Draft Regulations laid before Parliament under section 42(7) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2012 No.

IMMIGRATION
NATIONALITY

The Immigration and Nationality (Fees) Regulations 2012

Made - - - -	****
Coming into force - -	*6th April 2012*

The Secretary of State makes the following Regulations with the consent of the Treasury(**1**), in exercise of the powers conferred by sections 51(3) and 52(1), (3) and (6) of the Immigration, Asylum and Nationality Act 2006(**2**), and in reliance on section 42(1), (2) and (2A) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(**3**).

These Regulations are made pursuant to the Immigration and Nationality (Fees) Order 2011(**4**).

In accordance with section 42(6) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, the Secretary of State has consulted with such persons as appear to her to be appropriate prior to making these Regulations.

In accordance with section 42(7) of that Act, a draft of these Regulations has been laid before and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Immigration and Nationality (Fees) Regulations 2012 and shall come into force on 6th April 2012.

Interpretation

2. In these Regulations—

"the 1971 Act" means the Immigration Act 1971(**5**);

"the 2011 Order" means the Immigration and Nationality (Fees) Order 2011;

(**1**) In pursuance of section 52(5)(a) of the Immigration, Asylum and Nationality Act 2006 (c.13).
(**2**) 2006 c.13.
(**3**) 2004 c.19; section 42(1) was amended by, and section 42(2A) was inserted by, section 20 of the UK Borders Act 2007 (c.30).
(**4**) S.I. 2011/445.
(**5**) 1971 c.77.

"child" means a person under the age of 18;

"dependant" in respect of a person means-

(a) the spouse, civil partner or unmarried or same-sex partner, or

(b) a child,

of that person;

"EC Association Agreement with Turkey" means the agreement establishing an Association between the European Community and Turkey signed at Ankara on 12th September 1963;

"entry clearance" has the same meaning as provided in section 33(1) of the 1971 Act(**6**), as extended to the Channel Islands(**7**);

"immigration and nationality fees regulations" means regulations made under sections 51(3) and 52(1) and (3) of the Immigration, Asylum and Nationality Act 2006;

"immigration rules" means the rules for the time being laid down by the Secretary of State as mentioned in section 3(2) of the 1971 Act(**8**);

"leave to remain in the United Kingdom" means leave to remain in the United Kingdom given in accordance with the provisions of the 1971 Act or the immigration rules and any subsequent variation of that leave;

"Public Enquiry Office" means a public enquiry office of the United Kingdom Border Agency;

"sponsor" means a sponsor under Part 6A of the immigration rules;

"sponsor licence" means a licence granted by the Secretary of State to a person who, by virtue of such a grant, is licensed as a sponsor;

"transfer of conditions" means—

(a) the fixing of a stamp, sticker or other attachment on a passport or other document issued to the applicant, which indicates that a person has been granted limited, or indefinite, leave to enter or remain in the United Kingdom; or

(b) the issuing of a biometric immigration document within the meaning of section 5 of the UK Borders Act 2007(**9**) to replace a stamp, sticker or other attachment on a passport or other document issued to the applicant, which indicated a person had been granted limited, or indefinite, leave to enter or remain in the United Kingdom;

"United Kingdom Border Agency" means the United Kingdom Border Agency of the Home Office;

"unmarried or same-sex partner" of a person means someone who is living with that person in a relationship akin to a marriage or civil partnership which has subsisted for two years or more.

Fees for applications, processes and services in connection with immigration and nationality

3. Schedule 1 to these Regulations has effect to specify—

(a) the amount of the fees for specified applications for leave to remain in the United Kingdom and variation of such leave and related services for the purposes of articles 3(2)(a) and (c) and 4(i) of the 2011 Order and exceptions to the requirement to pay such fees;

(b) the amount of the fees for specified applications for entry clearance to enter the United Kingdom for the purposes of article 3(2)(b) of the 2011 Order, exceptions to the

(**6**) The definition of "entry clearance" in section 33(1) was amended by paragraph 2 of Schedule 4 to the British Nationality Act 1981 (c.61) and paragraph 5 of the Schedule to the Immigration Act 1988 (c.14).

(**7**) Section 33(1) was extended with modifications to the Bailiwick of Guernsey by the Immigration (Guernsey) Order 1993 (S.I. 1993/1796), and to the Bailiwick of Jersey by the Immigration (Jersey) Order 1993 (S.I.1993/1797).

(**8**) Laid before Parliament on 23rd May 1994 (HC 395).

(**9**) 2007 c.30.

requirement to pay such fees, and circumstances in which such fees may be waived or reduced; and

(c) the amount of the fees for specified applications for sponsor licences, for changes to a sponsor's status, and for related processes for the purposes of articles 3(2)(t) and (u) and 5 of the 2011 Order.

4. Schedule 2 to these Regulations has effect to specify the amount of fees for applications in connection with nationality for the purposes of article 3(2)(h), (j), (k), (l), (m), (n), (o) and (p) of the 2011 Order.

5. Schedule 3 to these Regulations has effect to specify the amount of fees for applications for entry clearance to enter either of the Channel Islands for the purposes of article 6 of the 2011 Order.

6. Schedule 4 to these Regulations has effect to specify—

(a) the amount of the fees for applications for a transfer of conditions for the purposes of articles 3(2)(e) and (s) of the 2011 Order; and

(b) the amount of the fees for the provision of services outside office hours for the purposes of article 4(j) of the 2011 Order.

Consequences of failing to pay the specified fee

7. Where these Regulations specify a fee which must accompany an application for the purposes of the 2011 Order, the application is not validly made unless it is accompanied by the specified fee.

Revocation

8. The Immigration and Nationality (Fees) Regulations 2011(**10**) are revoked.

Home Office
Date

Name
Minister of State

We consent

Name
Name
Two of the Lords Commissioners of Her Majesty's Treasury

Date

(**10**) S.I. 2011/1055.

SCHEDULE 1 Regulation 3

PART 1

INTERPRETATION

1.—(1) In this Schedule—

"Article 3 or Refugee Convention application" means an application for leave to remain in the United Kingdom made on the basis that the applicant is—

(a) a person making a claim for asylum within the meaning of section 94(1) of the Immigration and Asylum Act 1999(**11**) which has either not been determined or has been granted;

(b) a person who has been granted humanitarian protection under the immigration rules;

(c) a person who has been granted limited leave to enter or remain in the United Kingdom outside the provisions of the immigration rules or on rejection of their claim for asylum;

(d) a person who is a dependent of a person referred to in paragraph (a), (b) or (c) and is applying for leave to enter or remain in the United Kingdom under paragraphs 352A to 352FI of the immigration rules; or

(e) a child who does not come within paragraph (d) who was born in the United Kingdom to a person referred to in paragraph (a), (b) or (c);

"assistance by a local authority" means assistance, accommodation or maintenance provided by a local authority (or in Northern Ireland, an authority, which has the same meaning as provided in Article 2(2) of the Children (Northern Ireland) Order 1995(**12**)) under—

(a) section 17, 20 or 23 of the Children Act 1989(**13**);

(b) section 22, 25 or 26 of the Children (Scotland) Act 1995(**14**); or

(c) article 18, 21 or 27 of the Children (Northern Ireland) Order 1995;

"certificate of sponsorship" means an authorisation issued by the Secretary of State to a sponsor in respect of one of more applications, or potential applications, for leave to remain in or enter the United Kingdom;

"CESC national" means a person who is a national of a state which has ratified the European Social Charter, agreed by the Council of Europe at Turin on 18th October 1961(**15**);

"Highly Skilled Migrant" has the same meaning as provided in the immigration rules;

"leave to enter the United Kingdom" means leave to enter the United Kingdom given in accordance with the provisions of the 1971 Act or the immigration rules and any subsequent variation of that leave;

"online application" means an application made via the public website maintained by the United Kingdom Border Agency;

"PEO application" means—

(a) an application made in person at a Public Enquiry Office; or

(**11**) 1999 c.33; section 94(1) was amended by section 60(2) of the Nationality, Immigration and Asylum Act 2002 (c.41) and paragraph 180 of Schedule 3 to the Transfer of Tribunal Functions Order (S.I. 2008/2833).
(**12**) S.I. 1995/755 (N.I.2).
(**13**) 1989 c.41.
(**14**) 1995 c.36.
(**15**) (CETS NO.:035).

(b) an online application where the applicant, when making the application, chooses to use the procedure which requires applicants to attend a Public Enquiry Office for the purposes of processing the application;

"premium case-working basis" means the processing of applications for leave to remain in the United Kingdom under the super premium service offered by the United Kingdom Border Agency;

"premium sponsor status" has the same meaning as provided in the immigration rules;

"qualifying work permit holder" means an applicant for limited leave to remain in the United Kingdom who—

(a) was granted leave to remain in the United Kingdom for 3 years as a Tier 2 Migrant on the basis that they were a Qualifying Work Permit Holder under Part 6A of the immigration rules;

(b) is applying to extend the duration of the leave to remain referred to in paragraph (a) to 5 years; and

(c) is still working for the same employer and in the same role as they were when the leave to remain referred to in paragraph (a) was granted;

"small sponsor" means a sponsor that is—

(a) a company that qualifies as small in accordance with sections 382 and 383 of the Companies Act 2006(**16**);

(b) in the case of a person who is not a company for the purposes of those sections, a person who employs no more than 50 employees; or

(c) a charity within the meaning of section 1 of the Charities Act 2011(**17**), or section 1 of the Charities Act (Northern Ireland) 2008(**18**) or a body entered in the Scottish Charity Register.

"standard application" means either an application made by post or courier or an online application which is not a PEO application;

"Tier 1 Migrant", "Tier 1 (Entrepreneur) Migrant", "Tier 1 (Exceptional Talent) Migrant", "Tier 1 (General) Migrant", "Tier 1 (Graduate Entrepreneur) Migrant", "Tier 1 (Investor) Migrant", and "Tier 1 (Post-Study Work) Migrant" have the same meaning as provided in the immigration rules;

"Tier 2 Migrant" and "Tier 2 (Intra-Company Transfer) Migrant" have the same meaning as provided in the immigration rules;

"Tier 4 Migrant" and "Tier 4 (General) Student" have the same meaning as provided in the immigration rules;

"Tier 5 Migrant" and "Tier 5 (Temporary Worker) Migrant" have the same meaning as provided in the immigration rules;

"work permit holder" has the same meaning as provided in the immigration rules.

(2) For the purposes of this Schedule a claim for asylum is to be taken to be determined-

(a) on the day on which the Secretary of State notifies the claimant of the decision on the claim;

(b) if the claimant has appealed against the Secretary of State's decision, on the day on which the appeal is disposed of; or

(**16**) 2006 c.46.
(**17**) 2011 c.25. This section is due to come into force on 14th March 2012 under section 355 of that Act.
(**18**) 2008 c.12.