EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) AND PASSPORTS (FEES) (AMENDMENT) REGULATIONS 2023

2023 No. 15

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. Purpose of the instrument

2.1 This instrument is set to a) amend the Immigration and Nationality (Fees) Regulations 2018 ("the Immigration Fees Regulations") in respect of a fee exception and waiver provision for a new Temporary Permission to Stay route introduced into the UK immigration rules in October 2022 for the victims of human trafficking or slavery, and b) amend the Passport (Fees) Regulations 2022 to increase the fees for standard, postal and priority passport applications and amend other fees that have been found to not align with the stated policy intention.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Immigration Fees Regulations break the 21-day rule so that the provisions exempting and waiving the application fee for the victims of Human Trafficking or Slavery come into force on 30 January 2023, which is the day on which that new immigration route opens. The new route was introduced by the Statement of Changes in Immigration Rules laid before Parliament on 18 October 2022 (HC 719). The policy intention was to continue the policy of exempting and waiving the application fees that currently apply for Discretionary Leave into the new route. The changes required were not included in the amendments to the Immigration Fees Regulations made by SI 2022 No.1062 in October 2022 due to an oversight arising as both the rule changes and fee amendments were laid on the same date. This instrument amends the related provisions of fee exception and fee waiver so that they align with the new route and will be effective from 30 January 2023, when the new route opens for the victims of Human Trafficking or Slavery.

3.2 The Home Office regrets this breach of the 21-day rule and gave a careful consideration to whether this would be justified. Bringing the specified fee waiver provisions into force on 30 January 2023 is to the benefit of applicants and maintains the status-quo as is intended. The effect of bringing those into force after 21 days on 2 February 2023 rather than on 30 January would have been that the default fee of £1,048 for applications for limited leave to remain would have been charged to these applications until 1 February, subject only to the possibility that the fee might be refunded at the Secretary of State's discretion. However, setting fee refunds for a limited period in the department's application systems would have also required the diversion of operational and technical resources from other priority work designed to benefit customers. To

bring these provisions into force on 30 January 2023 is, therefore, a necessary and proportionate response to the issue which will safeguard the operation of this new immigration route and most importantly, will benefit applicants by ensuring the application fees can lawfully be exempted or waived from the date the route opens.

3.3 The amendments to the Passport (Fees) Regulations 2022 are made under sections 86 and 87 of the Immigration Act 2016. Under section 93(2)(j) of the 2016 Act, regulations made under section 86 must be subject to affirmative resolution if they specify functions exercised by the Secretary of State in connection with applications for the issue of a passport or other travel document. Otherwise, regulations made under section 86 must be made using the negative procedure. Section 93(2)(j) is understood to provide for affirmative resolution for the specification of fees for functions, in respect of which no fees have previously been prescribed. This instrument amends the fees payable in relation to existing functions of the Secretary of State and does not specify any new functions. The instrument will therefore be subject to the negative procedure.

4. Extent and Territorial Application

4.1 The territorial 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.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the same as the 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 This instrument amends the Immigration and Nationality (Fees) Regulations 2018 (S.I. 2018/330) which set fees and make provision for fee exceptions and waivers for the exercise of various functions in connection with immigration and nationality. The amendments are consequential to changes into the UK Immigration Rules laid before Parliament on 18 October 2022 (HC 719). These amendments ensure that victims of human trafficking or slavery will continue to benefit from an exemption and waiver of the application fee for Discretionary Leave when applying for leave to remain under the new route in the UK Immigration Rules. More information on this new route can be found in the Explanatory Memorandum to the related Statement of Changes in Immigration Rules on www.gov.uk.

6.2 This instrument also amends the Passport Fees Regulations 2022 (S.I. 2022/660) in order to amend the level of fees paid under those regulations.

7. Policy background

What is being done and why?

7.1 This instrument makes the following changes.

Explanations

The Immigration Fees Regulations

What was the legal position before changes were made by this instrument?

An application fee of £1,048 was set in the Immigration and Nationality (Fees) Regulations 2018 for the application for leave to remain in the UK and this fee was exempted and waived under specified terms and conditions for the victims of human trafficking or slavery who apply for grant of Discretionary Leave. The application fee was exempted for the first grant of leave and for further leave until total leave is accrued to 30 months. For a further grant of leave over 30 months the application fee was waived if the applicant is considered destitute.

Why is it being changed?

7.2 The amendment to the UK immigration rules laid on 18 October 2022 replaced these arrangements of Discretionary Leave and introduced a new immigration route for them to commence from 30 January 2023. The Home Office policy intention was to continue applying the existing provisions of the fee exception and waiver to the applicants under the new route. However, the existing provisions were in the context of the Discretionary Leave policy, and unless those are amended, the applicants under the new route will be charged the application fee of £1,048.

What will it now do?

7.3 This instrument will amend those provisions by cross referencing to the related Appendix in the immigration rules and aligning to the new route, so that the fee will lawfully be exempted or waived for the applicants under the new route within the existing specified terms and conditions, which will remain unchanged.

Passport Fees Regulations

What was the legal position before changes were made by this instrument?

7.4 The Passport (Fees) Regulations 2022 set the charging framework and individual fee levels for administering UK passport applications pursuant to sections 86 and 87 of the Immigration Act 2016 (c. 19).

Why is it being changed?

7.5 Income from fees plays a vital role in funding the wider migration and borders system. This is the first-time passport fees have changed in 5 years. The majority of passport fees are being changed to increase them closer to the full costs of processing and delivering the services associated with making a passport application when also taking into account costs associated with safeguarding the UK border. Since January last year, over 95% of standard passport applications have been processed within 10 working weeks.

7.6 This instrument also aligns the fees by reducing passport fees that are set outside of the policy intention. This includes reducing the under 16s Fast Track and Premium Service fees to align with the over 16s passport applications and reducing the adult Fast Track Collect fees so they pay the same for this service as the under 16s.

7.7 It increases the Fast Track and Premium fees set for over-16 prospective passport holder born on or before 2nd September 1929. The policy intention was that this group of customers get a standard passport for free but should pay the differential if

they want a Premium or Fast Track service. The fee was set lower in the 2018 and 2022 Regulations than intended.

7.8 The fee set for members of the armed forces applying overseas for a frequent traveller passport, is set at a higher level in the Passport Fees Regulations 2018 than was intended. It should be set at the same level as those charged in the UK for a frequent traveller passport. Also, where the application is checked and submitted by armed forces personnel who are nominated for that purpose, this fee is currently set higher than the policy intention.

What will it now do?

7.9 Fees for standard online, postal and priority applications are being increased to enable the department to recover more of the costs of delivering passports and related functions. The exception is the child Fast Track fees that will now align with the adult Fast Track fees, which will be set at £72.50 for the standard sized book and £83.50 for the frequent traveller passport.

7.10 The fees for the fast track and premium services for an over-16 prospective passport holder born on or before 2nd September 1929 will be changed to £72.50 and £111 respectively.

7.11 For members of the armed forces applying overseas for a frequent traveller passport, these fees are now set at the standard fee for an online or postal application plus £11.00. Where the application is checked and submitted by armed forces personnel who are nominated for that purpose, this fee will be reduced to align with the fees charged for the equivalent application in the UK.

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 2018 are consolidated from time to time. This instrument does not consolidate existing legislation and the consolidation is not required as the change is of a technical nature amending the existing provisions for the fee waiver and exception provision for the victims of human trafficking or slavery.

9.2 This instrument does not consolidate existing legislation relating to passport fees. This is the first instrument amending the Passport (Fees) Regulations 2022 and so is not considered to give rise to a need for future consolidation.

10. Consultation outcome

10.1 In respect of the Immigration Fees Regulations, there has been no public consultation on the above changes. The Home Office conducted a targeted 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. Responses to this consultation were analysed and continue to be reflected in this instrument.

10.2 There was no public consultation in respect of the Passport Fees Regulations on the fees set out in this instrument because we do not usually consult when amending passport fees.

11. Guidance

11.1 The Home Office guidance to staff will be updated to reflect these changes. Guidance to general members of the public will also be published prior to the new fees policy coming into effect.

12. Impact

12.1 As relates to the Immigration Fees Regulations 2018:

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

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

12.4 A full Impact Assessment has not been prepared for the changes to the Immigration Fees Regulations given these are technical amendments to continue an existing fee waiver and exemption and there is minimal likely impact.

12.5 As relates to the Passport Fees Regulations 2022:

12.6 There is a small impact on business, charities or voluntary bodies in the form of a transfer from the public sector.

12.7 There is a significant benefit to the public sector, representing a transfer of fee revenue from the resident population.

12.8 A full Impact Assessment is submitted with this memorandum in respect of the amendments to the Passport Fees Regulations and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

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 instrument does not include a statutory review clause in line with the requirements of the Small Business, Enterprise and Employment Act 2015. Nevertheless, the Home Office will continue to monitor the impact of this instrument.

15. Contact

15.1 Karen Clubbe and Milind Deshpande 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 for Immigration at the Home Office can confirm that this Explanatory Memorandum meets the required standard.