Draft Order laid before Parliament under section 74(2) of the Immigration Act 2014, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2015 No.

IMMIGRATION

The Immigration (Health Charge) Order 2015

Made - - - -	***
Coming into force - -	***

The Secretary of State makes the following Order in exercise of the powers conferred by sections 38 and 74(8) of the Immigration Act 2014(**a**). In accordance with section 38(4) of that Act, in specifying the amount of the charge under section 38(3)(b) of the Act, the Secretary of State has (among other matters) had regard to the range of health services which are likely to be available to persons who have been given immigration permission.

In accordance with section 74(2) of the Immigration Act 2014 a draft of this Order was laid before and approved by a resolution of each House of Parliament.

Citation and commencement

1. This Order may be cited as the Immigration (Health Charge) Order 2015 and comes into force 21 days after the day on which it is made.

Interpretation

2. In this Order—

"the 2014 Act" means the Immigration Act 2014;

"entry clearance officer" means a person entitled under the immigration rules to grant or refuse entry clearance;

"immigration rules" means rules made under section 3(2) of the Immigration Act 1971(**b**).

Requirement to pay an immigration health charge

3.—(1) A person who applies for—

(a) entry clearance of a type mentioned in section 38(2)(b) or (c) of the 2014 Act, or

(b) leave to remain in the United Kingdom for a limited period,

must pay a charge to the Secretary of State, subject to article 7.

(**a**) 2014 c. 22.
(**b**) 1971 c. 77.

(2) A person is required by paragraph (1) to pay a separate charge in respect of each application made by the person.

Amount of the charge

4.—(1) The table in Schedule 1 to this Order provides for the annual amount ("the specified annual amount") which must be paid in respect of each type of application specified in that table.

(2) The total amount of the charge which a person is required to pay in respect of each application by virtue of article 3 is to be calculated in accordance with paragraphs (3) to (6).

(3) Where a person applies for entry clearance under a paragraph of the immigration rules, the person must pay the specified annual amount for each year of the maximum period of leave to enter the United Kingdom which could—

(a) have effect upon the person's arrival in the United Kingdom by virtue of provision made under section 3A(3) of the Immigration Act 1971, or

(b) be granted pursuant to the entry clearance,

if the entry clearance is granted for the maximum period provided for under the immigration rules in respect of that paragraph.

(4) Where a person applies for leave to remain for a limited period under a paragraph of the immigration rules, the person must pay the specified annual amount for each year of the maximum period of leave to remain which could be granted pursuant to the application under the immigration rules in respect of that paragraph.

(5) Where a person applies for entry clearance or leave to remain outside the immigration rules, the person must pay the specified annual amount multiplied by 2.5.

(6) Where the maximum period of leave to enter or remain mentioned in paragraph (3) or (4) would be less than a year or would include part of a year, if the part year is—

(a) 6 months or less, the amount payable for that part is half of the specified annual amount;

(b) more than 6 months, the amount payable for that part is the specified annual amount.

When a charge must be paid

5.—(1) A person required by article 3 to pay a charge must pay the amount required when the person applies for entry clearance or leave to remain, as applicable.

(2) A charge is only paid as required by paragraph (1) where the person does not cancel or otherwise reclaim that payment subsequently, and provided the charge has not been wholly refunded under article 8.

Consequences of a failure to pay a charge

6.—(1) Where a person required by article 3 to pay a charge fails to pay the required amount in accordance with article 5, and the entry clearance or leave to remain, as applicable, has not yet been granted or refused, subject to paragraph (2)—

(a) an entry clearance officer or the Secretary of State, as applicable, may request that the person pays the outstanding charge;

(b) the person must pay the outstanding charge—

(i) in the case of an application for entry clearance, within 7 working days beginning with the date when the request for the payment under sub-paragraph (a) is sent in writing or made by telephone or in person, or

(ii) in the case of an application for leave to remain, within 10 working days beginning with the date when the request for the payment under sub-paragraph (a) is sent in writing or made by telephone or in person;

(c) if the outstanding charge is not paid within the time period mentioned in—

(i) sub-paragraph (b)(i), the application for entry clearance must be refused by an entry clearance officer, or

(ii) sub-paragraph (b)(ii), the application for leave to remain must be treated as invalid by the Secretary of State,

as applicable.

(2) Where a person makes an application for entry clearance or leave to remain and, before the application has been granted or refused, cancels or otherwise reclaims the amount of the charge, the application for entry clearance or leave to remain, as applicable, must be refused by the entry clearance officer or the Secretary of State.

(3) Where a person has been granted entry clearance or leave to remain, as applicable, but cancels or otherwise reclaims the amount of the charge—

(a) any entry clearance granted must be revoked by an entry clearance officer;

(b) any leave to enter conferred or granted pursuant to an entry clearance must be cancelled by an immigration officer (appointed under paragraph 1(1) of Schedule 2 to the Immigration Act 1971); and

(c) any leave to remain granted must be cancelled by the Secretary of State.

(4) Paragraph (5) applies where—

(a) a person has been refused entry clearance or leave to remain,

(b) the Secretary of State has refunded the total amount of the charge under article 8, and

(c) the refusal is subsequently found to be unlawful by a competent court or tribunal.

(5) Where this paragraph applies—

(a) the entry clearance officer or the Secretary of State, as applicable, may request that the person pays the charge;

(b) the person must pay the charge within 10 working days beginning with the date when the request for payment under sub-paragraph (a) is sent in writing or made by telephone or in person;

(c) if the charge is not paid within the period mentioned in sub-paragraph (b), the application for entry clearance or leave to remain must be refused by the entry clearance officer or the Secretary of State, as applicable.

Exemptions from the requirement to pay the immigration health charge

7. Schedule 2, which provides for circumstances when a person is exempt from paying the charge under article 3, has effect.

Reduction, waiver or refund

8. The Secretary of State has discretion to reduce, waive or refund all or part of a charge.

Home Office
Date

Name
Minister of State

SCHEDULE 1

Article 4

Table

Type of application	*Annual amount*
Application for entry clearance or leave to remain as a student, in accordance with the immigration rules.	£150
Application for entry clearance or leave to remain as the dependant of a student, in accordance with the immigration rules.	£150
All other applications for entry clearance or leave to remain.	£200

SCHEDULE 2

Article 7

1. A person is exempt from paying a charge under article 3 where the person makes an application—

(a) for entry clearance where, if granted in accordance with the immigration rules, the entry clearance would have effect on arrival in the United Kingdom as leave to enter for 6 months or less, or where the leave to enter which may be granted pursuant to that entry clearance would be for 6 months or less if granted in accordance with the immigration rules;

(b) for entry clearance under Part 2 of the immigration rules;

(c) for entry clearance or leave to remain under paragraphs 245G to 245GE of the immigration rules (Tier 2 Intra-company Transfer Migrants);

(d) for leave to remain of any kind made by a child under the age of 18 years where the child is being looked after by a local authority (within the meaning of section 22(1) of the Children Act 1989(**a**) or section 17(6) of the Children (Scotland) Act 1995(**b**) or section 74(1) of the Social Services and Well-being (Wales) Act 2014(**c**)) or where the child is being looked after by an authority (within the meaning of article 25(1) of the Children (Northern Ireland) Order 1995(**d**));

(e) for leave to remain which relates to a claim for asylum or humanitarian protection to be considered in accordance with Part 11 of the immigration rules;

(f) for leave to remain which relates to a claim that the person's removal from the United Kingdom would be contrary to the United Kingdom's obligations under article 3 of the Convention (within the meaning of section 21(1) of the Human Rights Act 1998(**e**));

(**a**) 1989 c. 41. Section 22(1) has been amended by the Local Government Act 2000 (c. 22), section 107 and Schedule 5, paragraph 19; the Children (Leaving Care) Act 2000 (c. 35), section 2(1) and (2); the Adoption and Children Act 2002 (c. 38), section 116(2).

(**b**) 1995 c. 36. Section 17(6) has been amended by the Adoption and Children (Scotland) Act 2007 (asp 4), Schedule 2, paragraph 9(4)(b), by the Children's Hearings (Scotland) Act 2011 (asp 1), Schedule 5, paragraph 2(4) and by S.S.I. 2013/211.

(**c**) 2014 anaw 4.

(**d**) S.I. 1995/755 (N.I. 2).

(**e**) 1998 c. 42.

(g) for leave to remain which relates to the person's identification as a victim of human trafficking in accordance with the United Kingdom's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings(**a**);

(h) for leave to remain outside the immigration rules with access to public funds under the Home Office policy known as the "Destitution Domestic Violence Concession" published on 2nd December 2013(**b**);

(i) for entry clearance or leave to remain as the dependant of a person who makes an application of a type mentioned in sub-paragraph (c), (e), (f), (g) or (h);

(j) for entry clearance or leave to remain as the dependant of a member of Her Majesty's forces under the immigration rules;

(k) for entry clearance or leave to remain as the dependant of a member of a force who is exempt from immigration control under section 8(4)(b) or (c) of the Immigration Act 1971, under the immigration rules;

(l) for entry clearance or leave to remain where provision for such entry clearance or leave has been made pursuant to an EU obligation (within the meaning of Part 2 of Schedule 1 to the European Communities Act 1972(**c**)).

2. A person is exempt from paying the charge where the person is a national of—

(a) Australia; or

(b) New Zealand.

3. A person is exempt from paying the charge where the person is a British Overseas Territory citizen (within the meaning of section 2(1) of the British Overseas Territories Act 2002(**d**)) who is resident in the Falkland Islands.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order requires a person who applies for entry clearance for a limited period, or for limited leave to remain in the United Kingdom, to pay an immigration health charge. Article 3 requires the person to pay a separate charge in respect of each application the person makes.

Article 4 makes provision for the amount of the charge to be paid. Schedule 1 sets out the annual amount payable in respect of the specified types of application.

Where a person applies for entry clearance under a paragraph of the immigration rules the person must pay the specified annual amount for each year of the maximum period of leave to enter which could have effect on the person's arrival in the United Kingdom, or be granted pursuant to the entry clearance, if the entry clearance is granted for the maximum period under the immigration rules in relation to that paragraph.

Where a person applies for leave to remain in the United Kingdom under a paragraph of the immigration rules, the person must pay the specified annual amount for each year of the maximum period of leave to remain which could be granted pursuant to the application under the immigration rules in relation to that paragraph.

Where the maximum period of leave to enter or remain would be for less than a year, or includes part of a year, the amount payable for that part is either half of the specified annual amount for a period of up to 6 months, or the specified annual amount if the part of the year is more than 6 months.

(**a**) Done at Warsaw on 16 May 2005.
(**b**) The policy is published at https://www.gov.uk/government/publications/application-for-benefits-for-visa-holder-domestic-violence. A copy is also available on request from the Home Office.
(**c**) 1972 c. 68.
(**d**) 2002 c. 8.

Where the person applies for entry clearance or leave to remain outside the immigration rules then the person must pay the specified annual amount multiplied by 2.5.

Article 5 provides that a person must pay the charge when the person applies for entry clearance or leave. The charge is only paid as required where the person does not cancel or otherwise reclaim the payment after it has been made, and provided the total amount of the charge has not been refunded under article 8 of the Order.

Article 6 sets out the consequences of a failure to pay a charge. The entry clearance officer or the Secretary of State, as applicable, may inform the person of the failure to pay the charge. Where a person applies for entry clearance, the person will have 7 days to pay the outstanding amount or the application must be refused. Where a person applies for leave to remain, the person will have 10 days to pay the outstanding amount or the application must be treated as invalid.

However, if a person applies for entry clearance or leave to remain but, before the application is determined, the person reclaims or otherwise withdraws the payment made, the application will be refused.

Where the person has been granted entry clearance or leave to remain, but reclaims or otherwise withdraws the payment, any entry clearance granted must be revoked, any leave to enter conferred or granted pursuant to the entry clearance must be cancelled, and any leave to remain must be cancelled.

Where a person has been refused entry clearance or leave to remain but that refusal is held to be unlawful by a competent court or tribunal, and the Secretary of State has refunded the amount of the charge under article 8, an entry clearance officer or Secretary of State may inform the person of their failure to pay the charge. The person must then pay within the specified time or the application must be refused.

Article 7 and Schedule 2 to the Order make provision for exemptions from the requirement to pay the immigration health charge.

A person is exempt from the charge if they apply for entry clearance which would have effect as leave to enter the United Kingdom on arrival for 6 months or less, or where leave to enter could only be granted pursuant to the entry clearance for 6 months or less if granted in accordance with the immigration rules.

A person is exempt from the charge if they apply for entry clearance in one of the categories set out in Part 2 of the immigration rules which concern visitors.

Those who apply for entry clearance or leave to remain under the Rules as a Tier 2 Intra-company Migrant Transfer are exempt from paying the charge.

A child who is a looked after child under the Children Act 1989 (or certain other equivalent provisions) is exempt from paying the charge.

A person who makes an application for leave to remain which relates to a claim for asylum, humanitarian protection, or a claim that their removal from the United Kingdom would be contrary to article 3 of the European Convention on Human Rights, does not have to pay the charge.

A person who applies for limited leave under the Home Office concession known as the destitute domestic violence concession is exempt.

A person who applies for leave to remain relating to their identification as a victim of human trafficking is exempt.

A person who applies for entry clearance or leave as a dependant of a person whose application falls under the one of the specified paragraphs is also exempt from the charge.

A dependant of a member of HM forces, or of a member of a force who is exempt from immigration control under section 8(4)(b) and (c) of the Immigration Act 1971, is also exempt

from the requirement to pay the charge when applying for entry clearance or leave to remain as a dependant.

Those who apply for entry clearance or leave to remain where the provision for such entry clearance and leave to remain has been made pursuant to an EU obligation are not required to pay the charge.

Nationals of Australia or New Zealand are exempt from paying the charge in line with international agreements between these two States and the United Kingdom for the provision of reciprocal healthcare without charge for their nationals.

A British Overseas Territories citizen who is resident in the Falklands Islands is exempt from paying the charge.

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