gov.uk/20100422120657/http:/www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/charging09/

8.2 Other consultation exercises on fees and charging have taken place. The UK Border Agency first conducted a full public consultation exercise on charging for immigration and nationality applications between 30 October and 22 December 2006, supported by the publication of a 'Consultation on a New Charging Regime for Immigration & Nationality Fees'. The formal government response to that consultation was published on 7 March 2007, and is available on the UK Border Agency website at: http://webarchive.nationalarchives.gov.uk/20100422120657/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/newchargingregime/

8.3 This consultation established the principle that the UK Border Agency should operate a flexible pricing approach to setting fees for immigration services. Since then, fees have been set taking into account the need to maintain the UK's international competitiveness, but also to ensure that there is sufficient income to manage and improve the immigration system while reducing the contribution made by the taxpayer. The majority of respondents to the consultation agreed that fees should be set flexibly to take into account wider policy objectives and that new fees should reflect a range of factors, not only those of value to the migrant.

8.4 A further, targeted consultation exercise on fees and charges to support the Points Based System and for biometric identity documents was held from 24 October to 9 November 2007. The Agency consulted key stakeholders, including representative bodies and umbrella organisations. The Agency used information from this exercise to set fees for the new services first provided to migrants and sponsors under the Points Based System in 2008.

9. Guidance

9.1 The Agency will announce details of the new fee levels and their commencement dates to Parliament in a Written Ministerial Statement. Full details of each fee and guidance to general members of the public on how to apply under each route will be made available on the UK Border Agency website.

10. Impact

10.1 The impact on business, charities and voluntary bodies is estimated to be zero net cost as explained in the full impact assessment attached at Annex A to this Explanatory Memorandum, which will also be published at www.ukba.homeoffice.gov.uk

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

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 50 people, we have maintained our approach of charging a lower fee for small businesses who apply for either the standard sponsor licence or the optional premium sponsor services.

12. Monitoring & review

12.1 The UK Border Agency will closely monitor the impact of fees for the application and services contained in these regulations. The UK Border Agency reviews fees and charges for immigration and nationality applications annually. The UK Border Agency monitors application trends on a monthly basis 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 Shola Akinyamoju at the Charging Programme of the UK Border Agency, Tel: 0208 196 0890 or email: Shola.Akinyamoju@homeoffice.gsi.gov.uk who can answer any queries regarding the instrument.