EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (REPLACEMENT OF TIER 4 AND FEES) AND PASSPORT (FEES) (AMENDMENT) REGULATIONS 2020

2020 No. 966

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 primary purpose of this instrument is to amend the Immigration and Nationality (Fees) Regulations 2018 ("the Immigration Fees Regulations") so that they reflect the replacement of the Tier 4 route in the United Kingdom immigration rules by the new Student and Child Student routes as part of the wider roll-out of the Points Based Immigration System. This instrument also introduces a statutory basis for the discretionary refund of fees paid under the Immigration Fees Regulations or the Passport (Fees) Regulations 2018 ("the Passport Fees Regulations"). It also introduces two new powers to waive fees under the Immigration Fees Regulations in order to enhance the department's flexibility to waive fees in exceptional circumstances and in response to court judgments.

2.2 The instrument enables certain applications for Biometric Residence Permits (BRPs) to be made without payment of a fee and amends the definition of the super priority visa service. It also reduces the fees for customers contacting UK Visas and Immigration (UKVI) from overseas.

2.3 The instrument also amends the Immigration and Asylum Act 1999 (Part V Exemption: Licensed Sponsors Tiers 2 and 4) Order 2009, to reflect the replacement of Tier 4 under the Points Based Immigration System.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 the 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 is England and Wales, Scotland and Northern Ireland, with certain amendments to the Immigration Fees Regulations also extending to the Isle of Man and certain amendments made to those Regulations also extending to the Bailiwick of Guernsey and the Bailiwick of Jersey. The amendments which also extend to the Isle of Man are those made by regulations 4, 13, 16 and 22. The

amendments which also extend to the Bailiwicks of Guernsey and Jersey are those made by regulations 4, 14, 16 and 23.

4.2 The territorial application of this instrument is the same as the 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 The instrument makes a number of amendments to the Immigration Fees Regulations to support the introduction of the Student and Child Student routes in the United Kingdom immigration rules, which replace the existing routes for students and their dependants. The amendments made to the Immigration Fees Regulations include setting fees for applications under these new routes, setting fees for associated sponsor licenses and Confirmations of Acceptance of Study (CAS), and removing fees relating to the existing Tier 4 routes. The instrument also makes provision preserving the fees for applications by dependants of existing Tier 4 migrants.

6.2 These amendments coincide with the laying before Parliament of changes to the United Kingdom Immigration Rules which replace the Tier 4 route with the new Student and Child Student routes.

6.3 The instrument also amends the Immigration and Asylum Act (Part V Exemption: Licensed Sponsors Tiers 2 and 4) Order 2009 ("the 2009 Order"). The 2009 Order provides an exemption (in particular circumstances) for licensed sponsors of Tier 2 and Tier 4 Migrants under the United Kingdom immigration rules from the prohibition under section 84(1) of the Immigration and Asylum Act 1999. That section prohibits a person who is not a qualified person (within the meaning of that section) from providing immigration advice or immigration services. This instrument makes amendments to the 2009 Order to exempt sponsors of applicants under the new Student and Child Student routes from the prohibition in section 84(1). It also makes other consequential amendments to the 2009 Order to reflect the replacement of the Tier 4 route.

6.4 The instrument also adds two new fee waiver powers in the Immigration Fees Regulations, one relating to groups facing exceptional circumstances and the other to enable fees to be waived in consequence of the decision of a court or tribunal. These will sit alongside the existing waiver powers in the Regulations and do not limit these existing powers in any way.

6.5 The instrument also adds provisions enabling the refunding of fees to both the Immigration Fees Regulations and the Passport Fees Regulations.

6.6 The instrument also enables certain applications for Biometric Residence Permits (BRPs) to be made without payment of a fee, amends the current definition of the super priority visa (SPV) service, which is offered to overseas customers, and reduces the fees for overseas customers contacting UKVI's overseas contact centre by phone and e-mail.

7. Policy background

What is being done and why?

Removal of existing Tier 4 routes and introduction of new Student routes

7.1 The Home Office is laying a Statement of Changes to the Immigration Rules, which introduces new routes for students under the Points Based Immigration System. These new routes – Student and Child Student – replace the existing Tier 4 (General) and Tier 4 (Child Student) routes for all new applicants. Existing Tier 4 migrants and their dependants will be able to apply for extensions of their leave under the new Student route.

7.2 This instrument removes existing fees under Tier 4 for entry clearance to enter and leave to remain in the UK, and sets fees for applications made by individuals and their dependants under the new routes. It also sets fees for applications for Student Sponsor Licences from educational institutions wishing to sponsor overseas students, for Confirmations of Acceptance for Study (CAS) issued by licensed sponsors, for the provision of premium services to student sponsors and for applications for a Student sponsor basic compliance assessment. Fees for applications under the new routes will be the same as for those they replace, and the same principle applies to sponsor licences and CAS and other services.

Introduction of a waiver to allow the Secretary of State to waive fees for groups of individuals facing exceptional circumstances

7.3 In recent years, there have been several occasions where the department has sought to waive immigration and nationality fees for groups of individuals who have been significantly impact by exceptional circumstances beyond their control. This includes those impacted in relation to the Windrush and Grenfell, as well as more recently as a result of Covid-19.

7.4 However, there is currently limited provision in the Regulations to waive fees in such circumstances, particularly where leave to remain or nationality applications are concerned. This has meant that, where the department has sought to urgently waive fees to ameliorate the impact of those circumstances on those concerned, an amendment to the Regulations has been required in each case. This has restricted the department's ability to react quickly and flexibly in pressing circumstances, particularly where the circumstances in question are likely to be time-limited.

7.5 To enhance the department's capacity to support customers in these circumstances, this instrument introduces a new provision enabling the Secretary of State to waive any fee specified in the Regulations where they consider that a number of individuals in the same or a similar situation have been significantly impacted by exceptional circumstances in a way that is beyond their control.

7.6 It is important to emphasise that the provision is only intended to be used exceptionally at the Secretary of State's discretion, and only in circumstances where a number of individuals have been impacted by exceptional circumstances. It is not intended to facilitate the waving of fees where circumstances are restricted to an individual case. Further detail of the policy will be set out in guidance for caseworkers to be published in tandem with this instrument

7.7 It is also important to note that the waiver is primarily intended to facilitate the temporary waiving of fees in time-limited circumstances, and to support urgent action

in pressing circumstances. Where it is considered that a longer-term exception needs to be made due to the on-going nature of the circumstances in question, then the department will seek to reflect this in a specific amendment to the Regulations in due course.

Introduction of a waiver to allow the Secretary of State to waive fees in consequence of a court or tribunal decision

7.8 Similar to the above, there have been occasions in recent years where the department has been specifically directed by, or otherwise sought to waive a fee as a consequence of, a court or tribunal decision, but has been unable to do so due to the lack of a suitable provision in the Regulations. This has in turn required the development of workarounds to enable the department to give effect to the decision, or the addition of a specific provision to the Regulations before action can be taken.

7.9 This instrument enhances the department's capacity to respond quickly to such decisions by providing the Secretary of State with the power to waive fees where they consider it appropriate to do so in consequence of a decision of any court or tribunal in the United Kingdom.

Introduction of a provision to support refund of immigration and nationality fees

7.10 This instrument provides the Secretary of State with a general power to refund any fee (or any part of a fee) paid under the Immigration Fees Regulations. This is intended to put the payment of refunds on a specific statutory footing. Guidance for caseworkers will also be published in tandem with this instrument, setting out the circumstances in which refunds can be considered.

Introduction of a provision to support the refund of passport fees

7.11 This instrument provides the Secretary of State with a general power to refund any fee (or any part of a fee) paid under the Passport Fees Regulations. This is intended to put the payment of refunds on a specific statutory footing, and guidance for caseworkers will also be published setting out the circumstances in which refunds can be considered.

Introduction of exceptions for certain redundant fees relating to the provision of Biometric Residence Permits

7.12 Table 10 in Schedule 3 to the Immigration Fees Regulations sets fees, at 10.6.1 and 10.6.2 in that Table, for applications for a letter or document confirming a person's identity and immigration or nationality status.

7.13 Certain standalone applications for Biometric Residence Permits (BRPs) are currently covered by these fees. These are applications for a BRP made when a person is granted a period of leave to remain in the United Kingdom by the Secretary of State without them having to make a formal application for that leave. In these circumstances, the Immigration (Biometric Registration) Regulations 2008 require that person to make an application for a BRP. The Home Office's policy is not to charge a fee for these applications. Therefore, this instrument provides for an exception in these circumstances from the fee under 10.6.1 or 10.6.2.

Amending the service standard definition for super priority visa services

7.14 Fee 18.2.2 in Table 18 in Schedule 7 to the Immigration Fees Regulations sets a fee for the expedited processing of an application under the 'super priority visa' (SPV) service, with paragraph 1 of that Schedule defining that term as 'the optional priority

service offered to applicants outside the United Kingdom, by which it is aimed to process relevant applications for entry clearance to enter the United Kingdom within 24 hours of receipt of the application'. There are also equivalent provisions for the Isle of Man, Guernsey and Jersey in Schedules 9 and 10.

7.15 As currently worded, UKVI cannot change the service level for this service without also amending the Regulations. As there is no need for operational service levels to be set in fees regulations, this instrument amends that definition in Schedules 7, 9 and 10 to remove the reference to the operational service standard, whilst still making it clear that it is the faster of the expediting services offered to overseas customers. This change will enable greater operational flexibility to UKVI. Full details of the expediting services offered to overseas customers are available on the Gov.UK website.

Reducing contact charges for overseas customers

7.16 Overseas visa customers are currently charged to contact the UKVI customer contact centre via telephone or email when enquiring about their visa or citizenship application, or seeking assistance in finding information about available immigration routes. The current fees for these services are set out in 18.3 of Table 18 in Schedule 7 to the Immigration Fees Regulations, which specifies the rate of - £1.37 per minute for telephone calls and £5.48 per query for e-mails.

7.17 UKVI are reducing the call and email charges overseas customers face in order to improve the accessibility of their services and reduce the number of customers who revert to using free but less responsive contact channels, such as MPs' correspondence and complaints. This instrument therefore amends the charges set out in the Regulations to £0.69 per minute for calls and £2.74 per query for e-mails.

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

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 Fees Regulations are consolidated periodically. There are no plans to consolidate the Passport Fees Regulations or the 2009 Order.

10. Consultation outcome

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

10.2 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. Responses to this consultation were analysed and continue to be reflected in this instrument.

11. Guidance

11.1 Home Office guidance for staff will be updated to reflect these changes.

11.2 Information and guidance for members of the public will also be published when this instrument is laid in parliament. Of particular note will be the guidance published in

support of the refunds provisions and the waiver for use in exceptional circumstances,.

12. Impact

12.1 An impact assessment is submitted with this memorandum for the reduction in contact fees for overseas customers, and published alongside the Explanatory Memorandum on the legislation.gov.uk website. In summary, the reduced fees will have a positive impact on customers at a cost to UKVI's income, although this cost is partly mitigated by an anticipated increase in demand for the service.

12.2 An impact assessment is also submitted for changes in relation to the Student route and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

12.3 An impact assessment has not been prepared for the changes relating to waivers, refunds or other technical changes in this memorandum, which are primarily changes designed to enhance the department's operational flexibility to support customers. As such, there is no, or no significant, impact on business, charities or voluntary bodies, or on the public sector. The Impact Assessment published alongside the Immigration Fees Regulations remains valid.

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, 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".

15. Contact

15.1 Daniel Boulton at the Home Office Telephone: 07774 770968 or email: Daniel.boulton@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Simon Cubley at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kevin Foster at the Home Office can confirm that this Explanatory Memorandum meets the required standard.