**EXPLANATORY MEMORANDUM TO THE**

# IMMIGRATION (LEAVE TO REMAIN) (FEES) (AMENDMENT) REGULATIONS 2005

**2005 No. 654**

**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 Joint Committee on Statutory Instruments.

## 2. Description

2.1 These Regulations amend the Immigration (Leave to Remain) (Fees) Regulations 2003. These Regulations prescribe the fee which is to be paid in connection with an application for leave to remain in the United Kingdom, an application for the variation of leave to enter or remain in the United Kingdom, or an application for the fixing of a limited leave stamp or indefinite leave stamp on a passport or other document issued to the applicant where the stamp was previously fixed on another passport or document issued to the applicant.

2.2 A fee of £335 is prescribed for an application made by post for leave to remain in the United Kingdom or for the variation of leave to enter or remain in the United Kingdom.

2.3 A fee of £500 is prescribed for all applications made in person at a Public Enquiry Office of the Immigration and Nationality Directorate of the Home Office.

2.4 A reduced fee of £250 is prescribed for an application made by post for leave to remain in the United Kingdom or for the variation of leave to enter or remain in the United Kingdom as a ‘student’ as described in these Regulations.

2.5 A fee of £160 is prescribed for an application made by post for the fixing of a limited leave stamp or indefinite leave stamp on a passport or other document

issued to the applicant where the stamp was previously fixed on another passport or document issued to the applicant.

2.6 An exemption from the requirement to pay a fee is prescribed for individuals granted limited leave outside the immigration rules following a failed asylum claim who seek further leave to remain in the United Kingdom outside the provisions of the immigration rules.

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

3.1 The new postal and premium leave to remain application fees include recovery of the cost of providing an appeals facility for unsuccessful applicants and (with the exception of student postal applications) the fees include some of the deficits incurred in 2003-04 and 2004-05. The new fees also reflect increases in the costs of operating the leave to remain service (for example, as a result of enhanced caseworking procedures).

3.2 The new fee of £500 is for all applications made at the Public Enquiry Offices (PEOs) in Croydon, Birmingham, Liverpool and Glasgow. The higher, premium fee of £500 is for an optional service which IND customers, including students, can take advantage of if they so choose. As specified in Treasury guidelines, where statutory services are to be provided in different forms – for example a normal and a high speed service, or a personal as well as a postal service – different fees may be set.

3.3 The new postal fee of £160 for applications to fix a limited leave stamp or indefinite leave stamp has increased by £5 to take account of inflation and the costs of reinstating this service for applicants seeking to transfer limited leave stamps.

## 4. Legislative Background

4.1 Section 5 of the Immigration and Asylum Act 1999 (as amended by Section 43 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004) ("the 1999 Act") enables the Secretary of State by regulations to prescribe fees for applications for leave to remain in the UK, applications to vary leave to enter or remain in the UK and applications for a limited or indefinite leave stamp to be fixed on the applicant's passport (or other document) where the stamp was previously fixed on another passport or document issued to the applicant. The

fees to be prescribed by regulations made by the Secretary of State under section 5, read with section 166, allows different fee levels to be set for different types of application. Under section 5(3), regulations prescribing fees may provide for no fee to be payable in prescribed circumstances.

4.2 Fees for leave to remain applications were first prescribed by the Immigration (Leave to Remain) (Fees) Regulations 2003 (S.I. 2003/1711) ("the 2003 Regulations") which set the fee for postal applications at £155 and for applications made in person at a Public Enquiry Office at £250.

4.3 Fees for leave to remain applications payable by holders of immigration employment documents were prescribed by the Immigration (Leave to Remain) (Fees) (Amendment) Regulations 2004 (S.I. 2004/580) which set the fee for postal applications at £121. No premium service was available to these applicants.

4.4 The 2003 Regulations provided for a number of exemptions from the requirement to pay a fee. A further exemption was added by the Immigration (Leave to Remain) (Fees) (Amendment No. 2) Regulations 2004 (SI 2004/3105): this exempted applicants under the age of 18 who had been granted limited leave to remain outside the provisions of the immigration rules on the rejection of their claim for asylum and who were seeking further leave to remain in the UK outside the immigration rules.

4.5 These Regulations refer to the Immigration (Application Fees) Order 2005, made under Section 102 of the Finance (No.2) Act 1987. Articles 2(3) and 3(1) of that Order expand the existing powers to prescribe fees, and provide for the recovery of appeals costs and deficits in setting the level of fee under section 5 of the 1999 Act.

## 5. Extent

5.1 This instrument applies to all of the United Kingdom.

## 6. European Convention on Human Rights

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.

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 through the leave to remain application fee:

(a) 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. 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; and

(b) deficits incurred in the operation of leave to remain services in 2003-04 and 2004-05, as a result of a difference in actual revenue against forecast volumes and costs. There is a presumption in the Treasury Fees and Charges Guide that Departments will seek to recover the costs of deficits incurred in previous years in relation to chargeable activity, where appropriate.

7.3 The new fees of £335 for leave to remain postal applications and £500 for premium applications includes recovery of the cost of providing the appeals facility

and some of the deficits incurred in 2003-04 and 2004-05. It also reflects increases in operating costs associated with these leave to remain services.

7.4 Student leave to remain applications made by post are charged at a lower rate of £250 in recognition of the significant economic and social benefits which international students bring to the UK. This fee does not include deficit recovery, nor does it reflect the full costs of operating the student leave to remain service. This will be subsidised from central funds.

7.5 In relation to the new exemption, individuals who do not qualify for asylum may qualify for further leave on the basis of a continuing need for protection outside the immigration rules. When this limited leave expires, the individuals concerned may apply for further leave. But in such circumstances, their claims will be subject to active review. If the basis of their application for further leave does not constitute a fresh asylum/Article 3 claim, under current regulations, it will be treated like any other application for leave to remain and be subject to a fee.

7.6 An exemption from the application fee was put in place in December 2004 for former unaccompanied asylum seeking children seeking further leave to remain in the UK outside the immigration rules. These Regulations extend this exemption to cover adult failed asylum seekers who have been granted limited leave on the basis of a continuing need for protection outside the immigration rules. This leave is granted in circumstances where to remove these individuals would breach the UK's obligations under the European Convention on Human Rights (ECHR). This places them in a special category as compared with, for example, those who seek to extend their leave as visitors or students. There is no merit in charging those who apply for further leave on the basis of a continuing need for protection, because the law requires us to

consider whether removing them from the UK would breach our obligations under the ECHR in any event.

## 8. Impact

8.1 Regulatory Impact Assessments have been prepared for this instrument in relation to fees for leave to remain applications payable by students and leave to remain applications payable by holders of immigration employment documents. These assessments are not attached to this Explanatory Memorandum, but they were published on 7 February 2005 and are available on the Home Office website at www.ind.homeoffice.gov.uk.

8.2 The impact on the public sector is expected to be none.

## 9. Contact

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.