EXPLANATORY MEMORANDUM TO

THE FIRST-TIER TRIBUNAL (IMMIGRATION AND ASYLUM CHAMBER) FEES (AMENDMENT) (No. 2) ORDER 2016

2016 No. 1149

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 This instrument will reduce the fees charged for appeals to the Immigration and Asylum Chamber of the First-tier Tribunal.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is made under the powers contained in section 42 of the Tribunals, Courts and Enforcement Act 2007[1]. The instrument will come into effect the next working day after it is laid, thereby breaching the 21 day rule. The reason for moving so quickly is set out below. The Government has considered the importance of providing for the normal scrutiny period prior to the instrument coming into effect, however, on balance it has concluded that its primary concern must be to provide legal certainty and clarity for appellants. It is preferable therefore that the legislation reflect actual practice as soon as possible. Whilst the Lord Chancellor clearly has the power in the current circumstances to reduce or remit fees, the Government takes the view that it is preferable that the power is exercised in this way for as limited a time as possible.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not yet been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 This instrument amends the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011 ('the 2011 Order') as amended by the First-tier Tribunal (Immigration and Asylum Chamber) Fees (Amendment) Order 2016 ('the 2016 Order') to reduce the fees payable for appeals to that Chamber. The 2016 Order had introduced fees designed to recover the full cost of the service received by appellants subject to a fee. This Order has the effect of undoing the fee increases imposed by the

[1] http://www.legislation.gov.uk/ukpga/2007/15/pdfs/ukpga_20070015_en.pdf

2016 Order, however, it does not affect the other changes made by that Order (for example, certain changes to the exemption scheme).

5. Extent and Territorial Application

5.1 This instrument extends to the whole of the United Kingdom.

5.2 The territorial application of this instrument is the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The Government has decided to suspend immediately the fee increases introduced in the Immigration and Asylum Chamber of the First-tier Tribunal on 10 October 2016. The fees were increased, following consultation, to make sure that Her Majesty's Courts and Tribunals service ('HMCTS') is adequately funded in order to protect the principle of access to justice and to set fees at such a level as to recover the full cost of proceedings in those cases where appellants are subject to a fee. This is in line with the guidance set out in HMT's *Managing Public Money*, which states that where those who use a public service are charged a fee to access them, those fees should be set at a level designed to recover the full costs of the service.

7.2 Whilst the Government firmly believes that the fees introduced by the 2016 Order, when taken together with the scheme of fee exemptions and the Lord Chancellor's exceptional power to remit fees, are realistically affordable for those who have to pay, we have listened to the representations we have received from a range of interested parties who were opposed to the increase. In light of this the Government has decided that it is right to suspend the higher fees and revert to previous fee levels of £80 for a determination on the papers and £140 for a determination at a hearing while we take stock and review immigration and asylum fees, to balance the interests of all tribunal users and the taxpayer and to look at them again alongside other tribunal fees and in the wider context of funding for the system overall.

7.3 It is right that having taken this decision the Government moves quickly to make sure that the Tribunal is operating on this basis. This instrument will formalise the position by resetting the fees at the lower rate but in the short interim period the changes will be effected through the use of the Lord Chancellor's discretionary power to remit or reduce fees (see article 7 of the 2011 Order). The Government is also taking steps to reimburse, in all cases where the higher fees have been paid, the difference between that fee and the previous relevant fee level. Appellants will not need to apply for a refund, we will identify those who have already paid and where possible refund the balance to the card used to make the payment. If this is not possible we will arrange for the payment to be made by bank transfer.

7.4 The Government's belief is unchanged that it is right that those who use our courts and tribunals should pay more, where they can realistically afford to do so, to ensure that the system is properly funded to protect access to justice and to relieve the burden on the taxpayer. However, it is right that we suspend the charging of the higher fees in the Immigration and Asylum Chamber of the First-tier Tribunal whilst we consider

our approach. We will bring forward any further plans for charging fees for appeals in the Immigration and Asylum Chamber in due course.

Consolidation

7.5 It is not intended that this statutory instrument will consolidate any other legislation.

8. Consultation outcome

8.1 The fees increases brought into effect on 10 October 2016 followed a consultation that ran from 21 April 2016, to 3 June 2016. 150 respondents responded to that consultation and disagreed with the proposed increases. We have continued to reflect on these representations and representations made by a range of interested parties since the consultation ended and the fees came into effect and have decided to take stock and re-consider these fees in the context of a wider strategic review of fees in Tribunals.

9. Guidance

9.1 Her Majesty's Courts and Tribunal Service will revise its guidance on fees payable in line with these amendments. Forms and leaflets will also be amended to remove any references to the higher fees. The recently revised guidance on the use of the Lord Chancellor's power to reduce or remit fees is unaffected by these changes and will remain in place.

10. Impact

10.1 Some business, charities, or voluntary bodies may pay the fees for immigration appeals on behalf of appellants, and to the extent they do, this change will reduce the burden on those organisations.

10.2 The impact on the public sector is that the Ministry of Justice will no longer generate the £26 million per annum originally anticipated from the higher fees. Equally any burden the Home Office faces from having to reimburse fees will be reduced by the fees reverting to lower levels.

10.3 An Impact Assessment has not been prepared for this instrument. However, an Impact Assessment[2] was published alongside the consultation response when we announced the fee increases that came into effect on 10 October 2016. That Impact Assessment included, at paragraphs 54 and 55, analysis of the 'do nothing' option which would have involved the fees remaining at the level to which they will now be returning.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 Fees and the impact of any changes are constantly monitored by way of feedback from tribunals and their customers and the monitoring of fee income and volumes.

[2] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/553431/immigration-asylum-impact-assessment.pdf

13. Contact

13.1 Paul Norris at the Ministry of Justice Telephone: 020 3334 3220 or email: Paul.Norris@justice.gsi.gov.uk can answer any queries regarding the instrument.