EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (LEAVE TO REMAIN)(PRESCRIBED FORMS AND PROCEDURES) REGULATIONS 2006

2006 No. 1421

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

2. Description

2.1 These Regulations prescribe new application forms to be used in connection with applications for limited or indefinite leave to remain in the United Kingdom and set out the correct procedures to be followed when making those applications. In doing so these Regulations revoke the Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations (No.2) 2005.

2.2 It has been necessary to revise and re-prescribe the application forms to reflect recent changes in the Immigration Rules.

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

3.1 None

4. Legislative Background

4.1 Section 31A of the Immigration Act 1971 (the "1971 Act") enables the Secretary of State by Regulations to prescribe forms and procedures for applications for leave to enter or remain in the United Kingdom.

4.2 Forms and procedures were first prescribed in the Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations 2003 (S.I. 2003/ No. 1712) (the "2003 Regulations"). Amendments to those Regulations (for example, adding new application forms) were made by later sets of Regulations.

4.3 The 2003 Regulations were revoked in 2005 and replaced by the Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations 2005 (S.I. 2005/771). Because of a defect in that Instrument, those Regulations were revoked and replaced in the same year by the Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations (No.2) 2005 (SI 2005/2358) (the "2005 Regulations").

4.4 These Regulations revoke and replace the 2005 Regulations.

4.5 Changes to the Immigration Rules necessitate changes to the application forms. Under section 31A of the 1971 Act changes to the application forms are to be done by way of Regulations.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The revised application forms prescribed in these Regulations reflect recent changes to the Immigration Rules – in particular the introduction of civil partnership provisions, the increase from 4 to 5 years to the period to be completed in employment categories in order to qualify for indefinite leave to remain in the United Kingdom, and the addition of two new categories of applicants: "overseas qualified nurses or midwifes" and "visiting religious workers or religious workers in non-pastoral roles".

7.2 The Regulations prescribe a wider definition of "dependant", insert "civil partner" as an alternative to "spouse", and "same sex partner" as alternative to "unmarried partner" to reflect the civil partnership provisions set out in the Civil Partnership Act 2004.

7.3 There are no changes to the prescribed application procedure. The need for such changes will be reviewed when new provisions contained in the Immigration, Asylum and Nationality Act 2006 are implemented

7.4 These Regulations also include a transitional provision. This is so that applicants who apply on the old forms during the period when the transitional provision is in force will not be deemed to have made an invalid application. For a period of 21 days after these Regulations are brought into force, applicants may apply using either the old application forms (prescribed by the 2005 Regulations), or the new application forms (prescribed by these Regulations). After that date all applicants should apply using the new application forms.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is expected to be none.

9. Contact

John Evans at the Immigration and Nationality Directorate of the Home Office (Tel: 020 8196 3743 or email:John.Evans@ind.homeoffice.gsi.gov.uk) can answer any queries regarding this Instrument.