EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT) (NO. 2) REGULATIONS 2024

2024 No. 1313

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

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

2. Declaration

2.1 Seema Malhotra MP, Minister for Migration and Citizenship at the Home Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Nicola Sills, Deputy Director – Strategic Finance and Risk, Corporate and Delivery, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Ben Foyle at the Home Office can be contacted with any queries regarding this instrument by email: feesandincomeplanning.requests@homeoffice.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These Regulations set a fee for the assessment of an overseas qualification for the purpose of demonstrating compliance with English language proficiency and qualification requirements ('the Equivalency and Proficiency Service') for certain immigration and nationality routes. These Regulations set additional fees for the Equivalency and Proficiency Service which include an electronic version of the statement provided to applicants and fees for optional fast track services.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland. The provisions specified at regulation 3(1), (2) & (7) additionally extend to the Isle of Man and those specified in 3(1), (3), & (8) additionally extend to the Bailiwicks of Jersey and Guernsey.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the same as its extent.

5. Policy Context

What is being done and why?

5.1 The Home Office Immigration Rules require an applicant applying for a visa to demonstrate proficiency in English Language at a specified level. This can be demonstrated in a number of ways, one of which is to use an academic qualification taught in English awarded by a university or an educational establishment outside of the UK.[1] Certain individuals making applications under Appendix Skilled Worker or Appendix High Potential Individual are required by the Immigration Rules to obtain verification that their qualification meets the required standard, using a service operated by a third-party supplier, Ecctis Limited, on behalf of the Home Office.

5.2 The assessment of an overseas qualification can also be used as part of an application to become a British Citizen, and by students undertaking a short-term period of study in the United Kingdom as part of a degree level study programme in the United States of America.

5.3 This instrument will set the fees for the standard Equivalency and Proficiency Service at the same level customers currently pay, which for the assessment of English language proficiency is £140 per application, and for an assessment of the equivalency of a qualification obtained overseas with one obtained in the UK, is £210 per application.

5.4 In addition to the Equivalency and Proficiency Service, customers can opt to use additional services for an additional fee. Customers can choose to have the outcome of their assessment by an e-Statement which is a secure PDF file that can be downloaded through a secure portal. The charge for an e-Statement is not a new charge and does not create an additional requirement for customers, who already have the option to pay for an e-Statement. The e-Statement can be used by the Home Office, employers and institutions and does not have an expiry date. Although customers can choose how their statement is provided to them, as the provision of an e-Statement is a core part of the service and is the preferred method of receiving the statement in the majority of cases, we are setting a provision in these Regulations for the provision of an e-Statement.

5.5 This instrument will set separate fees for customers who use the standard Equivalency and Proficiency Service and want to have their statement delivered by e-Statement. For the standard English language proficiency service, customers will pay £147.50. Customers who use the qualification equivalency assessment will pay £217.50. This is the current cost charged to customers if they opt to receive an e-Statement. If customers opt to have a physical copy of their statement delivered to them, additional fees will be charged on top of the fees set out in this paragraph or paragraph 5.3, depending on the delivery method chosen, reflecting the costs passed on to Ecctis by the delivery partner.

5.6 Customers using the English Language proficiency assessment have the option to pay for a fast-track service if they need their statement more quickly than the standard service. This will reduce the completion time of an assessment from 10 working days to one working day for an additional fee of £174, or two working days for an additional fee of £124. The cost of a fast-track service includes delivery of the statement and the e-statement. This means that customers will pay £140 for the English language assessment plus either £124 or £174, depending on the service

[1] https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-english-language

selected. These fees are set under existing provisions in the Immigration and Nationality (Fees) Oder 2016 (S.I. 2016/177).

5.7 These fees are being regulated following a review of the current charging arrangements for the Equivalency and Proficiency Service which took place in Spring 2024. This review was part of a competitive open re-procurement exercise which would, once complete, allow for a new contract to be issued for the supply of these services and for the Home Office to receive fees for these services where they are regulated. This review identified that it is a legal requirement for fees for these services, which have been specified in the Immigration Rules since 2008, to be set within the department's fees legislation in order for fees to be charged lawfully. This is due to the mandatory nature of the requirement to use the Equivalency and Proficiency Services in relation to applications on certain routes, and consequently the mandatory nature of the fee. These Regulations will put fees charged for these services on a statutory footing, following an amendment to the Immigration and Nationality (Fees) Order 2016 (S.I. 2016/177) which provided a power to charge fees and sets the fee maxima for the Equivalency and Proficiency Service.

What was the previous policy, how is this different?

5.8 The fees for the services being regulated through these Regulations have not, to date, been regulated. These Regulations are required to ensure that fees charged after these Regulations come into effect, are charged lawfully.

6. Legislative and Legal Context

How has the law changed?

6.1 The Immigration, Nationality and Passport (Fees) (Amendment) (No. 2) Regulations 2024 ("these Regulations") amend the Immigration and Nationality (Fees) Regulations 2018 (S.I. 2018/330) in respect of fees chargeable for applications and services relating to immigration and nationality. This amendment sets fees for the Equivalency and Proficiency service and associated services, putting them onto a statutory footing for the first time.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes to regulate these fees.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation was carried out on the changes we are making through these Regulations, as the changes are limited in nature and will not materially impact on requirements for users of the migration and borders system.

8. Applicable Guidance

8.1 Where the Home Office requires visa and nationality applicants to use the Equivalency and Proficiency Service, this is set out on gov.uk[2] and in the Immigration

[2] https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-english-language
https://www.gov.uk/skilled-worker-visa/knowledge-of-english
https://www.gov.uk/english-language/degrees-in-english

rules.[3] Guidance on the electronic statement and fast track services are set out on the supplier's website.[4]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full impact assessment has not been completed for this instrument as no, or no significant, impact on business, charities or voluntary bodies is foreseen. An Economic Note is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. The Economic Note assesses the theoretical impact of charging for the service in terms of income generated to the government based on current levels of service demand, and that this impact is approximately £17.7m per annum based on current service rates (exclusive of VAT), of which an estimated £1.6m per annum are treated as a transfer between UK residents and the government. This gives an overall Net Present Social Value (NPSV) of £135.5m across a ten-year appraisal period.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because these Regulations are not creating any new requirements for any of these sectors.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is estimated to be a benefit of £17.7m per annum.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the Home Office will keep these Regulations under review.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Seema Malhotra, MP, Minister for Migration and Citizenship, has made the following statement:

"It is not appropriate in the circumstances to make provision for review. These Regulations are kept under regular review, and I am satisfied that these Regulations do not impact on small businesses."

10.3 Nevertheless, the Home Office will continue to monitor the impact of these Regulations.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument breaches the 21-day rule by coming into force on the day it is laid, 11 December 2024.

[3] https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-english-language
https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-high-potential-individual
[4] https://www.ecctis.com/Qualifications/VAN/Default.aspx

11.2 The department regrets this breach, but considers that this departure from convention is necessary and proportionate due to the pressing need to put fees for English Language Proficiency and Qualification Equivalency assessments on a statutory footing. Additionally, these services are not a new requirement for customers, so would not need prior notice of the regulations coming into effect.

11.3 It has not been possible to lay these Regulations sooner. This is because the fees for the Equivalency and Proficiency service can only be set after an amendment to the Immigration and Nationality (Fees) Order 2016 laid on 11 September (S.I. 2024/1192) comes into force. The amendment to the Fees Order, which came into effect on 10 December 2024, established the relevant chargeable functions and a maximum chargeable amount to enable the fees to subsequently be set in these Regulations.

11.4 Once this instrument comes into force, fees for these services will be charged with the necessary legal backing.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").