

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (LEAVE TO REMAIN)(FEES)(AMENDMENT No.2)
REGULATIONS 2004

2004 No. 3105

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Immigration (Leave to Remain)(Fees) Regulations 2003 prescribe the fees which are to be paid in connection with applications for leave to remain in the United Kingdom and provide for exemptions from the requirement to pay the fee. This Statutory Instrument adds two new categories of exemption to the list set out in the 2003 Regulations.

2.2 Pursuant to the new exemptions, a person will be exempt from the requirement to pay the fee if, at the time of making the application, he is:

(i) a child who is under 18 and being supported by a local authority under the Children Act 1989; or (ii) a person who was granted limited leave to remain whilst they were under 18 on the rejection of their claim for asylum is now applying for further leave to remain outside the immigration rules.

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

3.1 None.

4. Legislative Background

4.1 Section 5 of the Immigration and Asylum Act 1999 enables the Secretary of State by regulations to prescribe fees for applications for leave to remain in the UK and applications for the variation of leave to enter or remain in the UK. Section 5(3) provides that applications for asylum (including human rights claims based upon Article 3 of the European Convention on Human Rights) are exempt from the fee and that the regulations may provide for no fee to be payable in prescribed circumstances.

4.2 Fees for leave to remain applications were first prescribed in the Immigration (Leave to Remain)(Fees) Regulations 2003 (S.I.2003/1711, as amended by S.I.2004/580), which also provide for a number of exemptions from the requirement to pay the fee.

4.3 During the course of the Third Reading debate on the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 in the House of Lords an undertaking was given by Lord Rooker that "children or those applicants who sought asylum whilst under the age of 18 who subsequently apply for further leave to remain should be exempted from the leave to remain application fee". (Hansard 6 Jul 2004 Column 781-782).

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 Minors (children under 18) who arrive in the UK and seek asylum in their own right, whether accompanied by members of their family or unaccompanied, have their asylum/human rights Article 3 claims fully considered. No fee is payable in connection with an asylum claim.

7.2 If an asylum application made by an unaccompanied minor is refused, and it is not possible to put in place any reception or longer term support arrangements in their country of origin, or to trace their family, a period of Discretionary Leave (either until the 18th birthday, or 3 years, or if from certain countries 12 months, whichever is the shorter period of time) will be granted in accordance with the asylum policies on Discretionary Leave and Children.

7.2 If a minor who has been granted Discretionary Leave in this way wishes to stay in the UK on the expiry of that leave (whether that is before they turn 18 or after) they will need to apply for an extension of that leave. If the basis of their application does not constitute a fresh asylum/Article 3 claim, it will be treated like any other application for leave to remain, so that under the 2003 Regulations it will be subject to a fee.

7.3 Unaccompanied asylum seeking children are supported by Local Authorities under the Children Act 1989. Many will continue to be supported by Local Authorities under the Children Leaving Care Act 2000 once they turn 18.

7.4 As a matter of policy it is considered to be undesirable that local authorities who support such people should effectively have to fund leave to remain applications and it is therefore considered appropriate that they should be exempted from the requirement to pay a fee.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

Ailish King-Fisher at the Home Office Tel: 0208 760 8500 or e-mail: Ailish.King-Fisher@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.