EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT) REGULATIONS 2016

2016 No. 929

1. Introduction

1.1 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 purpose of this negative instrument is to make amendments to a small number of definitions contained in the Immigration and Nationality (Fees) Regulations 2016 (S.I. 2016/226) ("the Fees Regulations 2016"), and to introduce a fee for a new, optional premium service for businesses who are licensed as sponsors under Tier 2 and Tier 5 of the Points-Based System.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 This instrument amends the Fees Regulations 2016 by providing a fee for a new optional premium service for sponsors, which will commence operation in October 2016. The level of the fee is set within the limit contained in the enabling Immigration and Nationality (Fees) Order 2016 (S.I. 2016/177), which was subject to affirmative resolution and made on 23 February 2016. In addition to introducing that new fee, this instrument amends a small number of the definitions in the Fees Regulations 2016 to clarify the policy intentions in these areas.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the whole of 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 is being done and why

7.1 This instrument makes amendments to the following definitions in the Fees Regulations 2016, in order to ensure that current policy intention is adequately expressed:

- Positive conclusive grounds decision. This definition is required to ensure the correct application of the fee exceptions set out in Schedule 2, Table 9.10 of the Fees Regulations 2016, which benefits victims of human trafficking, slavery, servitude, and forced or compulsory labour. As currently worded there is a risk that planned changes to legislation in Northern Ireland and Scotland may render the current exceptions inoperable;
- Assistance by a Local Authority. This definition is required to ensure the correct application of the fee exceptions set out in Schedule 2, Table 9.6 and Schedule 3, Table 13.4 of the Fees Regulations 2016. The policy intention is to enable exceptions from paying certain fees where the applicant is a child who is being 'looked after' by a Local Authority;
- Certificate of travel. This definition, in paragraph 1 of Schedule 3 of the Fees Regulations 2016, is being amended to better reflect the policy intention in respect of when a fee is payable. It clarifies that a fee is payable upon all applications for discretionary travel documentation issued by the Home Office.

7.2 This instrument also introduces a fee, for a new optional premium service for sponsors, which will be available to sponsors licensed under Tier 2 and 5 of the Points-Based System. The service will offer expedited processing of requests made through the electronic sponsor management system in connection with a sponsor's licence. For example:

- An annual allocation of Certificates of Sponsorship;
- An ad-hoc request for Certificates of Sponsorship over and above the annual allocation;
- The appointment of a new Authorising Officer (a named individual in the sponsor organisation who is responsible for all day-to-day activity as a licensed sponsor);
- The appointment of a new Level 1 Sponsorship Management System (SMS) user (the SMS is an online tool used by sponsors to issue certificates of sponsorship to migrants and to make certain reports in fulfilment of their obligations to the Home Office, as a licence holder).

Consolidation

7.3 There are currently no plans to consolidate the relevant legislation.

8. Consultation outcome

8.1 The Home Office conducted a targeted public consultation in November and December 2013 on how its charging strategy works in practice to help inform and shape the approach to charging in the future. The responses were analysed and reflected in the proposals set out in the Fees Regulations 2016.

8.2 The consultation document was made available to the general public on the Home Office website. Key interest groups from professional bodies, legal practitioners, education sector representatives, aviation and hospitality trade associations and travel and retail groups were also notified of the consultation and a number of face-to-face meetings took place during the consultation period.

8.3 Responses to the consultation were almost universally constructive:

- Stakeholders expressed appreciation for the opportunity to provide feedback.
- Positive feedback was provided where respondents felt the current charging strategy was successful, such as the availability of and charging at above-cost for premium services.

8.4 Some respondents emphasised the need to ensure that changes to fees were not detrimental to the Government's aim of attracting the 'brightest and best' to work and study in the UK. The Home Office sought to address this in the Fees Regulations 2016 by limiting fee increases for the majority of student, worker and visitor applications to 2% in 2016-17.

8.5 The government response to the consultation was published on the gov.uk website at https://www.gov.uk/government/consultations/fees-and-charging-immigration-and-visas-consultation.

9. Guidance

9.1 Full details of the new fee and information for sponsors on how to access that service will be made available on www.gov.uk, along with more general information on the changes to definitions contained in this instrument. The Home Office guidance to staff will also be updated to reflect these changes.

10. Impact

10.1 There is no additional impact on business, charities or voluntary bodies in these Regulations because the new fee within the sponsorship system is for an optional premium service; it is not a mandatory fee.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument. This is because an Impact Assessment was prepared for the Immigration and Nationality (Fees) Order 2016, which assessed the impact of the fee levels set out in the current Regulations.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses only in so far as it introduces a new, optional premium service which they will be eligible to use if they are a Tier 2 or Tier 5 sponsor.

12. Monitoring & review

12.1 The Home Office will closely monitor the impact of fees for the applications and services contained in this instrument. The Home Office reviews fees and charges for immigration and nationality applications annually. The Home Office also monitors application trends and 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

13.1 Annie Wattam at the Home Office, Fees and Income Planning, Financial Planning Unit, Telephone: 0114 207 2290 or email: Annie.Wattam@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.