

REGULATORY IMPACT ASSESSMENT

TITLE OF PROVISION

THE ASYLUM AND IMMIGRATION (TREATMENT OF CLAIMANTS ETC) BILL
Consolidated regulatory impact assessment for over cost charging; charging for transfer of conditions; and extension of immigration officers powers of arrest, entry and search

PURPOSE AND INTENDED EFFECT OF MEASURE

(i) Objective

1. The Bill has a number of strands that have a direct or indirect cost to business, charities or voluntary bodies. Included in this regulatory impact assessment (RIA) are three strands. These are:
 - a power to charge more than the economic cost for non asylum immigration applications received and processed in the United Kingdom (UK).
 - a power to charge individuals when we transfer conditions of stay (limited leave to remain) to a new document
 - extension of immigration officer's powers of arrest, entry and search to cover immigration-related offences.
2. The intended effect of these measures are:
 - to raise revenue from the increasing numbers of applicants who apply to enter the UK for economic and/or social reasons and from those applicants requesting transfer of conditions
 - to enable immigration officers (IOs) to tackle immigration-related crime (bigamy, counterfeiting and forgery etc) rather than the current narrow range of specific immigration offences (overstaying, working in breach etc).
3. Further RIAs on other policy will also accompany the Bill

(ii) The Background

General

4. The Nationality, Immigration and Asylum Act received the Royal Assent in 2002. Most of the Asylum reforms it contained have now come into force and have had a significant impact upon the number of applications for asylum [the numbers of applicants in June 2003 (3,610) was less than half the figures for October 2002 (8,770)]. The Asylum and Immigration (Treatment of Claimants etc) Bill has a collection of measures in it which seek to make further improvements to the immigration and asylum process. The main objective of the Bill is to reduce the scope and incentive for making asylum claims to reduce asylum intake.
5. For the purpose of this RIA the changes in the Bill include powers to: charge for the transfer of conditions of stay; allow the charges made for applications received and processed in the UK to be more than the cost of providing such a service; and extend the IOs powers of arrest, entry and search.

Over cost charging

6. The number of non-asylum applications received and processed in the UK this year are projected to exceed 900,000, and demand to enter the UK for economic or social reasons is expected to remain strong for the foreseeable future.
7. Charging on a cost recovery basis was introduced in 2003 for applications received and processed in the United Kingdom.
8. A consultation on proposals to charge for consideration of work permit limited leave to remain closed 17 October 2003 and initial indications from this consultation are that employers and individuals are willing to pay a fee for entry to the UK. The present charge for a work permit is £95 and the anticipated cost for the limited leave to remain associated with a work permit is expected to be between £95 and £125 (when introduced in early 2004).
9. Economic migrants benefit in many ways working in the UK, over and above a higher salary expectation and it is appropriate to pass on some of the costs of these benefits onto migrants through a further one-off charge upon application. Similarly there are sound economic and presentational grounds for considering additional charges. It is both fair and economically efficient that government in raising revenue should look to appropriate some of the windfall gain that migrants derive. For comparison purposes it is noted that the charge made for an economic migrant to enter Australia is approximately £770.

Charging when transferring conditions of entry

10. The aim is to change Section 5 of the Immigration and Asylum Act 1999 to provide a broader power to allow a charge when we transfer conditions. Section 5 allows fees to be prescribed for the consideration of applications for leave to remain in the United Kingdom, variation of leave to enter or remain, or the fixing of a stamp in a new or replacement passport or travel document confirming indefinite leave to enter or remain in the United Kingdom. The anomaly is that the transfer of limited leave to remain was omitted from those provisions.
11. The conditions that are being transferred are those relating to an applicant's stay in the UK, such as the time limit imposed and permission to work or restriction on taking employment etc. An applicant will request the transfer of their conditions of stay when they obtain a new passport or travel document.

Extension of immigration officers powers

12. The Government has made it clear that it wished to increase the numbers of removals of persons who have no claim to remain in the United Kingdom under immigration law.
13. Currently immigration officers' (IOs) powers of arrest, entry and search are related to specific immigration offences, such as illegal entry and breaching conditions of stay. The Immigration Service (IS) is now becoming involved in tackling the organised criminal gangs that are behind the abuse of immigration control through the provision of forged and counterfeit documents, the orchestration of bogus marriages and so on. The crimes committed by these groups go far beyond the narrow band of immigration offences for

which IOs currently have a power of arrest, and as such IND (Immigration and Nationality Directorate) are reliant on police assistance to deal with these offences.

(iii) Risk Assessment

14. On over cost charging no problem is being addressed but it does provide a means of raising more revenue. On transfer of conditions there is an anomaly which is being put right by legislation.

15. The risks being addressed by the extension of IOs powers are:

- reliance on the police to arrest in the circumstances (mentioned in paragraph 11) limits the role that IOs can play within joint police/IS crime investigation teams, which are exploring the use of immigration powers to disrupt major criminal networks. The targets of these teams are engaged in a wide range of offences including forgery and counterfeiting offences, theft and theft-related offences, albeit with an overarching aim of abusing the immigration control
- this reliance on the police is also hampering the IS becoming a self-sufficient organisation. IND have invested heavily in providing arrest training for some staff and are looking to provide a greater proportion of staff with these skills over the coming two to three years
- the specialist nature of the targeted crimes means that the police often lack the expertise, or experience, to deal with them. For example, in 1999 the IS in London prosecuted more people for bigamy than all 43 police forces combined. It is difficult to estimate how often the new powers would be used but, as a guide, the IS' immigration crime team in London laid 80 charges of bigamy and 132 charges of perjury in 1998/9, with the assistance of the police. The ability to pursue such cases independent of the police would undoubtedly see an increase in the number pursued.

OPTIONS

16. **Option 1** Maintain the current position (i.e. do nothing)

Option 2 Introduce the measures proposed in part.

Option 3 Introduce all measures proposed:

- a power to charge more than the economic cost for non asylum immigration applications received and processed in the United Kingdom (UK).
- a power to charge individuals when we transfer conditions of stay (limited leave to remain) to a new document
- extension of immigration officer's powers of arrest, entry and search to cover immigration-related offences.

COSTS AND BENEFITS

Business sectors affected

17. Over cost charging could affect all those businesses where the employer pays the employee for the increased costs of applications received and processed in the UK.

Option 1

18. The do nothing option will be cost neutral to business, charities, and voluntary sector and mean that:

- no charges can be made for some services nor will the facility be provided to make over cost charges for services
- without these extra powers, Immigration Service personnel will have to continue to rely on the police exercising those powers of arrest, entry and search.

Option 2

19. This options costs and benefits depend on the measures introduced. See Option 3 for costings.

Option 3

20. Introduce measures proposed:

- a power to charge more than the economic cost for non asylum immigration applications received and processed in the United Kingdom (UK). The drivers for which are that:
 - (1) the UK substantially undercharges for migration services in compared with other developed countries such as the USA and Australia.
 - (2) migrants make a windfall gain through being granted access to the UK labour market
 - (3) an ongoing need to raise revenue
- a power to charge individuals when we transfer conditions of stay (limited leave to remain) to a new document
- extension of immigration officer's powers of arrest, entry and search to cover immigration-related offences.

21. The level of any over cost charges will be set by Statutory Instrument, following the enactment of legislation. A further regulatory impact assessment will be provided then.

22. The number of projected applications received and processed in UK is 900,000 (no account is taken of: downturn in numbers of application as a result of new charging regime, over cost charging and the numbers exempt from the any charge).

23. The consultation paper, issued in July 2003, on charging for work permit limited leave to enter estimated in 2003/04 there would be 72,000 main applicants and identified that approximately 30% of applications could be from the public sector. Based on this figure, the assumption is that 21,600 are for people in the public sector and 50,400 would therefore be private sector related. Based on the number of responses received 67% of employers said they would pay the leave to remain charge. It is assumed for this RIA that 70% of employers would pay for the over cost charge.

24. The over cost charging indicative figures are that charges might range between £20 - £500 but would be introduced on a rolling programme over a number of years. Any over-cost element of the fee would be reviewed at the annual fee review for cost recovery charges. But there might be some trading off against other regulatory barriers in order to minimise the any impact of the levels of inward migration.

25. Below is a table covering the range of indicative costs for over cost charging:

Number of applicants	Over cost charging indicative range (assuming no differential charging, no exemptions for specific categories and a rolling programme)				
	Year 1	Year 2	Year 3	Year 4	Year 5
	+£20 -£100 £m	+ £200 £m	+£300 £m	+£400 £m	£500 £m
1. All applications (900,000) received and processed in UK	18 - 90	180	270	360	450
2. 100% of public sector businesses paying for in country work permits/leave to remain (21,600)	0.4 – 2.2	4.3	6.5	8.6	10.8
3. 100% of private sector businesses paying for in country work permits/leave to remain (50,400)	1 - 5	10.	15.1	20.2	25.2
<u>4. 70% of private sector businesses paying for work permits/leave to remain (0.35,300)</u>	<u>0.7 – 3.5</u>	<u>7.1</u>	<u>10.6</u>	<u>14.1</u>	<u>17.6</u>

26. See below for costs and benefits to business, charities and the voluntary sector:

Measure	Cost to business charities and voluntary sector	Benefit to business, charities and voluntary sector
Over cost charging	The indicative cost to business etc £0.7m - £17.6m assuming 70% of businesses pay for work permits/leave to remain (Based on the above table at item 4)	No benefit
Charging when transferring conditions	On present figures and charges the expected annual costs for all applications are: <ul style="list-style-type: none"> - £0.9m (postal at £155 per application) - £3.2m (public applications at £250 each) - £4.1m total The numbers transferring conditions who are in private/voluntary sector employment and whose employer pays for the transfer of conditions is likely to be between 1% and 5% of above total Estimated cost to business etc between £0.04m - £0.2m.	No benefit.

Extension of immigration officers powers	<p>Although this may increase the numbers of entry and searches the new powers will be unlikely to be used for searching and entry to business premises. Immigration Officers already have powers to enter and search for specific immigration offences (under the Nationality, Immigration and Asylum Act 2002) without a police presence</p> <p>The extension of the powers to immigration-related crime is likely to effect premises such as individual homes, registry offices, immigration offices, and passport offices</p> <p>Estimated cost minimal.</p>	No benefit
Total estimated costs £0.7m to £17.8m		No benefit

Public Sector Costs/Benefits

27. See below for costs and benefits to public sector:

Measure	Costs to public sector	Benefit to Public Sector
Over cost charging	Systems already set up for charging.	<p>The over cost charging indicative figures see figures in table at paragraph 25 for all applications.</p> <p>Total indicative benefit of over cost charging (less 21,600 public sector applications): £18m - £439m (no account has been taken in the figures of any downturn in numbers resulting from over cost charging, differential charging or specific exemptions).</p>
Charging when transferring conditions	Systems already set up for charging.	<p>On present figures expected annual figures for all applications are:</p> <ul style="list-style-type: none"> - £0.9m (postal at £155 per application) - £3.2m (public applications at £250 each). <p>Total benefit £4.1m</p>
Extension of immigration officers powers	The extension of powers will not itself increase costs but it may result in increased activity by the immigration service There will be some additional training costs.	The benefits will be that the increased powers will increase the effectiveness of IS staff in tackling the organised criminality that is behind much of the abuse of immigration laws. It is hoped that disrupting and dismantling the criminal gangs behind illegal immigration will result in a fall in the numbers of persons seeking to abuse the immigration laws.

28. The risks in implementing option 3 are:

- An increase in fees over and above cost recovery would not directly impact on the quality of service. But there may be an expectation from customers that service levels should be improved, this is unlikely to happen as a result of over-cost charging

- The level of fee is pitched at a level which encourages individuals to consider illegal entry, overstaying and working
- The level of fee deters potential migrants, which could threaten the economic benefits they bring the UK (and the revenue from the fees themselves)
- The extension of IOs powers does not increase effectiveness in tackling abuse of the immigration laws.

ISSUES OF EQUITY AND FAIRNESS

29. The level of fees may discourage applicants including employers.

SMALL FIRMS' IMPACT TEST

30. The Small Business Service (SBS) is disappointed that a proper small firm impact test, entailing consulting with small firm representative bodies, has not been undertaken. This means that neither the developing policy, amending a recently introduced regime, nor the RIA has taken account of their views.

Over-cost charging

31. The SBS is particularly concerned by this proposal which presents only costs and no benefits to business. The proposal is being driven by a desire to raise revenue, with a good part of this, £0.7-17.6 million per annum estimated, from business.

32. It is very keen to ensure that over-cost charging does not increase the barriers to employment in the UK for migrants, who perform an important task in alleviating skills gaps. Higher charges, on their own, would effectively raise existing barriers to use of the work permit system - negatively impacting on the UK's ability to secure the people and skills its economy needs. In this context, it believes there is a clear case for a differential fee structure between work permits and other leave to remain applications, such that the former are favoured. This would allow groups we wish to attract to the UK to be charged less and also for a regime that allows at least a degree of trading current regulatory and indirect financial barriers off against additional charges - with the objective of maintaining the same overall levels of restriction. This might, for example, include a reduction in the burden of proof placed on employers to demonstrate that the job in question could not be filled by a domestic worker (e.g. through a shorter minimum advertising period and / or a reduction in the scale of advertising required).

33. The SBS also suggests that work is undertaken to monitor the effect some of the existing WP fees have on small and medium sized enterprises and if as is suspected this proves to be significant, then much lower increases be proposed (and again monitored).

Charging when transferring conditions of stay

34. The SBS' view is that this proposal does not pose significant or complex impacts on small firms. There has not been sufficient time however to test this view with representative bodies.

Extension of Immigration Officers' Powers

35. The SBS is content that there appears to be no significant or complex impact on small firms from this proposal. It asks that IND issue a revised advice leaflet to employers

(notably those in higher risk sectors), to inform them of the extent of these new powers of arrest.

COMPETITION ASSESSMENT

Over cost charging

36. The proposed increase in fees will impact on all businesses, which sponsor non-asylum applicants. However, the increase is not expected to be sufficient to create implications for competition in any sector.

Charging when transferring conditions of stay

37. The proposals will not create any costs for business nor alter market structure. As such, it is not expected that the proposals will have implications for competition.

Extension of IOs powers

38. The proposals are not expected to have a significant impact on competition in any sector since they will not create costs for business or alter the structure of any markets.

ENFORCEMENT AND SANCTIONS

39. The consequences of not paying a prescribed fee are that the application cannot be considered by the Secretary of State and will be returned to the applicant.

40. There is an issue as to what do we do with people who refuse to pay and do not make a valid application under the Forms and Fees Regulations. If IS came across them in the course of other enforcement activity they would deal with them as an overstayer (or whatever else their immigration status amounted to).

CONSULTATION

41. In addition to consultation within the Home Office there has been consultation with other government departments on these issues.

MONITORING AND REVIEW

42. The provisions will be monitored and reviewed to see that intended effect has been achieved.

SUMMARY AND RECOMMENDATION

43. Option 3 will achieve the objective identified and is the recommended option. The costs to business, charities and the voluntary sector are:

Measure	Cost to business charities and voluntary sector	Benefit to business, charities and voluntary sector
Over cost charging	Indicative £0.7m - £17.6m	No benefit
Charging when transferring conditions	Estimated £0.04m - £0.2m.	No benefit.

Extension of immigration officers powers	Estimated minimal cost.	No benefit
Total cost to business	Estimated £0.7m - £17.8m	

DECLARATION

44. I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed

Date

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