EXPLANATORY MEMORANDUM TO

THE IMMIGRATION SERVICES COMMISSIONER (APPLICATION FEE) (AMENDMENT) ORDER 2014

2014 No. 2847

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

2. Purpose of the instrument

2.1 This Order amends the Immigration Services Commissioner (Application Fee) Order 2011[1] ("the 2011 Order"). It requires the Immigration Services Commissioner ("the Commissioner") to waive all of the fee specified in the 2011 Order where the person making an application for registration or continued registration with the Commissioner operates on a not for profit basis and does not charge a fee for the provision of immigration advice or services. It further corrects minor errors in the 2011 Order.

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

3.1 None.

4. Legislative Context

4.1 Section 84(1) of the Immigration and Asylum Act 1999 ("the 1999 Act") prohibits a person from providing immigration advice or services unless that person is registered with the Commissioner or authorised to practise by a designated professional body. The 1999 Act, as currently enacted, further requires, under section 5(2) of Schedule 6, that an application for registration or continued registration be accompanied by the specified fee.

4.2 Under the current provisions of the 1999 Act, the Commissioner has the power to exempt from registration persons who would otherwise need to register in order to provide immigration advice or services. As a matter of policy, the Commissioner exempts charities and other not for profit organisations that do not charge a fee for the provision of immigration advice or services.

4.3 Paragraph 2 of Schedule 7 to the Immigration Act 2014 ("the 2014 Act"), which will come into force on 17 November 2014, removes the Commissioner's power of exemption from registration. However, paragraph 3 of Schedule 7 to the 2014 Act makes provision for the Secretary of State to require or authorise the Commissioner to waive all or part of the specified fee in particular cases.

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[1] S.I. 2011/1366

5. Territorial Extent and Application

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 In keeping with assurances made to Parliament during the passage of the 2014 Act, the Government wishes to ensure that charities and other not for profit organisations that do not charge a fee for the provision of immigration advice or services are not required to pay a fee upon an application for registration or continued registration.

8. Consultation outcome

8.1 The fee waiver inserted into the 2011 Order by this Order reflects assurances given by the Government to Parliament during the passage of the 2014 Act. The other changes correct minor errors in the 2011 Order. These changes have not therefore been subject to a formal public consultation.

9. Guidance

9.1 Where necessary, guidance will be updated and placed on the Office of the Immigration Services Commissioner ("OISC") pages of the gov.uk website.

10. Impact

10.1 The effect of the waiver is that charities and other not for profit organisations that do not charge a fee for the provision of immigration advice or services do not have to pay a fee for registration or continued registration with the Commissioner.

10.2 The impact on the public sector is confined largely to the OISC and the Home Office.

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

11. Regulating small business

11.1 The legislation applies to, and benefits, small businesses which operate on a not for profit basis and do not charge a fee for the provision of immigration advice or services.

11.2 It does not impose any regulatory requirements on small businesses.

12. Monitoring & review

12.1 The effect of these changes will be monitored by the Home Office.

13. Contact

Suzannah Chirnside at the Home Office (Tel: 020 7035 1407 or email: Suzannah.Chirnside@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.