EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (BIOMETRIC INFORMATION ETC.) (AMENDMENT) REGULATIONS 2025

2025 No. 382

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Seema Malhotra, Minister for Migration and Citizenship at the Home Office, confirms that this Explanatory Memorandum meets the required standard.

2.2 Cezare Rodrigues-Noble, Deputy Director for the Passport, Identity and Nationality Policy unit at the Home Office, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 John Allen and Jonathan Kirman at the Home Office, telephone: 03000 721271 and 0300 105 0124 or email: identitysecurityteam@homeoffice.gov.uk and passengerpolicyenquiries@homeoffice.gov.uk can be contacted with any queries regarding this instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument updates UK biometric legislation by mandating biometric immigration documents for all entry clearance applicants. It introduces a requirement to update a facial image and a new sanction for those who fail to do so. It adds to the categories where fingerprints can be retained beyond 15 years, introduces new sanctions for non-compliance by eVisa (which is a digitised form of immigration status) holders, and gives the Secretary of State powers to refuse applications as a stateless person from individuals who fail to enrol their biometrics, without a reasonable excuse.

4.2 It introduces a power to capture biometric information (facial images and fingerprints) at the border from all UK arrivals. This data will normally be retained for up to 15 years, however this does not extend to British citizens. The instrument introduces a new power to refuse or cancel immigration permission if a passenger does not comply, which does not extend to British and Irish citizens.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction in which the instrument forms part of the law) is the United Kingdom.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 The Home Office has been rolling out eVisas since 2018, initially to individuals granted permission under the EU Settlement Scheme (EUSS) and then to other immigration routes. This is being delivered in line with our digital strategy, which is a central part of our efforts to modernise our immigration system.

5.2 On 1 November 2024, the Home Office stopped issuing physical biometric residence permits and instead provided foreign nationals with online evidence of their immigration status through eVisas, which holders can view and share with third parties. The rollout of eVisas will improve foreign nationals' experience as eVisas are secure and cannot be stolen, lost, or tampered with, unlike physical documents. Foreign nationals will also be able to view their status information anywhere and in real-time and update their details or documentation more easily. The Regulations help to implement the changes to a digitised system, by encouraging foreign nationals to create an account to access their eVisa and maintain their records, including their facial image, to ensure the information on their account and eVisa is accurate. The regulations take account of people who are less likely to need to prove their status in the UK.

5.3 During the transition away from physical documents, holders of existing immigration permissions will need to register for a customer account to receive an eVisa that proves their immigration status. We will continue to issue passport stickers (known as vignettes) to some foreign nationals in 2025. Afterwards, anyone applying for entry clearance or immigration permission must register for a customer account to receive an eVisa. This does not apply to individuals who apply for an Electronic Travel Authorisation (ETA) or holders of legacy immigration documents, such as a visa or passport endorsement and people granted permission under the EU Settlement Scheme.

5.4 Legislation is required to enable the transition from physical documents to eVisas and support the transformation to a digitised immigration system for every visa applicant arrival to the UK, in addition to those who are already required to apply for a biometric immigration document (BID) such as people who apply to stay in the UK for more than six months.

5.5 This legislation introduces several important changes to ensure a smooth transition to eVisas. For instance, we have extended the time within which a person needs to apply for a replacement BID, following cancellation or expiry from 3 months to 18 months. This means a BID holder will not be liable to be sanctioned for failing to create a UKVI account to access their eVisa after three months of their BRP card expiring. We want people to create an account to access their eVisa as soon as possible. However, we will allow them to use an expired BRP for up to 18 months after the card's expiry to create and access an account and to make an in-country immigration application.

5.6 We will encourage people aged over 70 years who hold an expired BRP to create a UKVI account to access their eVisa to make it easier for them to prove their status and identity in the UK. However, we will not require them to create an account as they are less likely to need to evidence a right to work in the UK and should they decide not to do so, they will not face any sanctions.

5.7 It will also require status-holders over 16 to update their facial photographs at least once every 10 years, until they are aged over 70 years. This is important to enable third party checkers to compare the image against the holder.

5.8 The instrument also introduces a new sanction to reflect the move to eVisas, which allows the Secretary of State to prevent the user creating a share code (which is a code that enables third parties to conduct status and identity checks) until they adhere with the requirements of the Immigration (Biometric Registration) Regulations 2008 ("the 2008 Regulations"). Under the related Code of Practice, ahead of issuing a sanction, the Secretary of State must issue a notification to the person, in a format that reflects the person's circumstances. Where a person fails to update their facial image, the Secretary of State will need to be satisfied the person had a reasonable opportunity to comply with this requirement of the 2008 Regulations, before preventing them from being able to create a share code.

5.9 The legislation also closes some gaps we have identified, including providing for the retention of biometric information beyond the standard retention period of 15 years from individuals who abscond from immigration bail and become uncontactable, so that they remain identifiable.

5.10 The regulations will ensure we can capture biometric information from individuals applying to stay in the UK as stateless persons.

5.11 This instrument is also required to introduce a power to capture biometric information at the UK border and retain it for up to 15 years. British citizens will not be subject to this retention period. The instrument introduces a new power to refuse or cancel permission for non-compliance. British and Irish citizens are exempt from the power to refuse or cancel immigration permission. The instrument would also allow the Home Office to explore options and pilot a contactless travel capability at the UK border. This forms part of the Home Office's commitment to improve both border security and the passenger experience.

What was the previous policy, how is this different?

5.12 This instrument enables us to deliver two policies: eVisas and Contactless Travel.

5.13 The previous policy was built around physical immigration documents. This instrument enables us to implement a digitised immigration system, where evidence of status is provided online. This will be provided by an electronic biometric immigration document (BID), via GOV.UK in the form of an eVisa.

5.14 On 1 November 2024, we stopped issuing physical biometric residence permit (BRP) cards to people granted permission to stay for over six months as evidence of their status in the UK. This instrument treats anyone who needs to apply for entry clearance as needing to apply for an eVisa.

5.15 Previously, anyone whose BRP was cancelled or expired and who had extant immigration permission, was required to apply for a replacement, within three months from the date of cancellation or expiry or face a sanction under Regulation 23 of the 2008 Regulations.

5.16 It also enables us to require holders to update their biographical details and require facial images to be updated at least once every 10 years, rather than the status-holder having to apply for a replacement document when the BRP card expires.

5.17 The previous policy only allows for the capture of biometric information at the UK border to complete identity verification as part of initial border examination. This instrument will require all UK arrivals to provide biometric information at the border, save for certain children under the age of 16. This will allow the Home Office to explore options to introduce a contactless travel capability at the UK border, by using passport or immigration application biometric information to validate the identity of

an individual without the need to present a passport or travel document. Passports and travel documents will remain a crucial part of the border-crossing process and passengers will still be required to travel on a valid passport or travel document to enter the UK.

5.18 The current policy does not allow for the routine capture of biometric information at the UK border and retention of this data. This instrument will introduce a power to capture and retain biometric information. The retention period will be aligned to existing periods in biometric legislation.

5.19 Border Force Officers are currently able to refuse or cancel permission to enter or stay in the UK if a person, when under examination, fails to adhere with the request to provide biometric information without a reasonable excuse. This instrument will expand this power to apply to all non-British or Irish arrivals to the UK, if they fail to provide a facial image and/or fingerprint(s) at the UK border.

6. Legislative and Legal Context

How has the law changed?

6.1 The law has changed incrementally over time. Since 1999 there have been five changes to our primary immigration and citizenship biometric legislation. Many of the changes have enabled us to align the powers to use and retain biometric information across immigration and citizenship. These regulations will continue that approach.

6.2 The law has changed to reflect the move away from a physical BRP card, which started as the Identity Card for Foreign Nationals, to the digitised eVisa. The law needs to reflect these changes, such as the fact that an eVisa cannot be physically lost or stolen unlike the previous physical biometric immigration documents. It introduces a new sanction for holders of BIDs who fail to comply with the 2008 Regulations.

6.3 The 2008 Regulations have been amended to remove the distinction between limited and indefinite leave, as well as removing the requirement that a biometric immigration document can only be issued where a grant of leave is to exceed six months' duration. They further clarify that where the biometric immigration document is an eVisa, it may take effect from the date that the leave to enter or remain specified in it takes effect.

6.4 The law has been amended to clarify gaps in the current legislation, including ensuring we can retain the fingerprints of people who abscond from immigration bail and cannot be contacted. In addition, individuals who apply to stay in the UK as a stateless person, may have their application rejected if they fail to enrol their biometrics as required.

Why was this approach taken to change the law?

6.5 This is the only approach to make the necessary changes. There are statutory powers for taking biometrics in connection with the Immigration Acts and for nationality. This means there is limited scope for changing policies using non-legislative means such as guidance.

7. Consultation

Summary of consultation outcome and methodology

7.1 There is no legal requirement for the Home Office to undertake a full public consultation on the biometric regulations, however, we ran a 12-week consultation

which was open to everyone in respect of a related Code of Practice. This received 29 responses, with only six of these completed fully. Following this we have held a range of in-person and virtual engagement events starting in October 2023, with a range of stakeholders (including large employers, legal representatives, charities and other organisations supporting individuals with eVisas). Some concerns were raised about the issuance of civil penalties where individuals fail to adhere with the requirements of the Immigration (Biometric Registration) Regulations 2008 ("the 2008 Regulations"). Two further engagement sessions with a range of organisations that cater for foreign nationals and vulnerable people took place in November and December 2024, to enable a further review of the draft Code of Practice so that it better identified vulnerable people.

7.2 The requirement to consider issuing civil penalties was addressed by amending the 2008 Regulations in the Immigration (Collection, Use and Retention of Biometric Information and Related Amendments) Regulations 2021, so that the Secretary of State has discretion on when to issue a civil penalty and the updated Code of Practice goes further, so it is clear that civil penalties should only be issued where non-compliance with the 2008 Regulations is significant. The updated Code of Practice and the Government's response to the consultation will be published on 20 January 2025.

7.3 Our engagement sessions enabled us to develop the policy on applying and using eVisas to take account of vulnerable people, who have limited access to digital devices or lack digital skills, and to ensure third parties that need to conduct checks can easily confirm the person's identity and status. The Government's consultation response can be found at: https://www.gov.uk/government/consultations/biometric-registration-regulations-changes-to-the-code-of-practice/outcome/consultation-response.

8. Applicable Guidance

8.1 Guidance is available at https://www.gov.uk/government/publications/biometric-information on enrolling, using, and retaining biometrics. This guidance is iterative and is regularly updated when legislation and policies change. The associated Code of Practice is found at: https://www.gov.uk/government/consultations/biometric-registration-regulations-changes-to-the-code-of-practice. . This sets out the sanction in the legislation that may be applied. The updated Code and the Government's response to the consultation was published on 20 January 2025 and can be found at the addresses above.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 We believe that eVisas and the Code of Practice will bring some familiarisation costs to businesses, including employers, landlords in England, and financial institutions. However, the impact is likely to be minimal. Costs associated with the implementation and rollout of digital documents are included in the relevant Home Office Accounting Officer's Assessment, which will be published in line with the regular reporting schedule.

9.2 An Economic Note and Options Assessment has been completed for the capture and retention of biometric information at the UK border and contactless travel section of

these regulations. This will be published alongside the instrument. Two options have been considered for this legislation:

- Do not pass the legislation and maintain the current border system. This will lead to increased border and cost pressures due to the likely increase in passenger numbers.
- Pass it in full to deliver strategic and policy objectives for border security and efficiency. (This is the preferred option.)

9.3 This instrument will allow for the capture and retention of biometrics at the border. The direct benefits associated with the legislation are:

- Potential for improved border security, because expanding biometric capture will enhance our ability to detect imposters and reduce risks from human trafficking to the UK.
- Better public perception of border security.

9.4 There are no direct costs associated with the passing of this section of the legislation, but there are wider, secondary benefits and costs associated with any policy changes that may occur at the border, including the piloting and implementation of contactless travel. Contactless travel benefits may be:

- Time savings at the border, as passengers will have a reduced transaction time at the eGates or Primary Control Point desks.
- Shorter queue times may help to improve the customer perception of the border system.
- If more passengers are able to use automation at the border, we will be able to target and reallocate Border Force resources to where they are most needed.
- Increased security, as all UK arrivals will have a biometric check when entering the UK.

9.5 Whilst not directly linked to the passing of this legislation, the costs associated with contactless travel may include:

- Equipment and signage.
- Maintaining the IT system, estimated to be £2.4 million per year. The anticipated cost is expected to be similar to current maintenance costs of the existing eGate system and is not expected to incur any direct cost to business greater than +/-£10 million.
- Staff costs and Border Force training.

9.6 Both assessments reference contactless travel, however, the regulations primarily allow for biometric capture at the border and do not specifically create a power to introduce a contactless travel capability at the UK border. Therefore, a full business case process will be undertaken if contactless travel is piloted and implemented at the UK border. The capability will require further testing, including at the UK border, before we are able properly to assess monetary costs and benefits. The Economic Note for biometric capture and retention at the UK border does not consider the cost of any procurement of required technology, including new eGate procurement this is beyond the scope of these regulations. A full business case process will be required to assess the implementation of contactless travel before the capability is rolled out at the UK border.

9.7 There is no significant impact on the public sector as a result of the introduction of a power to capture and retain biometric information at the UK border. In line with our public sector equality duty, we have undertaken assessments of the impact of the transition to eVisas as we have developed the policy and rolled them out. We continue

to assess the impact on people with protected characteristics and have put in place a range of mitigation for people which protected characteristics who may be affected by the policy.

9.8 We have taken steps to ensure people who are most likely to lack digital skills or not have access to suitable technology are supported. For example, we have provided support services, including telephone services, to users such as foreign nationals and people who need to check their status. This includes providing Assisted Digital Services and arranging for Grant Funded Organisations to provide support to people who are vulnerable. The eVisa scheme also enables people to make use of helpers and proxies to help them to set up and manage their UKVI account and access their eVisa. This legislation also removes the requirement on people aged over 70 years, who are less likely to have access to suitable technology or who may lack digital skills, to replace an expired or cancelled BID or to periodically update their facial image, as they are less likely to need to prove their status in the UK.

Impact on businesses, charities and voluntary bodies

9.9 There is no significant impact on business, charities, or voluntary bodies related to the eVisa aspect of these regulations. Through the contactless travel Economic Note, we have assessed that the equivalent net direct cost to business is below the threshold of £10 million and that the impact on business is negligible, as facial recognition technology is already integrated into the UK border system.

9.10 The legislation does not have a significant impact on small or micro businesses.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Home Office will review the impact of this legislation against its delivery targets. This will be completed annually.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister for Migration and Citizenship at the Home Office has made the following statement regarding Human Rights:

"In my view the provisions of the Immigration (Biometric Information etc.) (Amendment) Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").