



IDI CHAPTER 1A

SECTION 4

CHARGING – REFUNDS/ EX-GRATIA PAYMENTS AND FEE EXEMPTIONS IN IMMIGRATION APPLICATIONS AND CLAIMS

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IDI CHAPTER 1A: SECTION 4

CHARGING – REFUNDS/ EX-GRATIA PAYMENTS AND FEE EXEMPTIONS

Refunds / Ex-Gratia Payments

1. Introduction

1.1 This instruction relates to applications or claims for limited or indefinite leave to remain (including those under the Points-Based System (PBS), No Time Limit (NTL) endorsements, Transfer of Conditions (TOC), Certificate of Approval for Marriage (COA), Certificates of Sponsorship or Sponsor Licences for which a fee is specified in the Fees Regulations.

1.2 There is no current power in law to refund the fee paid for any application for which a fee is specified in the Fees Regulations. However, in certain circumstances, it is appropriate to refund the fee by means of an ex-gratia payment. Within this instruction, the term “refund” is used to cover all such payments, to avoid confusion with other ex-gratia payments made by the UK Border Agency.

1.3 The processes referred to within this instruction relate to online and postal applications only. However, the policy considerations also cover applications that have been submitted at one of the Public Enquiry Offices, unless otherwise stated.

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2. General considerations

2.1 A basic feature of charging is that we do not refund a fee if someone applies for something even though they do not meet the requirements of the immigration rules or other relevant legislation. Caseworkers should normally consider such applications on the basis on which they are made, without inviting any variation of application (unless in line with a specific casework instruction).

2.2 Refund consideration does not have to originate with a request from the applicant or their immigration adviser. Caseworkers may suggest such consideration via their Senior Caseworker or relevant HEO if they think the circumstances justify it.

2.3 An applicant should not be promised a refund or even told that this is being considered before the process is completed and a refund has been authorised.

2.4 All refunds/ex-gratia payments must be authorised by the Senior Caseworker in the Charging Support Team (CST) - or a designated HEO in sponsor licensing or employment route cases dealt with in Sheffield (such as FLR(IED) or PBS applications).

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3. Circumstances in which a refund may be justified - maladministration

3.1 If an error amounting to maladministration is made by the UK Border Agency, there is a legal obligation to take suitable remedial action. Where a fee is involved, we should take such action as may be necessary to ensure that the applicant is not disadvantaged financially by the error. In some circumstances, there may be alternatives to refunding the fee. A refund should be authorised only if there is no alternative remedy. Some examples of maladministration are:

Handling Errors

3.1.1 The applicant's passport has been lost within the UK Border Agency and as a result, an endorsement has been made on a status document. The applicant has subsequently obtained a new passport and submitted a paid application for an NTL or TOC endorsement.

3.1.2 An applicant applies for TOC where at the date of application they have extant leave of three months or more. However, this leave has subsequently lapsed due to a general delay in processing the application caused directly by the UK Border Agency rather than a delay due to the need to undertake further enquiries.

Misleading Advice by the UK Border Agency – Erroneous, unclear or incomplete advice or written guidance

3.1.3 An applicant has been given misleading advice by the UK Border Agency. In any cases of this sort, there will need to be supporting evidence. If it is alleged that the incorrect advice was given by the Immigration Enquiry Bureau (IEB), a transcript of the conversation

must be obtained from IEB to determine if a refund is appropriate. Other factors should also be taken into account, such as any relevant information on the UK Border Agency website or in the application form (or accompanying guidance notes).

- 3.1.4 An applicant has been given misleading advice by an entry clearance officer. An example of this was the misleading information given by entry clearance officers in Islamabad and Bombay to people issued with spouse visas between 2002 and 2005. This particular example, which resulted in premature applications for ILR by visa holders who had travelled late, is one where there was an alternative to refunding the fee - the premature application was held until the qualifying period had been completed.

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4. Other circumstances justifying a refund

In addition to cases involving maladministration, there are other circumstances in which, as a matter of policy, a refund will be appropriate.

4.1 NTL or TOC applications where the passport is not one recognised by UK authorities – applicants may not be aware of the non-acceptability.

4.2 Applications by members of the home forces or diplomatic staff who are still exempt from immigration control – exemption is a matter of law.

4.3 Unnecessary applications for ILR by people with indefinite leave to enter or remain in the UK who have misread the residence permit in their passport and do not realise that they already have indefinite leave. A person who has been granted indefinite leave to enter or remain which has not lapsed, cannot legally be granted leave to remain, so the UK Border Agency is unable to give effect in law to a grant of ILR in such cases.

4.4 Where an applicant applies for TOC/NTL but doesn't have a passport to transfer the endorsement into.

4.5 TOC applications where the applicant asks for a multiple entry visa to be endorsed in a new passport. This is not a service which the UK Border Agency can perform.

4.6 Applications for leave to remain from within the Common Travel Area but outside the United Kingdom (eg from an applicant in the Isle of Man or Channel Islands). For further information on how to deal with such cases please refer to IDI – Chapter 1 – Section 2

4.7 Applications for leave to remain submitted from outside the Common Travel Area - the Secretary of State has no power to give leave to remain to a person who is outside the United Kingdom.

4.8 An application for leave to remain or NTL by someone who is a British citizen or had the right of abode in the UK at the time of application. However, no refund will be considered where the applicant has been naturalised or registered as a British citizen subsequent to the application being made.

4.9 Applications for a certificate of approval for marriage or civil partnership by any of the following:

- an EEA national
- a family member of an EEA national exercising treaty rights
- a person who is exempt from immigration control
- a British citizen or other person with the right of abode in the UK
- a person who has indefinite leave to enter or remain
- a person who entered the UK with an entry clearance to marry the same proposed spouse or civil partner.

4.10 Where a postal or online application has been withdrawn within a short time of being made, that is before it has been entered onto the caseworking system (eg, CID), or within 7 calendar days of the date of application, whichever is the earlier date.

4.11 Where an applicant dies before the decision on their application is despatched.

4.12 Whilst the above scenarios are not a comprehensive list of situations where a refund would be considered, circumstances beyond these should only be based on

compelling business reasons. Any such decision is to be made by the Charging Support Team, or in the case of applications for leave in any of the sponsor licensing or employment routes by the relevant HEO, in consultation with the Operational Policy and Process Improvement Team 2 where necessary.

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5. Circumstances where a refund will NOT be considered

5.1 Where an application or claim is withdrawn (unless within the timescale set down in paragraph 4.10 above). This includes, in the case of leave to remain applications only, where the passport is returned for travel purposes, irrespective of whether the applicant actually travels or whether they have continuing leave when they travel outside the UK.

5.2 Where an application or claim is refused.

5.3 Applications made too early (usually when applying for settlement), unless it is a situation of the kind covered by a separate instruction.

5.4 An application for a COA for marriage where the applicant has failed to tell us that the ceremony is taking place in an Anglican Church

5.5 Where an application is made for limited leave to remain, but it appears that the applicant already has the appropriate period of leave. The application should be considered as a request for further leave in the usual way.

5.6 Where an applicant applies for NTL and they have been naturalised before the date of decision, but after the date of application.

5.7 Where someone granted leave as a refugee is applying for that leave to be transferred into their national passport.

5.8 Where an EEA national or their family member makes a charged application for leave to remain in the United Kingdom

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6. Fee Exemptions

The Fees Regulations specify certain exemptions from the requirement to pay a fee. Where an applicant erroneously pays for an application which is fee exempt, we have no power in law to retain the fee, so it must be refunded. The exemptions are:

6.1 An application for limited or indefinite leave to remain in the United Kingdom which is made on the basis that the applicant is

- a person making a claim for asylum* which has not been determined or has been granted
- a person who has been granted humanitarian protection under the immigration rules
- a person who has been granted limited leave to enter or remain in the UK outside the provisions of the immigration rules on the rejection of their claim for asylum
- a dependant of any of the above.

[*A claim for asylum for fee exemption purposes includes a claim lodged on Article 3 grounds.]

6.2 An application for limited or indefinite leave to remain if the application is made in respect of a person who, at the time of making the application, is a child (aged under 18) who is being provided with assistance by a local authority (or, in Northern Ireland, an authority, which has the same meaning given in article 2(2) of the Children (Northern Ireland) Order 1995). "Assistance" is not confined to financial assistance.

6.3 An application for limited or indefinite leave to remain under the terms of a European Community Association Agreement.

6.4 An application for indefinite leave to remain as a victim of domestic violence under the immigration rules, where at the time of making the application, the applicant appears to the Secretary of State to be destitute.

6.5 Applications for limited or indefinite leave in the categories listed below by nationals of Albania, Andorra, Armenia, Azerbaijan, Bulgaria, Croatia, Moldova, the former Yugoslav Republic of Macedonia, Romania, Turkey and Ukraine:

- work permit employment
- PBS Tier 1 categories (except Investor and Post-Study Work)
- PBS Tier 2
- seasonal agricultural workers scheme
- employment under the sector-based scheme
- Home Office approved training or work experience.

This exemption only applies to main applicants in these categories.

6.6 Where two or more applications for **leave to remain** in the UK are made at the same time, or are being considered in respect of the same person, a single fee is payable. Where the fees differ, the highest fee will apply. This exemption only applies to applications made on or after the 2 April 2007.

6.7 Similarly where an application for **leave to remain** is varied in line with paragraphs 34E and 34F of the immigration rules, a single fee is payable. Where the fees differ, the highest fee will apply.

6.8 The fee exemptions set out in paragraphs 6.1 to 6.7 above do not apply to NTL, TOC, COA or sponsor licence applications.

6.9 Where applications under the Workers' Registration Scheme are refused, a refund is appropriate as the fee paid is for the certificate rather than for the consideration of the application.

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7. Attempted Applications Made Whilst The Applicant's Leave Has Been Extended By Section 3C or 3D

If someone's leave is extended under the provisions of section 3C or 3D of the Immigration Act 1971, they are prohibited from making an application for leave to remain while such leave continues. If they do submit an application during such 3C or 3D leave, it must be treated as a variation of the original application if that application has yet to be decided, or as additional grounds of appeal if the application has been refused and an appeal lodged. Any fee paid with the second invalid application should normally be refunded. However, where the original application is

being varied to one for a purpose that attracts a higher fee, the difference in fee should be retained.

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8. Dependants

8.1 Where permitted by a specified application form, a main applicant may include on that form their spouse, civil partner, unmarried partner or same-sex partner, and dependent children under the age of 18, without payment of any additional fee. In PBS applications, such dependants need to complete a separate PBS (Dependant) form, but will still be considered free of charge if their application is made at the same time (that is, made in person, delivered by courier or posted on the same date) as the main applicant.

8.2 Where the dependants set out in 8.1 above have paid a separate fee, but their application was made at the same time as that of the main applicant, the fee must be refunded as there is no power in law to retain it.

8.3 Dependants cannot be added later to an application, or when an application is varied, without payment of a separate fee and completion of a separate application form.

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