EXPLANATORY MEMORANDUM

The Immigration Employment Document (Fees) (Amendment) (No. 2) Regulations 2004 No.1485

Explanatory memorandum by the Home Office

The subject of this explanatory memorandum is the Immigration Employment Document (Fees) (Amendment No. 2) Regulations 2004 (2004 No. 1485).

This explanatory memorandum is laid before Parliament by Command of Her Majesty. The Home Office is responsible for the making and laying of these Regulations.

Description of the Regulations

1. These Regulations are to be implemented on 2 July 2004 and amend the Immigration Employment Document (Fees) Regulations 2003[1] by:

   a) deleting any reference to the Sectors Based Scheme ("SBS") so that an application for an immigration employment document ("IED") made in respect of a person who seeks leave to enter or remain for employment under the SBS will be required to be accompanied by the fee for a "standard" IED application (i.e. work permits and permission letters); and

   b) increasing the fee that is to accompany an application for a "standard" IED from £95 to £153

Matters of special interest to the JCSI

(Nil)

Fee increase above the rate of inflation

2. The increase in the fee required to accompany an application for a "standard" IED to £153 and the abolition of a distinct fee in relation to SBS IED applications involves an increase in fees above the rate of inflation.

3. The current fee of £95 to accompany applications for "standard" IEDs (introduced on 1 April 2003) and £74 for SBS IED applications (introduced on 30 May 2003) were calculated in order to effect full cost recovery in respect of the service provided. Treasury guidelines on setting fees and recovering costs were followed throughout.

4. However, a review of the fees regime since its introduction showed that the full costs of providing the service (staffing, accommodation and overhead costs) were not being fully recovered. In addition, the review revealed that SBS applications cost the same to administer as "standard" applications and therefore should be subjected to the same charge.

[1] S.I. 2003/541.

5. As the proposed increase is above the rate of inflation, a full 12-week consultation has been conducted and a Regulatory Impact Assessment (RIA) undertaken, in accordance with Cabinet Office guidelines. The new fee will be subject to review on a regular basis and if it is proposed to increase it in future above inflation then these same procedures will be undertaken.

Legislative background

8. These Regulations are made under Section 122 of the Nationality, Immigration and Asylum Act 2002. Section 122 of the 2002 Act allows the Secretary of State by regulations to require an application for an IED to be accompanied by a fee. This power has previously been exercised to make the 2003 Regulations, the Immigration Employment Document (Fees) (Amendment) Regulations 2003[2], the Immigration Employment Document (Fees) (Amendment No.2) Regulations 2003[3], the Immigration Employment Document (Fees) (Amendment No. 3) Regulations 2003[4] and the Immigration Employment Document (Fees) (Amendment) Regulations (2004)[5].

9. The 2003 Regulations, as amended, specify that an application for an IED shall be accompanied by a fee of £95. They also provide certain exemptions to this requirement and specify that a different fee is to accompany an application for an IED made in respect of an individual who seeks to enter or remain in the UK for employment under each of the SBS (£74), the Highly Skilled Migrant Programme (£150) and the Seasonal Agricultural Workers Scheme (£12).

Extent

10. The provisions of this Regulation will apply equally to all parts of the UK (including Northern Ireland)

European Convention on Human Rights

11. The Minister of State is satisfied that the Order is compatible with the European Convention on Human Rights.

Policy background

12. An IED allows an individual from outside the EEA to take up work at a particular skill level within a UK-based organisation. The Sectors Based Scheme (SBS) is aimed at particular employment sectors (currently Hospitality and Food Processing) and the skills criteria are set at a lower level. The volumes of applications for SBS are controlled by a quota system.

---

[2] S.I. 2003/1277.
[3] S.I. 2003/2477.
[4] S.I. 2003/2626.
[5] S.I. 2004/1044.

13. The fee set originally under the 2003 Regulations was intended to recover full Home Office costs. However, the current fees of £74 in respect of SBS IEDS and £95 in respect of "standard" IEDs do not fully achieve this objective.

14. The current fee levels of £95 for "standard" IED applications and £74 for SBS IED applications led to a shortfall in operating costs of £1.4 million in income for the financial year 2003-04. The amendments to the fees requirements made by these Regulations is calculated to recover the full costs of running the services provided and to avoid the shortfall between income and expenditure experienced during the first year of charging.

15. With particular regard to the SBS fee in 2003, a reduced fee was calculated because it was anticipated that SBS applications would be simpler and quicker to process. In practice it has become apparent that these applications require the same amount of staff time and are handled by the same caseworkers as "standard" immigration employment document applications. It is therefore more appropriate and cost-effective to charge the same fee for both schemes.

16. The formal consultation on the new fee requirement was launched in January 2004 and ran for 12 weeks. A range of employers, representatives, governmental and other bodies was consulted directly, and details of the consultation were posted on various government websites.

17. Taken as a whole, the findings suggest that employers will accept the increase albeit with some reluctance. Responses to the proposed change were reasonably split between positive and negative. For example, in response to the impact of the introduction of the charge, 48% of employers registered on the two lowest points (negligible) and 40% on the two highest points (serious or very serious). Additionally, employers were surprised at the level and timing of the increase. However, the revised fee is timed to come into force 15 months after the original fee was implemented.

18. The consultation produced only 94 responses, although some of these were representative bodies (eg Immigration Law Practitioners Association and the Royal College of Nursing) who may have been responding on behalf of a large number of employers. This low overall response rate (less than 10%) may also be taken as an indication that in general employers have no serious concerns about the level of increase.

19. Taking all of the above into account and having in mind Work Permit (UK)'s commitment to providing a high quality service, it is therefore proposed to implement the new fee on 2 July 2004.

Impact

20. A Regulatory Impact Assessment has been prepared and is attached.

21. Any enquiries in connection with this explanatory memorandum should be addressed to:

Bharat Pamnani

Charging Development Team
Managed Migration Directorate
Foundry House
3 Millsands
Sheffield
S3 8NH
Tel: 0114 2793421
Email: bharat.pamnani@ind.homeoffice.gsi.gov.uk

Home Office



Home Office

Final R.I.A

Proposals to review the fee for the consideration of Work Permit/Sectors Based Scheme Applications in the United Kingdom

11 June 2004

Title of Proposed Regulation
Proposals to review the fee for the consideration of Work Permit/Sectors Based Scheme Applications in the United Kingdom. (Final Regulatory Impact Assessment).

Purpose and Intended Effect

Objective
This assessment estimates the costs and benefits when the fee is increased for the consideration of work permits and sectors based scheme applications. It reflects the response to the public consultation undertaken in the United Kingdom from 7 January 2004 to 31 March 2004.

We issued approximately 850 consultation documents directly to our customers. The consultation findings are based on 94 responses received from employers, representatives and organisations.

The consultation was also designed to determine the impact of the current charge as well as asking customers for their opinion about the potential impact the increased charge might have on their business.

In addition, in order to assess the potential financial and administrative impact that the charge might place on Micro and Small businesses, a random selection of organisations from within this category and their representative bodies were also targeted.

Summary of the consultation findings
The consultation suggested a range of fee between £155 and £180. This was based on forecast figures available in the autumn of 2003. Since then efficiency savings have been made, and the proposed level of the fee (£153) has now been calculated which is below this range. This reflects the efforts made to keep costs to a minimum and will to some extent allay employers' concerns about the level of the increase.

Overall the reaction of employers to the fee increase is one of surprise at the level and timing of the increase so soon after charging was introduced. The consultation quoted a higher fee range (£155-180). In numerical terms the responses to each of the questions are reasonably split between positive and negative. For example, in response to the question on the impact of the introduction of the charge, 48% of employers registered on the two lowest points (negligible) and 40% on the two highest points (serious or very serious).

The question on the impact of increasing the charge produced a more negative response. 53% predicted a serious or very serious effect while 34% predicted a negligible effect. In addition 38% thought that the increase would affect the numbers of applications while 62% thought their numbers would not be affected. This shows a deteriorating trend from the original consultation where 75% thought that the number of applications they made would not be affected. The comments revealed a great deal of concern from NHS Trusts and other parts of the health care sector. A copy of the full analysis is available on our website at www.workingintheuk.gov.uk

Background

The Nationality, Immigration and Asylum Act 2002 allows fees to be prescribed for the consideration of applications for immigration employment documents such as work permits and sectors based scheme applications in the United Kingdom.

Work Permits (UK) introduced charging for the consideration of work permit applications on 1 April 2003 and the Sectors Based Scheme (SBS) on 30 May 2003.

HM Treasury policy is that charges should normally be set to recover the full cost of the service provided from the outset. Indeed there is an expectation that we will recover the full costs of administering the service in order to ease the burden on the general taxpayer.

The figures used to reach the current fees of £95 for work permits and £74 for SBS were obtained from within the Home Office and HM Treasury approved the calculation method. However, it has become apparent that all the information to calculate this fee was incomplete at that time, therefore we were unable to achieve full cost recovery for the 2003/2004 financial year. We now have further information to enable us to re-calculate this and a fee of £153 has been proposed effective from 2 July 2004 for both the work permit and sectors based considerations.

Risk Assessment

There are no perceived risks/hazards that could lead to harm to any individual or organisation by increasing the charge.

Options

Four options have been identified for all work permits and sectors based scheme applications:

A. Increase the fees from the current levels of £95 and £74 in line with inflation.
B. Increase the fee to £153 for both the work permit and sectors based schemes.
C. Introduce a differential rate of charge (sliding scale).
D. Reduce the current fee levels.

Costs and Benefits

Potential Benefits and Disadvantages

Option A - Increase the fee from the current level of £95 and £74 in line with inflation.

Potential Benefits:

- To adopt option A would mean we would continue to recover a proportion of our costs to administer the service.

Potential Disadvantages:

- Work Permits (UK) would be unable to achieve full cost recovery to administer the service.

- With a shortfall in the income stream received then the general taxpayer would still be subsidising the service.

Option B – Increase the fee to £153

Potential Benefits:

- To adopt option B would mean full cost recovery.
- Those businesses using the service would continue to pay for the service, and those businesses and taxpayers not benefiting from the service would not be burdened.
- May encourage employers to recruit from within the EU.

Potential Disadvantages:

- If the fee is increased substantially then employers may see this as a financial burden they can ill afford.
- The impact to a small business may be greater than a larger business who may be able to absorb the increase in the fee more easily
- May deter employers recruiting from overseas

Option C – Introduce a differential rate of charge (sliding scale)

Potential Benefits:

- A differential charge (sliding scale) is more flexible than a flat rate fee. Adjustments can be made for a combination of the type of application, type of applicant or variations in processing and consideration times. For example, we may decide on a criteria whereby a small business should pay less for the service than a large company who could potentially absorb the higher level of fee more easily.

Potential Disadvantages:

- A differential charge (sliding scale) fee would be difficult to calculate and more costly to implement.
- May be seen as unfair as some applicants would be provided with a subsidised service whilst others would be paying more than the service costs.
- As work permits and sectors based scheme applications take roughly the same time to consider, differential charging could be seen as unfair.

Option D – Whether the current fee levels can be reduced

Potential Benefits:

- We would continue to recover a proportion of our costs to administer the service.

Potential Disadvantages:

- Work Permits UK would be unable to achieve full cost recovery to administer the service.

- With a shortfall in the income stream received then a burden would fall to the general taxpayer.

Additional Costs to Business
Currently, approximately 30% of all work permit applications are made by the public sector (NHS Trusts and state schools) and 30% by small businesses. Also 4% of all work permit applications and 10% of all sectors based scheme applications will be exempt from the charge, these are applications for prospective employees from a country that has signed and ratified the European Social Charter detailed in Section 12.

The number of decisions forecast to be made for 2004/2005 is 155,000 under the work permit arrangements and 15,000 for sectors based scheme applications. The table below represents the additional costs to business when increasing the fee from £95 to £153 under the work permit scheme and from £74 to £153 for the sectors based scheme.

2004/2005	**Number of applications**	**Breakdown of additional cost burden to business**	**Overall burden**
Work permits	**155,000 - 4% exemptions, 30% public sector and 30% small business = 72,912**	**72,912 x £58 = £4.2m**	**72,912 x £153 = £11.16m**
Sectors Based Schemes	**15,000 – 10% exemptions = 13,500**	**13,500 x £79 = £1.07m**	**13,500 x £153 = £2.07m**
Small Business (This is 30% of work permits after public sector have been taken out)	**31,248**	**31,248 x £58 = £1.81m**	**31,248 x £153 = £4.78m**
Public Sector	**44,640**	**44,640 x 58=£2.6m**	**44,640 x £153 = 6.83m**
		Total = £7.1m (excluding public sector cost) additional burden to business	**Total = £18.1m (excluding public sector costs**

Small Business

The top 5 sectors making work permit applications for small businesses are:

a) Entertainment & Leisure Services
b) Computer Services
c) Administration, Business and Management Services
d) Health & Medical Services
e) Hospitality, Hotel & Catering

The table below represents the increased cost impact that may be borne by all sectors based on the revised fee of £153.

Sectors	**Projected number of applications 2004/2005 = 31,248**	**Total additional cost burden**	**Overall burden**
1. Ents & Leisure (21%)	**6,560 x £58**	**£0.38m**	**1m**
2. Computer Services (18.5%)	**5,780 x £58**	**£0.34m**	**0. 89m**
3. Admin (14%)	**4,370 x £58**	**£0.25m**	**0. 67m**
4. Health (11.5%)	**3,590 x £58**	**£0.21m**	**0.55m**
5. Hospitality (9%)	**2,810 x £58**	**£0.16m**	**0.43m**
6. Others (26%)	**8138 x £58**	**£0.47m**	**1.24m**
		Total = £1.81m additional burden to business	**Total = £4.78m overall burden to business**

The table below represents the additional and overall costs impact to all small businesses making sectors based scheme applications.

Quota	**Additional cost burden to small business**	**Overall burden to small business**
15,000 less 10% exemptions = 13,500 **Estimated that 50% will be small businesses = 6,750 applications**	**6,750 x £79 = £0.533m**	**6,750 x £153 = £1m**

The additional cost burden for all small businesses including the sectors based schemes is around £2.34m. The overall cost burden for small businesses including sectors based scheme is around £5.78m

Small Business Impact Test

The Small business section of the DTI have commented that they are disappointed that the fees for applications to these schemes, only introduced in April 2003 are to be revised significantly upwards. While the proposed new fee range was consulted on in the first quarter of 2004, the firmer revised fees now proposed (at £153 for each)

represent a 60% increase for a Work Permit and more than a doubling for a sector based scheme application.

The consultation revealed that 53% of all employers felt the increases were serious or very serious. Small firms will be hit proportionately harder than all firms by these increases. Overall, the small firm sector will bear an additional annual cost of around £2.3m for work and sector based permits. The total annual cost to small firms for these permits will now be around £6m.

They also expressed concerns at the proposed speed of introduction of the revised fees; 2 July, barely a month away. The revised fees will increase the cost impact of businesses using these schemes. Under the general requirement on implementation periods for proposals increasing business impact there is a general requirement to allow 12 weeks for business to be able to plan and adapt to the proposed change. The proposed introduction date falls well short of this requirement, and will instantly affect small firms recruiting from outside the EU who had budgeted on a lower cost basis.

Voluntary Organisations and Charities
The responses from voluntary organisations and charities were negligible and did not highlight any major objections to the increase to the charge.

Exemptions
The only exemptions to the charge will be prospective employers of nationals of countries who have signed and ratified the Council of Europe Charter or the Council of Europe Revised Social Charter. Currently, employers making work permit applications for nationals of Albania, Armenia, Bulgaria, Croatia, Moldova, Romania and Turkey would not incur a charge.

Competition Assessment
The OFT have commented that the proposed fee increases for work permits will impact upon any company that is employing (or will employ) non-EU workers. In that regard, the proposed fee increases will impact on both the private and public sector. In turn these proposals will therefore impact on many markets. Some of these may be concentrated (e.g. specific companies may hold a high market share).

It is also the case that some companies will face a higher cumulative impact than others, dependent upon the number or proportion of non-EU staff they employ. Some companies may also face a higher cumulative impact if they are reliant on skills which are in short supply in the UK.

The above suggests that there may be negative impacts on certain companies - as indicated by some of the consultation responses. In order to assess the impact on competition, however, we need to analyse the impact of the proposed fee increases relative to the total cost of firstly, recruiting the permit holder and secondly, the costs of employing the permit holder overall. In that regard, the former will include costs such as advertising and interviewing while the latter will include costs such as wages and National Insurance contributions. Therefore, the proposed fee increase, while admittedly being another cost for business to cover, is a small percentage of the overall costs involved in recruiting and employing the permit holder. We would therefore not anticipate that the proposed fee increase would be significant enough to

force companies to exit their respective markets or be a barrier to entry for those wishing to enter any given market. We would welcome comments on this assessment.

Monitoring & Review
The costs and impact on business will be reviewed regularly and consideration will be given to any evidence provided in relation to exemptions or discounts for certain types of employers or employment. If there are any changes as a result of this a further RIA will be provided.

Summary
The reasons for proposing an increase to the current level of charges are:

The Home Office receive an income stream which allows us to fund the service.

Those businesses using the service would continue to pay for the service, and those businesses and taxpayers not benefiting from the service would not be burdened.

Option B is the recommended option. This will cost business an additional £7.1m.

Declaration
I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister

Des Browne
Date: 8th June 2004

Contact point:

Denise Mellor
Home Office
Work Permits (UK)
Foundry House
3 Millsands
Sheffield
S3 8NH

Tel no: 0114 279 3418
Fax no: 0114 279 3430
E-mail: denise.mellor@ind.homeoffice.gov.uk