EXPLANATORY MEMORANDUM TO

THE FIRST-TIER TRIBUNAL (IMMIGRATION AND ASYLUM CHAMBER) FEES (AMENDMENT) ORDER 2020

2020 No. 314

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.

2. Purpose of the instrument

2.1 This instrument introduces a means-tested remissions scheme to the First-tier Tribunal (Immigration and Asylum Chamber) for appeals where the appellant is in the United Kingdom at the time of filing the appeal.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the United Kingdom.

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

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This instrument amends the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011 by introducing a new Schedule on fee remissions for appeals made in the UK.

7. Policy background

What is being done and why?

7.1 Fees for appeals to the First-tier Tribunal (Immigration and Asylum Chamber) ("FtT IAC") are prescribed by the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011 ("the 2011 Order"). There are two fees that are payable in the FtT IAC; a £80 fee for appeals without a hearing and a £140 fee for those with a hearing.

7.2 Help with Fees is a means-tested remissions scheme used in all fee-paying jurisdictions of HM Courts and Tribunals Service (HMCTS) that considers the ability of court and tribunal users to pay a fee. The gross monthly income test takes into account their income, and the disposable capital test takes into account their assets (including savings).

7.3 The FtT IAC currently operates a bespoke scheme that provides for a set of remissions and exemptions, rather than means-testing appellants' ability to pay a fee. A number of these exemptions are based on case-type, meaning that no fee is charged for certain types of appeal (such as deprivation of citizenship or revocation of protection status). In addition to case-type specific exemptions, appellants can currently receive a remission or exemption based on their status, for example if they are in receipt of legal aid or asylum support, both of which are means-tested. However, eligibility for legal aid is also conditional on case-type (scope) and the merits of the case, and asylum support is only available to those who are destitute or likely to become destitute. The Government does not regard either as an equal proxy for Help with Fees.

7.4 This instrument will align the remissions schemes for appeals made to the FtT IAC where the appellant is in the UK at the time of filing the appeal ("in-country appeals") with other jurisdictions across HMCTS where Help with Fees has been applied since 2013. The policy change caveats that out-of-country appeals will not be covered by Help with Fees. The Help with Fees scheme was designed specifically to account for living standards and the cost of living in the UK. The current remissions and exemptions scheme (outlined in 7.3 above) would be maintained for out-of-country appeals as it is not appropriate to apply the Help with Fees scheme to people living in other countries, due to the varying living standards in the range of countries from which out-of-country appellants may apply. The remissions and exemptions that currently apply to both out-of-country and in-country appeals will continue to apply alongside this policy change.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

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

10. Consultation outcome

10.1 The Lord Chancellor has performed his statutory obligation to consult the Senior President of Tribunals in accordance with section 42(5) of the Tribunals, Courts and Enforcement Act 2007. A general public consultation on this instrument is not necessary because we are expanding access to fee remissions, and those who bring proceedings will not be disadvantaged by the changes.

11. Guidance

11.1 Detailed public guidance will be issued and signposted so that FtT IAC users are aware of the changes to the remissions system and that they may be eligible for a full or partial remission of their fee. Updated guidance and training will also be provided

to court and tribunal staff. The guidance will be issued in paper and digital format in English and Welsh and will be available in the tribunal and on the Government's website. It will also be circulated in advance of the implementation date to key stakeholders who provide advice to users of the tribunal. The guidance will provide clear information on:

- the terms of the disposable capital test and gross monthly income test;
- the documentary evidence required of the applicant;
- where an applicant is unable to make a fee remission application; and
- the process for refunds and appeals.

12. Impact

12.1 The impact on the main affected groups is included in the attached Impact Assessment.

12.2 The impact on the public sector is included in the attached Impact Assessment.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation is for the Ministry of Justice and the Home Office to carry out a joint internal review of the policy's impact on the wider immigration appeals system six months after implementation and continue to review the impact every six months until the next Spending Review period.

15. Contact

15.1 Kyra Bowman at the Ministry of Justice (Telephone: 07540264210 or email: kyra.bowman@justice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Roshnee Patel and Stephanie Hack, Deputy Directors for Courts and Tribunals Fees Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chris Philp MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard