EXPLANATORY MEMORANDUM TO
THE IMMIGRATION AND NATIONALITY (COST RECOVERY FEES) (AMENDMENT NO. 3) REGULATIONS 2008

2008 No. 2790

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

2. Description

2.1 These Regulations set the fees for certain applications related to immigration to the UK, where the fee level is set at or below the normal administrative cost of providing the service.

2.2 These Regulations amend the Immigration and Nationality (Cost Recovery Fees) Regulations 2007 (as amended by the Immigration and Nationality (Cost Recovery Fees) (Amendment) Regulations 2008 and the Immigration and Nationality (Cost Recovery Fees) (Amendment No. 2) Regulations 2008) (the "2007 Regulations").

2.3 These Regulations:

a) set the fees for certain new applications being introduced under the Points Based System;
b) create a reduced rate fee for entry clearance as a visitor to allow the Secretary of State to charge £45 rather than the existing £65 visit visa fee in certain instances;
c) set the fee for entry clearance as an academic visitor in line with changes to the immigration rules;
d) remove the exemption from the requirement to pay a fee for entry clearance applications as a Tier 5 (Temporary Worker) migrant that are made in respect of nationals from states who have ratified the Council of Europe Social Charter[1] (CESC) or the Council of Europe Revised Social Charter[2] (CERSC) and introduce new, reduced rate fees for such applications made in respect of nationals from states who have ratified the CESC;

[1] Signed in Turin on 18th October 1961 (CETS NO. 035)
[2] Signed in Strasbourg on 3 May 1996 (CETS NO. 163)

e) delete the fees for certain application routes that have been replaced by the Points Based System.

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

3.1 None.

4. Legislative Background

4.1 Section 51(3) of the Immigration, Asylum and Nationality Act 2006 (the "2006 Act") provides that where an order under that section provides for a fee to be charged, regulations made by the Secretary of State shall specify the amount of the fee.

4.2 These Regulations specify fees in respect of certain applications for which the Secretary of State has previously stated in the Immigration and Nationality (Fees) Order 2007 (as amended by the Immigration and Nationality (Fees) (Amendment) Order 2008), (the "Fees Order 2007") that she intends to charge a fee.

4.3 Section 51(3) of the 2006 Act also enables the Secretary of State to, amongst other things, confer a discretion to reduce or waive a fee, provide for exceptions and make provision about the consequences of failure to pay a fee. Section 52(3) enables the Secretary of State, to make different provision for different cases or circumstances.

4.4 Fees for applications which will be charged above the administrative cost must be specified in other regulations laid before and approved by a resolution in each House of Parliament.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister of State for Borders and Immigration has made the following statement regarding Human Rights:

In my view the provisions of the Immigration and Nationality Fees (Cost Recovery Fees) (Amendment No. 3) Regulations 2008 are compatible with the Convention Rights.

7. Policy Background

7.1 The fees contained in these regulations are set below the administrative cost of an application or process in line with the Government's charging model. By charging below the administrative cost of delivery on the application types referred to in this instrument, the Home Office is able to support wider Government objectives, particularly where it is believed that a cost recovery fee would be so high as to damage international competitiveness in this area (e.g. for student applications). To help enable this, the Home Office sets fees for other application types above the cost of delivery.

7.2 During the course of 2003/04, following consultation, the Home Office introduced charges for a range of immigration applications to ensure that those who use and benefit from the UK's immigration system met the costs of delivering the administrative service provided.

7.3 A further public consultation exercise on charging for immigration and nationality applications was undertaken from 30 October to 22 December 2006, supported by the publication of *A consultation on a new charging regime for immigration & nationality fees*. The consultation document was made available on the Home Office website and also sent to 3000 people and organisations. The formal Government response to the public consultation was published on 7 March 2007, and established the principles that fees should be set flexibly to take into account wider Government policy objectives, and that those who benefit most from the immigration system should pay proportionately more towards the true end to end costs of the system, rather than seeking to fund improvements wholly via general taxation.

7.4 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. We consulted key stakeholders, based around – but not limited to – the membership of the UK Border Agency's existing stakeholder taskforces which include representative bodies and umbrella organisations. We set out a number of proposals in a letter sent to 493 bodies and individuals which received 132 written responses. We met with 119 individuals at consultation meetings.

7.5 The majority of respondents including most of those from business supported the proposal to continue to set some fees above cost recovery levels including Tier 1, Tier 2 and sponsor licence application fees. Ernst & Young stated that "We feel that it is acceptable that Tier 1 and Tier 2 applicants should pay slightly higher fees as they are the applicants that will potentially earn greater money". Hodson-Wren Associates agreed that fees for applications for entry clearance or leave to remain under Tier 1 and Tier 2 should be set at above normal cost recovery levels.

7.6 There was also widespread agreement that the fees should be offered at a concessionary rate to students (Tier 4 migrants), and we have reflected this in our fees model by setting Tier 4 migrant fees at a lower rate, subsidised by higher fees for Tier 1 and Tier 2 migrants (highly skilled and skilled workers).

7.7 These Regulations also include a reduced fee for an application for entry clearance as a visitor. In the published *Government Response to the Consultation on Visitors*[3], the Government said that new visit visa products would be piloted, to support the Government's market research into whether a reduced visit visa fee might help promote the UK as an attractive tourist destination, particularly for new and emerging markets. These Regulations allow such pilots to take place, and also give provision for the reduced visit visa fee to be charged in response to unforeseen circumstances where we believe it would help in operational, political or strategic terms to operate a lower fee. We would expect this fee to used sparingly and in particular, time-limited cases. The results of any such pilots will be reviewed with external stakeholders at the UK Border Agency's Visitor Taskforce.

[3] Published at www.ukba.homeoffice.gov.uk, paragraph 2.4

Fees for New Applications

7.8 These Regulations set the fees for Tier 4 applications that will be implemented under the Points Based System by March 2009. The Table below also shows the fee charged under the route that Tier 4 replaces.

Table A (Fees for new applications under Points Based System):

Application Type	**Fee for comparative route (£)**	**New Tier 4 Fee (£)**
Entry Clearance as a Tier 4 Migrant.	99	99
Leave to remain as a Tier 4 Migrant (application made by post).	295	295

Reduced rate fee for entry clearance as a visitor

7.9 These Regulations also set a reduced fee for a short term visit visa, which enables the Secretary of State to set a reduced fee of £45 rather than the existing £65 fee in certain, limited circumstances such as piloting a reduced fee in certain markets or responding to unforeseen circumstances where we believe it would help in operational, political or strategic terms to operate a lower fee.

Entry clearance as an academic visitor

7.10 They also specify the fee for Entry Clearance to the UK as an academic visitor. This fee is charged at the same rate as the existing short term visitor fee but is for a period of twelve months or less, whereas the short term visitor visa is for six months or less. Currently, the academic visitor category is a concession outside the Immigration Rules, but from November 2008 it will be covered by revisions to the Immigration Rules for business visitors.

Table B (other new fees)

Entry Clearance Route	**Standard Visitor Fee**	**Reduced Rate Visitor Fee**
Visitor visa (6 months or less)	£65	£45
Academic Visitor (12 months or less)	£65	N/A

Council of Europe Social Charter

7.11 The Immigration and Nationality (Cost Recovery Fees) (Amendment No. 2) Regulations 2008 introduced a new exemption from the requirement to pay a fee for Tier 5 (Temporary Worker) entry clearance applications where the application was in respect of a national who had ratified either the CESC[4] or the CERSC[5]. These Regulations remove this exemption and, for nationals of CESC states, replaces it with a reduced rate fee. Under Article 18(2) of the CESC, the UK has an obligation to reduce fees in respect of workers who are nationals of states who have ratified the CESC. The Regulations do not specify a reduced fee for nationals of states who have ratified the CERSC: the UK is not bound by the obligations under this later Treaty since it has not ratified it.

7.12 This change is made in support of our wider charging policy that those who benefit from the services provided by UKBA should contribute to the cost of providing those services and also to discourage speculative applications that are more likely to arise from a complete fee exemption.

7.13 Table C shows the new fees for entry clearance applications that will be implemented for nationals of countries who have ratified the CESC from 27th November 2008:

Table C (CESC Reduced fees):

Entry Clearance Route	**Standard Fee**	**Fee for CESC national**
Tier 5 (Temporary Worker)	£99	£90[6]

Deletions

[4] The CESC states that are not members of the European Economic Area are Croatia, FYR Macedonia and Turkey. (Nationals of states who are members of the European Economic Area are not subject to immigration control when exercising EC Treaty rights).

[5] The CERSC states that are not members of the European Economic Area and have not ratified the CESC are Albania, Andorra, Armenia, Azerbaijan, Georgia, Moldova, and Ukraine.

[6] New fees are set at a 10% reduction of the price normally charged for this type of application, in line with the UK's obligation to reduce fees under Article 18(2) of the CESC.

7.14 Table D shows the fees deleted by these regulations. These are for several application routes that will no longer be operated, having been incorporated into the five-tier Points Based System:

Table D (Deleted fees):

Permission to enter the UK as:	Deleted Fee
Voluntary worker outside the immigration rules	£99
Sportsman outside the immigration rules	£99
Entertainer outside the immigration rules	£99

7.15 Full guidance for customers on all application routes and the applicable fees is available via www.ukba.gov.uk

8. Impact

8.1 Full impact assessments have already been published in respect of both the wider policy and the application fees for migrants and sponsors applying under the Points Based System[7].

9. Contact

9.1 Chris Nickson at the UK Border Agency of the Home Office (e-mail: Chris.Nickson2@homeoffice.gsi.gov.uk or tel: 01142072446) can answer any queries regarding the instrument.

[7] published at http://www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/pbsdocs/.