EXPLANATORY MEMORANDUM TO

THE IMMIGRATION SERVICES COMMISSIONER (DESIGNATED PROFESSIONAL BODY) (FEES) ORDER 2009

2009 No. 458

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. Purpose of the instrument

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 Commissioner's most recent annual report and audited accounts are used to calculate the amount and cost of the regulatory activity she has devoted to each designated professional body; the fee is set to cover the costs incurred during the financial year prior to collection. The total fees to be collected under this Order have decreased by 5.4% from the previous year, and six of the seven designated professional bodies will be charged fees that are less than those collected from them last year. The levels of the decreases range from 2.2% to 46.3%. The fee due from the Law Society of Scotland is the only fee that has increased from that collected last year. This year's fee has increased from £8,900 to £10,650, and increase of 19.7%. The costs incurred with dealing with complaints accounts for most of this increase and follows on from the changes introduced last year in the way fees are calculated. The Commissioner calculates fees according to the time actually spent on complaints for each body resulting in more accurate and fairer assessment of the staff time utilised in respect of work for each of the designated professional bodies than in previous years.

4. Legislative Context

4.1 The Commissioner has a statutory duty to ensure that the designated professional bodies are providing effective regulation of their members in relation to the provision of immigration advice and services including oversight of their investigation of complaints against their members. Under section 86(10) of the 1999 Act each designated professional body must pay the Commissioner a fee to cover the costs incurred by the Commissioner in discharging her functions.

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

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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 Office of the Immigration Services Commissioner (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 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.

7.4 Once the Commissioner has provided the UK Border Agency with cost information, the Agency writes to each designated professional body advising them of the fees each will have to pay to the Commissioner by the end of the financial year, and explaining the basis of those costs.

8. Consultation outcome

8.1 Each body has been given the opportunity to comment to the Commissioner having been advised in writing by the UK Border Agency on 11 February 2009 of the fee for this year. The Law Society of Northern Ireland requested information about the calculation of the fee to be paid by that body and the OISC has written to the Chief Executive to give the details that have been requested. No other responses to the notification of fees that were sent to the designated professional bodies have been received.

9. Guidance

9.1 The Home Office is not providing any publicity or any guidance to users, stakeholders and enforcement agencies to explain the details of this Order. The Order has occurred annually since 2002 and affects only those designated professional bodies that are required to pay fees to the OISC. Those bodies have been advised of the fee due and confirmation will be sent to them in writing by the UK Border Agency after the Order comes into force. The fees will then be sent to OISC. The Commissioner reports on the regulation by the designated professional bodies in the OISC annual report, but the details of the fees are not published as part of the report.

10. Impact

10.1 The impact is limited only to the designated professional bodies, and there is no other impact on business, charities and voluntary bodies

10.2 There will be no impact on the public sector.

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The fees set out in this Order relate to the work done by the Immigration Services Commissioner and the fees are to cover the costs of the work the Commissioner is required to do under the Immigration and Asylum Act 1999. The fees are calculated with due regard to work done throughout the year and in accordance with the procedure used in previous years, the data used is based on the audited accounts for the previous financial year. The designated professional bodies have been given the opportunity to comment on the fee and gives reasons if a fee is believed to be incorrect. The method used by the OISC in determining fees has not caused controversy in previous years and has proven to be reliable. There will be no review of the fees during the next 12 months, but the calculations reached will be examined when the fees for 2009/10 are calculated to ensure that the system remains reliable.

13. Contact

Marina Pitfield in the OISC Sponsor Unit at the UK Border Agency, Tel: 020 8604 6002 or e-mail: marina.pitfield2@homeoffice.gsi.gov.uk can answer any queries regarding this instrument.