EXPLANATORY MEMORANDUM TO

THE CONSULAR FEES ORDER 2011

2011 No. 738

1. This explanatory memorandum has been prepared by the Foreign and Commonwealth Office.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

This Order is made to enable Her Majesty to increase existing consular fees, representing a whole range of services performed at Posts abroad.

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

3.1 This Order amends the fees set out in Part 1 of Schedule 1 of this Order. For those fees that are increasing in cost, the average increase is 3.85% which is below the current rate of inflation. A number of fees are decreasing in cost. A new fee is being introduced to charge on a per hour basis services relation to shipping, seamen and related matters that were previously covered by a number of specific fees. More detail as to these changes is contained in paragraph 7 below. The fees in Parts 2 and 3 of Schedule 1 are not being increased by this Order.

3.2 The format of Schedule 1 of this Order differs from that used in previous Consular Fees Orders. The new format reflects changes that have occurred as a result of simplification of those consular fees that are owned by the FCO, together with a splitting out into separate parts the consular fees that are owned by Identity and Passport Services and UK Border Agency. The fees reflect those listed in previous Consular Fees Orders, but the numbering has changed such that there is no read across to previous fees of the same number.

4. Legislative Context

4.1 This Order revokes and replaces the Consular Fees Order 2010 and the Consular Fees (Amendment) Order 2010.

4.2 UK Border Agency is taking on responsibility for the fees in Part 3 of Schedule 1 of this Order as of 6 April 2011. UKBA currently have legislation before Parliament in the form of the Immigration and Nationality (Fees) Regulations 2011 and the Immigration and Nationality (Cost Recovery Fees) Regulations 2011 that will take over control these fees. However, in the event that there is any delay in the UKBA regulations coming into force, UKBA has requested that FCO continue to cite the UKBA fees in Part 3 of Schedule 1 of this Order to cover any interim period between the repeal of the Consular Fees

Order 2010 (as amended) and the entry into force of their Regulations. This is the reason for the inclusion of the provision in section 4 of the Order which disapplies Part 3 of Schedule 1 on the date that the new UKBA Regulations come into force.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As this Order is not subject to Parliamentary procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The Consular Fees Act 1980 provides that Her Majesty may by Order in Council prescribe the fees that can be levied for performance of consular services. Consular fees are levied so that the costs of providing such services can be recovered from the customers that use them. This Order revokes and replaces the Consular Fees Order 2010, as amended, so that fees for existing consular services can be amended where appropriate to take into account any changes to the costs of providing such services. Further explanation of the changes introduced by this Order is set out below.

7.2 This Order increases the fees charged in Part 1 of Schedule 1 by an average of 3.85%. This figure is slightly less than the 4% Consumer Price Index for January 2011. This Order makes no increase to the fees relating to passport services or entry clearance (Parts 2 and 3 of Schedule 1 of this Order).

7.3 The fees in Part 1 of Schedule I are amended as follows:

i. the fee for the standard legalisation service increases from £28.80 to £30.00;

ii. the fee for the premium legalisation service increases from £71.00 to £75.00;

iii. the fee for the overseas legalisation service decreases from £38.00 to £30.00;

iv. the fee for preparing any certificate, declaration or document not listed elsewhere in the Table of General Consular Fees in English decreases from £46.30 to £45.00;

v. the fee for preparing any certificate, declaration or document not listed elsewhere in the Table of General Consular Fees in any other language decreases from £73.00 to £70.00;

vi. the fee for preparing and/or signing a declaration of existence (except if required by a department of Her Majesty's Government in the United Kingdom) decreases from £17.40 to £15.00;

vii. the fee for administering an oath, marking of exhibits or making a declaration or affirmation increases from £54.50 to £55.00;

viii. the fee for witnessing a signature decreases from £21.60 to £20.00;

ix. the fee for making or verifying a copy of a document (including certifying when necessary), increases from £25.50 to £30.00;

x. the fee for uniting documents and sealing the fastening decreases from £21.60 to £20.00;

xi. the fee for fixing a photograph to a document and, if necessary, certifying it as a true likeness decreases from £21.60 to £20.00;

xii. the fee for supplying certified copies of documents which form part of the records of a court which, for each page increases from £64.80 to £65.00;

xiii. the fee for forwarding an application for registration, naturalisation or renunciation to the Home Office increases from £64.80 to £65.00;

xiv. the fee for administering an oath of British Citizenship under British Nationality Act 1981 increases from £82.30 to £85.00;

xv. the fee for receiving notice of an intended marriage, civil partnership or overseas relationship, including an application for a Nulla Osta increases from £64.80 to £65.00;

xvi. the fee for issuing a certificate (either in English or in the local language spoken at the place of the consular post or diplomatic mission) that no impediment to an intended marriage or civil partnership has been shown to exist, or issuing a Nulla Osta or "certificate de coutume" for an intended marriage or overseas relationship in accordance with local law increases from £64.80 to £65.00;

xvii. the fee for solemnising a marriage, administering oaths to the parties and registering the marriage; or registering a civil partnership increases from £137.80 to £140.00;

xviii. the fee for forwarding to the appropriate Registrar General a record of a marriage under the local law or an overseas relationship, together with any necessary certification decreases from £37.00 to £35.00;

xix. the fee for administering an application for the registration of a birth or a death increases from £100.80 to £105.00;

xx. the fee for making an addition to or correction in the consular register as necessary decreases from £37.00 to £35.00;

xxi. the fee for issuing a certified copy of an entry in the consular register, per page increases from £64.80 to £65.00;

xxii. the fee for providing the services of a consular officer or consular employee to affect or try to affect service of a document in relation to civil proceedings or proceedings in which State Immunity is in issue, for each hour or part hour increases from £131.70 to £140.00;

xxiii. the fee for providing evidence of service or attempted service of a document decreases from £131.70 to £130.00;

xxiv. the fee for forwarding a request to a local authority for the taking of evidence or the service of a document and, where necessary, certifying the accuracy of an accompanying translation decreases from £131.70 to £130.00;

xxv. the fee for providing or administering a service not otherwise covered in this Schedule in relation to shipping, seamen and related matters is a new per hour fee of £130/hour which replaces the fees for individual services listed in Part XIII of the Consular Fees Order 2010 (S.I. 2010/238);

xxvi. the fee for administering an application for (and, if successful, providing) an Emergency Travel Document increases from £91.50 to £95.00;

xxvii. the fee for administering an application for (and, if successful, providing) an Emergency Passport on an exceptional basis when it is not possible to provide an Emergency Travel Document increases from £71.00 to £75.00; and

xxviii. the fees for arranging, exceptionally, for currency to be made available against the deposit of funds change from £8.20 (£0-£50), £16.40 (£51-£100), £32.90 (£101-£500), £76.10 (£501-£1500), £92.60 (>£1500) to £10.00 (£0-£99), £30.00 (£100-£499) and £80.00 (>£500).

The fee for providing the services of a consular officer or a consular employee in relation to any other service which the consular post or diplomatic mission has agreed to undertake, for each hour or part hour (to include travel time if performed away from the consular premises) and in addition to direct costs, if any, remains flat at £130.00.

7.3 Where increases to fees have been calculated on the basis of a percentage, the new fee has been adjusted so that it is divisible by five.

8. Consultation outcome

8.1 No consultation has been carried out in relation to this Order. Treasury rules require that the full cost of fee-bearing services is recovered through the fees charged, but impose no requirement to consult. The Order introduces no changes in policy and the fees are not considered to have a disproportionate impact on any particular stakeholders.

9. Guidance

9.1 Detailed information on consular services and the fees charged is provided on the www.fco.gov.uk website and hard copies of the fees table are on display at consular offices around the world.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minor.

10.2 The impact on the public sector is that the costs to the public sector of providing consular services will continue to be recovered from the fees charged for those services.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The level of consular fees will be reviewed between September and November 2011.

13. Contact

Michael Rumble at the Consular Directorate, Foreign and Commonwealth Office can answer any queries regarding the instrument.

Tel: 020 7008 0863 or email: michael.rumble@fco.gov.uk