EXPLANATORY MEMORANDUM TO

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

2006 No. 2899

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. Description

2.1 These Regulations prescribe the application forms to be used in connection with certain types of applications for limited leave to remain in the United Kingdom under the Immigration Rules. In doing so these Regulations amend the Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations 2006 ("the 2006 Regulations").

2.2 It has been necessary to amend the 2006 Regulations in order to revise and re-prescribe the FLR (IED) application form and introduce a new FLR (HSMP) application form as a result of changes in the Immigration Rules.

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

3.1 These Regulations breach the 21-day Rule. The reason why these Regulations have not been laid for 21 days prior to them coming into force is because if they had been then applicants would have been forewarned of the intention to 'suspend' the Highly Skilled Migrant Programme (HSMP) prior to the criteria being changed. However, at the same time we wished to prescribe the new limited leave to remain form for highly skilled migrants the day after the announcement was made.

3.2 The reason for prescribing the new limited leave to remain form for highly skilled migrants the day after the announcement is threefold. First, this avoids applicants being placed in a position where they are required to make and pay for their applications using old forms and guidance which refer to the old Rules against which their applications will no longer be considered. Secondly, by making their application on the new FLR (HSMP) form applicants will be asked to provide all the information necessary to determine their application. Thirdly, it also avoids the risk of applicants applying on the new form before it is prescribed and therefore making an invalid application.

3.3 To avoid the applicant being prejudiced by the fact that these Regulations will come into force the day after they have been laid, transitional provisions are set out in the Regulations.

4. Legislative Background

4.1 Section 31A of the Immigration Act 1971 enables the Secretary of State by Regulations to prescribe forms and procedures for applications for leave to enter or remain in the United Kingdom. When a prescribed form needs to be changed, a new version of the form must be prescribed.

4.2 Forms and procedures were first prescribed in the Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations 2003 (S.I. 2003/1712). Additional and amended application forms and amendments to the procedures have been prescribed by later Regulations.

4.3 These Regulations amend the 2006 Regulations and prescribe new forms which have been revised to reflect changes to the Immigration Rules.

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 2006 Regulations came into force on 22 June 2006.

7.2 The revised application forms prescribed in these Regulations reflect changes to the Immigration Rules required to implement the changes to the Highly Skilled Migrant Programme (HSMP) to be announced on 7 November 2006.

7.3 The existing FLR (IED) application form will be revised in order to remove the HSMP sections. A new FLR (HSMP) form will be prescribed for applications for limited leave to remain in the UK as a highly skilled migrant. This new form will cover both applications from individuals already in the UK in another immigration category who wish to switch into the HSMP, and applications from individuals in the UK under the HSMP who wish to extend their leave to remain in this category.

7.4 As the Immigration Rules relating to the HSMP criteria are to change, applicants will need to provide more/different documents in order to demonstrate that they satisfy the criteria. The new form reflects the changes that are to be made to the Immigration Rules for HSMP applications.

7.5 It will be particularly helpful to have applications for HSMP limited leave to remain covered by a separate form as we move towards the introduction of Tier 1 of the Points Based System, into which HSMP will eventually be incorporated. This will avoid having to revise the FLR (IED) in 2007, as part of the implementation of Tier 1, which would be necessary if this form continued to provide for HSMP limited leave to remain.

7.6 The amendment to the 2006 Regulations will come into force the day after laying these Regulations.

7.7 Transitional provisions are included in these Regulations which allow for any application submitted on the old FLR (IED) form during the suspension period, to be, in principle, accepted as 'valid'. This avoids applicants from being disadvantaged by the early implementation of these Regulations. Although applicants are not charged for invalid applications they may lose their appeal rights in respect of the determination of their application if their current leave expires before they make a valid application.

7.8 There are no procedural changes. The need for such changes is currently being reviewed and any such changes will be effected when Section 50 of the Immigration and Nationality Act 2006 is commenced. That provision will replace the present statutory basis and in particular allow the application forms to be prescribed administratively. The consequences of failing to apply on the prescribed form must be set out in the Immigration Rules.

8. Impact

8.1 We have conducted an Initial Regulatory Impact Assessment on the changes to the HSMP and have found that the impact of this change on businesses, charities and voluntary bodies will be small. We have therefore not prepared a Partial or a Final Regulatory Impact Assessment. A Race Equality Impact Assessment has been prepared.

9. Contact

9.1 **Claire Wilkinson** in Work Permits (UK), at the Immigration and Nationality Directorate of the Home Office (Tel: 0114 207 6560 or email: Claire.Wilkinson@ind.homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.