EXPLANATORY MEMORANDUM TO

THE IMMIGRATION SERVICES COMMISSIONER (APPLICATION FEE) ORDER 2011

2011 No. 1366

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 specifies the fee to be paid to the Immigration Services Commissioner on making an application for registration or continued registration with the Commissioner. Immigration advisers who provide immigration advice and services must, if they are not otherwise regulated, be regulated by the Office of the Immigration Services Commissioner (OISC). A fee is payable upon application for registration or continued registration (renewal).

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

3.1 None

4. Legislative Context

4.1 This instrument is made under paragraph 5(1) of Schedule 6 to the Immigration and Asylum Act 1999 ("the 1999 Act") and under the power conferred by section 166(3) of the 1999 Act. Paragraph 5(1) of Schedule 6 allows the Secretary of State to specify by Order the application fees for registration and continued registration.

4.2 The 1999 Act established the OISC as an independent body remitted to promote good practice by those who provide immigration advice or immigration services. The OISC has the responsibility in accordance with the Immigration and Asylum 1999 Act to:

- Ensure that those who give immigration advice are fit and competent and act in the best interests of their clients;
- Ensure that advisers who should be within the regulatory scheme apply to be admitted or are prosecuted.

4.3 Advisers are registered with the OISC at one of 3 levels; Level 1 for advisers dealing with basic work, Level 2 for casework and Level 3 for complex work, including advocacy at immigration appeal hearings. The fees payable to the OISC vary according to the level of registration being sought and according to the number of advisers working in the organisation.

4.4 The current application fee levels were set by S.I. 2004/802. There have been no increases in fee since then and whilst the 1999 Act does not specify that a regular uprating of fees should take place, the costs incurred by the OISC have increased since then and therefore a review of fees should have been held on a regular basis to ensure that fee levels were adequate. An increase in fees at a rate of inflation has been agreed at this time in order to apply an overdue uplift to fee levels.

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 The OISC receives and deals with applications from advisers, and also operates a complaints scheme regarding all who provide immigration advice and services. All those advisers who operate on a for-profit basis have to pay a fee upon application for registration or continued registration. Advisers who operate on a not for profit basis do not pay a fee.

7.2 There has been no action taken to increase fees since they were increased by the Order in 2004. The absence of a process to increase fees has been due in part to the review of the role and purpose of the OISC carried out in 2008/09. The OISC has been scrutinised again more recently as a result of the Government's review of all public bodies. At the current time there remains a need to increase fees as such an increase is overdue. We are operating on a business as usual basis and an increase in line with inflation rates has been applied to all fees.

7.3 Guidance issued by the Treasury for fees, charges and levies is that full cost should be charged to enable full recovery of costs to take place. Most of the work done by the OISC relates to the regulation of registered advisers and those advisers exempted from paying a fee. The work required to regulate registered advisers accounts for at least 50% of the OISC's resources but the fees received by the OISC account for only 25% of total costs. If the application fees were now to increase to a level to enable full cost recovery this would place an unfair financial burden on advisers, and burden current advisers with the responsibility for redressing the fact that there has been no increase in fees for 7 years. Moreover when the OISC was established the fee scales agreed then were not based upon full cost recovery.

7.4 The role and purpose of the OISC remains subject to further review and consideration. As part of that review, announced as part of the review of all public bodies, the funding of the OISC will be examined.

8. Consultation outcome

8.1 The Commissioner and the OISC's senior management team have been consulted about the proposals to increase fees. They have been given the opportunity to comment on proposed rates of increase and the likely effect on advisers. As a result of the consultation with the OISC, the decision to increase fees by 3% was taken. The proposals have also been referred to UKBA Finance Directorate and the UKBA Charging Board for approval. Advisers registered with the OISC have not been consulted, but they were told in December 2010 at the OISC annual conference that the registration fees would be increased after April 2011.

9. Guidance

9.1 The OISC has been given notice of this Order and has advised registered advisers of the new fee levels and date of coming into force. The Home Office is not providing any publicity or any guidance to users, stakeholders and enforcement agencies to explain the details of this Order.

10. Impact

10.1 The fee levels set out in this instrument will apply to businesses that provide immigration advice and services on a "for profit" basis. They will be charged increased fees for registration or continued registration, but the increase in fees charged will not be above the rate of inflation. This instrument will have no impact on charities or voluntary bodies who provide immigration advice and services because those organisations that operate on a "not for profit basis" are not required to pay a registration fee.

10.2 The fee levels as set out in this instrument will apply to local authorities and other public sector organisations that provide immigration advice and services on a "for profit" basis. They will be charged increased fees for registration or continued registration, but increase in the fees charged will not be above the rate of inflation. This instrument will have no impact on those local authorities or other public sector organisations who provide immigration advice and services on a "not for profit basis" as they are not required to pay a registration fee.

10.3 An Impact Assessment has not been prepared for this instrument because the level of increase to fees is not greater than the level of inflation.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that the fees charged are varied according to the number of advisers working for an organisation. The level of increase applied has been the same across all fee levels and the fees charged to firms employing fewer than 10 advisers is proportionately the same as that applied to other firms. The level of increase in fees has been kept to 3%, below the rate of inflation to ensure that fees are uprated in an appropriate manner and not in a manner that places a disproportionately high impact and unfair burden on businesses.

12. Monitoring & review

12.1 The impact of the fee levels introduced in this instrument will be subjected to internal review after 12 months. The examination of the impact of new fees on the number of advisers leaving and the impact on the level of income received by the OISC will be assessed through this review. This work will be done in addition to the work being carried out concerning the long term future of the regulation of immigration advisers.

13. Contact

13.1 Marina Pitfield in the OISC Sponsor Unit at the UK Border Agency, Tel: 020 7239 1790 or e-mail: marina.pitfield@ukba.gsi.gov.uk can answer any queries regarding this instrument.