EXPLANATORY MEMORANDUM TO

THE IMMIGRATION AND NATIONALITY (FEES) (CONSEQUENTIAL AMENDMENTS) ORDER 2014

2014 No. 2038

1. This explanatory memorandum has been prepared by the Home Office 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 amends the Immigration and Nationality (Fees) Order 2011 ('the 2011 Order') that enables the Secretary of State to make regulations charging fees for the processing of applications and the provision of services and processes relating to immigration and nationality. The 2011 Order, as amended by the Immigration and Nationality (Fees) (Amendment) Order 2013 and the Immigration and Nationality (Fees) (Amendment) Order 2014, sets out the applications, services and processes for which the Home Office may charge a fee. The actual fee is then set out in regulations.

2.2 The amendments are required to facilitate the implementation of biometrics provisions in the Immigration Act 2014. They will allow the Home Office to charge for these new biometric enrolment requirements. The actual fee levels are to be specified in separate regulations.

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

3.1 The Home Office has obtained HM Treasury consent to this instrument, although this is not a formal requirement in relation to this SI (as it is in relation to most other immigration and nationality fees instruments).

4. Legislative Context

4.1 This instrument is being made to allow the Home Office to take a power to implement a charge for taking a record of biometrics for new categories of applicants required to submit biometrics as part of an application process. The new biometric provisions are set out at section 8 to 14 of the Immigration Act 2014.

5. Territorial Extent and Application

5.1 This instrument applies to 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 we are doing and why:

7.1 The Immigration Act 2014 has introduced a power to require new categories of applicants to enrol their biometrics when making certain applications in connection with immigration or nationality. The changes affect citizenship applicants and non-EEA nationals who apply for a document which evidences their entitlement to enter and reside in the UK by virtue of an enforceable EU law right.

7.2 The Home Office is introducing new processes to enable implementation of these measures.

7.3 The 2011 Order allows us to charge a fee for the process of enrolling biometric information in respect of those categories of applicant who, prior to the Immigration Act 2014, were required to provide such information. A cost-recovery fee is set out for this process in Fees Regulations. However, the current wording in the 2011 Order is not broad enough to allow us to levy a charge for the enrolment of biometric information by the new cohorts (required by the Immigration Act 2014 to enrol such information). Accordingly, we are amending the 2011 Order to ensure that all persons who will be required to enrol their biometric information can be charged a fee. A single fee will apply, and will be set at cost-recovery level.

8. Consultation outcome

8.1 No separate consultation exercise was conducted as these proposals reflect existing immigration policy and are in line with overall charging policy that users of a service should pay for the costs of providing that service rather than the taxpayer. The Home Office conducted a targeted public consultation on how its charging strategy works in practice to help inform and shape the approach to charging in the future. Responses were broadly supportive of the proposals and the general principles of charging. The full government response to the consultation has been published on the government consultation website:

https://www.gov.uk/government/publications?publication_filter_option=consultations

8.2 The Home Office does not expect any adverse reactions to these proposals.

9. Guidance

9.1 The Home Office guidance to staff will be updated to reflect these changes. Guidance to general members of the public will also be published when regulations setting relevant fees are made and made available on the Gov.uk website.

10. Impact

10.1 No Impact Assessment is required for this instrument as fees will be set in regulations made in reliance on the 2011 Order, so there is no impact on businesses or the voluntary sector.

11. Regulating small business

11.1 This instrument is enabling legislation and the changes do not apply to small business.

12. Monitoring & review

12.1 The Home Office will closely monitor the impact of fees for the applications and services contained in the 2011 Order. The Home Office reviews fees and charges for Immigration and Nationality applications annually. Application volumes are monitored on a monthly basis. Analysis of application trends is reviewed by officials from all relevant government departments to ensure that fee levels generate sufficient revenue to cover Home Office costs but do not adversely impact on the UK economy.

13. Contact

Shola Akinyamoju at the Home Office Finance and Estates Directorate, Tel: 0208 196 0809 or email: Shola.Akinyamoju@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.