EXPLANATORY MEMORANDUM TO

THE IMMIGRATION SERVICES COMMISSIONER (DESIGNATED PROFESSIONAL BODY) (FEES) ORDER 2010

2010 No. 891

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). These fees cover the cost incurred by the Commissioner in ensuring the designated professional bodies effectively regulate their members in relation to e.g. their provision of immigration advice and services.

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

3.1 The fees are for the year 1st April 2009 to 31st March 2010 but reflect the referable costs incurred in the course of the Commissioner's regulatory activity in the preceding year1st April 2008 to 31st March 2009 .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 total fees to be collected under this Order have decreased by 8.3% from the previous year, and three 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 5.8% to 21.7%. The levels of increase range from 6.4% (for the Law Society of Scotland) to 57% (for the Law Society of Northern Ireland). The fee due from the Law Society of Scotland has increased from £9,620 to £10,240 and this is due to increased amounts of information gathering. The fee due from the Law Society of Northern Ireland has risen from £1,210 to £1,900 due to work required for a memorandum of understanding that was not required last year. The additional work in connection with a memorandum of understanding is also responsible for the increase from £1,210 to £1,760 (45%) payable by the General Council of the Bar of Northern Ireland. The other body facing an increase is the General Council of the Bar of England and Wales that has seen its fee raised from £10,940 to £13,670 (25%) due to increased work in relation to handling complaints. The Commissioner calculates fees according to the time actually spent on complaints and other work for each body resulting in an accurate and fair assessment of the staff time utilised in respect of work for each of the designated professional bodies.

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. Further to section 86(10) and (12) and section 166 (3) (b) of the 1999 Act each designated professional body must pay the Commissioner each year a fee that is specified by an Order 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 2003 to reflect the cost incurred by the Commissioner in the activities referred to in 3.1 above.

4.3 The responsibility for the oversight of designated professional bodies in England and Wales will no longer remain with the Commissioner once changes in oversight introduced by the provisions of the Legal Services Act 2007 come into force. The designated professional bodies in Scotland and Northern Ireland will remain under the oversight of the Commissioner.

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. The 1999 Act established a regulatory framework to regulate the quality of immigration advice and services provided. The regulation of the provision of such advice and services was required to protect the interests of migrants and the general public.

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. The 1999 Act gave the Commissioner responsibility 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. The 1999 Act recognised that Commissioner would incur costs in discharging these functions and therefore there would be power under the Act for a fee to be charged to each designated professional body. Section 86(12) of the 1999 Act states that the fees to be are to be specified by an Order. The 1999 Act does not provide any other means by which to collect the fees.

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 at 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 15 February 2010 of the fee for this year. The Law Society requested information about the calculation of the fee to be paid by that body and this was explained in a telephone call made by the Deputy Commissioner on 24th February. 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 2003 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 since it only affects the seven designated professional bodies listed in the schedule to this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The fees are for the year 1st April 2009 to 31st March 2010 but reflect the referable costs incurred in the course of the Commissioner's regulatory activity in the preceding year1st April 2008 to 31st March 2009. 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 in accordance with the procedure used in previous years i.e. according to time spent on complaints and other work for each designated professional body. 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 give 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, although the methods used to calculate fees will be examined at the end of 2010/11 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.