EXPLANATORY MEMORANDUM TO

THE IMMIGRATION SERVICES COMMISSIONER (DESIGNATED PROFESSIONAL BODY) (FEES) ORDER 2006

2006 No. 400

1. This explanatory memorandum has been prepared by the Home Department 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 This Order sets the annual fee which must be paid by each designated professional body listed in section 86(1) of the Immigration and Asylum Act 1999 (the 1999 Act) to the Immigration Services Commissioner (the Commissioner).

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

3.1 The Order imposes fee increases above the rate of inflation. The total fees to be collected under the Order have increased by 15.5% from the previous year. The Commissioner's most recent set of audited accounts are used to calculate the amount of regulatory activity she has devoted to each designated professional body; the fee is set to cover those costs in the following year. Fees will vary up or down, year on year, according to how much regulatory activity the Commissioner has undertaken in relation to each body during the previous year. The fees charged (per complaint handled) have increased from the 2005 Order because of an overall increase (of 25%) in the staff time at the Office of the Immigration Services Commissioner (the OISC) having to be allocated to complaints and meetings with the designated professional bodies.

4. Legislative Background

4.1 This Order is made in accordance with section 86(10) and (12) of the 1999 Act.

4.2 The Commissioner has a statutory duty to monitor designated professional bodies regarding the regulation of their members in the provision of immigration advice and services. Under section 86(10) of the 1999 Act each designated professional body must pay to the Commissioner a fee to cover the costs incurred by the Commissioner in discharging her functions.

4.3 An Order has been laid under this power each year since 2002 to reflect the costs incurred by the Commissioner in the activities referred to in 3.1 above.

5. Extent

5.1 This instrument applies to 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 1999 Act set up the OISC as an independent public body to regulate immigration advisers.

7.2 Members of certain professional bodies referred to in the 1999 Act as "designated professional bodies" may provide immigration advice or immigration services without registering with the OISC.

7.3 The designated professional bodies are:

- The Law Society;
- The General Council of the Bar;
- The Institute of Legal Executives;
- The General Council of the Bar of Northern Ireland;
- The Law Society of Northern Ireland;
- The Law Society of Scotland; and
- The Faculty of Advocates.

7.4 The Commissioner is nevertheless responsible for monitoring the regulation by the designated professional bodies of their members in their provision of immigration advice or immigration services and this includes her consideration of complaints against their members. Each designated professional body is required to pay a fee each year to cover the costs incurred by the Commissioner in discharging her functions.

7.5 Once the Commissioner has provided the Immigration and Nationality Directorate (IND) with cost information, IND write to each designated professional body advising them of the fees each one will have to pay to the Commissioner by the end of the financial year, and explaining the basis for those costs. Each body has been given the opportunity to comment to the Commissioner.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument because it only affects the seven professional bodies listed in 7.3 above. Each organisation has already been advised in writing by IND of the fee for this year.

9. Contact

9.1 Claire Downie at the Home Office, Immigration and Nationality Directorate (telephone: 020 8760 8414, e-mail: Claire.Downie@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.