

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT IMMIGRATION AND NATIONALITY
(FEES) (AMENDMENT) ORDER 2018

Monday 5 February 2018

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Friday 9 February 2018

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The Committee consisted of the following Members:

Chair: SIR DAVID CRAUSBY

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| † Adams, Nigel (<i>Lord Commissioner of Her Majesty's Treasury</i>) | † Khan, Afzal (<i>Manchester, Gorton</i>) (Lab) |
| † Blackman, Bob (<i>Harrow East</i>) (Con) | † Kinnock, Stephen (<i>Aberavon</i>) (Lab) |
| † Clarke, Mr Simon (<i>Middlesbrough South and East Cleveland</i>) (Con) | † Morris, David (<i>Morecambe and Lunesdale</i>) (Con) |
| † Dakin, Nic (<i>Scunthorpe</i>) (Lab) | † Murray, Ian (<i>Edinburgh South</i>) (Lab) |
| Elliott, Julie (<i>Sunderland Central</i>) (Lab) | † Nokes, Caroline (<i>Minister for Immigration</i>) |
| † Ellman, Mrs Louise (<i>Liverpool, Riverside</i>) (Lab/Co-op) | † Shelbrooke, Alec (<i>Elmet and Rothwell</i>) (Con) |
| † Goodwill, Mr Robert (<i>Scarborough and Whitby</i>) (Con) | Smith, Eleanor (<i>Wolverhampton South West</i>) (Lab) |
| † Howell, John (<i>Henley</i>) (Con) | † Thewliss, Alison (<i>Glasgow Central</i>) (SNP) |
| | † Thomas, Derek (<i>St Ives</i>) (Con) |
| | Gail Bartlett, <i>Committee Clerk</i> |
| | † attended the Committee |

Seventh Delegated Legislation Committee

Monday 5 February 2018

[SIR DAVID CRAUSBY *in the Chair*]

Draft Immigration and Nationality (Fees) (Amendment) Order 2018

4.30 pm

The Minister for Immigration (Caroline Nokes): I beg to move,

That the Committee has considered the draft Immigration and Nationality (Fees) (Amendment) Order 2018.

The purpose of the draft order is to make a relatively small number of changes to the Immigration and Nationality (Fees) Order 2016, which, along with the Immigration and Nationality (Fees) (Amendment) Order 2017, remains in place. The changes are needed to ensure that the charging framework set out in secondary legislation for immigration and nationality fees remains current and supports plans for the next financial year.

The Committee will wish to be made aware that it has come to my attention that there is an error in the draft order and its explanatory note. Following further review of the section of the draft order that deals with circumstances in which a fee may be set in respect of the provision of biometric identity documents, it has been identified that the change we sought to make, through article 2(4)(a), has no effect. That is because of the way in which the related legislation, the Immigration (Biometric Registration) Regulations 2008, operates. The intention was to permit the Home Office to charge a fee when a person fails to collect their biometric residence permit within the required time limit. However, the 2008 regulations do not in fact require an application in those circumstances, hence there is no service for which a fee could be charged.

Although the explanatory note states that article 2(4)(a) has an effect, that is not correct. Before such a change can take effect, we will need to amend the 2008 regulations. The explanatory memorandum has been amended to clarify that issue for the record. The 2016 order continues to set out the overarching framework and the maximum amounts that can be charged for immigration and nationality functions over the current spending review period, as previously agreed by Parliament.

Changes made by the draft order are intended to clarify existing powers in connection with entry clearance to the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man. The draft order will confirm powers to charge fees when offering premium services in relation to the Crown dependencies, and also makes clear that the current definitions of a “sponsored worker”, “unsponsored worker”, “sponsor” and “certificate of sponsorship” apply in respect of applications to the Isle of Man.

Ian Murray (Edinburgh South) (Lab): I am slightly disappointed that the draft order does not allow for a reduction in fees for European Union nationals seeking residency. Will the Minister comment on that?

Caroline Nokes: That is completely separate issue from that which we are considering. We will introduce a programme that will allow EU citizens to apply for settled status at the end of this year. Those who already have permanent residency will not be charged an additional fee for settled status.

Two further changes included within the draft order will delete obsolete provisions for which no fee is currently set in regulations. The original 2016 order permits a fee to be set for the acceptance of applications at a place other than an office of the Home Office. That provision currently allows the Home Office to charge a premium fee when delivering an optional service to enrol biometrics at a place of convenience to service users. Under plans to modernise services offered, the draft order will allow for fees to be set at an hourly rate, rather than a fixed fee. That will provide flexibility and allow for the fee charged to be commensurate with the time taken to deliver such services. That change does not affect the Home Office’s basic services, such as for those who enrol their biometric information at a local post office.

Finally, the draft order will also update the power to charge for services offered on behalf of certain Commonwealth and British overseas territories, where such services may not be offered within consular premises.

To sum up, we seek to make a small number of changes to the 2016 order to maintain the framework for immigration and nationality fees. We do not seek to change the overarching charging framework, nor the maximum fee levels agreed by Parliament.

Mr Robert Goodwill (Scarborough and Whitby) (Con): Will my right hon. Friend confirm that the draft order is part of the Government’s intention to move towards a border, immigration and citizenship system that is fully funded by those who use it, not subsidised by the taxpayer?

Caroline Nokes: Given that my hon. Friend is a former Immigration Minister, we should expect him to be completely right in that respect. Indeed, we seek to move to a position where the fees charged cover the costs of providing the border, immigration and citizenship service.

As I have said, we are not seeking to make changes to the overarching framework, nor to the maximum fee levels that were agreed by Parliament and set out in the 2016 order, other than in respect of the premium service fee, which I have already referred to. Individual fee levels to be charged over the course of the next year will be set by new regulations, which are due to be laid before Parliament in March 2018. I therefore invite the Committee to approve this amendment order.

4.35 pm

Afzal Khan (Manchester, Gorton) (Lab): We are not opposed to these measures. However, we do have some concerns and questions, which I will put to the Minister. On fines for those who fail to collect their biometric residence permit, will the provisions apply to those who legitimately cannot collect permits in time—for example, if they are ill or hospitalised? Why does the Home Office not allow people from outside the UK to have the BRP sent to a nominated address in the UK? How many of these fines does the Minister expect the Government to collect?

Turning to the super premium service proposals, the cost to individuals and families has become extortionate. The proposed arbitrary rate is a lot of money. What is the justification for privatisation? Why cannot the Home Office provide the service itself? Would it not be better and cheaper to sort out the chaos in the Home Office and then pay a private company to take over that part of it?

At the moment, people are finding out that even when they pay for premium service, their applications are severely delayed and decision making is poor. We do not want to see a private company being brought in and charging more but offering a worse service than that being offered at present. What has the Minister done to ensure that that will not happen?

Last year, the Parliamentary and Health Service Ombudsman investigated double the number of complaints against the Home Office compared with 2015-16 and upheld 60% of them. Some 95% of the complaints were immigration-related. The key issues people complained about were delays and decision making. In order to compete internationally for talent, students and tourists, who all contribute massively to our economy, we need urgently to reform the efficiency and effectiveness of the Home Office—£2,600 an hour is a lot of money. How long do these applications usually take and how much does the Minister expect people will be charged? At the maximum £2,600 an hour, if it takes four hours to process an application it will cost more than the £10,500 currently charged. It is feasible that some complex applications will take more than four hours to process.

Finally, the fees will include a profit for the commercial partner. I regret that applicants are now having to pay for a private profit as well as the cost of processing their application. How much does the Minister expect the profit margin will be? Has the Home Office started finding contractors and negotiating with them, and if not, when does it intend to do that?

4.38 pm

Alison Thewliss (Glasgow Central) (SNP): I am glad to have the opportunity to speak in this debate. I echo many of the points that have just been made. We in the Scottish National party have concerns about the cost of immigration and the effectiveness of the immigration system.

I will highlight two particular points from my own constituency. At the end of July a woman who lives in the Gorbals applied via the premium service for a spousal visa for her husband, but the application was not approved until the end of September. The application was made so that her partner could be there for the birth of her child. Given that the response was deemed to be within the 12-week limit, she did not get a refund despite not having received any manner of premium service: the service did not meet her needs.

A couple in Pollokshields applied on 7 June via a six-week service for a spousal visa. The Home Office eventually got back to them on 1 October to let them know that their application had been refused. Not only was it not a premium service, but it did not have a good outcome and they received no recompense for the lack of a visa or premium service. By putting out the service to be delivered by an external commercial company, I am worried that whenever anyone makes a complaint about the likes of VFS Global the Home Office replies

that timescales on its commercial partners' websites are indicative, so there is no guarantee that applying for a premium service will deliver a premium service, and that is a matter of great concern.

I am also concerned about the suggested cost. The hon. Member for Manchester, Gorton sensibly pointed out that it could take more than several hours to process some of the applications, and it would be hugely stressful for someone sitting in the waiting room seeing the cost going up and up. It is already expensive.

Mr Goodwill: I am sure that the hon. Lady realises that the whole point of the premium service is that the immigration service goes to it. The individual would not be sitting in a waiting room, but would be visited in their hotel room or home. That is why the premium service is so attractive to certain VIPs, footballers or perhaps foreign royals who need it.

Alison Thewliss: It is, regardless, still a very expensive service, and I question whether the expense meets the cost of processing those visas. It would be good to get more information from the Government about exactly how much it costs to provide such a service. As I was about to say, I am concerned about something not mentioned in the documentation, namely the equality impact, including on women, who have lower earnings and may be in the UK waiting for a spouse to come over. They will have even fewer means at their disposal. The situation was hugely stressful for the constituent I have mentioned, who was pregnant and waiting for her husband to come over.

Will the Minister clarify the point about charging people for not collecting biometric residence permits? I want to probe further as to the scale of that problem. Exactly how many people do not collect them on time, or at all? What are the reasons for that? What investigation has the Home Office done of that apparent problem? There must be a problem, unless the Home Office just wants to gouge people further for money for immigration. That seems to be a pattern, judging by what comes through my office.

Finally, a further example of such gouging is charging £6.25 for a webchat facility or email. It would be good to know exactly the reason for that, and for the £2.50-a-minute phone cost. Will those costs be fixed or capped, or will there be continued rises? My point is that immigration is a very expensive business. The super premium service has not provided anything like super premium responses to the people who come to my office. They come to me chasing answers, which they have not been able to get despite paying considerable sums of money to go through the immigration process.

I should like to know a wee bit more about quality checking, and the controls that there will be over external companies once the service is put out to them. At the moment my constituents tell me that the service is not adequate or fit for purpose, and they are not getting anything like a super premium service.

4.43 pm

Caroline Nokes: I thank hon. Members for the consideration they have given to the order. A number of issues were raised, and it is important to clarify some of those. The service described as super premium—mobile

[*Caroline Nokes*]

biometric testing—is currently used by something in the region of 500 applicants a year. It is a very small number, and the service is used, as my hon. Friend the Member for Scarborough and Whitby mentioned, largely by VIPs—visiting royalty or, often, footballers, and people who are time-poor but well able to pay the current fee of £10,500.

As to the decision to move to an hourly charge, the fee has not yet been set. It will be a maximum of £2,600 an hour. In the vast majority of cases we fully expect the process to be significantly quicker than the four hours it would take to get to the current cost of £10,500, which is the set standard fee regardless of how long the work takes.

I point out to the hon. Member for Glasgow Central that 98.9% of non-settlement visas are decided within three weeks and 85.5% of all settlement visas, including spousal visas, are processed within 12 weeks. It is impossible for us to determine how long each application will take without knowing how complex that application may be. It is fair to say, and I absolutely accept, that there are very long delays for some visa applications, but that is for the very complex cases. The Government have been very successful in turning around easy, straightforward applications. However, where applications are complicated, I hope we all agree that it is absolutely right that they are subject to the level of scrutiny that they need and deserve.

Alison Thewliss: The Minister can correct me if I am wrong, but my understanding from my constituents is that, if the initial timescales are not met, they often find that theirs are deemed to be complex cases, because there is no time limit on dealing with those. They are put into a black hole in which it is very difficult to get their cases resolved.

Caroline Nokes: I thank the hon. Lady for that comment. If she wants to raise specific cases with me, I am very happy to look at them. However, the reality is that, where issues are complicated and visa applications are not straightforward, it is absolutely right that full rigour is applied to inspecting and determining them.

Afzal Khan: On the issue of complexity, how do we know that the process is not being abused by the Home Office? Are there set formulae or criteria that say what is complex?

Caroline Nokes: It is fair to say that no single application is identical to another. I hope, and I am sure, that the hon. Gentleman is not questioning the integrity of Home Office officials—the really hard-working civil servants who determine these cases and on whose judgment we rely. It is important that the system is rigorous but also as fair and as speedy as possible, because we are all conscious of cases of constituents who are concerned at the length of time it has taken. It is absolutely a priority of the Home Office that we speed up applications, and we are doing very well on meeting our targets in the straightforward cases. However, I absolutely take this on the chin, which is why I was in Liverpool last week, talking to caseworkers who deal with complex cases.

As I have said previously, the Government believe in the benefits of controlled migration, but we also want an immigration system that is strong and sustainable. It is important that we strike a good balance between the economic interests of the UK and the need to maintain a sound border, immigration and citizenship system. This amendment to the 2016 order mainly seeks to maintain and clarify the charging framework under which immigration and nationality fees are set. We aim to set out the actual fee levels for 2018-19 in regulations using the negative procedure in March. The passage of the draft order will not, other than for the premium fee, amend or increase the maximum amounts that can be charged for border, immigration or citizenship applications.

Prior to making any changes to individual fee levels in regulations using the negative procedure, we invite appropriate scrutiny of our proposals, ensuring that they are reviewed and approved by a number of other Government Departments and that an impact assessment is produced before they are presented to Parliament. I believe that those steps will ensure that the Government balance our policy that users should pay with consideration of the impact of fees on businesses, education institutions and economic growth.

As I have said, the maximum amount set for the new power is £2,600 per hour. The procurement process for the partner with which we will eventually work is currently under way. We will, of course, announce that partner in due course. As such, I commend the draft order to the Committee.

Question put and agreed to.

4.48 pm

Committee rose.