EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) (REFUND, WAIVER AND AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 475

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations amend the Immigration and Nationality (Fees) Regulations 2018 and provide for the refund and waiver of certain fees under those Regulations. They implement the announcement made by the Prime Minister on 21 January 2019 that there will be no fee payable for applications under the EU Settlement Scheme when this is open fully from 30 March 2019 and that anyone who paid an application fee during the test phases of the scheme will have this refunded. In addition, they make other fee arrangements associated with the scheme, including no fee for applications by citizens of countries outside the European Economic Area (EEA) and Switzerland for entry clearance to join or accompany an EEA or Swiss citizen who has been granted leave under the Scheme.

2.2 These Regulations also provide for other fee exceptions, as well as a number of new fees and fee increases, and make other miscellaneous provision about immigration and nationality fees.

2.3 The Regulations refer to provisions of the UK immigration rules added by the Statement of Changes in Immigration Rules (HC 1919) laid in parallel on 7 March 2019. They also refer to amended provisions of the Jersey and Guernsey immigration rules.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These Regulations contain fees which have increased above the rate of inflation. More detail is set out in section 7 of this memorandum.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As this instrument is subject to negative resolution procedure, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument, in respect of regulation 2, is England and Wales, Scotland and Northern Ireland. The amendments made by regulations 3 to 12

have the same extent as the provisions of the Immigration and Nationality (Fees) Regulations 2018 that they amend.

4.2 The territorial application of this instrument is the same as its extent.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 These Regulations amend the Immigration and Nationality (Fees) Regulations 2018 (SI 2018/330), which specify fees for the exercise of functions in connection with immigration and nationality. These amendments remove fees payable under those Regulations for applications under the EU Settlement Scheme, including where such an application is rejected as invalid. The amendments also preserve the fee specified by those Regulations for administrative review of decisions in respect of applications under the EU Settlement Scheme, subject to exceptions, and provide an exception to the existing requirement to refund that fee where the reviewed decision is withdrawn. These Regulations also specify circumstances in which the Secretary of State must refund any fee already paid for an application under the scheme and circumstances in which Secretary of State must waive payment of an outstanding fee for an application under the scheme that has not yet been decided.

6.2 These Regulations specify fee levels for immigration and nationality applications and services. These fees are set are within the limits set in the Immigration and Nationality (Fees) Order 2016 ("the 2016 Order"), as amended by the Immigration and Nationality (Fees) (Amendment) Order 2017 and the Immigration and Nationality (Fees) (Amendment) Order 2018, which were all subject to affirmative resolution and which were made on 11 February 2016, 14 March 2017 and 8 March 2018 respectively. These Regulations also provide for new fee exceptions and remove existing redundant fees.

6.3 The changes set out in these Regulations take effect on 29 March 2019, except for the following which take effect on:

<u>30 March 2019 at 0700 (predominantly relating to the EU Settlement Scheme*</u>

regulation 2

regulation 4(2)

regulation 5(4) so far as it inserts 4.5 and 4.5.1 in Table 4 in Schedule 1 to the current Regulations

regulation 6(2) and (5) to (8)

regulation 7(2), 3(b) and (d) to (f) and (4)

regulation 11(2), (3), (5) and (6)

regulation 12

*7.00am is the time of day at which the requisite technical changes in the online application process for the EU Settlement Scheme can be delivered with the minimum of interruption in service to applicants.

6 April 2019 (in respect of relevant Afghan citizens)

regulation 5(4) so far as it inserts 4.6 and 4.6.1 in Table 4 in Schedule 1 to the current Regulations

1 July 2019 (in respect of increases to fees for optional premium services offered by Border Force)

regulation 8(3)(d), (e) and (f)

7. Policy background

What is being done and why?

EU Settlement Scheme

7.1 These Regulations, (which should be read with the Statement of Changes in Immigration Rules HC 1919 laid in parallel on 7 March 2019), facilitate implementation of the announcement made by the Prime Minister on 21 January 2019: (i) that there will be no application fee under the EU Settlement Scheme when the scheme is fully open by 30 March 2019; and, (ii) that anyone who paid an application fee during the test phases of the scheme will have this refunded. As the Prime Minister explained in her announcement, having listened to representations on the issue from parliamentarians and others, this will ensure that there is no financial barrier for any EU citizen who wishes to stay here after the UK's withdrawal from the European Union.

7.2 These Regulations therefore remove any requirement to pay a fee in respect of an application for leave to remain in the UK under the EU Settlement Scheme and remove the fees for processing any such application that is rejected as invalid. They also require the Secretary of State to refund any fee paid for such an application made from 28 August 2018, when the scheme was implemented for the initial private beta phase, where that fee has not already been refunded. They also provide for the payment of any outstanding fee for ongoing applications under the Scheme to be waived.

7.3 The Home Office recognises that some employers may have reimbursed their employees the cost of applications made under the scheme since 28 August 2018. These Regulations require the Secretary of State to refund any such fees and refunds will be issued to the payment card used in the application. If any third party has already reimbursed an applicant the cost of paying the fee, that will be a matter for the applicant and the third party to resolve.

7.4 Further details about the refunds process for applicants who have paid an application fee during the test phases of the scheme will be published on gov.uk.

7.5 These Regulations also make provision in connection with applications for administrative review of a decision made under the EU Settlement Scheme. A fee for administrative review will continue to be charged, except where the applicant was a child being looked after by a local authority at the time of the application under the scheme, or where the application was made before 0700 on 30 March 2019 and a fee exception applied to it. The fee will continue to be refunded where the original decision is withdrawn due to a caseworking error based on the information and evidence available to the original decision-maker. An applicant will also be able to

make further, free applications under the EU Settlement Scheme, including where they wish to rely on new information or evidence. The fee will not be refunded where the outcome of the administrative review is the withdrawal of the original decision solely on the basis of new information or evidence provided in the application for administrative review, which was not available to the original decision-maker.

7.6 The Regulations provide for free applications to be made by certain non-EEA citizens under the Statement of Changes in Immigration Rules HC 1919. This is where certain non-EEA citizen family members of an EEA or Swiss citizen, who has been granted leave under the scheme, apply for entry clearance to come to the UK for a short stay, or to make an application in-country for leave to remain under the scheme. Similar provisions have been made in respect of entry clearance to enter the Bailiwick of Jersey. The Regulations also provide for other applications for entry clearance to enter Jersey or Guernsey to be free, where the application is made for the purpose of making any application under their respective EU settlement scheme arrangements.

7.7 These Regulations also set a fee of £56 for an application by a non-EEA citizen family member to replace a biometric residence card issued under the EU Settlement Scheme, because the original has been lost, stolen or destroyed, or because the details contained on the card become incorrect, for example if the holder changes their name. (Biometric residence cards are not issued to EU citizens.)

Introduction of fees for the new "Start-Up" and "Innovator" application routes.

7.8 These Regulations also make provisions in connection with the reform of the Tier 1 Entrepreneur routes, with the introduction of fees for the new Innovator and Start-Up routes. Fees for these new routes are being set at the same level as for the Entrepreneur routes that they replace. Transitional protection for those with a legacy entitlement to make an application under the Entrepreneur routes is provided by leaving the Entrepreneur route fees in place until such time that they are no longer needed.

Bailiwick of Jersey – new work permit arrangements for seasonal workers

7.9 These Regulations reduce the fee for entry clearance to enter the Bailiwick of Jersey for the purposes of unskilled seasonal work permit employment for a period of 9 months or less. This new route will be similar to the seasonal agricultural worker pilot arrangements in the UK, under the existing Tier 5 structure. Therefore, the reduced fee for entry clearance under the Jersey scheme is being set at the same as that for the UK Scheme - £244.

Afghan locally engaged staff

7.10 Following on from changes made in October 2018 - to except payment of any fee in respect of leave to remain applications made by certain cohorts of Afghan citizens – the Government is now formalising the fee arrangements for entry clearance applications by those citizens, their partners and their minor dependent children. Those Afghan citizens who are eligible to relocate to the UK under a Government-sponsored scheme are not required to pay a fee in connection with that relocation process. The Government is therefore providing a specific exception from payment of any fee for an application for entry clearance in connection with relocation under the relevant scheme.

Redundant fees and fee increases

7.11 These Regulations also remove redundant fees and specify a small number of targeted increase to fees for visit visas and optional expediting services as follows:

	current fee	new fee
Short Term Standard Visit Visa	£93	£95
Two Year Standard Visit Visa	£350	£361
Five Year Standard Visit Visa	£636	£655
Ten Year Standard Visit Visa	£798	£822
Visiting Academic (up to 12 months)	£186	£190
Visit (Private Medical Treatment up to 11 months)	£186	£190
Chinese Visa Scheme	£93	£95
Priority Visa Service (Overseas)	£212	£220
Priority Visa Service (in UK)	£477	£500
Super Priority Visa Service (in UK)	£610	£800

7.12 The Government has also reviewed the fees charged by Border Force for a number of optional, 'above basic services'. The current charge for these services was set in April 2012, at £53.08 per hour, per officer providing the service. This reflected the cost of delivering the service. This figure has been recalculated and will increase to £57.33 from 1 July 2019. This fee will continue to be charged for those services which are offered by Border Force to government departments. However, the fee for services offered other than to a government department will increase to £77.40 per hour, per officer providing the service, from 1 July 2019. This amendment reflects the distinguishable nature of services offered by Border Force and the benefits accrued by commercial organisations. In line with that increase, the fee for the Fast Track service for the expedited entry of a passenger into, or transit of a passenger through, the UK at Heathrow airport Terminals 2, 3 and 4 will increase to £5.20 from 1st July.

7.13 The fee for an Electronic Visa Waiver will also increase from £15 to £30. The Electronic Visa Waiver service is available to all Kuwaiti, Omani, Qatari and United Arab Emirates (UAE) passport holders, as an alternative to a visa to travel to the UK for the purpose of visits lasting up to 6 months. Since its introduction in May 2016, the service has been charged at £15. The benefits offered by this product are akin to that of the Short Term Standard Visit Visa, charged at £95, and therefore careful consideration has resulted in an increase of £15, to £30.

7.14 In total, these fee increases are required to meet the Home Office budget plans in 2019-20, and specifically to enable the Home Office to continue to support its ambition for a Border, Immigration and Citizenship system that is funded by those who use it. When setting fees, the Home Office considers the cost of processing the application, the wider costs of running the border, immigration and citizenship (BIC) system and the benefits likely to accrue from a successful application. The Home Office does not make a profit from fees charged above the estimated cost to process an application. Any income generated above the estimated unit cost is used to contribute to the wider running of the BIC system.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018, but relates to the withdrawal of the United Kingdom from the European Union because it supports implementation of the EU Settlement Scheme.

9. Consolidation

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

10. Consultation outcome

10.1 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. These responses were analysed and continue to be reflected in the proposals set out in these Regulations.

10.2 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.

10.3 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.

10.4 Some respondents emphasised the need to ensure that changes to fees were not detrimental to the Government's aim to attract the 'brightest and best' to work and study in the UK. The Home Office is not increasing fees for work or study visas in these Regulations. 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

10.5 The Government has not undertaken a public consultation on the EU Settlement Scheme, but the overall policy and approach have been discussed with internal and external stakeholders, such as groups representing EU citizens in the UK, Consulates and community organisations, and account has been taken of those discussions. There has been no public consultation specifically related to the removal of the fee for applications made under the scheme.

11. Guidance

11.1 Guidance relating to this change will be updated and placed on the gov.uk website.

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 An impact assessment on the EU Settlement Scheme was published on 20 July 2018 to support the Immigration and Nationality (Fees) (Amendment) (EU Exit)

Regulations 2018. This has been updated and published on 7 March 2019 to support these Regulations, and is available alongside that measure on the legislation.gov.uk website.

12.4 A separate impact assessment has been produced to assess the impact of the increases in visit visas described in these Regulations. The proposed changes to visit visa fees are within the maximum amount that can be charged, as set out in the 2016 Order, and are in accordance with the broad strategy for charging fees for immigration and nationality functions.

12.5 The costs and benefits described in the impact assessment laid with these Regulations are assessed within the framework set out in the impact assessment prepared for the 2016 Order, which assessed the impact of fee increases over the Spending Review period 2016-17 to 2019-20. The methodology used is also in line with the analysis used to assess the impact of increases in fees set out in Immigration and Nationality (Fees) (Amendment) Regulations in 2017 and 2018, following changes to the fee increases assumed in the original IA produced for the 2016 Order. The impact assessment laid with these Regulations is available on the legislation.gov.uk website.

12.6 The Home Office wishes to ensure that the fees it charges for immigration and nationality functions are set at appropriate levels to contribute towards the costs of running the BIC system. The financial constraints on public spending mean the Home Office needs to continue to keep fees under review to ensure sufficient revenue is generated to contribute to the Home Office's ambition for a BIC system that is funded by income from fees and charges paid by those who use it.

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 for the Home Office to monitor the impact of these Regulations on all parties affected by them.

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, Rt. Hon. Caroline Nokes MP, Minister of State for Immigration at the Home Office, has made the following statement: "Fees are kept under regular review and I am satisfied that these regulations do not impact on small businesses."

15. Contact

15.1 Annie Wattam at the Home Office Telephone: 07557 205215 or email: annie.wattam@homeoffice.gov.uk can be contacted with any queries regarding this instrument.

15.2 Emily Weighill at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Caroline Nokes MP, Minister of State for Immigration at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.