**EXPLANATORY MEMORANDUM TO**

**THE IMMIGRATION (BIOMETRIC REGISTRATION) (AMENDMENT) REGULATIONS 2010**

**2010 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 instrument

2.1 These Regulations continue the incremental rollout of biometric immigration documents to include additional groups of foreign nationals who are subject to immigration control and who have limited leave to stay in the United Kingdom. The biometric immigration document issued under the Regulations takes 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. This Regulation has been amended (April 2008) by Council Regulation (EC) No 380/2008 to upgrade the security features, introducing a requirement to contain certain biometric data; fingerprints and digital facial image.

4.2 These Regulations are the fifth set of regulations to be made under the biometric registration provisions of the UK Borders Act 2007. They make further amendments to the Immigration (Biometric Registration) Regulations 2008 which enable the UK to comply with the EC regulations it opted into. This enables us to move a step closer towards complying with the EU requirement for Member States to confirm leave through the issue of a residence permit in the form of a card from May 2011 and with a biometric card from May 2012.

4.3 These Regulations build upon commitments to expand the rollout of the biometric immigration documents to certain categories of foreign nationals. Individuals applying for further leave to stay in the UK for more than 6 months under the Immigration Rules in Tiers 1 and 5 of the Points Based System for migration will now have to apply for a biometric immigration document.

## 5. Territorial Extent and Application

5.1 This instrument extends to all of the United Kingdom.

## 6. European Convention on Human Rights

6.1 Damian Green, Minister of State for Immigration, Home Office, has made the following statement regarding Human Rights:

In my view the provisions of the Immigration (Biometric Registration) (Amendment) Regulations 2010 are compatible with the Convention rights.

## 7. Policy background

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

7.1 These Regulations build on previous Regulations which enable the UK to comply with EU law by rolling out biometric immigration documents to immigration categories of applicants extending their stay in the UK

These regulations impose a requirement to apply for a biometric immigration document to the following categories of migrants:

- Foreign nationals from outside of the European Economic Area (EEA) who are subject to immigration control and are applying for further leave to remain in the United Kingdom for more than 6 months under Tiers 1 and 5 of the Points Based System for migration, and;
- Dependants of these applicants applying under the immigration rules.

7.2 These changes only apply to foreign nationals subject to immigration control and who are applying for further leave to remain in the UK in the categories described.

7.3 PBS Tier 1 covers highly skilled workers, investors, entrepreneurs and post-study work. Tier 5 is for certain types of sponsored temporary worker whose stay helps to satisfy cultural, charitable, religious or international objectives. The specific categories of the PBS tiers covered by the regulation are:

Tier 1 (General) Migrant;
Tier 1 (Entrepreneur) Migrant;
Tier 1 (Investor) Migrant;
Tier 1 (Post-Study Work) Migrant; and
Tier 5 (Temporary Worker) Migrant.

7.4 Having a biometric immigration document will make it easier for foreign nationals granted an extension of stay in these categories to demonstrate their status in the UK to their sponsor and others to access benefits and services to which they are entitled. It makes it easier for employers of migrants in these categories to make right to work checks as the card clearly sets out the holder's entitlements. Employers do not need to undertake any more checks than already required, but the document issued is more secure and straightforward than other paper-based status documents issued. Employers are also becoming increasingly familiar with the biometric immigration document as the numbers in circulation have increased following previous roll outs.

- ***Consolidation***

7.5 These Regulations amend The Immigration (Biometric Registration) Regulations 2008, by adding additional categories required to apply for a biometric immigration document. These are the third set of amendments made to the Immigration (Biometric Registration) Regulations 2008, but the majority of the

original Regulations remain unchanged. If further substantive amendments are necessary in the future, consolidation will be considered at that stage.

## 8. Consultation outcome

8.1 The UK Border Agency has not undertaken a formal consultation, however, the rollout strategy and policy have been discussed with internal and external stakeholders.

## 9. Guidance

9.1 We will continue to liaise with our stakeholder groups including the Business Advisory Panel, Joint Education Taskforce, Arts & Entertainment Taskforce, employers, sports representatives, religious organisations, overseas governments and their embassies and organisations representing foreign nationals through stakeholder events and through publications on the UK Border Agency website.

## 10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be minimal as these regulations affect individuals.

10.2 The impact on the public sector is expected to be small as public sector organisations, such as the police, local authorities, NHS, DWP have become more familiar with the biometric immigration document since the beginning of its rollout in November 2008. Any impact will largely fall to learning and awareness issues. However, we have mitigated against this by continuing to work with organisations providing additional guidance and through continued stakeholder liaison.

10.3 An Impact Assessment and Equality Impact Assessment Report are attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

## 11. Regulating small business

11.1 The legislation does not apply to small businesses.

## 12. Monitoring & review

12.1 The UK Border Agency continues to monitor the rollout of the biometric immigration document for foreign nationals against its delivery targets and the impact of the policy.

## 13. Contact

13.1 Eleanor West at the UK Border Agency Tel: 0208 760 2244 or e-mail: eleanor.west16@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.