EXPLANATORY MEMORANDUM TO THE IMMIGRATION AND NATIONALITY (COST RECOVERY FEES) (AMENDMENT) REGULATIONS 2014

2014 No. 2398

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

2. Purpose of the instrument

2.1 The Immigration and Nationality (Cost Recovery) Regulations 2014 specify fees for applications, services and processes in connection with immigration and nationality, where those fees are set at or below the administrative cost of dealing with the application or providing the process or service. These amendments set new fees for certain processes consequent on the Immigration Act 2014 (the "2014 Act"), amend the fee for a direct airside transit visa, and introduce a fee for the process of enrolling a person's biometric information for migrants being granted leave to enter or remain in the UK following enforcement action.

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

3.1 None.

4. Legislative context

4.1 This instrument amends the Immigration and Nationality (Cost Recovery Fees) Regulations 2014. In particular, this instrument enables implementation of aspects of the 2014 Act:

- It enables the Secretary of State to charge for the process of conducting an administrative review of a decision made in connection with immigration. This process is being established following the amendments to provisions on appeal rights made in the 2014 Act;
- It enables the Secretary of State to charge for the process of enrolling a person's biometric information, in the context of the new applications for which such information is now required (under the provisions of the 2014 Act).

4.2 The Amendment Regulations also amend and clarify the scope of existing fees to support policy and operational requirements.

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 The 2014 Act reforms immigration appeal rights, reducing the number of immigration decisions that can be appealed from 17 to 4. As a consequence, the Home Office is establishing an administrative review process as a proportionate and less costly mechanism for resolving case working errors. This process will be set out in the Immigration Rules. Where an applicant believes that an eligible decision has been affected by a case working error, they may request an administrative review of the decision. This instrument specifies a cost recovery fee for applications for an administrative review so that users of the system will cover the cost. The application fee will be refunded to the applicant where the outcome of the administrative review is that the original decision is withdrawn.

7.2 Where a main applicant and a dependant of that person made linked applications (e.g. the dependant applied as the spouse or child of the main applicant), the Secretary of State will charge a single fee for the administrative review of both decisions (or, where there are multiple dependents, of all decisions), rather than separate fees in respect of each individual application. This is because the administrative review will provide a single decision, with any dependant applicants being treated in line with the main applicant. For the avoidance of doubt, a person who applies as a child dependant of a main applicant, and reaches the age of 18 before making an application for administrative review, will still benefit from this provision. However, a person who becomes a dependant of the main applicant after the date of the decision on the application that is the subject of the administrative review, or who was not included in the original application, will have to make a separate application for administrative review, paying a separate fee.

7.3 The 2014 Act also expanded the categories of applicants required to submit biometric information (such as finger prints and facial images). This information assists the Home Office to establish identity and prevent fraud and illegal immigration. The changes introduced allow regulations to require biometric information from two new cohorts: applicants for citizenship and applicants applying for certain types of EEA documentation (documents issued as evidence that a person who is not a national of an EEA state or Switzerland is entitled to enter or remain in the UK by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972). These changes will be enacted in separate legislation placed before Parliament. This instrument enables the Home Office to levy the existing administrative charge, set at cost recovery levels, for the process of enrolling the biometric information of these categories of applicant.

7.4 This instrument also makes further miscellaneous amendments. It amends the fees for applications for direct airside transit visas. This follows a review of the operation of the policy in both of this area. A new lower fee of £30 (compared to the previous level of £40) will be charged for applications for direct airside transit visas,

to make the fee for this route more competitive in comparison to other transit locations.

7.5 Finally, this instrument specifies a fee for the enrolment of biometric information for migrants who are granted leave to enter or remain following enforcement action. The fee is set at administrative cost recovery level, to ensure that the Home Office can recover the costs of the service. Charging a fee to this cohort of applicants will reduce Home Office spending, and align the approach on charging for biometric enrolment for this category with other types of leave applications, where biometric enrolment costs are recovered through fees, unless a specific waiver or exemption applies (e.g. for asylum or humanitarian protection applications, or children being provided with local authority assistance).

8. Consultation outcome

8.1 No separate consultation exercise was conducted as these proposals reflect existing immigration policy and are in line with overall charging policy: that users of a service should pay for the costs of providing that service rather than the taxpayer. In November 2013, the Home Office conducted a targeted public consultation on how its charging strategy works in practice to help inform and shape the approach to charging in the future. Responses were broadly supportive of the proposals and the general principles of charging. The full government response to the consultation is published on the government consultation website:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/276026/ImmigrationFeesChargingResponse.pdf

8.2 The Home Office does not expect any adverse reactions to these proposals.

9. Guidance

9.1 Full details of each fee and guidance to general members of the public on how to apply under each route will be made available on the Gov.uk website.

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 The Home Office reviews fees and charges for immigration and nationality applications annually. It monitors application volumes and trends on a monthly basis. Officials from all relevant government departments consider proposals to amend fee levels to ensure they do not adversely impact on the UK economy.

13. Contact

Shola Akinyamoju at the Home Office Finance and Estates Directorate, Tel: 0208 196 0809 or email: Shola.Akinyamoju@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.