EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) (AMENDMENT) REGULATIONS 2024

2024 No. 928

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. 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, Finance Directorate at the Home Office, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

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

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These Regulations introduce certain fee waivers and exceptions, and make minor amendments to existing waivers and exceptions, to maintain alignment with the Immigration Rules following the Statement of Changes laid before Parliament on 10 September 2024 (HC 217). More information on the relevant rule changes can be found in the Explanatory Memorandum to the Statement of Changes, which is published on Gov.uk: https://www.gov.uk/government/collections/immigration-rules-statement-of-changes.

4.2 These Regulations include the following changes in respect of fee waivers–

(i) Introduce a fee waiver for bereaved partners applying for settlement where a person has, or was last granted, leave or permission as a partner and their partner has died. The fee waiver will be available to apply for where an applicant is destitute.

(ii) Amend an existing provision to make specific reference to Appendix Child Staying with or Joining a Non-Parent Relative (Protection) ("Appendix CNP") in the Immigration Rules. This will clarify that applications made within the UK on this immigration route are eligible to apply for a fee waiver. Appendix CNP allows those in the UK with protection status (i.e. refugee leave or leave on humanitarian protection grounds) to sponsor children whom they are not parents of, where those children have no family to support or care for them other than

the sponsor (i.e. non-parent relative) in the UK. The fee waiver is available on the basis of affordability.

4.3 These Regulations further introduce two specified fee exceptions in respect of applications for new visa routes introduced through the Statement of Changes –

(i) A new Diplomatic Visa Arrangement Visitor ("DVA Visitor") visa for diplomatic passport holders from select visa national countries. It replaces the current diplomatic visa waiver policy.

(ii) A new VIP Delegate Visa for officials accompanying Heads of State and Government Ministers on their official visits to the UK.

4.4 A small technical amendment is also made to an existing fee exception which exempts the fee for applications made in the UK for limited leave to remain under Appendix Family Reunion (Protection) to the Immigration Rules. There is no change in the existing policy as a result of this amendment, which is made for the purposes of achieving better consistency with wording in the Immigration Rules.

Where does the legislation extend to, and apply?

4.5 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.

4.6 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? What was the previous policy, how is this different?

A fee waiver for bereaved partners

5.1 The provisions under Appendix Bereaved Partner to the Immigration Rules allow for a grant of settlement in the UK to bereaved partners where a person has, or was last granted, leave or permission to enter or remain in the UK on a specified family route and their partner has died. Similar provisions for bereaved partners are set out in Appendix Gurkha and Hong Kong military unit veteran discharged before 1 July 1997 to the Immigration Rules. As defined in the Immigration Rules a 'partner' means a person's a) spouse or (b) civil partner or (c) unmarried partner, where the couple have been in a relationship similar to marriage or civil partnership for at least two years. Individuals with dependent children can apply for immediate settlement under those provisions and do not need to complete the standard requirement for five or ten years residence in the UK to qualify. These provisions help to ensure certainty of immigration status in the UK at a traumatic time and where the bereaved partner no longer qualifies for permission as a partner following their partner's death.

5.2 At the time of these Regulations the fee for an application for settlement as a bereaved partner is £2,885, which is the same as for most other applications for settlement. It is recognised that some individuals in this group may not be able to pay the fee due to their adverse personal and financial circumstances, and as a result may be prevented from applying for settlement. In recognition of this, these Regulations introduce a fee waiver on the basis of destitution, in order to support relevant individuals in achieving certainty of immigration status.

5.3 The scope of the fee waiver will be individuals who are eligible to apply for indefinite leave to enter or remain in the UK as set out in the Appendices stated in paragraph 5.1 above. The fee waiver will be effective from 9:00 a.m. on 9 October 2024. Bereaved

partners will be able to apply for the fee waiver by providing appropriate evidence of their financial circumstances as part of the application process for settlement on this route.

A fee waiver for the applications under Appendix Child Staying with or Joining a Non-Parent Relative (Protection) (Appendix CNP) to the Immigration Rules

5.4 Appendix CNP to the Immigration Rules allows individuals with protection status to sponsor, under certain specified circumstances, a child who they are related to but do not have a parental relationship with, including where that child has no other family to support or care for them. Such children may apply for entry clearance from overseas, or leave to remain within the UK, to join and stay with sponsors who hold protection status. Entry clearance and leave to remain applicants are required to pay an application fee. However, those who are unable to pay the fee, can request a fee waiver on the basis of affordability.

5.5 Fee waiver requests for applications made from outside the UK are considered under a general fee waiver provision at Table 5.1 in Schedule 1 of The Immigration and Nationality (Fees) Regulations 2018 ("the 2018 Regulations"). For those applying within the UK, a fee waiver is considered under the provision at Table 9.4 in Schedule 2 of the 2018 Regulations, which is available if the application falls within scope of the definition of 'specified human rights applications' in the 2018 Regulations. This provision provides a fee waiver for the specified human rights applications where to require payment of the fee would be incompatible with the applicant's Convention rights, as identified by Section 1 of the Human Rights Act 1998. The said fee waiver operates based upon the assessment of the individual's affordability to pay a fee. While applications under Appendix CNP fall under the scope of relevant definition, we have determined that this could be made clearer on the face of the 2018 Regulations through explicit reference to Appendix CNP. These Regulations, therefore, make an amendment by adding a reference to leave to remain applications made under Appendix CNP to the existing definition of 'specified human rights applications'.

5.6 This amendment will be effective from 8 November 2024, when the simplified Appendix CNP to Immigration Rules will also be effective. Individuals who are applying for a fee waiver for leave to remain (also known as permission to stay) on this route will be required to provide appropriate supporting evidence.

Amendment to the fee exception under Appendix Family Reunion (Protection)

5.7 Appendix Family Reunion (Protection) to the Immigration Rules allows for applications by a partner or dependent child of a person who holds protection status or settlement on a protection route in the UK to join or stay with their sponsors in the UK. They can apply from overseas and within the UK and currently an exception exists so that there is no fee payable for these applications.

5.8 These Regulations make a minor amendment for consistency to the description in the existing provision for applications within the UK, and it is not a change in the existing policy. The amendment will take effect from 8 November 2024, which is aligned to the date when a minor change in the Immigration Rules in Appendix Family Reunion (Protection) will also be effective.

A fee exception for Diplomatic Visa Arrangement (DVA) Visitor visa

5.9 DVA Visitor is a new visitor visa category introduced within Appendix V: Visitor through the Statement of Changes to the Immigration Rules. It will replace the current

diplomatic visa waiver policy, by which some visa nationals who are diplomatic passport holders from certain countries can visit the UK without obtaining a visit visa in advance of travel. Individuals holding a diplomatic passport issued by countries specified in that Appendix will now be able to apply for a DVA visit visa where that application is supported with a Note Verbale provided by their government. Relevant individuals will be able to apply for a two year multiple entry visit visa, with each stay in the UK not exceeding six months. DVA Visitor visas are designed primarily for diplomats visiting the UK in an official capacity, though they can also be used where they are visiting the UK in a personal capacity.

5.10 The policy intention is that there should be no fee payable for an application under Appendix DVA. These Regulations, therefore, provide an exception to the two-year visit visa fee for these applications. It will be effective when the new visa route becomes operative on 18 February 2025.

A fee exception for VIP Delegate Visa

5.11 The Immigration (Exemption from Control) Order 1972 ('the Order') provides that members of foreign governments on official business and their families are exempt from immigration control and do not require entry clearance. The State Immunity Act 1978 ('the Act') affords Diplomatic Privileges Act 1964 protections on sovereigns or other heads of state, members of their family forming part of their household, and their private servants. This exempts them from immigration control, so they do not require entry clearance. These individuals are typically accompanied by broader delegations, including advisers, officials, or support staff. These individuals are not afforded exempt status by either the Order or the Act. Nonetheless, such delegations are essential for facilitating inbound diplomatic exchanges in the UK's national interest.

5.12 The new VIP Delegate Visa introduced under Appendix VIP Delegate Visa to the Immigration Rules, provides a specific route for the accompanying officials who are otherwise required to apply for a visa before coming to the UK. Numbers will be capped (20 for officials accompanying Heads of State and 10 for officials accompanying Ministers) and applications will require a supporting Note Verbale provided by the relevant Government. Any accompanying officials in excess of the caps requiring prior entry clearance will have to apply for a standard visit visa.

5.13 The policy intention is that there should be no fee payable for applications made under Appendix VIP Delegate Visa to the Immigration Rules. At the time of laying these Regulations the applicable fee for this category of visa is £637 (at Table 1.5.1 in Schedule 1 of the Regulations). These Regulations, therefore, provide an exception so there will be no requirement to pay the said fee. This provision will be effective from 10 October 2024 when the relevant Immigration Rules and the new visa route will become operative.

6. Legislative and Legal Context

How has the law changed?

6.1 The Immigration and Nationality (Fees) (Amendment) Regulations 2024 amend the Immigration and Nationality (Fees) Regulations 2018 (S.I. 2018/330) in respect of the fees chargeable for the applications and services related to immigration and nationality.

Why was this approach taken to change the law?

6.2 This is the only possible approach to making the changes required to existing fee provisions and set new fee waivers and exceptions within the powers derived from Section 68 of the Immigration Act 2014. With changes in the Immigration Rules, the related references in the Immigration and Nationality (Fees) Regulations 2018 also need to be amended to align to the amended Rules.

7. Consultation

Summary of consultation outcome and methodology

7.1 These Regulations have not been the subject of a formal public consultation, as this would be disproportionate given the nature of the changes being made and small groups of people due to be impacted.

8. Applicable Guidance

8.1 Information and guidance for members of the public and staff will be updated and placed on the GOV.UK website as the fee waivers and exceptions introduced through these Regulations take effect. That will include the relevant details of the process to apply and, where necessary, request a fee waiver along with requirements for supporting evidence. The relevant information will be published for the fee waiver for bereaved partners on 9 October 2024, and fee exception for the new VIP Delegate Visa on 10 October 2024, and for the new VDA Visitor Visa on 18 February 2025. The changes clarifying the existing provisions related to Appendix CNP and Appendix Family Reunion (Protection) will be reflected as appropriate in published guidance on 8 November 2024.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument due to the low volumes that are anticipated to be affected by the changes made. Estimated impacts are summarised briefly below –

- **Fee waiver: Bereaved Partners route** – The Home Office receives an average of 122 applications per year for settlement as a bereaved partner, with a very small proportion of that volume likely to be destitute. The loss of fee income and additional processing cost associated with introduction of the fee waiver is therefore anticipated to be minimal.
- **Fee waiver: Appendix CNP** – No impact as this is a clarification of the existing policy position. To date, there have been no leave to remain applications made within the UK under this route.
- **Fee exception: Appendix Family Reunion (Protection)** – No impact as this is a technical amendment which does not change existing policy.
- **Fee exception: New DVA Visitor Visa route**- No impact on fee income as under existing arrangements, this cohort is not currently required to pay a fee. Considering the estimated low volumes, and estimated processing cost of a visit visa application, the operational costs are estimated to be low at £560,000 in the first year of the new route's operation.
- **Fee exception: New VIP Delegate Visa route** - No impact on fee income as currently relevant individuals are exempt from paying an application fee. Due to

the cap on application numbers (20 for officials accompanying Heads of State and 10 for officials accompanying Ministers), and the fact that an existing process is to be used with some minor adaptations, and the estimated number is expected to be small, the operational costs are estimated to be minimal. Any applicants in excess of the capped numbers will have to pay the full visit visa fee, covering costs and increasing Home Office revenue.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because of the changes set in these Regulations.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no significant impact on the public sector due to the estimated low volumes applying for these fee waivers and exceptions.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that fees and associated provisions are kept under regular review, and this will include the changes made through these Regulations.

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. 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.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the 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").