



Home Office

Exceptional circumstances fee waiver

Version 1.0

To set out principles for use of the exceptional circumstances fee waiver provision.

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About this guidance

This guidance outlines the purpose of the exceptional circumstances fee waiver and the process through which it will be applied.

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the Fees and Income Planning Team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **1.0**
- published for Home Office staff on **10 September 2020**

Changes from last version of this guidance

This is new guidance.

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Overview

This section outlines the context for the introduction of the exceptional circumstances fee waiver and the scenarios under which its use will be considered.

Background

A provision was laid in the Immigration and Nationality (Fee) Regulations in September 2020 (to come into force on 5 October 2020), granting the Secretary of State the power to waive fees set out in the Regulations in exceptional circumstances affecting a number of people.

Prior to the introduction of this provision, the department had been restricted in its ability to respond in an agile fashion to cohorts who had been significantly impacted by exceptional circumstances beyond their control, and where to charge a fee would either be unreasonable or prevent another policy having the intended effect. In these cases, specific legislation had been required in each instance.

Use cases

Broadly speaking, use of the exceptional circumstances fee waiver will only be considered where both the following criteria apply:

- where an issue or event has arisen and it is clear that, as a result, **a number of individuals** have been **significantly impacted** in a way that is **beyond their control**
- the Secretary of State considers that there is a **compelling and compassionate** justification for temporarily waiving a fee specified in the Regulations (for example fee for application for leave to enter or remain in the UK) in order to mitigate the impact of that issue or event on all those individuals

An example of circumstances in which these criteria apply would be where visitors to the UK have been prevented from returning to their home country as a result of events that have occurred during their visit (for example pandemic restricting international travel), and where their existing leave is nearing expiry or has expired. In cases such as these, the individuals concerned would be at risk of overstaying (and of facing subsequent enforcement action) through no fault of their own, action would be required in terms of their immigration status to mitigate that risk, and requiring a fee for any fresh leave would be unreasonable.

It is important to emphasise that this provision is only to be used at the **discretion of the Secretary of State** and in circumstances where the anticipated impacts are of a **breadth and severity** that they are likely to affect a number of individuals in a significant way. It is an **exceptional power** and **not for use** in situations where impacts are likely to be limited to an **individual case**.

Supporting Parliamentary oversight

It is important that there is transparency in the use of this waiver and the cohorts to which it is being applied. As such, where the Secretary of State has sanctioned its use, most likely as part of a wider package of measures for the affected cohort, this will be followed by a notification to Parliament on the detail of and rationale for the measures in question. Where the exception is anticipated to be more long-standing in nature (due to the circumstances in question applying for longer than 6 months), the department will also seek to reflect this through an amendment to the Regulations.

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Process

This section outlines the process for the identification, consideration and implementation of waivers under the exceptional circumstances provision.

Identification

Use of this waiver will primarily be considered in situations where the issue or event is of such a scale and severity that it has already led to the initiation of urgent policy and operational activity in the department. As such, the waiver would likely be considered as part of a wider package of measures to support the impacted cohort, rather than being identified as a standalone measure.

Where a team has identified a situation where use of the exceptional circumstances waiver may be appropriate, they should consult with the Fees and Income Planning Team to ensure that there is a clear rationale for doing so before proposing any such use to ministers.

Consideration

Where the waiver has been identified as a suitable measure to mitigate the impacts on an affected cohort, the relevant policy and operational teams will consider the following:

- characteristics of the affected cohort
- routes and products to which a waiver would be applied
- how applicants would demonstrate their eligibility for any measures designed to support that cohort (for example bespoke caseworking process or digital solution)
- the period of time in which the waiver would be available for eligible applicants
- how availability of the waiver would be communicated to the relevant applicants
- whether other associated charges, such as the Immigration Health Surcharge, should be waived along with the fee (note: this is not a Fees Policy lead)
- financial implications of granting the waiver, including the impact on departmental income
- legal implications, including any impacts on the department's wider fees framework
- equality impacts, including whether the decision to differentiate treatment of the cohort in question would either directly or indirectly discriminate against individuals with a protected characteristic
- parliamentary handling, including the process for updating Parliament on the measures taken including the use of the waiver
- any other considerations that are relevant to the circumstances

These considerations will then inform the development of advice to the Secretary of State, either as part of wider advice on measures to be taken in relation to the issue/event or as a standalone submission. Any advice must also be accompanied

by the development of an Equality Impact Assessment and completion of a Policy Assurance Framework (PAF) return.

No further action can be taken until the Secretary of State (or a minister that they have nominated) has made a decision to implement the proposed waiver.

Implementation

Following the Secretary of State's decision, the relevant policy and operational teams will engage with the Parliamentary Team to determine an appropriate means of notifying Parliament on the use of the waiver.

The specific means by which applicants will be supported in making a fee-free application will be determined on a case-by-case basis, with the relevant policy/operational teams working with Home Office Digital, Data and Technology (DDaT) and/or the Guidance, Rules and Forms Team (GRaFT), as applicable, to determine a means by which applicants can demonstrate their eligibility if necessary.

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