EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT) (NO. 3) REGULATIONS 2023

2023 No. 1359

1. Introduction

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

2. Purpose of the instrument

2.1 The Immigration and Nationality (Fees) (Amendment) (No. 3) Regulations 2023 ("these Regulations") amend the Immigration and Nationality (Fees) Regulations 2018 (S.I. 2018/330). These regulations make amendments to fee provisions consequential to the Statement of Changes to the Immigration Rules laid before Parliament on 7 December 2023 (HC 246).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales, Scotland, and Northern Ireland.

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

5. European Convention on Human Rights

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

6. Legislative Context

6.1 These Regulations support amendments made through the Statement of Changes to the Immigration Rules laid on 7 December 2023 (HC 246) for which more information can be found in the associated Explanatory Memorandum on the gov.uk website (EXPLANATORY MEMORANDUM TO THE STATEMENT OF CHANGES IN IMMIGRATION RULES PRESENTED TO PARLIAMENT ON 7 DECEMBER 2023 (HC 246) (publishing.service.gov.uk).The relevant amendments made through these Regulations are –

(i) amending the existing fee waiver provision on the basis of destitution for applications for settlement in the UK as a Victim of Domestic Abuse, to reference the new Appendix Victim of Domestic Abuse in the Immigration Rules

(ii) setting a specified fee of £2,885 (equivalent to the existing fee for indefinite leave to remain (ILR) in the UK) for an application for indefinite leave to enter the UK (ILE) as a Victim of Domestic Abuse under the new Appendix.

(iii) introducing an associated fee waiver provision on the basis of destitution for that fee

(iv) amending the existing fee provision which exempts the fee for an application for leave to remain as a Stateless person and their family members as below –

(a) to remove the family members from the scope of that fee exemption, and reference to the new Appendix Statelessness to the Immigration Rules.

(b) to introduce a specified provision to exempt the fee for those family members applying under the transitional provisions in Part 14 of the rules to reflect the changes in respect of family members on introduction of Appendix Statelessness.

7. Policy background

What is being done and why?

Victim of Domestic Abuse

7.1 A new Appendix Victim of Domestic Abuse has been introduced to the Immigration Rules which replaces the existing provisions under Appendix FM and Appendix Armed Forces. This provides a single set of rules for applications for settlement as a victim of domestic abuse and dependent children. These changes will allow victims of domestic abuse and their dependent children to apply for entry clearance from outside the UK, where they have been abandoned overseas as victims of domestic abuse including transnational marriage abandonment. This means that out of country applicants under the new Appendix will be entitled to the same immediate settlement status as those applying in-country.

7.2 These Regulations will introduce a specified fee of £2,885 for applications for entry clearance to settle in the UK made under Appendix Victim of Domestic Abuse for entry clearance to settle in the UK. This is the same fee as for applications for settlement in the UK.

7.3 There is an existing provision in the Fees Regulations that allows the fee to be waived for relevant applications made within the UK, subject to the applicant meeting a destitution test. These Regulations amend that provision to reference the new Appendix Victim of Domestic Abuse.

7.4 Further in respect of applications made outside the UK under the new Appendix, these Regulations introduce an equivalent fee waiver provision in relation to the new fee (£2,885) specified for applications for settlement in the UK under the new Appendix.

7.5 These changes will be effective from 31 January 2024 when the new Appendix comes into effect and bring both in-country and out of country applications as a Victim of Domestic Abuse on the same footing in respect of fees.

Stateless Persons

7.6 An existing provision in the Fees Regulations exempts the fee for stateless persons and their family members applying for limited leave to remain and ILR under Part 14 of the Immigration Rules.

7.7 Part 14 will be replaced by a new Appendix Statelessness. Applicants will be eligible to apply for leave to remain (permission to stay) or indefinite leave to remain (settlement) in the UK as a stateless person under the new Appendix Statelessness. These Regulations will amend the existing provision that exempts fees for stateless persons to remove the fee exemption for family members and reference the new Appendix Statelessness.

7.8 Currently, family members (i.e. partners or children) of a stateless person who are not themselves stateless are able to apply for leave to enter or remain and settlement on the stateless route under Part 14. Following the change to the Immigration rules, there will be no dependent rules for partners and children under Appendix Statelessness from 31 January 2024. A partner or child of a stateless person will instead be required to apply under Appendix FM for leave to enter, leave to remain and settlement from 31 January 2024. This policy change is to achieve greater consistency across immigration routes for dependant family members and provide consistency on family rules.

7.9 Family members of a stateless person will be required to pay the relevant application fee in line with wider applications under Appendix FM (current fee £1,048 for limited leave to remain and £2,885 for ILR) unless they request and are granted a fee waiver for limited leave to remain under the existing waiver provision for specified human rights applications.

7.10 A transitional arrangement has been provided in the Rules in respect of family members of stateless persons who have been granted leave under Part 14 of the Immigration Rules, so that they can continue to apply for further leave to remain or ILR under Part 14. These Regulations will, therefore, make a specified provision to exempt the fee for such family members applying under Part 14 from 31 January 2024. This provision will also exempt the fee for a child born in the UK to a parent who was granted leave as a stateless person or as a partner of a stateless person under Part 14 before the change in rules.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Immigration and Nationality (Fees) Regulations are consolidated periodically.

10. Consultation outcome

10.1 The changes made by these Regulations are consequential to changes in Immigration Rules and, therefore, have not been the subject of a separate formal public consultation. Furthermore, where new fee provisions have been made, these are in line with existing fees on equivalent routes.

11. Guidance

11.1 Home Office guidance for staff will be updated to reflect the changes in these Regulations closer to the respective commencement dates. Information and guidance for members of the public will also be published when these Regulations are laid before Parliament.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 As the volumes of individuals affected by this legislation are small, the impacts, including financial impacts, are expected to be minimal. A full Impact Assessment has therefore not been prepared for this instrument.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that fees are kept under regular review.

14.2 These Regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Tom Pursglove, MP, Minister of State at the Home Office, has made the following statement: "It is not appropriate in the circumstances to make provision for review. Fees are kept under regular review, and I am satisfied that these Regulations do not impact on small businesses." Nevertheless, the Home Office will continue to monitor the impact of these Regulations.

15. Contact

15.1 Mohammed Khurrum Mahay at the Home Office can be contacted with any queries regarding the instrument on email: feesandincomeplanning.requests@homeoffice.gov.uk

15.2 Paul Darling, Deputy Director - Special Projects, Fees and Income Planning, Corporate Enablers, Finance Directorate at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister of State for Legal Migration and Delivery, Tom Pursglove MP, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.