

**EXPLANATORY MEMORANDUM TO
THE IMMIGRATION AND NATIONALITY (FEES) REGULATIONS 2012**

2012 No. 971

1. This explanatory memorandum has been prepared by the UK Border Agency of 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. **Purpose of the instrument**

- 2.1 These regulations specify fees for applications, services and processes relating to immigration and nationality where those fees exceed the administrative cost of dealing with the application or providing the process or service. They replace the Immigration and Nationality (Fees) Regulations 2011 and are to come into force on 6th April 2012.

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

- 3.1 These regulations contain some fee increases above the rate of inflation. More detail is set out in section 7.6 to 7.18 of this memorandum.

4. **Legislative Context**

- 4.1 These regulations follow on from the Immigration and Nationality (Fees) Order 2011, which sets out those applications, processes and services relating to immigration and nationality for which fees can be charged.
- 4.2 These regulations will replace the Immigration and Nationality (Fees) Regulations 2011, which together with the Immigration and Nationality (Cost Recovery Fees) Regulations 2011, have specified immigration and nationality fees since April 6th 2011.
- 4.3 There are two sets of fees regulations because regulations setting fees exceeding the administrative cost of dealing with applications or providing the relevant process or service must be approved in draft by Parliament before they are made. Those fees are to be found in the Immigration and Nationality (Fees) Regulations 2011, which these regulations will replace. Fees at or below cost do not require prior parliamentary approval. These fees are specified in the Immigration and Nationality (Cost Recovery Fees) Regulations, which will also be replaced by a new set of regulations also due to come into force on 6th April 2012.

5. **Territorial Extent and Application**

- 5.1 This instrument extends to the United Kingdom. The regulations in addition set fees for entry clearance to enter the Channel Islands.

6. European Convention on Human Rights

- 6.1 The Minister of State for Borders and Immigration, Damian Green MP has made the following statement regarding Human Rights:

“In my view the provisions of the Immigration and Nationality Fees Regulations 2012 are compatible with the European Convention on Human Rights.

7. Policy background

What we are doing and why:

- 7.1 The fees contained in these regulations are set above the administrative cost of providing the application, process or service in line with the Government’s flexible charging model. Charging above the cost of delivery helps raise the revenue required to fund the overall immigration system and to cross subsidise fees set below cost for other immigration routes where a lower fee supports wider government objectives. By charging above the administrative cost of delivery on the application types referred to in this instrument, the UK Border Agency is able to generate sufficient revenue to ensure the UK border is secure and public confidence in the immigration system is maintained.
- 7.2 The UK Border Agency’s overall aim is to generate an appropriate contribution to its’ agreed running costs from the income generated from visa, nationality and immigration applications. By doing this, the UK Border Agency seeks to reduce the financial obligation on the UK taxpayer to subsidise the immigration system. The overall policy for setting fees will continue to help protect certain routes from significant increases and will contribute to the additional revenue needed to fund enforcement and other necessary improvements to the immigration system.
- 7.3 As with previous years, fees are set over costs to reflect the value of the product in terms of the benefits that the Secretary of State thinks are likely to accrue to the applicant if they are successful or the process completed. The UK Border Agency takes into account the different set of rights and entitlements to a successful applicant for each route. For example, some routes give a successful applicant valuable entitlements such as access the UK labour market without the need for a sponsor, an option to apply for settlement, the ability to bring in dependants who can also work without restriction, have access to benefits etc. The fee charged for such routes are set higher to reflect these valuable entitlements. In comparison, other routes may not attract entitlements of the same level and are therefore priced accordingly. Generally, the overall burden of fee increases is spread across all routes. Where fees are set higher for certain routes, it enables the Secretary of State

to set a lower fee in others considered to be the most economically sensitive routes (visitors, workers, employers, universities' direct costs).

7.4 The UK Border Agency has published indicative unit costs for each application for the financial year 2012/13. Full details are available at <http://www.ukba.homeoffice.gsi.gov.uk>. The unit cost is the estimated average cost to the Agency of processing each application. These costs are provided to Parliament to ensure transparency. Although unit costs are not fixed over the course of the financial year, publishing unit costs in this way will enable applicants to see which fees are set over cost and by how much, and which fees are set under cost and by how much.

7.5 The tables below set out the current fee levels and the new proposed fees, for products that are set above cost or included in these regulations:

VISA FEES

PRODUCTS	2011/12 Fees (£)	Estimated Unit Cost for 12/13 (£)	Proposed Fee for 12/13 (£)
Non PBS Visas			
Long term visit visa (up to 2 years)	265	140	270
Long term visit visa (up to 5 years)	486	140	496
Long term visit visa (up to 10 years)	702	140	716
Settlement visa	810	391	826
Settlement visa – Armed Forces Dependant	810	391	810
Settlement Visa - Dependant Relative	1,814	458	1,850
Other visa	265	163	270
Media Representative	N/A	250	480
PBS Visas			
Tier 1 (Entrepreneur, Investor, Exceptional Talent), Main applicant	800	432	816
Tier 1 (Entrepreneur, Investor, Exceptional Talent), All Dependents	800	432	816
Tier 1, CESC, Main applicant	720	432	734
Tier 1 (Post Study Work), Dependents	474	459	483
Tier 2 (General), ICT – Long term staff, Sport & MOR, Main applicant	400	250	480
Tier 2 (General), ICT – Long term staff, Sport & MOR, Dependents	400	250	480
Tier 2 (General), ICT – Long term staff, Sport & MOR, CESC, Main applicant	360	250	432
Tier 2 (ICT Short term staff, Graduate Trainee or Skills Transfer), Main Applicant	350	227	400
Tier 2 (ICT Short term staff, Graduate			

Trainee or Skills Transfer), Dependants	350	227	400
Tier 2 (ICT Short term staff, Graduate Trainee or Skills Transfer), CESC, Main Applicant	315	227	360
<i>CESC = Council of Europe Charter reduction</i>		<i>MOR=Minister of religion</i>	
<i>ICT=Intra Company Transfer</i>			
<i>Applications to the Channel Islands under Employment and Study routes attract Tier 2 & Tier 4 fees and costs respectively.</i>			

IN UK – Leave to Remain and Nationality Fees

PRODUCTS	2011/12 fees (£)	Estimated unit cost for 2012/13 (£)	Proposed fees for 2012/13 (£)	Dependants fee (£)
NON PBS ROUTES - Migrants in UK				
ILR Postal, Main applicant	972	255	991	496
ILR Postal, CESC, Main applicant	875	255	893	486
ILR PEO, Main applicant	1,350	255	1,377	689
ILR PEO, CESC, Main applicant	1,215	255	1,239	689
ILR Dependant Relative, Postal	1,814	299	1,850	N/A
ILR Dependant Relative, PEO	2,214	299	2,258	N/A
LTR Other, Postal, Main applicant	550	308	561	281***
LTR Other, PEO, Main applicant	850	307	867	434
Transfer of Conditions PEO, Main applicant	648	229	661	331
Mobile case working (Premium+)	6,000 + PEO fee	2,211	6,000 + PEO fee	N/A
Residual FLR IED Postal, Main applicant	550	246	561	281
Residual FLR IED PEO, Main applicant	850	148	867	434
Residual FLR BUS Postal, Main applicant	1,000	148	1,020	510
Employment LTR outside PBS, Postal	550	253	561	281***
Employment LTR outside PBS, PEO	850	259	867	434
Additional Out of Hours Premium*– PEO, Main applicant	300	N/A	300	150
Nationality applications - Migrants in UK				
Naturalisation (UK Citizenship), Single application**	836	181	851	N/A
Naturalisation (UK Citizenship), Joint application**	1,294	272	1,317	N/A
Naturalisation (UK Citizenship) Spousal application **	836	181	851	N/A
Nationality Registration, Adult **	620	181	631	N/A
Nationality Registration, Minor	540	181	551	N/A
Nationality Registration, Multiple Minor	810	272	827	276
<i>ILR=Indefinite Leave to Remain</i>		<i>IED=Immigration Employment Document</i>		
<i>LTR=Limited Leave to Remain</i>		<i>FLR =Further Leave to Remain</i>		
<i>PEO=Public Enquiry Office</i>		<i>PBS=Points Based System</i>		
<i>*Out of Hours Premium fee payable is payable in addition to standard PEO fee</i>				
<i>** Includes additional £80 per applicant is payable to cover the ceremony fee.</i>				

***These fees are set below cost but included in these regulations for ease of reference.

PBS routes – Migrants in UK

PRODUCTS	2011/12 fees (£)	Estimated unit cost for 2012/13 (£)	Proposed fees for 2012/13 (£)	Dependants fee (£)
PBS ROUTES – Migrants in UK				
Tier 1 (General), Postal, Main applicant	1,000	181	1,500	750
Tier 1 (General), PEO, Main applicant	1,300	181	1,800	900
Tier 1 (General), CESC, Postal, Main applicant	900	181	1,350	1,500
Tier 1 (General), CESC, PEO, Main applicant	1,170	181	1,620	900
Tier 1 (Entrepreneur, Investor, Exceptional Talent), Postal, Main applicant	1,000	181	1,020	510
Tier 1 (Entrepreneur, Investor, Exceptional Talent), CESC, Postal, Main applicant	900	181	918	N/A
Tier 1 (Entrepreneur, Investor, Exceptional Talent), PEO, Main applicant	1,300	181	1,326	N/A
Tier 1 (Entrepreneur, Investor, Exceptional Talent), CESC, PEO, Main applicant	1,170	181	1,193	N/A
Tier 1 (Transition), Postal, Main applicant	500	N/A	500	250
Tier 1 (Transition), PEO, Main applicant	700	N/A	700	350
Tier 1 (Graduate Entrepreneur), Postal Main applicant	N/A	181	700	350
Tier 1 (Graduate Entrepreneur), CESC, Postal Main applicant	N/A	181	630	350
Tier 1 (Graduate Entrepreneur), PEO, Main applicant	N/A	181	1,000	500
Tier 1 (Graduate Entrepreneur) CESC, PEO, Main applicant	N/A	181	900	500
Tier 2 (General, ICT Long term staff, Sport & MOR), Postal, Main applicant	550	160	561	281
Tier 2 (General, ICT Long term staff, Sport & MOR) CESC, Postal, Main applicant	495	160	505	281
Tier 2 (General, ICT Long term staff, Sport & MOR), PEO, Main applicant	850	160	867	434
Tier 2 (General, ICT Long term staff, Sport & MOR), CESC, Main applicant	765	160	780	434
Tier 2 (ICT Short term staff, Graduate trainee or Skills Transfer), Postal Main applicant	350	160	400	179
Tier 2 (ICT Short term staff, Graduate				

trainee or Skills Transfer), CESC, Postal, Main applicant	315	160	321	179
Tier 2 (ICT Short term staff, Graduate trainee or Skills Transfer), PEO	650	160	700	350
Tier 2 (ICT Short term staff, Graduate Trainee or Skills Transfers) CESC, PEO, Main applicant	585	160	630	434
Tier 4 Postal, Main applicant	386	259	394	197***
Tier 4 PEO, Main applicant	702	259	716	358
Tier 5 PEO, Main applicant	648	145	661	330
Tier 5 CESC, PEO Main applicant	583	145	595	330
PBS Dependants applying separately	550	418	561	N/A
<i>CESC = Council of Europe Charter reduction</i>		<i>PEO=Public Enquiry Office</i>		
<i>ICT =Intra company transfer</i>		<i>MOR=Minister of religion</i>		
<i>***These fees are set below cost but included in these regulations for ease of reference.</i>				

PBS Sponsorship Products

PRODUCTS	2011/12 Fees (£)	Estimated Unit Cost for 12/13 (£)	Proposed 12/13 fees (£)
Premium sponsor status, Large Enterprise	N/A	N/A	25,000
Premium sponsor status, SME	N/A	N/A	8,000
Tier 2 Large Sponsor	1,025	1,531	1,500***
Tier 2 Certificate of Sponsorship	175	153	179
<i>***These fees are set below cost but included in these regulations for ease of reference.</i>			

7.6. The Secretary of State has limited the majority of fee increases to around 2% for most routes. The following paragraphs explain the key exceptions to this and why.

Media Representatives

7.7 The UK Border Agency has reviewed the fee that applies to applications for entry clearance and in country extensions from Media Representatives. Previously, entry clearance applicants from this group were considered for a fee of £265, under the other visa category. Given that the purpose of an applicant applying for a visa as a media representative is similar to that of an applicant applying as a Tier 2 migrant, the Secretary of State proposes aligning this fee with the proposed Tier 2 visa fee at £480. This fee is more in line with the benefits and entitlements offered to a successful applicant. This is the approach taken with the in country extension applications, where the fee is aligned to that paid by Tier 2 applicants.

Settlement applications for Armed Forces family members

7.8 The Secretary of State has reviewed the settlement fees that apply to dependants of serving Armed Forces personnel who enter the UK to join their serving family member. In recognition of the service of members of the UK

Armed Forces to the country, the Secretary of State proposes to maintain entry clearance fees for their family members at the current level of £810.

Tier 1 applications

- 7.9 Tier 1 applications are from migrants who are highly skilled and do not require a sponsor under the Points Based System. They are not required to have a confirmed job from a registered UK employer and they have unlimited access to the labour market. The Secretary of State proposes a fee of £1,500 up from £1,000 for Tier 1 (General) Extension applications. The Tier 1 (General) route is no longer available to new applicants. Therefore, this route is only open to a limited group of existing applicants already in the UK who want to extend their permission to remain in the UK in the same category. Successful applicants may then become eligible to apply for settlement, and with this, retain benefits such as entitlement to continuing unrestricted access to the UK labour market and associated healthcare, education and social care benefits.
- 7.10 A new subcategory, Graduate Entrepreneur, has been added to the Tier 1 in country route. This route is for migrants who are able to secure support from their institution to apply for an extension of leave as an Entrepreneur. The Secretary of State proposes a fee of £700 for applications. Successful applicants will be able to engage in business, undertake supplementary work and bring dependants to the UK. The UK Border Agency will pilot the introduction of this category and impose a limit on places for the first year.

Tier 2 applications

- 7.11 Tier 2 migrants are sponsored skilled workers who come to the UK to work for a named sponsor. This category allows people coming to the UK with a skilled job offer to fill a gap in the workforce a settled worker cannot fill. Migrants under this route obtain a good set of entitlements also. They can work in the UK for an employer who has sponsored them, and their dependants have unrestricted access to the labour market. The Secretary of State is proposing a new fee of £480 up from £400 for Tier 2 Visa applications. This is in line with the UK Border Agency's intention to gradually align this fee with the fee charged for a similar application in country. This will bring the fee to a level which better reflect the value of the entitlements that applicants benefit from.
- 7.12 The UK Border Agency has aligned the fee that applies for in country and overseas applications for Tier 2 Intra Company Transfer short term staff applications of less than 12 months. The Secretary of State proposes a new fee of £400 for these routes. Compared to the fee above, the lower fee for these routes is to reflect the shorter length of leave offered.

Nationality applications

- 7.13 Nationality applications are for migrants who want to become British Nationals. The fees charged for these applications are set at levels above normal cost recovery to reflect the entitlements and benefits to applicants. For example, successful applicants under this route have the ability to apply for a

British passport that provides them with free movement rights within the European Economic Area (EEA) and allows them to live and work in any part of the European Union EU).

- 7.14 The Secretary of State is introducing a fee to determine applications for registration and renunciation of the British Protected Person status. This applies to people connected with a former British protectorate or protected state who did not acquire the citizenship of the territory concerned when British protection ceased. They do not have the right of abode in the UK. This service is new to the UK Border Agency and was previously provided by the Foreign and Commonwealth Office. The fee being proposed for this service is in line with what is charged for other types of nationality applications.

Dependants applying to extend their leave in the UK

- 7.15 The Secretary of State is maintaining the fee paid by dependants for applications made in the UK at 50% of the main applicant's fee. In the future, the UK Border Agency intend to reconcile the UK- based application fee structure with that is in place for visas so that individuals under a given application type all pay the same individual fee. The UK Border Agency believe this is the right model because each application bears an additional processing cost to the Agency and may confer a successful applicant with an independent set of rights and entitlements.

Fees for sponsorship under the Points Based System

- 7.16 The Secretary of State is introducing a new optional premium sponsor status category for Tier 2 and 5 sponsors which will offer greatly enhanced levels of customer service. There will be a two tiered fee structure with a fee of £25,000 per year for large sponsors and £8,000 a year for those small sponsors who are already entitled to pay the lower sponsor licence fee. This fee reflects the value of the service on offer. The service is being introduced based on feedback from previous consultations, which indicated support for the development of optional premium services. For an annual fee, sponsors will receive benefits including access to a named account manager, priority access to appointments at the UK Border Agency public facing offices and attendance at premium sponsor events.
- 7.17 Also, the Secretary of State is proposing a fee of £1,500 up from £1,025 for a large sponsor, for a licence that entitles the employer to bring skilled migrant workers to the UK. Since the introduction of the Points Based System in 2008, the UK Border Agency has maintained the fees for sponsorship for both large and small sponsors at a relatively low level, compared to the actual cost to the Agency of providing the service. However, the UK Border Agency's costs have increased in this time. This new fee better reflects the administrative costs to the UK Border Agency. It also allows the Agency to continue to offer concessions for licence applications to small sponsors.

Mobile case-working Service Premium

- 7.18 The UK Border Agency offer a mobile case-working service to process applications at a location determined by the customer (e.g. their home, or workplace). The UK Border Agency proposes to continue to offer this service at the current premium fee of £6,000 plus the relevant Public Enquiry Office fee. This service will be extended to cover a wider range of application types for limited or indefinite leave to remain applications. This facility is limited to ten customers per visit.

8. Consultation outcome

- 8.1 The UK Border Agency published a full public consultation on Charging for Immigration and Visa Applications between 1 September and 1 December 2009. Over 90% of respondents agreed that the UK Border Agency should continue to set fees flexibly by taking into account wider policy objectives, such as attracting specific groups of migrants that are beneficial to the UK. The UK Border Agency published the formal Government response to the consultation on 14 January 2010 on its' website at <http://webarchive.nationalarchives.gov.uk/20100422120657/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/charging09/>.
- 8.2 Other consultation exercises on fees and charging have taken place. A targeted consultation exercise on fees and charges to support the Points Based System and for biometric identity documents was held from 24 October to 9 November 2007. The UK Border Agency consulted key stakeholders, based around – but not limited to – the membership of the UK Border Agency's existing stakeholder taskforces which include representative bodies and umbrella organisations. The UK Border Agency used feedback from this exercise to set fees for the new services first provided to migrants and sponsors under the Points Based System in 2008.
- 8.3 The UK Border Agency conducted a full public consultation exercise on charging for immigration and nationality applications between 30 October and 22 December 2006, supported by the publication of a *consultation on a new charging regime for immigration & nationality fees*. The formal Government response to that consultation was published on 7 March 2007, and is available on the UK Border Agency website at: <http://webarchive.nationalarchives.gov.uk/20100422120657/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/newchargingregime/>
- 8.4 This consultation established the principle that the UK Border Agency should operate a flexible pricing approach to setting fees for immigration services. This allows fees to be set taking into account the need to maintain the UK's international competitiveness. But also to ensure that the immigration system overall can generate a sufficient level of revenue from income for services provided (alongside the costs met by the UK tax payer) to fund necessary improvements. The majority of respondents to the consultation agreed fees should be set flexibly to take into account wider policy objectives and that new fees should reflect a range of factors, not only those of value to the migrant.

9. Guidance

- 9.1 The UK Border Agency will announce details of the new fee levels and their commencement dates to Parliament in a Written Ministerial Statement. Full details of each fee and guidance to general members of the public on how to apply under each route will be available on the UK Border Agency website in due course.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is estimated to be zero net cost as explained in the full impact assessment attached at Annex A to this Explanatory Memorandum.
- 10.2 The impact on the public sector is explained in Annex 6 of the attached impact assessment.
- 10.3 The full impact assessment attached at Annex A will also be published at www.ukba.homeoffice.gov.uk.

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 To minimise the impact of the requirements on firms employing up to 20 people, we have maintained our approach of charging a lower fee for small businesses who apply for the optional premium sponsor status.

12. Monitoring & review

- 12.1 The UK Border Agency will closely monitor the impact of fees for the application and services contained in these Regulations. The UK Border Agency review fees and charges for Immigration and Nationality applications annually. The UK Border Agency monitors application trends on a monthly basis. The cross-Whitehall fees committee monitor analysis of application trends to ensure that fee levels generate sufficient revenue to cover the UK Border Agency delivery costs but do not adversely impact on the UK economy.

13. Contact

- 13.1 Shola Akinyamoju at the Charging Programme of the UK Border Agency, Tel: 0208 760 2716 or email: Shola.Akinyamoju@homeoffice.gsi.gov.uk who can answer any queries regarding the instrument.