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. 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, which will be available to sponsors of workers. These sponsors are licensed under Tier 2 and 5 of the Points-Based System. The service will offer expedited processing (including the necessary Home Office checks) of certain requests in connection with a sponsor's licence, and made through the Home Office's electronic Sponsorship Management System (SMS).

7.3 The SMS is an online account which sponsors use to manage their day-to-day activity as a licensed sponsor. This includes creating and assigning Certificates of Sponsorship (CoS). A CoS is an online document created by a licensed sponsor within their SMS account. A CoS must be created in respect of each migrant sponsored. It contains a migrant's personal information, and information about the work they will do for the sponsor. When a CoS is created, a random number is generated; this number is assigned by the sponsor to the migrant, who must in turn include it in their associated application for leave to enter, or remain in the United Kingdom as a Tier 2 or Tier 5 migrant.

7.4 A sponsor must request an annual allocation of CoS based on their estimate of how many CoS they will require for the following 12 months. The Home Office then decides how many CoS the sponsor can assign to migrants by setting a limit within the sponsor's SMS account. A sponsor cannot assign more CoS than their allocated limit within the 12 month period. Should it be necessary, a sponsor can request additional CoS during the 12 month period, on an ad-hoc basis.

7.5 The SMS also enables the sponsor to make required reports to the Home Office in fulfilment of their obligations as a licensed sponsor. For example, they are required to inform the Home Office if a sponsored migrant is absent from work for more than 10 working days, without their authorisation.

7.6 A sponsor is also required to submit requests through their SMS account, to change certain information about their organisation, including, but not limited to, a change of address, or the addition or replacement of a named individual involved in their day-to-day activity as a licensed sponsor. These named individuals must be approved by the Home Office and include an 'Authorising Officer' and a 'Level 1' SMS user.

7.7 The Authorising Officer is ultimately accountable to the Home Office for all of their organisation's activity as a licensed sponsor. This individual will typically be a senior employee who is responsible for recruitment.

7.8 A sponsor's SMS account is only accessible to named, authorised 'users'. Users are designated as 'Level 1' and 'Level 2'; Level 1 users have a higher level of permission and can carry out more activities within the SMS than a Level 2 User. A Level 1 user is responsible for all the activities of a Level 2 user. An SMS user will typically be an employee or representative of the sponsor organisation.

7.9 The new premium service will initially offer expedited processing of the following requests:

- The appointment of a new Authorising Officer;
- The appointment of a new Level 1 SMS user;
- An annual allocation of *CoS;
- An ad-hoc request for *CoS over and above the annual allocation.

* This does not include 'restricted' Tier 2 (General) CoS which count towards the Home Office's annual limit on Tier 2 (General). Applications for restricted CoS are managed under different arrangements.

More information about the system of sponsorship, CoS, SMS and the Home Office's annual limit on Tier 2 (General) is available in the guidance for sponsors, published on the gov.uk website at https://www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators

Consolidation

7.10 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.