EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (COST RECOVERY FEES) REGULATIONS 2012

2012 No. 813

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

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

2. Purpose of the instrument

2.1 These regulations specify fees for applications, services and processes relating to immigration and nationality where those fees are at or below the administrative cost of dealing with the application or providing the process or service. They replace the Immigration and Nationality (Cost Recovery Fees) Regulations 2011 and are to come into force on 6th April 2012.

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

3.1 These regulations contain some new fees and fee increases above the rate of inflation. More detail is set out in section 7.7 to 7.13 of this memorandum. In addition, the Immigration and Nationality (Cost Recovery Fees) Regulations 2011, which these regulations replace, were reported by the committee for defective drafting[1]. The new regulations have been substantially re-drafted and the reported errors have been dealt with as part of that process.

4. Legislative Context

4.1 These regulations follow on from the Immigration and Nationality (Fees) Order 2011, which sets out those applications, processes and services relating to immigration and nationality for which fees can be charged.

4.2 These regulations will replace the Immigration and Nationality (Cost Recovery Fees) Regulations 2011, which together with the Immigration and Nationality (Fees) Regulations 2011, have specified immigration and nationality fees since April 6th 2011.

4.3 There are two sets of fees regulations because regulations setting fees are subject to different parliamentary procedures, depending on whether or not they set fees above the relevant administrative costs. Those regulations setting fees at or below cost do not require prior parliamentary approval. Those fees are currently found in the Immigration and Nationality (Cost Recovery Fees) Regulations 2011, which these regulations will replace. Fees exceeding the administrative cost of dealing with

[1] See the 22nd Report of session 2010-2012 (HL Paper 150/HC 354-xxii)

applications or providing the relevant process or service must be approved in draft by Parliament before they are made. These fees are to be found in the Immigration and Nationality (Fees) Regulations 2011, also intended to be replaced by a new set of regulations laid in Parliament on 9 February, proposed to come into force on 6th April 2012.

5. Territorial Extent and Application

5.1 This instrument extends to the United Kingdom. The regulations in addition set fees for entry clearance to enter the Channel Islands.

6. European Convention on Human Rights

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 These Regulations replace the previous Immigration and Nationality (Cost Recovery Fees) Regulations 2011. The UK Border Agency's overall aim is to generate an appropriate contribution to its agreed running costs from the income generated from visa, nationality and immigration applications. By doing this, the UK Border Agency seeks to reduce the financial obligation on the UK taxpayer to subsidise the immigration system.

7.2 In setting the fees covered by these regulations at or below administrative costs, the UK Border Agency seek to support wider Government objectives. For example, the fees for tourist visas are set below the cost of processing an application in recognition of the importance of this route to the UK economy. The UK Border Agency balances this by setting fees above the administrative cost of processing under other regulations.

7.3 The UK Border Agency has limited the majority of this year's increases to 2%, and spread the contribution from applicants generally across all routes. The exception to this is Tier 4 visa applications, where fees have been increased in line with the cost to the UK Border Agency of processing an application. Previously, these applications were charged below the cost of processing. Similarly, the UK Border Agency has also reviewed sponsorship fees under the Points-Based System (PBS) to ensure fees are set at a level which better reflects the cost of processing an application.

7.4 The UK Border Agency works to maintain a balance between the objectives of reducing the level of subsidy required from the UK taxpayer to fund the migration system, whilst ensuring that immigration and nationality applicants make a greater contribution to the funding of the immigration system. The proposed fee increases are proportionate and fairly balance these objectives. They also remain good value when compared with equivalent routes in other key countries.

7.5 The UK Border Agency has published indicative unit costs for each application for the financial year 2012/13. Full details are available at http://www.ukba.homeoffice.gsi.gov.uk/. The unit cost is the estimated average cost to the Agency of processing each application. These costs are provided to Parliament to ensure transparency. Although our unit costs are not fixed over the course of the financial year, publishing unit costs in this way will enable applicants to see which fees we set over cost and by how much, and which fees are set under cost and by how much.

7.6 The tables below set out the current fee levels and the new proposed fees, for products that are set at or below administrative cost, by these regulations.

VISA FEES

PRODUCTS	2011/12 Fees (£)	Estimated Unit Cost for 12/13 (£)	Proposed Fee for 12/13 (£)
Non PBS Visas			
Short Term visitor visa	76	140	78
Short Term student visa (between 6 & 11 months)	140	140	140
Settlement (Refugee Dependant Relative)*	N/A	458	458
Transit Visa	51	73	52
Certificate of Entitlement	265	355	270
Vignette Transfer Fee	100	163	102
Call out/out of hours fee	£130/hr max £939/day	134/hr	130/hr
Single entry visa to replace Biometric Residence Permit Overseas	70	70	70
Forwarding documents to Commonwealth Countries/Overseas Territories	70	N/A	70
Handling applications on behalf of Commonwealth Countries/Overseas Territories	50	N/A	50
**Previously applied for under other visa category*			
PBS Visas			
Tier 1 (Transition)	332	N/A	332
Tier 1 (Transition) CESC	300	N/A	300
Tier 4 Main applicant	255	289	289
Tier 4 Dependant	255	289	289
Tier 5 Temp Work & Youth Mobility, Main applicant	190	206	194
Tier 5 Temp Work & Youth Mobility, Dependant	190	206	194
Tier 5 (CESC)	171	206	175
Tier 5 (CESC) - Dependants	190	206	194
CESC = Council of Europe Social Charter reduction			

IN UK – LEAVE TO REMAIN AND NATIONALITY FEES

PRODUCTS	2011/12 Fees (£)	Estimated Unit Cost 12/13 (£)	Proposed Fee for 12/13 (£)	Dependents Fee
NON PBS ROUTES - Migrants Inside UK				
Transfer of Conditions, Postal, Main applicant	216	229	220	110
Travel Documents, Certificate of Travel (CoT), Adult	238	249	238	N/A
Travel Documents, Certificate of Travel (CoT), Child	149	159	149	N/A
Travel Documents, Convention Travel Document, (CTD), Adult	77.50	159	77.50	N/A
Travel Documents, Convention Travel Document, (CTD), Child	49	113	49	N/A
Enrolment of biometrics	N/A	N/A	19.20	N/A
Replacement Biometric Residence Permit	37	37	37	N/A
Work Permit Technical Changes	22	123	22	N/A
Call out/out of hours fee	£130/hr	134/hr	130/hour	N/A
Nationality applications - Migrants in UK				
Renunciation of Nationality	225	238	229	N/A
Re-issued Certificates of Nationality	86	91	88	N/A
Nationality right of abode	162	181	165	N/A
Nationality Reconsideration Fee	80	181	80	N/A
Status Letter (Nationality)	86	91	88	N/A
Non Acquisition Letter (Nationality)	86	91	88	N/A
Nationality Correction to certificate	86	91	88	N/A

IN UK PBS FEES

PRODUCTS	2011/12 Fees (£)	Estimated Unit Cost for 12/13	Proposed Fee for 12/13	Dependents Fee
PBS - Migrants in UK				
Tier 1 - (Post Study Work), Postal, Dependant	297	337	303	N/A
Tier 5 – Postal, Main applicant	190	196	194	97
Tier 5 – Postal, CESC, Main applicant	171	196	175	97
Tier 4 Permission to change Sponsor*	160	160	160	N/A
CESC = Council of Europe Social Charter reduction **For migrants that applied to UKBA for permission to study from 31 March 2009 to 4 October 2009*				

PBS SPONSORSHIP FEES

PRODUCTS	2011/12 Fees (£)	Estimated Unit Cost for 12/13 (£)	Proposed Fee for 12/13 (£)

Tier 2 Sponsor licence - small business	310	1,531	500
Tier 4 Sponsor licence	410	1,531	500
Tier 5 Sponsor licence	410	1,531	500
Tier 2, Tier 4 &/or Tier 5 Licence (where sponsor currently holds Tier 4 or Tier 5 licence)	615	1,531	1,000
Highly Trusted Sponsor Licence	410	1,531	500
Sponsor Action Plan	1,000	1,531	1,500
Tier 5 CoS	10	13	13
Tier 4 CAS	10	13	13
CoS = Certificate of Study *CAS = Confirmation of acceptance for study*			

7.7 The following paragraphs outline the routes where an increase above the rate of inflation has been applied to fees and why.

Settlement (Refugee Dependant Relative)

7.8 The UK Border Agency has reviewed the fee that applies to entry clearance applications from extended family members of refugees and persons with Humanitarian protection. Previously, these applications were classified as the 'other visa' category. The Secretary of State proposes a fee of £458, set at cost recovery levels. This will enable the UK Border Agency to set a fee at a level which reflects the administrative cost of processing these applications.

Tier 4 Visa (Student)

7.9 The Tier 4 visa route allows an applicant to come to the UK as a student with a licensed sponsor on the register of approved sponsors. The UK Border Agency has increased the fee for this route to £289. This is a key route to us in the UK Border Agency, to the education system in general, and to the broader UK economy. In previous years, fees for this route have been kept below the administrative cost to the UK Border Agency of processing an application. This meant that every student application was being cross-subsidised. The new proposed fee brings the fee for this route up to the full administrative cost of processing an application.

Fees for enrolment of biometrics

7.10 The Immigration (Biometric Registration) Regulations 2012 extended the previous categories of immigration applicants required to apply for a biometric residence permit (BRP) and enrol their biometrics. This new provision completes the roll out of the requirement for a BRP to new in country applications for more than six months leave from those subject to immigration control from outside the European Economic Area. The Secretary of State has set a fee of £19.20 for applicants to enrol their biometrics under the UK Border Agency's Front Office Service. This service will be provided by the Post Office, on behalf of the UK Border Agency. For this fee, the Post Office will collect biometric data such as facial images, finger prints and an electronic signature from applicants who have made an application to be issued with a BRP.

Fees for sponsorship under PBS

7.11 The UK Border Agency proposed fees for sponsorship under PBS continue to take fully into account the needs of UK businesses at the present time. Since the introduction of PBS in 2008, the UK Border Agency has maintained the fees for

sponsorship for both large and small sponsors at a relatively low level, compared to the actual cost to the Agency of providing the service. In this time, the costs of providing the service have increased.

7.12 The UK Border Agency has increased the various fees to register as a sponsor under PBS. A new fee of £500 is set for a licence to register as a small Tier 2 sponsor, a Tier 4 or Tier 5 sponsor or, for a Highly Trusted Sponsor status licence. Where a large sponsor currently holds a Tier 4 or Tier 5 sponsor licence, and wants to apply for an additional Tier 2 licence, the fee is £1,000. Also, a new fee of £13 is set for a Tier 4 CAS or a Tier 5 CoS. The new fees better reflect the administrative costs to the Agency.

7.13 The majority of fee concessions for small businesses and charities that sponsor migrants are still being kept below cost recovery levels. This is in recognition of the importance of keeping direct costs to sponsors under PBS as low as possible, particularly in the current economic climate.

8. Consultation outcome

8.1 The UK Border Agency published a full public consultation on Charging for Immigration and Visa Applications between 1 September and 1 December 2009. Over 90% of respondents agreed that the UK Border Agency should continue to set fees flexibly by taking into account wider policy objectives, such as attracting specific groups of migrants that are beneficial to the UK. The UK Border Agency published the formal Government response to the consultation 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/.

8.2 Other consultation exercises on fees and charging have taken place. A targeted consultation exercise on fees and charges to support PBS and for biometric identity documents was held from 24 October to 9 November 2007. The UK Border Agency 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. The UK Border Agency used feedback from this exercise to set fees for the new services first provided to migrants and sponsors under PBS in 2008.

8.3 The UK Border Agency conducted a full public consultation exercise on charging for immigration and nationality applications between 30 October and 22 December 2006, supported by the publication of a *consultation on a new charging regime for immigration & nationality fees*. The formal Government response to that consultation was published on 7 March 2007, and is available on the UK Border Agency website at: http://webarchive.nationalarchives.gov.uk/20100422120657/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/newchargingregime/.

8.4 This consultation established the principle that the UK Border Agency should operate a flexible pricing approach to setting fees for immigration services. This

allows fees to be set taking into account the need to maintain the UK's international competitiveness. It also ensures that the immigration system overall can generate sufficient level of revenue from income for services provided (alongside the costs met by the UK taxpayer) to fund necessary improvements. The majority of respondents to the consultation agreed we should set fees flexibly to take into account wider policy objectives and that new fees should reflect a range of factors, not only those of value to the migrant.

9. Guidance

9.1 The UK Border Agency announced details of the new fee levels and their commencement dates to Parliament in a Written Ministerial Statement on 9 February 2012. Full details of each fee and guidance to general members of the public on how to apply under each route will be available on the UK Border Agency website in due course.

10. Impact

10.1 The impact on business, charities or voluntary bodies is explained in the full impact assessment attached at Annex A to this Explanatory Memorandum.

10.2 The impact on the public sector is explained in Annex 6 of the attached impact assessment.

10.3 The full impact assessment attached at Annex A will be also be published at www.ukba.homeoffice.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The UK Border Agency proposes to maintain the approach of charging a lower fee for small businesses who apply for a sponsor licence. This is in recognition of the importance of keeping direct costs to sponsors under PBS as low as possible, particularly in the current economic climate.

12. Monitoring & review

12.1 The UK Border Agency will closely monitor the impact of fees for the application and services contained in these Regulations. The UK Border Agency review fees and charges for immigration and nationality applications annually. The UK Border Agency 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 UK Border Agency delivery costs but do not adversely impact on the UK economy.

13. Contact

13.1 Shola Akinyamoju at the Charging Programme of the UK Border Agency, Tel: 0208 760 2716 or email: Shola.Akinyamoju@homeoffice.gsi.gov.uk who can answer any queries regarding the instrument.