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OFFICIAL REPORT

First Delegated Legislation Committee

IMMIGRATION AND NATIONALITY (FEES) ORDER 2016

Tuesday 2 February 2016

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IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

Chair: Ms KAREN BUCK

† Brokenshire, James (*Minister for Immigration*)
 † Cherry, Joanna (*Edinburgh South West*) (SNP)
 Donelan, Michelle (*Chippenham*) (Con)
 † Elphicke, Charlie (*Lord Commissioner of Her Majesty's Treasury*)
 † Harris, Carolyn (*Swansea East*) (Lab)
 † Hayman, Sue (*Workington*) (Lab)
 Hepburn, Mr Stephen (*Jarrow*) (Lab)
 Huq, Dr Rupa (*Ealing Central and Acton*) (Lab)
 † Kendall, Liz (*Leicester West*) (Lab)
 † Loughton, Tim (*East Worthing and Shoreham*) (Con)

† McLaughlin, Anne (*Glasgow North East*) (SNP)
 † Morton, Wendy (*Aldridge-Brownhills*) (Con)
 † Scully, Paul (*Sutton and Cheam*) (Con)
 † Starmer, Keir (*Holborn and St Pancras*) (Lab)
 † Throup, Maggie (*Erewash*) (Con)
 † Whittaker, Craig (*Calder Valley*) (Con)
 † Wood, Mike (*Dudley South*) (Con)
 † Wragg, William (*Hazel Grove*) (Con)

Joanna Welham, Luanne Middleton, *Committee Clerks*

† **attended the Committee**

First Delegated Legislation Committee

Tuesday 2 February 2016

[Ms KAREN BUCK *in the Chair*]

Draft Immigration and Nationality (Fees) Order 2016

2.30 pm

The Minister for Immigration (James Brokenshire): I beg to move,

That the Committee has considered the draft Immigration and Nationality (Fees) Order 2016.

Thank you, Ms Buck. It is a pleasure to serve under your chairmanship and to welcome other members of the Committee to this consideration of the draft Immigration and Nationality (Fees) Order 2016. The order sets out the maximum amounts that can be charged for broad categories of immigration and nationality functions for the next four years, which is the expected life of this order. Maximum fee amounts are ceilings, limiting the amount that may be charged in subsequent fee regulations; they therefore set out that broad framework.

This order is to be made using the charging provisions in sections 68 to 70 of the Immigration Act 2014, which consolidated and simplified the charging provisions from three previous Acts and allows for such multi-year arrangements. Like the previous order, the maximum amount for each category is set to accommodate the highest individual fee in each category. In most cases, the categories will contain a number of different, individual fees. I want to make clear that the maximum amounts are not targets that the Home Office will seek to charge by the end of the four-year period. Rather, these maximums will allow the Home Office to be responsive over the next four years to the needs of customers, the Department and the taxpayer, and to meet the Government's objective, as announced at the spending review, of a border and immigration system that is fully funded by those who use it by 2019-20.

The fees order will also enable us to expand the scope of our premium service and provide greater flexibility to deliver services directly to customers and organisations that request an increased or tailored level of support. We continue to ensure that measures are in place to enable appropriate scrutiny of our proposals and to ensure that immigration and nationality fees continue to be transparent and set in the best interests of the UK. The individual fee levels will be set out in negative regulations. We expect to lay regulations shortly setting fees for 2016-17. We have published a fees table that shows our intentions for individual fees in 2016-17.

To support the Government's approach towards recovering an increased proportion of immigration and visa costs and transitioning to a self-financing border and immigration system, we propose to apply incremental increases to most immigration and nationality categories. To support economic growth, we intend to make relatively small fee increases for applications related to work, study and visit; these will increase by 2% next year.

For example, the fees for short-term visit visas and tier 4 student visas would rise by £2 and £6 respectively. A number of visa and immigration fees will continue to be set at or below the estimated processing cost. The highest proposed increases to fees in 2016-17 are for optional services that offer an enhanced level of convenience and for routes that provide the most benefits and entitlements; for example, requests for bespoke application services and applications for indefinite leave to remain.

I know that all hon. Members will support a border and immigration system that controls immigration for the benefit of the UK while improves services to customers and reduces the cost to the UK taxpayer. I believe that this fees order, as an enabling provision, will help us to achieve this, and I commend it to the Committee.

2.34 pm

Keir Starmer (Holborn and St Pancras) (Lab): Thank you, Ms Buck. It is a pleasure to serve with you in the chair. I indicate from the outset that we will not be opposing this order and we support the broad aim of making the border, immigration and citizenship system self-financing. It is right that the service is sustainably funded rather than being funded by the taxpayer. However, there are some issues on which we would like clarity from the Minister. The first of these relates to the introduction of premium-rate phone lines for visa applicants. Once the order is in force there will be a £2.50 a minute maximum charge for "the provision of advice, assistance or training in relation to functions in connection with immigration or nationality." The Government have so far indicated that they intend to set the initial fee level at about £1 a minute, but the bracket is between £1 and £2.50 a minute. That seems questionable in principle, and I ask the Minister to provide more detail. In particular: is the premium-rate phone line for general inquiries about immigration status and visa applications or is it a special advice line? If it is not for general inquiries, will the Minister provide more detail about the circumstances in which it will be used?

I want to probe a particular example, and hopefully get some reassurance from the Minister. When the Immigration Bill was going through the Committee, attention was paid to the ability of landlords and employers to check the immigration status of those they might rent to or employ. Only this week, we saw the roll-out of the Immigration Act 2014 scheme for civil penalties for landlords who find themselves renting premises to people who do not have the right immigration status. The current Immigration Bill proposes to extend that provision by introducing a criminal penalty, and landlords are anxious about how that will work. So far, they have been reassured by the Home Office saying that it will be possible to carry out quick-and-easy checks on immigration status and that they therefore need not fear neither the introduction nor the extension of the scheme.

Is it anticipated that the premium-rate phone line will be the advice service for landlords? Will they be charged at the premium rate for carrying out their checks? That would be a major cause of concern for the Residential Landlords Association, which, I think, is under the impression that it will be either a free advice service or one with a limited charge, rather than £1, or even up to £2.50, a minute.

Anne McLaughlin (Glasgow North East) (SNP): I wonder whether the hon. and learned Gentleman has experience, as I have, of constituents coming to surgeries saying that they are entitled to work here but that the Home Office is months behind with getting the paperwork sorted. The Home Office has then advised people to phone the not-yet-premium-rate line but their employers have said, “Look, I can’t be bothered. I don’t have the time”. Not only will the measure deter people who cannot be bothered because they have others they can employ; it will deter those who just do not want to pay the extortionate rate to make the call.

Keir Starmer: I am grateful for that intervention. It touches on an issue that we discussed in the Bill Committee, which is that for landlords and employers there is a risk, if checking immigration status is difficult and there is a penalty for getting it wrong—which, of course, there is—that they will default to a position where unless someone has a British passport and is white, they will not let them premises or employ them. That was not the first time that the concern was raised; it was brought up when the 2014 Immigration Bill was going through Parliament. All parties were concerned that there was a risk of indirect discrimination.

It is accepted that there is a risk. The Minister and the Home Office say that it is a manageable one, but one of the tools for managing the risk is the ability of landlords and employers quickly to get the advice they need. They say, unsurprisingly: “We are not experts in checking immigration status. There are many nationalities that will apply to rent a premises, or for a job, and we need to be able very swiftly to get an answer to any queries”.

James Brokenshire: Will the hon. and learned Gentleman give way?

Keir Starmer: I think that that was almost an instruction to give way, but I will in any event.

James Brokenshire: I would never dare to instruct the hon. and learned Gentleman in that manner. I can perhaps assist the Committee by explaining that the fees set out in the order relate to the overseas line. The landlords checking service is a different product, for which we have no intention of charging, and that applies also to the employers checking service.

Keir Starmer: I am glad to have that reassurance, which is in keeping with our debate in the Bill Committee, and I am sure that now it is on the record it will be clear for all to see. I am grateful for the Minister’s intervention.

I welcome the reduction in fees for dependent relatives of refugees. However, it is clear, going through the order, that the largest increases in 2016-17 are being imposed on those seeking British nationality or long-term residence, with many of those costs increasing by up to 25%. In contrast, the fees for those coming here on tier 2 skilled worker visas are being frozen or increased by 2%. It is right that we do not impose excessive costs on those coming here to do skilled work, but we must be careful to strike the right balance. The proposed fees under the order are higher than the 2015 maximums in

more than a quarter of categories. Did something go wrong with the previous regime that required those changes under the order?

Secondly, when is the border, immigration and citizenship system expected to be self-financing, which is the aim? When do the Government plan to raise fees to achieve that? Thirdly, the order states that it will allow for increases over the next four years. Is the intention that, by the end of the four years, the likelihood is that the maximum fees will be charged? Fourthly, the impact assessment indicates that the planned increase in fees will cause application volumes to fall. Will the Minister provide more detail on the anticipated fall over the four years?

2.42 pm

Joanna Cherry (Edinburgh South West) (SNP): It is a pleasure to serve under your chairmanship, Ms Buck.

The Scottish National party opposes this order. We are concerned about the 25% increase across the board for family fees, and the huge hike in the administrative review fee from £80 to £400—a 500% increase. I am sure that the Minister will wish to emphasise, as he already has, that these are maximum ceilings and that lower indicative costs have been published for the coming year. But what guarantee do we have that they will not go to the maximum in the effort to make the system self-financing, which is the Government’s avowed aim? Committee members will no doubt have had an opportunity to look through the briefing from the Immigration Law Practitioners Association, which makes some pertinent points. In particular, it highlights the fact that there is no correlation with the ability to pay, and that study and business-centred immigration is favoured over child and family issues. The Minister has said that he has given reasons, but we have grave concerns that the fee increase will be a disincentive to families, particularly those already here trying to register a child.

All Members have constituents coming to us with examples of the difficulties posed for them by the immigration system, and in November the ombudswoman published a report that was very critical of the Home Office. Let me give a couple of examples of constituents who have come to me about administrative reviews, which the ILPA has also highlighted. One constituent applied for a settlement visa for his wife, but the Home Office failed to communicate with Cambridge English Language Assessment about her certificate, which clearly stated that she had passed the English language assessment, and the application was refused. My constituent was forced to submit an administrative review and wait several months before the decision was overturned. It was a clear error on the Home Office’s part and resulted in his wasting money. I am sure the Minister will say that in certain circumstances the administrative fee is refunded, but as the ILPA briefing highlights, it is not refunded in all circumstances. For example, it says:

“The fee is refunded if the application is successful. It is not refunded where the refusal stands, but on some other ground, the original decision having indeed been found to have been flawed”.

I feel that that is against the principles of natural justice.

There is also the issue that regardless of the expectation that the fee may be refunded, people still have to stump up at the outset. There is a huge difference between £80 and £400, and that may be a disincentive to go for

[Joanna Cherry]

administrative review. During the passage of the Immigration Act 2014, the Government sought to reassure us that review would be cheaper than bringing an appeal, but these proposed maximums suggest that they have abandoned that idea. We should also remember that the increases must be seen in the context of increased thresholds for spousal visas, the removal of appeal rights and the removal of legal aid.

I want to speak briefly about another constituency example. A gentleman and his wife came to see me. They are both entrepreneurs and have invested considerably in the Scottish and, indeed, the UK economy and employed many UK citizens. Their application for a tier 1 entrepreneurship visa was rejected on grounds that were purely due to a Home Office mistake—a typographical error which meant that it searched for and investigated the wrong company in relation to the evidence of investment that had been produced. My constituent had stumped up a total of £7,200 up front to get the application in. I hope, because I believe in the principles of natural justice even within the Home Office, that an administrative review will be granted. My constituent's business success means that he is in the fortunate position of being able to stump up the fee, but that does not detract from the fact that people are already expected to lay out large sums, and now considerable increases are proposed.

I know that the Government have said that one reason for the increases is to fund the costs of the system and make it self-financing. My hon. Friend the Member for Glasgow North East will talk more generally about the benefits of immigration for the UK and why we should question whether the system needs to be completely self-financing, but I make the point that the costs of the system would be substantially reduced if the Home Office addressed its considerable inefficiencies.

The report published on 10 November last year showed:

“Poor handling of immigration-related complaints is a key reason why the Parliamentary and Health Service Ombudsman upholds almost seven in 10 complaints about the Home Office... The top reason for the complaints were delays, which left many people separated from their loved ones, denied access to education or forced into the informal economy where they can face abuse. Poor decision making was the second issue highlighted in the report, cited in more than one in four upheld complaints about the Home Office.”

I ask the Government, why should families who want to come and live in this union of countries and contribute to our economies have to pay for the Home Office's inefficiencies? What is the Home Office doing to address those inefficiencies, rather than putting the costs on to the applicants?

2.48 pm

Anne McLaughlin (Glasgow North East) (SNP): As my hon. and learned Friend for Edinburgh South West says, the Government have stated that the excessive hike in fees is to cover the cost of running immigration services, with the aim of their becoming self-funding within four years. They say that those who benefit should pay for the services, which strongly implies that the British taxpayer does not benefit from immigration: immigrants add nothing to the UK, so why should the British taxpayer pay for those services? If we are going down that route, incidentally, I want to get out of

paying for Trident. The Government do not have to reduce my tax bill; they could just put the money towards something that I think is beneficial. The idea is ridiculous because we have to take a collective approach to running these islands, and given that we do benefit from immigration, the costs should not be borne purely by those seeking to live and work here.

The Government recognise the impact of immigration in some circumstances, mainly where they can see a direct financial impact, but perhaps they need some help to see the bigger picture. We know that they recognise the benefits because it is only some who will be hit by these fee hikes. Large, wealthy multinational companies that require immigrant workers to make profits, for instance, will not see a rise in fees, with tier 2 sponsorship remaining at £1,476. Clearly the Government see that these immigrant workers are necessary for those companies and beneficial to our economy. Students who wish to study at our universities will also not experience a rise in fees, so again the Government can see the direct correlation between overseas students paying big money to universities and those establishments staying afloat. However, families who wish to be together and to practise the family values that the Conservatives are so fond of extolling will, in many cases, find the cost of being together out of reach. Are we to believe that “family values” is a reference to financial cost, rather than family relationships and bonds?

What of the student who we have previously welcomed because they will be paying big money for an education? Notwithstanding the problem of a lack of post-study work visas, there are still ways for that student to obtain a work visa, namely if he or she can get a graduate-level job. Let us take a civil engineer on a starting salary of just over £24,000 a year, although many start on lower salaries. They get a visa, they have enjoyed studying here and they want to settle for a while, so they apply to bring their spouse and children over. Do the Government honestly believe that a person on such a salary can afford to pay the proposed fees? This is yet another example of people being educated and gaining really useful skills at our universities, but the UK not getting the benefit of those skills. It does not make sense.

Far from embracing family values, the Government are clearly stating that families are not welcome, because otherwise why would they make it so excessively costly for them to come here to be with their loved ones? It is almost as if the Government do not believe that having a multicultural society and encouraging families of different ethnicities and cultures to mix is of any value to the UK whatsoever. It is as if they know the cost of everything and the value of nothing. The Government do not seem to realise that when people come to live and work here, they buy property, furniture and cars, go to local shops and contribute skills that we are often short of, so they do contribute to our economy. I am embarrassed that the migrant integration policy index has ranked the UK 38th out of 38 for family-friendly immigration policies.

Finally, like my hon. and learned Friend the Member for Edinburgh South West, I want to draw attention to the increase in fees for administrative reviews from £80 to £400. It is well documented that a large number of decisions are overturned at the review stage. Is this why the Government want to make such reviews out of reach to all but the better-off?

James Brokenshire: I am interested that the hon. Lady and the hon. and learned Member for Edinburgh South West have suggested that the fees for admin reviews are rising to £400. The proposals published by the Home Office represent an increase in fees from £80 to £84.

Anne McLaughlin: If that is the case, why am I reading a figure of £400? The Government may charge up to that amount, and no one knows what the cost will be in the end. I remind the Committee about the large number of decisions that are found to be wrong at review stage and therefore overturned.

Perhaps the Minister forgets—I am sure that he has not—that I was a member of the Immigration Public Bill Committee. I am as certain as I possibly can be that he stated during our consideration that it did not matter if appeal rights were removed because an administrative review would be a cheaper option. Perhaps he is about to guarantee that all administrative reviews will cost the £84 he just cited, rather than £400, but I will be interested to hear what he has to say about the situation, given that he plans to increase the fees by an eye-watering 500% in some cases, although we do not know how many.

2.53 pm

James Brokenshire: I appreciate the opportunity to clarify the situation in the light of some of more excitable statements that we heard from the hon. Lady about the increase in certain fees. It is important to state that the Government believe that those who use and benefit most from the immigration system should contribute more to that system's cost, which means that it is appropriate to increase charges to users of services, application and processes, rather than continuing to rely on the UK taxpayer to meet the costs. As we set out at the spending review, the Government's intention is that the border and immigration system is fully funded by those who use it by 2019-20. I think that that answers a question asked by the hon. and learned Member for Holborn and St Pancras.

The order is, in our judgment, an essential part of the immigration fees framework, enabling us to set fees regulations over the next four years, setting maximum amounts, which will provide the flexibility to adjust fee levels within those ceilings. However, as I think I indicated at the outset of the Committee, the important point is the framework and that flexibility. It is not our intention to try to maximise revenue. Indeed, if the hon. Member for Glasgow North East looks at the maximum fees we allowed ourselves in the last such order that was before this House, she will see that we certainly did not use the full flexibility allowed by that order, and we would not seek to do so in these circumstances. It is about ensuring that we have that broad basket—that broad range—to enable the move to the process that I have outlined.

Anne McLaughlin: The Minister has said a couple of times today that the reason for the change is that the service should be self-funded by those who use it, but the impact assessment—and everything else the Government have put out—refers to “those who use and benefit”

from it. Maybe it was an excitable statement, in his view, when I talked about whether he recognised that we benefit from immigration, but can I ask: does he, in fact, recognise that this country benefits from immigration and that therefore we should share the costs?

James Brokenshire: If the hon. Lady looks at the things I have said and the approach we have taken, for example on the growth routes—she highlighted the 2% increase in tier 2 and tier 4—she will see that it recognises the contribution made in those circumstances. Therefore, that is the approach we have taken to the fees that we would propose for 2016-17. It is important that we strike a good balance between the economic interests of the UK and the need to maintain a sound immigration system. We will seek to ensure that fees for immigration and nationality services enable the UK to retain its position as an attractive destination to work in, study in and visit.

Keir Starmer: The briefing from the Immigration Law Practitioners Association raised the point about ability to pay and gave an example that I have to say concerned me. The Minister may be able to give an answer now or in detail later, but the briefing quotes a figure of £936 to register a child as a British citizen where there is an entitlement to do so. I appreciate that the Minister may not have the detail on this, but I was struck by the fact that there is no provision for those who do not have the means to pay, yet if that relates, as in that example, to registering a child where there is an entitlement to do so, that would concern me. It may be that the Minister can reassure me on that point now or, if the answer is too detailed, perhaps in writing.

The Chair: Order. May I point out that interventions are drifting in the wrong direction?

James Brokenshire: We have considered the increases carefully in respect of what I have outlined when it comes to the growth routes—those we judge to be focused on contributing to our economic growth—and therefore the distinction that has been drawn is between those and certain other categories, where we judge there to be significant benefits that attach to the rights that are applied.

For example, we are looking to larger fee increases for what we consider to be the non-growth routes by up to 25%, which includes nationality and settlement fees. We believe these fees reflect the considerable benefits and entitlements available to successful applicants. That is the approach we have taken, certainly over the last couple of years, to relative fee increases. We judge that to be the appropriate stance to take, certainly in respect of the manner in which we are moving to self-funding for the border and immigration system, as I have outlined. Moving to 2019-20, we anticipate that the increases we intend to set out in the 2016-17 regulations will take us to around three-quarters self-funding for the costs of the borders, immigration and citizenship system, around £600 million of which is currently funded by the Exchequer. It is also important to underline that it is not simply about that side of the equation. There are rightly efficiencies that we need to continue to make to drive down costs and ensure that we have an efficient and effective service. Our expenditure is expected to reduce over the period

[James Brokenshire]

before 2019-20 to get us to that self-funded position. We judge that that is the right thing to do, building on the important steps that the Home Office has taken since 2010, when the coalition Government came into office.

About £3 billion of savings will have been delivered in 2015-16 as a consequence of this Government's reforms, which were required to deal with the economic issues we had to face up to and to ensure that our public finances are on a much stronger footing. That has been the driver behind our work and it has delivered a much more efficient, effective, reliable service. That service has dealt with the issues, some of which have been described today, and decisions have been reached correctly and therefore have not been susceptible to appeal.

Keir Starmer *rose*—

The Chair: Short interventions, please.

Keir Starmer: I will be short, Ms Buck. The question is about the registration of a child where there is an entitlement to do that but it costs £936, and the individuals cannot afford it. Is the answer that is tough?

James Brokenshire: As I have already said, fees will be set out in the negative regulations. There are already operable fees for citizenship and the other elements I have outlined. It is certainly not intended that there will be a specific nationality waiver and we will never require a fee when that would be incompatible with rights under the European convention on human rights. Clearly, there are costs to the immigration system in processing and assessing such claims and in the ability to assert rights, so it is right that we have a system that can recover those costs. I will certainly reflect on what the hon. and learned Gentleman has said and see whether there is anything further I wish to add once I have reread his comments. It is all about that relative balance.

On the question of a reduction in the number of applications, I would direct hon. Members to the regulatory impact assessment, which shows that there is no clear evidence that an increase in the fees would lead to such a reduction. Although certain assumptions are made in the impact assessment to underpin that, it makes it very clear that in practice such a reduction may not be seen and how, should there be a reduction, the amount of fees charged would cover the financial implication of that. We have increased charges for a number of routes over the past few years and yet, in many cases, the number of applications has gone up, notwithstanding those fee increases. There is no clear read-across in terms of what the economists would argue about price elasticity of demand being linked to the overall price of a visa.

I hope that the Committee will be minded to support the order.

Question put.

The Committee divided: Ayes 9, Noes 2.

Division No. 1]

AYES

Brokenshire, rh James	Throup, Maggie
Elphicke, Charlie	Whittaker, Craig
Loughton, Tim	Wood, Mike
Morton, Wendy	Wragg, William
Scully, Paul	

NOES

Cherry, Joanna	McLaughlin, Anne
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Question accordingly agreed to.

Resolved,

That the Committee has considered the draft Immigration and Nationality (Fees) Order 2016.

3.5 pm

Committee rose.