EXPLANATORY MEMORANDUM TO THE

IMMIGRATION (APPLICATION FEES) ORDER 2005

2005 No.

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

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

2.1 This Order specifies functions and matters which may be taken into account when fixing fees for certain types of immigration applications. It allows for the recovery of past deficits incurred in relation to specified immigration applications. It also allows for the recovery of the costs of providing and running an appeals system in relation to (a) applications for leave to remain and (b) applications for the variation of leave to enter or remain in the UK.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 Section 102 of the Finance (No. 2) Act 1987 provides a power to specify functions and matters which can be taken into account when exercising a power to fix a fee. Existing Statutory Instruments set the level of fees for different types of (non-asylum) immigration applications. Subject to the approval of this Order, amendments will be made to the existing Statutory Instruments to allow the fees to be set at a level which incorporates the appeals function (where appropriate) and some of the deficits incurred in 2003-04 and 2004-05.

4. Legislative Background

4.1 Fees are currently levied for a range of immigration applications, under the following powers:

- Applications for leave to remain in the UK and applications for the variation of leave to enter or remain in the UK: Section 5(1)(a) and (b) of the Immigration and Asylum Act 1999
- Applications for the transfer of limited or indefinite leave stamps into a new document: Section 5(1)(c) of the Immigration and Asylum Act 1999
- Applications for leave to remain for holders of immigration employment documents (e.g. a work permit, a document under the Highly Skilled Migrant Programme): Section 122(1) of the Nationality, Immigration and Asylum Act 2002
- Applications for immigration employment documents (e.g. a work permit, a document under the Highly Skilled Migrant Programme): Section 122(1) of the Nationality, Immigration and Asylum Act 2002
- Applications for citizenship: Section 41(2) of the British Nationality Act 1981; and
- Applications for a certificate showing that the applicant has a right of abode in the UK: Section 1 of the Consular Fees Act 1980 and Section 10 of the Nationality, Immigration and Asylum Act 2002.

4.2 These powers allow the fees to be fixed at a level which recovers the full costs of processing an application up to the point of making and conveying a decision. There are already Statutory Instruments in force which use these powers to prescribe application fees.

4.3 In line with the Treasury Fees and Charges Guide, the Government is seeking to recover the costs of deficits incurred in previous years in relation to processing the immigration applications listed above. There is no intention to allow the cross-subsidisation of deficit recovery, i.e. to recover the deficit incurred on one service through the fee for an unrelated service.

4.4 In addition, the Government is seeking to recover, through the application fee, the cost of providing an appeals function for those whose applications for leave to remain in the UK or variation of their leave to enter or remain in the UK are unsuccessful.

4.5 Section 102 of the Finance (No.2) Act 1987 provides a power to specify functions and matters which can be taken into account when exercising a power to fix a fee. In this Order the functions and costs are:

- The cost of the deficits incurred in previous years in relation to the processing of immigration applications listed in 4.1 above; and
- the provision and running of the appeals system, including handling of appeals and preparation and presentation of cases in relation to applications for leave to remain and applications for variation of leave to enter or remain

4.6 The costs associated with the appeals function include the full administrative costs related to the management and processing of successful and unsuccessful appeals. This includes staff costs and associated overheads (accommodation, utilities, Information Technology, Human Resources). Extraordinary costs (such as the costs incurred in the depreciation of assets) and legal aid costs are not included.

4.7 The Order does not allow for the recovery of past deficits incurred in relation to the provision of the appeals function. Nor does the Order allow cross-subsidisation of the recovery of appeals costs. In other words, the costs of providing and running the appeals system in relation to any other types of appeals cases (e.g. asylum) other than those made in relation to an unsuccessful application for leave to remain, are not included.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 The Government aims to deliver a self-financing managed migration programme by 2008, where possible, to reduce reliance on the public purse and generate income to support the ongoing modernisation of immigration services. Fees for immigration applications are currently charged at a level which reflects the administrative cost of a providing a service up to the point of making and conveying a decision.

7.2 In order to ensure the Government is delivering full cost recovery in relation to all of the activities associated with the administration of immigration services, the Government is now seeking to recover:

(a) deficits incurred in relation to a range of immigration applications as a result of a difference in actual revenue against forecast volumes and costs. This is in line with Treasury Fees and Charges Guidelines require the recovery of past deficits where appropriate; and

(b) the costs of providing an appeals function for those who seek leave to remain or variation of the condition of their leave to enter or remain in the UK. This facility is part of the service provided to applicants seeking leave to remain in the UK. The Government believes it is appropriate for all applicants who benefit from the knowledge that they can appeal an unsuccessful decision, to meet a proportion of the costs of providing that facility through the application fee.

7.3 A table of the current charges and the proposed new fees is appended to this Explanatory Memorandum.

8. Impact

8.1 Regulatory Impact Assessments have not been prepared for this instrument, but assessments of the impact of the resultant fee increases on business and the education sector

are available on the Home Office website (www.homeoffice.gov.uk) and at www.direct.gov.uk for:

- applications for leave to remain associated with an Immigration Employment Document (impact on business); and
- applications for leave to remain made by international students (impact on education sector).

9. Contact

9.1 **Alex Martin** at the Immigration and Nationality Directorate of the Home Office Tel: 020 8760 8773 or e-mail: alex.martin@homeoffice.gsi.gov.uk can answer any queries regarding the Instrument.

Appendix A: Proposed new fees for Immigration Applications (as from April 2005):

Application Type	Current Fee (£)	New fee (£)
Leave to Remain (postal)	155	335
Student Leave to Remain (postal)	155	250
Transfer of Leave (postal)	155	160
Leave to Remain (premium)	250	500
Transfer of Leave (premium)	250	500
IED LTR (postal)	121	335
IED LTR (premium)	-	500
HSMP	150	315
SBS	153	153
Travel Documents (CID)	67	195
Child CID	N/A	115
Travel Documents (CTD)	42	42
Child CTD	N/A	25

Nationality – ROA	20	120
Nationality – 6(1)	150	200
Nationality – 6(2)	146	200
Nationality – Adult Registration	85	120
Nationality – Minor single and multiple	144	200
Nationality – renunciation	81	120

Fees for other immigration applications remain unchanged.