EXPLANATORY MEMORANDUM TO

THE BRITISH NATIONALITY (GENERAL) (AMENDMENT) REGULATIONS 2015

2015 No. [XXXX]

AND

THE IMMIGRATION (PROVISION OF PHYSICAL DATA) (AMENDMENT) REGULATIONS 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 instrument

2.1 These Regulations expand the range of immigration and nationality applications for which the applicant can be required to provide biometric information. They also set out new rules for the use and retention of biometric information provided with these applications.

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

3.1 None.

4. Legislative Context

4.1 The Immigration Act 2014 ("the 2014 Act") made several changes to the legislative framework governing the collection, use and retention of biometric data provided for immigration and nationality purposes. Relevant to these Regulations, the 2014 Act amended:

- the British Nationality Act 1981 to enable the Secretary of State to require the provision of biometric information as part of an application to naturalise or register as a British citizen; and
- the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") to expand the range of immigration applications for which the Secretary of State can require biometric enrolment. These changes will enable the collection, use and retention of biometric data for direct airside transit visas and documents issued as evidence that a person who is not a national of a European Economic Area (EEA) state or Switzerland is entitled to enter or remain in the United Kingdom by virtue of an enforceable European Union right or of any provision made under section 2(2) of the European Communities Act 1972. Such documents are issued in accordance with the Immigration (European Economic Area) Regulations 2006 (as amended).

4.2 These Regulations put in place requirements for persons making the above immigration or nationality applications to enrol their biometric information and the practical arrangements for this by amending the British Nationality (General) Regulations 2003 and the Immigration (Provision of Physical Data) Regulations 2006. They also set out the same circumstances in which biometric information provided for immigration or nationality purposes may be retained, how it may be used and when it must be destroyed.

4.3 These Regulations are part of a series of instruments which implement the biometric powers contained in the 2014 Act.

5. Territorial Extent and Application

5.1 These Regulations extend to all of the United Kingdom.

6. European Convention on Human Rights

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

In my view the provisions of the British Nationality (General) (Amendment) Regulations 2015 and the Immigration (Provision of Physical Data) (Amendment) Regulations 2015 are compatible with the Convention rights.

7. Policy background

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

7.1 Biometric information is an important element of our secure immigration system, designed to detect identity fraud and to ensure that when migrants who are in the UK unlawfully are encountered, they can be identified and returned to their country of origin. The majority of our immigration processes that allow foreign nationals to visit and live in the UK require biometrics to be enrolled or checked, including overseas visa applications, SecureID checks at UK ports and in-country biometric residence permit applications.

7.2 These Regulations will now require the provision of biometric information from:

- applicants for British citizenship;
- applicants for transit visas (for passing through the UK); and
- non-EEA nationals, with an enforceable EU law right, applying for documentation to evidence their right to enter or reside in the UK.

7.3 These Regulations are intended to improve our levels of assurance about the identities of foreign nationals coming to or remaining in the UK, thereby minimising the risk that fraudulent applications will be successful. The changes in these Regulations will mean that we are able to use biometric information to fix and manage a person's identity from when they first apply to come to the UK from overseas until they are granted British citizenship and obtain a British passport (if applicable).

7.4 The requirement to provide biometric information when applying to become a British citizen will apply to every applicant regardless of their nationality. However, children aged under 5 and those physically unable to provide fingerprints will only have to enrol a facial image.

7.5 Non-EEA nationals with enforceable EU rights will be issued with biometric cards, similar in format to the biometric residence permits already issued to non-EEA nationals. The consultation for these proposals completed in February 2013 revealed that two thirds of employers and businesses would welcome improvements to the documentation which is provided to this group of foreign nationals. This will reduce the administrative burdens on employers and public authorities required to check a person's status before offering employment or providing a service. It will be easier for those people who are in the United Kingdom legitimately to evidence their status, thus facilitating the exercise of their free movement rights, and it will be harder for people who are not in the United Kingdom legitimately to live and work here.

7.6 Both sets of Regulations build on statements provided to Parliament during the passage of the 2014 Act regarding the provisions for how biometric information provided to the Secretary of State may be retained, used and destroyed.

- ***Consolidation***

7.7 These Regulations 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. However, the proposals being enacted in these Regulations have been discussed with internal and external partners. These proposals were shared with various organisations for their comment during the passage of the 2014 Act through Parliament. 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 Regulations reflect those discussions.

8.2 An online survey was undertaken in late 2012 about the issue of biometric cards to non-EEA family members of EEA nationals. Over 60 responses to the questions about the impact of the proposed policy were received. The majority of the responses were favourable although some respondents were concerned about potential equality and discrimination issues.

9. Guidance

9.1 The Home Office will publish appropriate guidance and continue to liaise with its corporate partners through stakeholder events and publications on the GOV.UK website.

10. Impact

10.1 The impact on business, charities and voluntary bodies is expected to be minimal.

10.2 The impact on the public sector is minimal.

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 businesses.

12. Monitoring & review

12.1 The Home Office will monitor the impact of these Regulations against its delivery targets and the impact of the policy. This will be achieved through discussions with internal and external partners.

13. Contact

13.1 John Allen at the Home Office Tel: 0207 035 5551 or email: john.allen@homeoffice.gsi.gov.uk.