EXPLANATORY MEMORANDUM TO

THE GENDER RECOGNITION (APPLICATION FEES) (AMENDMENT) ORDER 2011

2011 No. 628

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

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

2. Purpose of the instrument

2.1 This instrument increases the income thresholds which determine the fees payable for applications under the Gender Recognition Act 2004 ("the Act").

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

3.1 None

4. Legislative Context

4.1 Under section 7(2) of the Act, fees are payable for applications to the Gender Recognition Panel for a gender recognition certificate. Fees are payable whenever applications are made under sections 1(1), 5(2), 5A(2) or 6(1) of the Act. The amount of the fee that an applicant will pay will depend on their income. This Order amends the income thresholds at which those fees become payable.

4.2 The Gender Recognition (Application Fees) Order 2006, S.I. 2006/758, ("the 2006 Order") set the level of fees and described the circumstances in which no fee is payable. There are two levels of fee - £30 and £140 - dependant on the income of applicants.

4.3 These income thresholds have been increased by the Gender Recognition (Application Fees) (Amendment) Order 2007, S.I. 2007/839, the Gender Recognition (Application Fees) (Amendment) Order 2008, S.I. 2008/715, and the Gender Recognition (Application Fees) (Amendment) Order 2009, S.I. 2009/489. This Order, which comes into force on 6th April 2011 and applies to applications made on or after that date, similarly amends the 2006 Order to increase the income thresholds.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

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

7.1 The 2011 Order makes no change to the level of fees set out in the 2006 Order, but increases the thresholds for the relevant income at which the fees of £30 and £140 become payable. The fee of £140 will now apply to applicants whose relevant income is greater than £27,005 (previously £26,204) and the fee of £30 will now apply to applicants whose relevant income is greater than £18,008 (previously £17,474) but not more than £27,005. No fee will be payable in circumstances where the applicant's relevant income is £18,008 or less or if the applicant is in receipt of a qualifying benefit. "Relevant income" and "qualifying benefit" are defined in articles 4 and 5 of the 2006 Order. Income-related employment and support allowance was added to the list of qualifying benefits in Article 5 of the 2006 Order by S.I. 2008 No 1879 and S.R. (NI) 2008 No 412.

7.2 The figure of £18,008 originates from HM Revenue and Customs and is used as a qualifying threshold for several benefits. The upper figure of £27,005 reflects a percentage increase of 3.1% (based on the annual Consumer Price Index) on the previous upper limit of £26,204. Only those who earn more than £27,005 will pay the full fee. The thresholds were previously increased in line with the Retail Price Index. However the Government is using the Consumer Price Index for the price indexation of benefits and tax credits from April 2011. The thresholds were not increased in 2010 due to negative inflation (the annual Retail Price Index fell by 1.4%).

- ***Consolidation***

7.2 Consolidation of the existing instruments is not proposed.

8. Consultation outcome

8.1 The fees threshold rates are updated annually (subject to positive inflation), as described in paragraph 7.2 above, and no consultation is felt necessary.

9. Guidance

9.1 The Gender Recognition Panel will publish details of the revised income thresholds and will include the revised details in the guidance sent to applicants.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The fee thresholds will continue to be reviewed on an annual basis in line with any future increases notified by HM Revenue and Customs.

13. Contact

Alice Ashworth at the Ministry of Justice Tel: 020 3334 5436 or email: alice.ashworth@justice.gsi.gov.uk can answer any queries regarding the instrument.