EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (REPLACEMENT OF T2 SPORTSPERSON ROUTE AND FEES) (AMENDMENT) REGULATIONS 2021

2021 No. 1035

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 These Regulations make fee provisions consequential to the changes made by the Statement of Changes to the UK Immigration Rules (HC 617) ("the Statement of Changes"), and amendments made to the Immigration and Nationality (Fees) Order 2016 by SI 2021/768 ("the Fees Order 2021 SI"), and also amend the Immigration and Asylum Act 1999 (Part V Exemption: Licensed Sponsors Tiers 2 and 4) Order 2009 ("the 2009 Order"). In addition, they provide a new visa fee exception for the Commonwealth Games and remove the fee concessions related to the Council of Europe Social Charter of 1961. These are detailed in sections 6 and 7 below.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, Scotland, and Northern Ireland. The amendments made by paragraphs 2 and 6 of Schedule 3 also extend to the Isle of Man.

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

5. European Convention on Human Rights

5.1 As the 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 (S.I. 2018/330) ("the Fees Regulations"). The changes detailed in 6.2 to 6.4 below, relate to the Statement of Changes laid before Parliament on 10 September 2021. More information can be found in the explanatory memorandum to the Statement of Changes to the UK Immigration Rules on the gov.uk website at: Statement of changes to the Immigration Rules: HC 617, 10 September 2021 - GOV.UK (www.gov.uk).

6.2 These Regulations support the introduction of the new "International Sportsperson route" by setting fees for applications for entry clearance to enter and limited leave to remain in the UK, and for sponsor licences and Certificates of Sponsorship, under this route. They further amend certain fee descriptions as a result of re-branding of the T5

Temporary Worker routes. Both these changes will come into effect at 9.00 a.m. on 11 October 2021.

6.3 These Regulations also amend the 2009 Order, which contains an exemption allowing licensed sponsors on specified routes to provide immigration advice or services to migrants they are sponsoring, and/or their dependants, which would otherwise be subject to the prohibition in section 84(1) of the Immigration and Asylum Act 1999 (as defined within this section). From 11 October 2021, this exemption will also extend to sponsors on the new International Sportsperson route.

6.4 These Regulations further amend the existing fee exceptions to align to changes to the Afghan Relocations and Assistance Policy (ARAP) and ex-gratia scheme, and subsequent changes to the Immigration Rules for Afghan Locally Employed Staff (LES) to come into effect, along with the Immigration Rules, on 6 October 2021.

6.5 These Regulations also make changes consequential to the Fees Order 2021 SI. They set fees for the re-use of biometric information in connection with specified applications and for specified premium services to reflect the recent amendments made through the Fees Order SI 2021. More information can be found in the Explanatory Memorandum to the Fees Order 2021 SI on the legislation.gov.uk website at www.legislation.gov.uk/uksi/2021/768/memorandum/contents.These changes will come into effect on 6 October 2021.

6.6 They also introduce a new fee exception for a short-term visa for those involved in the Commonwealth Games to be held in Birmingham from 28 July to 8 August 2022. This change will come into effect on 18 October 2021.

6.7 These Regulations also remove fee concessions for the nationals of those countries who have ratified the Council of Europe Social Charter of 1961 (CESC of 1961). This concession stems from the United Kingdom's obligations under Article 18(2) of the CESC of 1961. The United Kingdom has since denounced the acceptance of Article 18(2); the denunciation will have effect from 26 February 2022 and the fee concessions will end on that date.

7. Policy background

What is being done and why?

New International Sportsperson route

7.1 The new International Sportsperson route as stated in the Statement of Changes will replace the existing T2 Sportsperson route and the sporting section of the T5 (Temporary Worker) Creative or Sporting Worker route, by bringing them together into a single route. The existing fee arrangements will be broadly replicated under the new route. For individual applicants, the fee for a visa application for 12 months or less, will be £244, for both in and out-of-country applications. This is the same fee for the existing T5 (Temporary Worker) Creative or Sporting Worker route. For applications for a period of more than 12 months, the out-of-country fee will be £610, and the in-country fee will be £704, in line with the fees for the existing T2 Sportsperson route.

7.2 There will be a two-tier fee structure for Certificates of Sponsorship (CoS) under the new route – £21 for 12 months or less, and £199 for over 12 months to suit the options under the new route to apply for a visa for 12 months or less, or more than 12 months (up to three years). This again broadly replicates the existing arrangements, where

sponsors under the T2 Sportsperson route pay the higher CoS fee and those under the T5 (Temporary Worker) Creative or Sporting Worker route pay the lower CoS fee.

7.3 Existing sponsors under T2 Sportsperson and the sporting section of the T5 (Temporary Worker) Creative or Sporting Worker route will, on the date the new route goes live, be automatically given an "International Sportsperson" sponsor licence. There will be no fee payable for this change and the expiry date of their licence will not change. The fee for new sponsor licences, and licence renewals, will be set at £536 for those sponsors who meet the "small or charitable sponsor" criteria stated in the Fees Regulations and £1,476 for all other sponsors. This replicates the current T2 Sportsperson sponsor licence fee arrangements.

Re-branding of T5 Temporary Worker routes

7.4 These Regulations amend the fee descriptions in respect of fees for visa applications, Certificate of Sponsorship (CoS), and sponsor licenses, to reflect re-branding of the Temporary Worker routes and the change that sets the route solely for "Creative Workers" as stated in the Statement of Changes.

Changes in Afghan Relocations and Assistance Policy (ARAP) and the ex-gratia scheme

7.5 These Regulations also align the existing fee exceptions with the Statement of Changes in respect of the Afghan Relocations and Assistance Policy (ARAP) and the ex-gratia scheme for Afghan Locally Employed Staff (LES) and their family members. These amendments enable Afghan LES and their dependants to continue to be able to make applications without the payment of a fee.

Changes consequential to amendments to the Fees Order

7.6 These Regulations set fees for the reuse of biometric information, in connection with specified applications and for specified premium services to reflect the amendments made through the Fees Order 2021 SI.

7.7 The amendment adds a fee for the provision of an immigration officer to provide premium services outside of the UK; for example, on board cruise ships for clearance of immigration checks whilst in international waters. These premium services are optional, and the fee remains the same as it is currently charged to a person other than a government department for such premium services provided within the United Kingdom.

7.8 The Home Office charges a fee of £19.20 to enrol applicants' biometric information (fingerprints and facial image), where required by The Immigration (Biometric Registration) Regulations 2008, as amended. Historically, applicants have been required to enrol their biometric information each time they apply. The Fees Order 2021 SI made clear that the Home Office may also charge a fee for the reuse of previously enrolled biometric information. The departmental processing costs for reuse are similar to those for an enrolment and the fee payable remains unchanged. These Regulations amend the fee provisions to make clear that the fee is payable either for the reuse or for the taking of a person's biometric information, and that the existing fee exemptions apply in either case.

Fee waiver for Commonwealth Games

7.9 The Commonwealth Games are due to be held in Birmingham between 28 July and 8 August 2022. As a part of the UK government's guarantee as a host country to support

the bid for the Games, these Regulations introduce a fee exception in respect of applications for short term visit visas made for the purpose of taking part or otherwise being involved in the Games. This will apply to 'Games Family Members', who are a cohort accredited by the Birmingham 2022 Commonwealth Games Organising Committee, which includes athletes and team officials, dignitaries and guests, sponsors, international federations, broadcasters, observers, press and photographers.

Removal of CESC fee concession

7.10 The Fees Regulations have, for many years provided a fee concession for nationals (and their sponsor employers) of countries that have ratified the Council of Europe Social Charter of 1961 (CESC of 1961). This concession stems from the United Kingdom's obligations under Article 18(2) of this Charter requiring signatory countries "to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers". The concession currently amounts to a reduction of £55 on application fees for work visas (main applicants only), and no fee is payable, where a Certificate of Sponsorship (CoS) is required from a sponsor employer.

7.11 It is the Government's aim that the new immigration system operates a single, global immigration system that treats all applicants equally. Maintaining the concession solely for the CESC of 1961 signatory states does not align with that aim. A formal notice of the United Kingdom's decision to denounce the acceptance of Article 18(2) of the CESC 1961 was issued to the Council of Europe on 15 July 2021. This denunciation will take effect on 26 February 2022 and the fee concession will end on that date.

7.12 The United Kingdom's ratification of the CESC of 1961 was extended to the Isle of Man, and as a result, the Isle of Man extended the £55 fee concession to visa applications on their work visa routes to enter the Isle of Man. The Isle of Man Council of Ministers have also decided to denounce the acceptance of Article 18(2), in line with the United Kingdom's approach, and the existing CESC fee concessions for the Isle of Man entry clearance applications will, therefore, be removed in the same way, with effect from 26 February 2022. Changes in respect of the Isle of Man's CoS fees and leave to remain fees will be made through their domestic legislation.

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 are consolidated periodically.

9.2 There are plans to consolidate the Immigration and Asylum Act 1999 (Part V Exemption: Licensed Sponsors Tiers 2 and 4) Order 2009 in 2022.

10. Consultation outcome

10.1 There has been no public consultation on the above changes.

10.2 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 these Regulations.

11. Guidance

11.1 Home Office guidance for staff will be updated to reflect these changes. Information and guidance for members of the public will also be published when these Regulations are laid before Parliament.

12. Impact

12.1 The impact on business, charities or voluntary bodies of the removal of the CESC fee concession, is the corresponding cost to business of removing the concession for Certificates of Sponsorship, equivalent to £35m in additional cost over the next five years.

12.2 The impact on the public sector is the additional Certificate of Sponsorship (CoS) and visa fee revenue from removing the relevant concessions. This is estimated at around £50m in additional revenue over the next five years, of which £35m is from removing the CoS concession.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website setting out the impact of the removal of the CESC fee concession. The remaining changes included in these Regulations are not expected to have a significant impact on the public sector, or on business, charities or voluntary bodies.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 These Regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Kevin Foster MP, Parliamentary Under-Secretary of State for Future Borders and Immigration at the Home Office, 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.

15. Contact

15.1 Milind Deshpande at the Home Office Telephone: 07776 808 029 or email: Milind.Deshpande@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

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 Parliamentary Under-Secretary of State for Future Borders and Immigration at the Home Office, Kevin Foster MP, can confirm that this Explanatory Memorandum meets the required standard.