EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (BIOMETRIC REGISTRATION) (AMENDMENT) REGULATIONS 2015

2015 No. [XXXX]

THE IMMIGRATION (BIOMETRIC REGISTRATION) (AMENDMENT) (NO. 2) REGULATIONS 2015

2015 No. [XXXX]

AND

THE IMMIGRATION (LEAVE TO ENTER AND REMAIN) (AMENDMENT) ORDER 2015

2015 No. [XXXX]

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 instruments

2.1 These instruments continue the incremental roll-out of policy on biometric immigration documents by requiring foreign nationals from outside the EEA or Switzerland who are subject to immigration control and apply for entry clearance which will have effect as leave to enter the United Kingdom for more than 6 months to apply for a biometric immigration document[1], to be obtained on arrival in the United Kingdom. In addition, these instruments introduce a new short term type of biometric immigration document, known as a short-stay permit and new arrangements about retaining and using biometric information provided for immigration and nationality purposes.

Biometric immigration documents take the form of a card with a chip containing biometric data - fingerprints and a digital facial image.

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

3.1 None.

4. Legislative Context

4.1 The UK opted in to European Council Regulation (EC) No 1030/2002 of 13 June 2002 – laying down a uniform format for residence permits for third-country nationals – which requires the standardisation of residence permits issued for over 6

[1] References to a Biometric Immigration Document include both Biometric Residence Permits and Short Stay Permits.

months. This Regulation was amended in April 2008 by Council Regulation (EC) No 380/2008 to upgrade the security features of the required format, introducing a requirement to contain certain biometric data, two fingerprints and a digital facial image.

4.2 The Immigration (Biometric Registration) (Amendment) Regulations 2015 amend the Immigration (Biometric Registration) Regulations 2008 ("the 2008 Regulations") to require a third country national, applying for entry to the UK for more than six months from overseas, to apply for a biometric immigration document (to be collected in the UK) thus meeting our European obligations. The Immigration (Biometric Registration) Regulations 2008 already provide for in-country applications for a biometric immigration document.

4.3 The Immigration (Biometric Registration) (Amendment) (No. 2) Regulations 2015 add countries and territories to a list in a schedule to the 2008 Regulations. This list is of the countries and territories from which if a person enrols their biometrics they must apply for a biometric immigration document. This approach allows for a phased implementation, linked to the progressive roll-out of UK Visas and Immigration's upgraded visa application system computer software.

4.4 The Immigration (Leave to Enter and Remain) (Amendment) Order 2015 allows entry clearance to have effect as leave to enter for a third country national who has made a successful application for a biometric immigration document from overseas and who is travelling on a short term vignette in order to collect their biometric immigration document in the UK.

5. Territorial Extent and Application

5.1 These instruments extend to all of the United Kingdom.

6. European Convention on Human Rights

6.1 James Brokenshire, Immigration and Security Minister, Home Office, has made the following statement regarding Human Rights:

"In my view the provisions of the Immigration (Biometric Registration) (Amendment) Regulations 2015; the Immigration (Biometric Registration) (Amendment) (No. 2) Regulations 2015; and the Immigration (Leave to Enter and Remain) (Amendment) Order 2015 are compatible with the Convention Rights".

7. Policy background

- ***What is being done and why***

7.1 These Regulations build upon a commitment to expand the roll-out of policy on biometric immigration documents to certain categories of foreign nationals, in order to meet our EU obligations. The previous stage of the roll-out required applications to be made for a biometric immigration document, where an applicant within the UK applied for an extension of leave which brought the total period of leave to more than

6 months. This was completed in 2012 and to date around 1.5 million biometric immigration documents have been issued.

7.2 The Immigration (Biometric Registration) (Amendment) Regulations 2015 will impose a requirement for foreign nationals from outside the EEA or Switzerland, who are subject to immigration control and apply from overseas for entry clearance which will have effect as leave to enter the United Kingdom for more than 6 months, to apply for a biometric immigration document. It is estimated that this group of foreign nationals will represent around half a million people per year.

7.3 Increasing the number of biometric immigration documents in circulation, and reducing the amount of paper documents used to evidence rights, supports the Government's strategy against illegal working and also makes it easier for foreign nationals to demonstrate their status in the UK and to access work and any benefits and services to which they are entitled.

7.4 The Immigration (Biometric Registration) (Amendment) Regulations 2015 require successful overseas applicants to obtain their biometric immigration documents in the UK. This has been identified as the most secure method to get this extremely valuable document safely into the possession of the rightful holder. In addition, it provides a more practical and improved customer service.

7.5 Successful applicants will be provided with a short term entry clearance vignette for use to travel to the UK to collect their biometric immigration document. . They will also be provided with a written decision which will advise them which Post Office branch to collect their biometric immigration document from, as well as how to arrange a different collection point.

7.6 If an applicant does not collect their biometric immigration document within the period specified in the written decision, they will face a warning and then possible sanction under the Code of Practice about sanctions for non-compliance with the biometric registration regulations. Sanctions range from an initial small fine up to an immigration sanction, which could include curtailment or cancellation of leave. Clearly, there is significant benefit to the applicant in collecting their biometric immigration document as quickly as possible so that they can evidence their rights, particularly their right to work. In addition, the applicant will need their biometric immigration document on their return to the UK from any trip abroad, once the short term entry clearance vignette has expired.

7.7 In addition to the changes covering overseas applications for biometric immigration documents, these Regulations introduce other alterations to the current biometric immigration document scheme, including the introduction of short stay permits for short extensions of leave granted while the applicant is in the UK, to provide more consistent and secure forms of immigration documentation. These Regulations also strengthen measures to prevent abuse of the English language test, by requiring holders of biometric immigration documents to produce them when requested, to tackle impostor fraud.

7.8 These Regulations also introduce revised provisions about the use and retention of biometric information in consequence of the Immigration Act 2014. These provisions build on statements provided to Parliament during the passage of the Immigration Act 2014.

7.9 The biometrics related change to the Immigration (Leave to Enter and Remain) (Amendment) Order 2015 is necessary to allow the short term entry clearance vignette provided to successful overseas applicants to have effect as leave to enter on arrival in the United Kingdom. An unrelated amendment to that Order will ensure that the leave of partners and children of members of HM Forces does not lapse if they are out of the United Kingdom for more than two years accompanying their sponsor on an overseas posting.

- ***Consolidation***

7.10 The Immigration (Biometric Registration) (Amendment) Regulations 2015 contain provisions about the use and retention of biometric information in consequence of the Immigration Act 2014. There are further changes required to give full effect to the biometric provisions in that Act, but these cannot be implemented until other parts of the Act are commenced. We are giving active consideration to, once these changes can be implemented, consolidation of all of the immigration and nationality instruments regarding use and retention of biometric information.

8. Consultation outcome

8.1 The Home Office has not undertaken a full public consultation on these instruments given that this is simply a continuation of an existing policy, to roll-out biometric immigration documents as a more secure form of evidence of immigration status and any associated rights and conditions, and in no way contradicts or undermines the response from the extensive public consultation on the first phase. The Home Office has held discussions with the Information Commissioner's Office and the Biometrics Commissioner about how biometrics taken for immigration and nationality purposes are used and retained. These instruments reflect those discussions.

9. Guidance

9.1 Guidance will be produced on the relevant outward facing internet sites so that customers are aware of the change. The importance of the biometric immigration document to the Government's strategy to combat illegal working, and the benefits to all parties of having more biometric immigration documents in circulation, will be highlighted through stakeholder events, communications and publications on the GOV.UK website following liaison with corporate partnership groups and organisations representing foreign nationals.

10. Impact

10.1 There is no perceived negative impact on business, charities, voluntary bodies or the public sector as a result of these instruments. Indeed we see a benefit since it will become easier for foreign nationals to be able to prove their entitlements and thus should reduce the burden on those who need to check the right to work and other entitlements. Accordingly an Impact Assessment has not been prepared.

11. Regulating small business

11.1 Not applicable.

12. Monitoring & review

12.1 The Home Office continues to monitor the roll-out of the biometric immigration documents for in-country applications, and will similarly maintain an ongoing review of the operation of the overseas application process to ensure customers are best served and the benefits to business and the UK Government are delivered.

13. Contact

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