EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (BIOMETRIC REGISTRATION) (AMENDMENT) REGULATIONS 2012

2012 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. 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 was amended in 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 sixth 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 and allow us to complete the in-country rollout of the biometric immigration document.

4.3 These Regulations build upon commitments to expand the rollout of biometric immigration documents to certain categories of foreign nationals. Individuals from outside the European Economic Area (EEA) applying to be allowed to stay in the UK for more than six months under any category of the Immigration Rules or outside the immigration rules will now have to apply for a biometric immigration document. This includes applicants for both temporary and permanent leave to remain (LTR) in the UK (known as further leave to remain or FLTR and indefinite leave to remain or ILR). Details of the other types of individuals who are included within the Regulations are given in section 7 below.

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 2012 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 incorporate all non-EEA applications made in the UK ("in-country") for more than six months leave to remain and as such reaffirm those categories already rolled out. (Previous stages of the rollout have been to applications made in the UK for an extension of stay under the points-based system for migration and a number of other categories including spouses and partnership.)

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

Foreign nationals from outside of the EEA or Switzerland who are subject to immigration control and are applying for leave in the United Kingdom for more than 6 months, incorporating;

- Indefinite Leave to Remain applicants (ILR or settlement);
- (Further) Leave to Remain (LTR or FLTR or extensions of stay);
- Dependants on these applicants[1].

Foreign nationals from outside of the EEA or Switzerland who are subject to immigration control and are applying for recognition as a refugee, a person in need of humanitarian protection or a stateless person; or as the dependant of a person making such an application.

In addition, the following applications will require an application for a biometric immigration document:

- Settled migrants replacing or upgrading their immigration status document (known as a "No Time Limit"[2] application);
- Travel document applications (where they do not already hold a valid biometric immigration document): Convention Travel Document, Stateless Person's Travel Document or Certificate of Travel Document

7.2 These changes complete the in-country rollout.

7.3 These Regulations exclude individuals who may apply in-country for an extension of stay in the UK as an Olympic/Paralympic Games Family Member Visitor or Olympic/Paralympic Games Family Member Child Visitor because their extant leave or permission to be in the UK will expire during Games time. (Such an

[1] Where a dependant application is permissible under the provisions for these categories.

2 The equivalent application for those with temporary leave to remain, known as a "Transfer of Conditions" application, was incorporated under SI 2009/819 The Immigration (Biometric Registration) (Amendment) Regulations 2009. As with all previously rolled out application categories it is affirmed in these Regulations.

application would be made in accordance with paragraphs 56R and 56U of the immigration rules (Olympic or Paralympic Games Family Member Visitor or an Olympic or Paralympic Games Family Member Child Visitor).) This is considered proportionate given the contractual obligations of the UK as hosts of the Olympic and Paralympic Games and the exceptional nature and circumstances of the event. Any such extension of stay will only be available between 30 March 2012 and 8 November 2012 and we expect very few applications on these grounds.

7.4 Having a biometric immigration document makes it easier for foreign nationals to demonstrate their status in the UK and to access work, 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 document 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. Employers have also become increasingly familiar with the biometric immigration document as the numbers in circulation have increased following previous roll outs.

7.5 In addition to the rollout of biometric immigration documents to new categories, the Regulations introduce other changes. These principally comprise consequential amendments necessary to reflect the new categories incorporated in the Regulations. In addition, they ensure that from 1st December 2012, all non-EEA nationals granted leave for more than six months will need to apply for a biometric immigration document as evidence of that leave if they were not previously required to apply for a document in respect of that leave. This will ensure that from this date there will only be one such format of document issued in-country by the Home Office, making it simpler for employers and others required to check them.

7.6 The Regulations include provision to ensure that a person can be required to attend premises before a specified date and to bring with them specified documents. This is intended to enable use of third party biometric enrolment services.

7.7 In addition, these Regulations widen the circumstances where a foreign national who holds a biometric immigration document must provide it, to include all immigration applications and also nationality or related applications. They ensure that when providing their document, such people may also be required to provide their fingerprints for comparison against those in the document.

7.8 The requirement to provide fingerprints for comparison is also extended to where a biometric immigration document is presented for employment purposes. This is intended to give those conducting right to work checks the potential to fully verify that the person presenting it to them is the rightful holder of the document.

7.9 The Regulations also make it clear that where the person has made an application for recognition as a refugee, stateless person or where the person is in need of humanitarian protection (or a dependent of such an applicant) the sanctions imposed for non-compliance will be limited to the issuance of a civil penalty notice and refusal to issue the biometric immigration document. This is because to refuse or disregard the person's application for protection on these grounds would conflict with the UK's obligations under international conventions and domestic human rights legislation.

- ***Consolidation***

7.10 These Regulations amend The Immigration (Biometric Registration) Regulations 2008 by adding additional categories required to apply for a biometric immigration document. These are the fourth set of amendments made to the Immigration (Biometric Registration) Regulations 2008, but the majority of the original Regulations remain unchanged or amended only to reflect the new categories incorporated. 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 full public consultation however, the rollout strategy and policy have been discussed with internal and external partners.

9. Guidance

9.1 We will continue to liaise with our corporate partnership groups including the National Asylum Stakeholder Forum, Business Advisory Panel, Employers' Taskforce, MPs and organisations representing foreign nationals through stakeholder events and communications and 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 in the past and are continuing to do so by working with organisations, liaison with partners, providing additional guidance and launching a new communications campaign to build up to this phase of the rollout.

10.3 The Impact Assessment is 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.