EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (COST RECOVERY FEES) (AMENDMENT) REGULATIONS 2012

2012 No. 2276

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

2. Purpose of the instrument

2.1 The purpose of this instrument is to make amendments to the Immigration and Nationality (Cost Recovery Fees) Regulations 2012; these Regulations specify various fees for applications, services and processes relating to immigration and nationality. The amendments introduce new exemptions for applications for leave to remain and biometric immigration documents by victims of domestic violence, reduce fees for certain travel documents, and amend the fee for student visitors coming to the UK under the English Language concession operated by UKBA.

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

3.1 None.

4. Legislative Context

4.1 This instrument is being made:

- To ensure that student visitors coming to the UK to study on English language courses under the English language concession (a scheme operated outside the immigration rules by UKBA) are only required to pay a fee of £140.
- To reduce fees for convention travel documents[1], stateless person's travel documents[2] and documents of identity[3] in line with similar reductions to the cost of passport applications. This is being done to comply with the United Kingdom's obligations under the 1951 UN Convention relating to the status of Refugees and the 1954 UN Convention relating to the status of Stateless Persons.
- To ensure victims of domestic violence are not required to pay a fee in respect of:
    - Applications for limited leave to remain under Appendix FM;
    - Applications for indefinite leave to remain (ILR) as a victim of domestic violence under section DVILR of the new Appendix FM to the immigration rules where the applicant is destitute. This change is being made to take account of the fact that applications

[1] A convention travel document is a document issued to refugees residing in the UK to enable them to travel.
[2] A stateless person's travel document is a document issued to stateless persons residing in the UK to enable them to travel.
[3] A document of identity is a document allowing a person to make a single trip out of the UK.

previously dealt with under paragraph 289A of the rules (for which a similar exemption was in place) are now dealt with under section DVILR.

- Applications for biometric immigration documents or the enrolment of biometric information as part of that process.

5. Territorial Extent and Application

5.1 This instrument extends to 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 we are doing and why:

7.1 Dependants who entered the UK as family migrants prior to 9 July 2012 under paragraph 289A of the Immigration Rules may claim ILR in the UK in their own right if they flee the family home due to being a victim of domestic violence. For a number of years UKBA has provided an exemption from the ILR fee for those victims who are also destitute. This instrument introduces a further fee concession to extend that right to those dependants who entered the UK on or after 9 July 2012 under Appendix FM of the Immigration Rules.

7.2 In April 2012, UKBA introduced a concession to destitute victims of domestic violence to enable them to be granted temporary leave to remain (thereby establishing their status) prior to their application for ILR. From 1 December 2012, the Immigration (Biometric Registration) Regulations 2012 will require an application for a biometric residence permit (BRP) to be made before such grants of leave to remain can be issued. This instrument introduces an exemption for destitute victims of domestic violence from the fees to apply for the BRP and enrol biometrics.

7.3 This instrument also amends the fee applicable for applications for convention travel documents, stateless person's travel documents and documents of identity . Under the terms of the 1951 United Nations Convention relating to the Status of Refugees and the 1954 United Nations Convention relating to the Status of Stateless Persons, the United Kingdom must not charge any more for such documents than a British citizen would pay for a comparable document (e.g. a passport). The Identity and Passport Service have reduced British Passport application fees from 3 September. Therefore, UKBA is reducing fees for convention travel documents etc. from the current levels of £77.50 to £72.50 for an adult and from £49 to £46 for a child.

7.4 This instrument ensures that the fee for student visitors entering under the English language concession to study on an English language course for more than 6 months but not more than 11 months is set at £140. This is the estimated administrative cost to UKBA for processing an application. It is set at £140 to recover the administrative cost of processing the applications.

8. Consultation outcome

8.1 No separate consultation exercise was conducted as these proposals reflect existing immigration policy and are in line with overall UKBA charging policy. UKBA published the formal Government response to its full consultation on charging 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/. The formal Government response to a previous consultation exercise on charging for immigration and nationality applications was published on 7 March 2007, and is available on the UKBA website at: http://webarchive.nationalarchives.gov.uk/20100422120657/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/newchargingregime/. UKBA does not anticipate any adverse reactions to these proposals.

9. Guidance

9.1 UKBA guidance to staff will be updated to reflect these changes. Guidance to general members of the public on eligibility, how to apply under each route and the associated fee will be available on the UKBA website in due course.

10. Impact

10.1 No impact on business, charities or voluntary bodies is foreseen.

10.2 No impact on the public sector is foreseen.

10.3 No impact assessment has been prepared because no impact on the private or voluntary sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 UKBA reviews fees and charges for immigration and nationality applications annually. UKBA monitors application trends on a monthly basis. The cross-Whitehall fees committee monitor analysis of application trends to ensure that fee levels generate sufficient revenue to cover UKBA delivery costs but do not adversely impact on the UK economy.

13. Contact

13.1 Shola Akinyamoju at the UKBA Charging Programme, Tel: 0208 196 0809 or email: Shola.Akinyamoju@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.