EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (BIOMETRIC REGISTRATION) (CIVIL PENALTY CODE OF PRACTICE) ORDER 2008

2008 No. 3049

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

2. Description

2.1 Sections 9(1) of the UK Borders Act 2007 enables the Secretary of State to impose a civil penalty regime where a person fails to comply with a requirement of regulations made under section 5(1) of that Act. Under section 13, the Secretary of State must issue a Code of Practice setting out matters to be considered in determining whether to give a penalty notice and the amount of the penalty.

2.2 A draft of the Code of Practice was published on 25 February 2008 and members of the public had until 4 May 2008 to respond to the consultation. Seventeen responses were received and considered. The Code was revised to reflect some of the issues raised, and was laid before Parliament on the same date as this Order was laid. This Order provides for the Code to come into force on the day after the day when the Order is made.

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

3.1 None

4. Legislative Background

4.1 This draft Order, to be made under section 13(6) and 14 of the UK Borders Act 2007, provides for the coming into force of the first Code of Practice issued under section 13 of that Act. The Code concerns the imposition of a civil penalty where a person fails to comply with a requirement of regulations made under the biometric registration provisions of that Act (section 5(1)). The relevant regulations - laid in draft at the same time as this Order - are the Immigration (Biometric Registration) Regulations 2008.

4.2 Under section 14(3), the first Order to be made under these powers shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

5. Territorial Extent and Application

5.1 This instrument extends to all of the United Kingdom.

6. European Convention on Human Rights

6.1. Meg Hillier has made the following statement regarding Human Rights:

In my view the provisions of the Immigration (Biometric Registration) (Civil Penalty Code of Practice) Order 2008 are compatible with the Convention rights

7. Policy background

7.1 The Government is committed to securing the United Kingdom's borders and improving immigration control. It also has a wider agenda of protecting people against identity fraud, communities against crime, illegal immigration and terrorism. The Government is therefore introducing the National Identity Scheme which will ultimately deliver a universal and simple proof of identity for all those who are legally entitled to live and work in the UK.

7.2 The introduction of identity cards for foreign nationals under the biometric registration provisions of the Act will allow the Government to link securely a person to a single identity and provide clear evidence of the holder's immigration status (the card will be the biometric immigration document issued under the forthcoming biometric registration regulations). This will help tackle abuses such as illegal working, multiple applications for leave to stay in the UK in different identities, and fraudulent access to public funds. It will also provide reassurance and identity protection to legal migrants.

7.3 The vast majority of migrants coming to the UK comply with our laws and rules. However, a small number of individuals will fail to comply with requirements of regulations made under the UK Borders Act 2007. For this reason, the Act enables the Secretary of State to make regulations which impose sanctions to encourage compliance. These include refusing to issue a biometric immigration document, refusing or rejecting an immigration application, cancelling or varying (by curtailment) existing leave and the imposition of a civil penalty notice.

7.4 The Code sets out how the Secretary of State will apply sanctions on those foreign nationals who fail to comply with requirements made under regulations provided by the Act. In particular, it establishes the circumstances when the Secretary of State may impose a civil penalty, and the amount of any civil penalty notice issued. It also sets out when an immigration sanction will be imposed rather than a civil penalty.

7.5 The Code of Practice was included in the policy for biometric registration provisions of the UK Borders Act to mirror similar provision in the Identity Cards Act 2006. The purpose of the Code is to provide clear, public guidance on how the sanctions regime will operate, to ensure a degree of consistency with other legislation and to provide Parliament an opportunity to scrutinise the operation of the sanctions.

8. Impact

8.1 An Impact Assessment is attached to this memorandum.

9. Contact

9.1 John Allen at the UK Border Agency Tel: 0208 760 3465 or e-mail: john.allen@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency:	Title:	
Home Office / UK Borders Agency	**Impact Assessment of Identity Cards for Foreign Nationals - Student and Marriage Categories**	
Stage: Initial	**Version:** 1.6	**Date:** 28 May 2008
Related Publications: Introducing Compulsory Identity Cards for Foreign Nationals ; Consultation on the Code of Practice.		

Available to view or download at:

http://www.ukba.homeoffice.gov.uk

Contact for enquiries: Wendy DuChesne **Telephone:** 020 8760 3253

What is the problem under consideration? Why is government intervention necessary?

Limited ability to precisely fix identities of some foreign nationals staying in the UK. Need to comply with EU Regulation, ensuring adequate safeguards for individuals in domestic legislation. Need to phase out insecure documents. The solution requires UKBA to obtain legislation requiring foreign nationals staying in the UK and subject to control to register their biometrics. This will be the way we comply with EU Regulation which require that residence permits issued by member states to third country nationals shall be drawn up in a uniform format and contain biometric identitifiers.

What are the policy objectives and the intended effects?

Introduce requirement to apply for a Identity Card for Foreign Nationals fixing a foreign national's identity at the earliest point and allowing them to demonstrate reliably and securely that they are legally in the UK. These regulations start with some student and marriage/spouse categories. This will provide a document which is easily recognised by employers and others showing entitlements. It also supports the Government commitment to introducing a single comprehensive National Identity Scheme to cover everyone legally resident in the UK and to establish a National Identity Register.

What policy options have been considered? Please justify any preferred option.

Do nothing - not possible because measures are required to comply with EU regulations

Partially Implement EU Minimum - issue a card where required by EU regulations but do not issue it where this is not required by the regulations. Fully Implement - issue a high quality secure document to those legally here, easily recognisable by employers and others. Delivery approach choices considered big bang or incremental roll-out. Incremental risk led roll out selected on basis of de-risking project.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The policy will be reviewed for benefits realisation as part of the Office of Government Commerce Gateway Process, approximately a year after the policy is introduced.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Meg Hillier.....Date: 4th June 2008

Summary: Analysis & Evidence

Policy Option: Full implementation	Description: Implementation of identity cards for in-country students and marriage applicants (biometric residence permits)

COSTS

ANNUAL COSTS		Description and scale of **key monetised costs** by 'main affected groups' The proportion of start up costs for students and marriage cases are as follows.One off costs include setup IT, programme and property costs (all UKBA). Average annual costs include card costs and IT costs (UKBA) and social costs to migrants (cost of travel time).
One-off (Transition)	**Yrs**	
£ 4.5m	5	
Average Annual Cost (excluding one-off)		
£ 3.58m (10 yrs)		**Total Cost** (PV) **£ 40.3m**

Other **key non-monetised costs** by 'main affected groups' None

BENEFITS

ANNUAL BENEFITS		Description and scale of **key monetised benefits** by 'main affected groups' 10 year benefits Reduction in benefit fraud (UK plc), crime reduction (UK plc), reduction in fraudulent appeals (UKBA), less removals due to travel deterrent (UKBA). Total £29.8m
One-off	**Yrs**	
£ 0		
Average Annual Benefit (excluding one-off)		
£ 2.98m (10 years)		**Total Benefit** (PV) **£ 29.8m**

Other **key non-monetised benefits** by 'main affected groups' Alignment with National Identity Scheme, Attract migrants by ensuring a secure identity, Utility to card holder - easier to deal with government, easier to travel, easier employer or education sponsor checks. Deter illegal entry to UK. Align with EU

Key Assumptions/Sensitivities/Risks The power to record biometrics and issue identity cards will be introduced on a rolling basis from 2008 guidced by two principles; risk and efficiency. Costs and benefits included here are only for students and those applying under marriage related categories. At this point there is no compulsory card reading in place.

Price Base Year 0	Time Period Years 10	**Net Benefit Range** (NPV) **£**	**NET BENEFIT** (NPV Best estimate) **£ -10.5m (cost)**

What is the geographic coverage of the policy/option?	National
On what date will the policy be implemented?	25 November 2008
Which organisation(s) will enforce the policy?	UK Border Agency
What is the total annual cost of enforcement for these organisations?	£ 2.3m
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	Yes
What is the value of the proposed offsetting measure per year?	£ Nil
What is the value of changes in greenhouse gas emissions?	£ Nil
Will the proposal have a significant impact on competition?	No

Annual cost (£-£) per organisation (excluding one-off)	Micro **None**	Small **None**	Medium **None**	Large **None**
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ 0 Decrease £ 0 **Net Impact** **£** 0

Key:	**Annual costs and benefits: Constant Prices**	**(Net) Present Value**

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

1 - Introduction

The UK Border Agency obtained new powers in the *UK Borders Act 2007* to enable the Secretary of State to make regulations which will require foreign nationals, subject to immigration control, to apply for an identity card for foreign nationals (known as a 'Biometric Immigration Document' (BID) in the Act) and register their biometric identifiers (for example, facial image and fingerprint identifiers) for verification purposes. Collecting biometric identifiers and biographical information is important for three reasons, it:

1. Aligns with the Government's plans for the National Identity Scheme
2. Complies with EU Regulation 1030/2002 as amended by 380/2008 regarding format of residence permits
3. Secures the border

2 - Strategic Context

Aligning with the National Identity Scheme

The Government was elected on a manifesto commitment to introduce identity cards under the Identity Cards Act 2006 and the UK Borders Act 2007. The Identity and Passport Service has responsibility for delivering the Government's aim of introducing a National Identity Scheme, which will establish a National Identity Register.

The Government's 'National Identity Scheme Delivery Plan 2008' published in March 2008, reaffirmed the Government's commitment to introduce a single comprehensive National Identity Scheme to deliver a universal and simple proof of identity for all those who are legally entitled to live and work in the UK.

The issuing of identity cards for foreign nationals from 2008 under the UK Borders Act forms an integral part of the National Identity Scheme, ensuring that eventually all UK residents will have some form of recorded biometrics linked to their identity, providing significant benefits in terms of reduced identity fraud, immigration offences and abuse of public funds. The roll out strategy for foreign nationals was also published in March 2008.

It is the Government's intention that the identity card for foreign nationals will be designated as an ID Card under section 4 of the Identity Cards Act 2006, as soon as it is practical. The National Identity Register will be ready for operation during 2009, with large volumes of registration occurring in 2011/12. Once the identity card for foreign nationals is designated, the card issued to the individual will serve as both an identity card for foreign nationals (i.e. a Biometric Immigration Document) and as an ID Card (with the holders' biometric and biographical details held on the National Identity Register alongside checks on British citizens issued with Identity Cards). However, a designation order (secondary legislation under the

Identity Cards Act and subject to the affirmative order procedure, i.e. with approval of both Houses of Parliament) will first be required.

Complying with EU Regulations

In June 2002, Council Regulation (EC) 1030/2002 laid down a uniform format for residence permits for third-country nationals. This set out the format and security features for residence permits, to be issued as a vignette sticker in a passport or as a card.

In November 2003 the EU Council agreed to amend the Regulations relating to the uniform format for visas (1683/95) and residence permits for third-country nationals (1030/2002). These proposals provided for the mandatory storage of digitised facial images and fingerprints within 2-3 years from the date of adoption (this has now been adopted by the EU member states).

In March 2006 the Commission presented an amended proposal that residence permits may only be issued as a card. The revised Regulation Council Regulation (EC) No 380/2008 amending regulation No 1030/2002 laying down a uniform format for residence permits for third country nationals was adopted at the JHA Council on 18 April 2008. It was published in OJ L115 29 April 2008 – this introduces a time-frame of 2 – 3 years from the agreement of technical standards to implement the regulation phasing-out of residence permits in the form of vignette stickers, requiring instead that residence permits are only issued as cards containing certain biometric information.

Securing the Border

The document Securing the UK Border, Our Vision and Strategy was published in March 2007 and detailed a new approach which recognised that a single staffed physical frontier where travellers showed paper based identity documents to pass through was subject to abuse. It outlined how, by managing identity throughout all points of contact it would be possible to put into place a border security system which made life easier for legitimate travellers but would stop those who would cause harm.

Information, intelligence and identity systems allow scrutiny at key checkpoints on the journey to and from the UK; the issue of Identity Cards to Foreign Nationals reinforce this secure approach providing for either further checks to verify a person's identity, or, subject those who were not in possession of a biometric visa to the requirement to apply for a biometric immigration document either as a stand alone document or as part of their further application for leave to remain.

3 - Selection of Roll Out Strategy

The strategy document introducing compulsory identity cards for foreign nationals was published 6 March 2008. In order to mitigate risk and introduce changes gradually it was recommended that the roll out should be on an incremental basis – i.e. UKBA would not introduce the scheme for all foreign nationals at the same time. Options for an incremental roll out have been considered for implementing Identity Cards for Foreign Nationals. These include roll-out by geography, nationality, application type or a mixture of all. UKBA undertook analysis of migration statistics, internal information and intelligence reports to understand how the immigration system is targeted by those who seek to abuse the system.
It was considered that roll-out by geography would allow for displacement as people would simply move from one address to another. Roll-out by nationality was also discounted. The decision was made to introduce Identity Cards on an incremental basis to initially target categories which evidentially contained higher proportions of those who seek to abuse the system. The roll out of Identity Cards will start with those in Student and Marriage categories followed by those granted discretionary leave; updating their "no time limit" stamps, work permit holders and those applying as a child of a foreign national parent already settled in the UK.

Within 3 years of the commencement of roll-out all of those who successfully apply for an extension of stay will receive a card. The regulations which introduce each new category will be accompanied by an Impact Assessment which will be prepared in light of the experiences of the earlier roll-out to students.

The intention behind roll out by category type is to include a wide cross section of foreign nationals of all nationalities. However, with this approach it is accepted that there will be higher numbers of nationals within some nationality groups than of others but this will even out within two out as the roll-out progresses to encompass all foreign nationals who apply for further leave to remain in the UK. Selecting these specific categories is justified on the basis of the risk analysis which has been undertaken.

So how many people will this policy impact? We have analysed previous immigration statistics. In 2006 142,000 decisions were made from students plus their dependents on applications for extension of leave in the UK or settlement. In 2006 21,450 decisions were made from spouses plus their dependents on applications for extension of leave in the UK or settlement. Statistics, taken from; Control of Immigration Statistics 2006.

The table below details the nationalities that were granted the highest number extensions of leave to remain or settlement as students:

China	25,895
Pakistan	13,750
India	13,575
Nigeria	7,680
Bangladesh	4,400
Mauritius	4,075
Brazil	4,215
Ghana	3,700
South Korea	3,215
Jamaica	3,180

The table below details the nationalities that were granted the highest number extensions of leave to remain or settlement as spouse:

Pakistan	1,815
India	1,470
United States	1,245
South Africa	1,160
China	1,030
Australia	1,030
Jamaica	885
Thailand	775

Ghana	740
Nigeria	640
Brazil	610
Russia	515

4 - Sanctions

In accordance with the UK Borders Act 2007 (c. 30) section 13 a public Consultation exercise on the Code of Practice about the sanctions was launched in February 2008 to explain the UK Border Agency approach to ensuring compliance with the requirements and to give the public an opportunity to give their views on the draft Code of Practice.

Although it is expected that the vast majority of people will wish to comply with the biometric registration regulations it is a mandatory requirement and failure to comply will lead to a financial or immigration sanction. The consultation about the Code of Practice about the Sanctions for Non-Compliance with the Biometric registration Regulations sets out the detail of how the sanctions will operate. The Act sets out a number of requirements, the consequence of failure to comply with some has a greater impact then others. These different requirements fall into two categories which were referred to within the consultation exercise as Primary and Secondary Compliance Requirements but have now been are termed Application and Maintenance Compliance Requirements.

Application requirements are those which form an essential part of the application process for an identity card and other key requirements, including making an application for an identity card for foreign nationals and following any specified process when required to provide biometric identifiers. The Secretary of State may impose a sanction on a person who fails to comply with an Application requirement.

Maintenance requirements are other important requirements that apply after an identity card has been issued to a person and failure to comply with a maintenance requirement will normally result in the issuing of a civil penalty. In order to ensure that in a person is given the optimum opportunity to comply with the requirement a letter will be issued in every case warning the person of the contravention; if the warning is heeded in reasonable time no further action in respect of the that particular non-compliance.

5 - Appeals

There is no right of appeal against a decision to refuse to issue an identity card for foreign nationals or to reject an immigration application, although this could be challenged by Judicial Review in appropriate cases.

There may be a right of appeal to the Asylum and Immigration Tribunal (under section 82 NIA 2002) when an immigration application is refused or leave is varied or cancelled.

There is a right to object to the Secretary of State and appeal against the issue of a Civil Penalty Notice to the county court or sheriff.

6 - Impacts of Policy

Employers

All employers have a responsibility to make the appropriate checks when they recruit people and satisfy themselves that the documents presented to them are valid and relate to the applicant. The holder of an identity card for foreign nationals will be required to produce the card to a potential employer showing their entitlement to work and at other specified times, for example on the anniversary of their employment, to show that they remain entitled to work. As

UKBA phases out old style insecure documents and replaces them with secure cards employers sponsors will have increased confidence in the immigration system and in the applicant's entitlement to work.

Help already exists for an employer to confirm that a person is entitled to work through the employer checking service and if further help or reassurance is required around the identity card employers will be able to receive it through the employer checking service. The identity card is a versatile tool which may be utilized confidently by the employer immediately allowing the employer to visually compare the document with the holder, and as a reliable document should the employer wish to contact the employer checking system and in due course as contains the benefits of new technology, for an employer to carry out his or her own verification process should they wish. At present no requirement for the employer to purchase a card reader or introduce any new procedures or processes as the result of the introduction of the identity card for foreign nationals.

Employers have a responsibility to prevent illegal working in the UK. On 29 February 2008 section 15 – 25 of the Immigration, Asylum and Nationality Act 2006 came into force. With effect from 29 February 2008 an employer who employs someone subject to immigration control aged over 16 who is not entitled to undertake the work in question will be liable to pay a civil penalty of up to £10,000 per illegal worker. A code of practice has been produced to provide further information. It is possible for employers to establish an excuse against the liability for payment of a civil penalty for employing an illegal migrant by checking and copying certain documents before they commence working for the employer. The list of documents includes an identity card for foreign nationals (listed as a biometric immigration document), as the identity documents gradually replace the other documents presently in circulation it will become easier for employers to confidently identify those who legally entitled to work in the UK.

Educational establishments

As the identity card will provide evidence that the holder has leave to enter or remain in the United Kingdom it may be used to demonstrate that a person is entitled to study at an educational institution. Colleges and educational establishments will find they have increased certainty that the students turning up are the students who made the applications to study.

Applicants

The main change for applicants is that they will be required to apply for the card and attend a biometric enrolment appointment as part of their application for further leave. Many already attend in person at a UKBA public enquiry office – for these people the biometric element will add less than half an hour to their visit. For those who normally apply by post a biometric enrolment appointment will need to be made and attended at a public caller facility before leave is granted. Appointments only last for 30 minutes and the process is quick and easy. UKBA have already rolled out fingerprint visas at overseas posts so this process will be familiar to many. Public caller facilities will available to postal applicants. Applicants who previously applied by post will now have to travel to attend the appointments, their application will then be considered in line with the present processes.

Although the requirement for a relevant person to apply for a card is mandatory there is some flexibility around the timing and location of the appointment led by the applicant's preferences. Family groups will be accommodated together. The enrolment process is quick and clean, there is no wet ink involved, and the enrolling officer does not need to touch the applicant to facilitate the enrolment. Photographs are taken which reveal the face but the process of taking the photograph will reflect cultural sensitivities. Special arrangements may be made for those who require them by virtue of disability or illness.

Children

Children are required to apply with the requirement to apply for an identity card for foreign nationals. Children up to the age of six years will provide their biometrics with a digitalised photograph. Those aged over six years will, in addition, enrol their fingerprints. All children up to the age of 16 must be accompanied through the enrolment process by an adult who takes responsibility for them on that occasion. We will not enrol the biometrics of children under 16 except in the presence of an adult who is the child's parent or guardian; or a person who has taken responsibility for the child (but this cannot be a person acting on behalf of the UK Border Agency).

7 - Delivering the Policy

Enrolment Pilot

On 28 April 2008 the UK Border Agency commenced a pilot enrolment exercise to record the biometric identifiers of a small number of people making applications for further leave to remain as a spouse or civil partner of a person present and settled in the United Kingdom or as the unmarried or same- sex partner of a person present and settled in the United Kingdom on application form FLR (M) and those applying within the student categories on application form FLR(S). It did not involve the issue of an Identity Card and where leave was granted it was in the form a vignette (sticker). The pilot affected those who resided within the London postal code area and were making an application by post or had booked an appointment to attend the Croydon Public Enquiry Office for a same day (premium) service. The pilot is designed to pressure-test enrolment processes and technology.

The main roll out

The main roll out for cards will start on **25 November 2008** for students and those applying as a spouse (for further leave to remain). As explained above, these immigration categories have been prioritised for early roll out as there is evidence and intelligence that these categories have been targeted by those seeking to abuse in the system. We will quickly move on to other immigration categories so that within 3 years of roll out all new applicants and those extending their stay in the UK will have a card.

At the same time, the Identity and Passport Service is starting its roll out of identity cards for British Citizens. Initially from 2009 this will focus on those working in sensitive roles or locations. From 2010 the scheme will extend to issuing cards to young people on a voluntary basis. From 2010/11 IPS will start to enrol British citizens in high volume.

Over time the number of locations foreign nationals to undergo biometric enrolment will grow. Initially, applicants will be able to apply through the premium service and attend appointments at Croydon, Solihull, Liverpool, Glasgow or Sheffield. The UK Border Agency will supplement this network with additional public caller facilities in time and as the volume of applicants grows. UKBA is also working closely with the Identity and Passport Service to make use of additional space should this be cost effective and appropriate.

We anticipate that in the region of 50,000 applicants will go through biometric enrolment by the end of March 2009. Additional powers will then be sought to bring in other groups of foreign nationals into the scheme. At this stage a further Impact Assessment will be prepared.

8 - Costs and Benefits

Overall approach to costs

In this impact assessment we have included the proportion of the costs and benefits that are relevant for the initial groups prioritised for roll out and which are the subject of the regulations to be laid in Parliament. This will be repeated new groups are introduced into the scheme as regulations are taken and a new impact assessment is published. These costs are part of the wider costs of introducing the initial phase of identity cards for foreign nationals which are shown in the table below (the costs have been scrutinised by Parliament's EU Scrutiny

Committee as part of its review of the introduction of biometric residence permits which are a subset of identity cards for foreign nationals).

For clarity the full costs of rolling out identity cards over 10 years to those foreign nationals extending their stay in the UK are as follows:

	Full Implementation Option
Total one-off costs over 5 years	£20.7m
Total running costs over 10 years	£166.9m
Average Annual cost (Excluding one-off)	£16.7m
Total Cost (PV) over 10 years	£187.6m
Average annual benefit	£18.8m
Total Benefit (PV) over 10 years	£139.0m
Net Cost/benefit (NPV) over 10 years	£48.6m (cost)

Whilst we are not able to include a breakdown of full costs for commercial reasons, the main cost headings are IT, accommodation, staff and card services.

The costs shown in the table are a subset of those published in the recent Identity Cards Costs Report, May 2008 which outlines the estimated costs of the Government's plans to more widely roll out identity cards to foreign nationals (by issuing cards to those holding visas valid for more than six months and also, in time, the settled population). Further Impact Assessments will be prepared when regulations are laid to include those groups in the Scheme.

Benefits

The benefits for identity cards for foreign nationals fall into those that are quantifiable and those that are not quantifiable. Further discussion on the non-monetised benefits and the extent to which they will arise under the different options are at Annex A. The non-monetised benefits for the full implementation option far outweigh those for the partial implementation and as a result that is the options that will be implemented.

The quantified benefits (a proportion of which are realised from rolling out cards to students and spouse/marriage cases) are described below. The methodologies used in quantifying these benefits have been developed based on existing research and statistics and, where appropriate, assumptions regarding future behaviours.

- **Reduction in immigration related benefit fraud** – Publicity surrounding the introduction of identity cards for foreign nationals will make it clear that life in the UK for an illegal migrant will be increasingly difficult without a card. This deterrent effect will reduce the amount of benefit fraud. This will be a benefit to the wider UK economy and other government departments who are able to crack down on abuse as a result of checking more secure documents.

- **Identity cards for foreign nationals will deter some illegal immigrants from entering the UK and will therefore reduce crime** – The introduction of identity cards will make it clear that life in the UK for an illegal migrant will be increasingly difficult without a card. Some of those seeking to abuse the system will therefore decide not to come and this will reduce crime.

- **Reduction in fraudulent appeals** - every year there a number of people appeal against the outcome of family visitor visa applications, and a proportion of these appeals are fraudulent, for example, providing and using biometric data to identify people who are making multiple visitor visa applications in country with a view to selling visas on the black market. Identity cards will lock down identities and therefore help identify and deter fraudulent appeals. We have analysed the cost of dealing with these appeals and how much can be saved through the introduction of identity cards for foreign nationals. Benefit to UKBA.

- **Less removals due to travel** deterrent - Publicity surrounding the introduction of identity cards will make it clear that life in the UK for an illegal migrant will be increasingly difficult without a card. As a result fewer illegal immigrants will come to the UK and therefore there will be a reduction in the costs as these people will not need to be detained and removed. Benefit UKBA.

Non-monetised benefits can be summarised as follows. Annex A demonstrates how each option rates against each benefit:

- **Alignment with National Identity Scheme** - In order to achieve the full benefit of the wider National Identity Scheme, it is necessary to implement biometrics across the whole spectrum of people living in the UK. This will be a benefit to the wider UK economy.

- **Increased volume of biometric records** - It is intended that the additional information that will be provided by recording of biometric data for foreign nationals could be made available to other bodies, such as the police within the limits of legislation. The information will contribute to the strengthening of border controls and help reduce crime.
- **Increase confidence in immigration system** - The UK's immigration system has been the focus of much media scrutiny in recent years. 2008 sees the Government implement the biggest ever set shake-up in border security and immigration. The introduction of identity cards for foreign nationals is a key part of this and will build public confidence as the cards reducing the harm that accrues from illegal migration
- **De-risk National Identity Scheme** –The rollout of identity cards for foreign nationals as the first stage of the wider scheme means we will learn lessons for the main identity scheme.

- **Attract migrants by ensuring a secure identity** – research evidence suggests that those living here legally and playing by the rules can sometimes have concerns regarding the security of their identity and their ability to prove their identity and entitlements. The identity card will provide this security and an easier way to prove who you are and what you are entitled to. The new cards will be made of a polycarbonate which contains a highly secure embedded chip and incorporates sophisticated security safeguards to combat tampering. This means that the identity cards for foreign nationals will be more resistant to attack than the existing residence permits and other UK immigration status documents. As the identity cards for foreign nationals will confirm both a person's immigration status and entitlement to work and/or public funds in the UK, we will, for the first time, be able to securely link a person to a single identity. This measure should provide reassurance and protection for legal migrants. Benefit to migrants and to the wider UK economy.

- **Identify multiple identity applications** - Biometric data is tied to one unique identity so checks undertaken when a person applies for a residence permit will automatically identify individuals who have previously had their biometrics recorded (either in-country or out-of-country) and who are now claiming to be someone else. Benefit to the wider UK economy.

- **Detect other immigration offences** – If a cardholder who has overstayed their leave and presents a card at the border, it will trigger an enforcement action that we can then deal with. This will be a benefit to the wider UK economy.

- **Align with EU partners** - Using a common standard for design of the card will allow the UK to introduce systems which are interoperable with those in place across the EU. The card will also be interoperable with other international standards and systems. Benefit to UK plc and EU.

- **Make life easier for the card holder** – migrants here legally who are issued with a card will, over time, find it easier to deal with government and to travel as they have a secure document showing their entitlements - by phasing out the wide range of old style documents it makes it easier for those checking the card to deal with migrants quickly and confidently. Benefit to migrants.

- **Easier employer or education sponsor checks**. The phasing out the whole range of old style insecure documents will make it easier for employers and educational establishments to check entitlements. This will be a benefit to the wider UK economy.

- **Secure documents** – The card is designed in such a way that it is inherently more secure than the old style paper based immigration documents. The secure card design is supported by more secure issuing processes and the verification of biometric data, as well as the ability to 'lock' a person's identity to that biometric data. This will be a benefit to the wider UK economy.

- Identity cards for foreign nationals will deter illegal immigrants from entering the UK and will reduce illegal working and increase tax revenues. As a result businesses will be more likely to use legal workers and this could lead to increased tax revenue. Where it is not replaced there will still be benefits from reducing illegal working in the UK. This will be a benefit to the wider UK economy.

9 - Alternative Options assessed

The options assessed were:

- **Do nothing** - not possible because of measures needed for an effective application of the EU regulations. While the EU regulations are themselves directly applicable as part of UK law, it was necessary to legislate for additional provisions in domestic law, for example, those concerning safeguards for children, or the provisions of civil penalties and other sanctions for failure to comply with a biometrics requirement, and other matters which the EU regulations do not cover.

- **Partially Implement (EU Minimum)** - The table on page 13 illustrated the costs and benefits of this option which are included for comparative purposes. This option assumes we issue a card where EU regulations require it, but do not issue it where not required by the EU regulations e.g. if the person already has leave to enter or remain. Do not re-verify people's biometrics if already on database, or those transferring conditions or holding a no time limit stamp. Additionally under this EU option, UKBA would start with only facial biometrics (photo) and widen the scope to include fingerprints in line with the EU deadline (thus missing out on at 1-2 years worth of enroling and checking fingerprints). This was discounted as all groups of foreign nationals subject to control in the UK are required to be included in the national identity scheme. Therefore, those transferring conditions or with a no time limit stamp need to be included. Without including these groups, and eventually the whole settled population, there would be gaps

in the scheme, and potential abuse of the system. The option to enrol, check and re-check migrants' fingerprints even if they have already had their biometrics recorded, for example as part of a visa application, is also necessary to reduce abuse of the system. This adds significant additional non-monetised benefits in the area of reduction of fraud, crime and illegal working. Some of the additional non-monetised benefits would not be realised fully, with the delay of including fingerprint biometrics from day one.

- **Fully Implement** - issue a high quality secure document to those legally here, easily recognisable by employers and others. Delivery approach choices considered big bang or incremental roll-out. Incremental risk led roll out selected on basis of de-risking project.

Summary: Analysis & Evidence

Policy Option: Partial implementation (EU MINIMUM)	Description: Issue a card in line with EU regulations but with no additional identity verification THIS OPTION HAS NOT BEEN TAKEN FORWARD

COSTS

ANNUAL COSTS	
One-off (Transition)	**Yrs**
£ 4.5m	5
Average Annual Cost (excluding one-off)	
£ 2.29m	10

Description and scale of **key monetised costs** by 'main affected groups' The proportion of start up costs for students and marriage cases are as follows.One off costs include setup IT, programme and property costs (all UKBA). Average annual costs include card costs and IT costs (UKBA) and social costs to migrants (cost of travel time)

Total Cost (PV) **£ 27.4m**

Other **key non-monetised costs** by 'main affected groups' None

BENEFITS

ANNUAL BENEFITS	
One-off	**Yrs**
£ 0	
Average Annual Benefit (excluding one-off)	
£ 2.98m	

Description and scale of **key monetised benefits** by 'main affected groups'

10 year benefits Reduction in benefit fraud (UK plc), crime reduction (UK plc), reduction in fraudulent appeals (UKBA), less removals due to travel deterrent (UKBA). Total £29.8m.

Total Benefit (PV) **£ 29.8m**

Other **key non-monetised benefits** by 'main affected groups' Alignment with National Identity Scheme, Attract migrants by ensuring a secure identity, Utility to card holder - easier to deal with government, easier to travel, Easier employer or education sponsor checks.

Key Assumptions/Sensitivities/Risks The power to record biometrics and issue identity cards will be introduced on a rolling basis from 2008 guided byrisk and efficiency. Costs and benefits included here are only for students and those applying under marriage related categories. At this point there is no compulsory card reading in place. No verification leads to increased risk of immigration crime.

Price Base Year 0	Time Period Years 10	**Net Benefit Range** (NPV) **£**	**NET BENEFIT** (NPV Best estimate) **£ 2.4m**

What is the geographic coverage of the policy/option?			National	
On what date will the policy be implemented?			25 November 2008	
Which organisation(s) will enforce the policy?			UKBA	
What is the total annual cost of enforcement for these organisations?			£ 1.9m	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ nil	
What is the value of changes in greenhouse gas emissions?			£ nil	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro **0**	Small **0**	Medium **0**	Large **0**
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ 0 Decrease of £ 0 **Net Impact** **£** 0

Key:	**Annual costs and benefits: Constant Prices**	**(Net) Present Value**

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

Annexes

Annex A – Summary table and comparison of Non Monetised Benefits [DN - under review may be replaced with a shorter narrative explaining]

Benefit description	Partial Implementation – EU Minimum	Full implementation	Rationale
	Assessment of ability of option to deliver benefit		
Align with National Identity Scheme	mid	Full	Coverage is fuller with preferred option (as more groups of migrant are included) resulting in better alignment with NIS
Increase volume of biometric records	mid	high	Coverage is fuller with preferred option so there will be an increased number of records on database for future checking.
Increase confidence in immigration system	low	high	The preferred option includes face to face verification and ongoing fingerprint checks if the migrant makes a subsequent application therefore building confidence in UKBA decision making.
De-risk National Identity Scheme	low	Full	The preferred option allows increased opportunity to test technologies in required timescales (eg fingerprint enrolment sooner) and learn lessons in time to influence wider roll out.
Attract migrants by ensuring a secure identity	low	high	Because the biometric element is delivered sooner by the preferred option and that applicants are verified face to face even if they have been seen before, migrants will feel more secure that cards will only be issued to legitimate migrants who have been fully verified.
Identify multiple identity applications	low	Full	The additional verification checks under the preferred option reduce the opportunity for multiple identity application.
Detect other immigration offences	low	Full	The additional coverage of the preferred option and earlier inclusion of fingerprint enrolment will increase detection of other immigration offences.

Benefit description	Partial Implementation – EU Minimum	Full implementation	Rationale
Align with EU partners	full	Full	Both options align with the EU legislation.
Make life easier for card holder - quicker to deal with government	mid	Full	The preferred option will allow an increased number of people to quickly demonstrate their identity and entitlements.
Make life easier for card holder - less hassle travelling (leisure)	full	Full	Both options allow the holder to easily demonstrate their entitlement to travel freely in the UK
Make life easier for card holder - less hassle travelling (business)	full	Full	Both options allow the holder to easily demonstrate their entitlement to travel freely in the UK
Deterred migrants won't commit Vehicle Excise Duty fraud	mid	Full	As more migrants will be checked under the preferred option, higher volumes will be deterred.
Improves DVLA's ability to check for Vehicle Excise Duty fraud in country	mid	Full	As more migrants will be checked under the preferred option, higher volumes of migrants can be checked by DVLA as card reading technology becomes the norm.
Easier employer checks	high	Full	The preferred option generates higher volumes of migrants with cards for employers to easily check.
Secure documents	high	Full	The preferred option introduces fingerprint technology sooner, thus making the cards more secure.
Reduce illegal working and increase tax revenues	high	Full	The greater deterrent effect associated with the preferred option will result in a greater reduction in illegal working.

COUNT OF CONTRIBUTIONS TO QUALITATIVE BENEFITS			
full	3	13	
high	3	3	
mid	5	0	
low	5	0	
SUMMARY ASSESSMENT	**LOW**	**HIGH**	



EQUALITY IMPACT ASSESSMENT

UKBA

Biometric Policy Team

EQUALITY IMPACT ASSESSMENT

METHODOLOGY AND OVERVIEW

IDENTITY CARDS FOR FOREIGN NATIONALS – STUDENT & MARRIAGE APPLICATIONS

Identity card for foreign nationals; stakeholder engagement included:

- The passage of the UK Borders Bill included cross-government involvement around the impact of identity cards
- A Regulatory Impact Assessment (RIA) for the UK Borders Bill issued in May 2007
- Consultations on the Code of Practice about the sanctions for non-compliance with the biometric registration regulations – sent to over 180 parties and made available in the Houses of Parliament, raised awareness and sought input on the question of dealing with vulnerable people.
- Detailed discussions with Ministry of Justice, the devolved administrations in Scotland, Wales and Northern Ireland
- Questionnaires, focus sessions and discussions with groups with specific interest in matters relating to children, ethnicity, race, disability, and gender.

PRELIMINARY SCREENING

IDENTITY CARDS FOR FOREIGN NATIONALS **–** **STUDENT & MARRIAGE CATEGORIES**	This is a change to existing policy.

–

Policy Aims, Objectives & Projected Outcomes

To issue secure reliable biometric cards to those subject to immigration control and to phase out less secure evidence of a person's immigration status and enable the UK to comply with its European obligations to issue a biometric card whenever the UK grants leave for more than 6 months.

The UK Border Agency obtained new powers in the UK Borders Act 2007 to enable the Secretary of State to make regulations which require foreign nationals, subject to immigration control, to apply for an identity card for foreign nationals known as a "Biometric Immigration Document" (BID) in the Act, and to register their biometric identifiers (for example, facial image and fingerprint identifiers) for verification purposes.

The Immigration (Biometric Registration) Regulations 2008 are the first of the regulations which will commence the rollout of the identity card for foreign nationals. It will require those who are applying for further leave to remain in the United Kingdom under the immigration rules in the following specified categories to apply for an identity card. The specified categories are-

a) as a student
b) as a student nurse
c) to re-sit an examination
d) to write up a thesis
e) as a prospective student
f) as a sabbatical officer
g) as the spouse or civil partner of a person settled in the United Kingdom; or
h) as the unmarried or same-sex partner of a person present and settled in the United Kingdom

Only the above groups – students (approximately 44,000) and those in the marriage categories (approximately 5,000),[1] will be affected by these regulations. Although this equality impact assessment details the wider roll out this is only to provide clarity and it is important to note that further regulations will be accompanied by further impact assessments and relevant equality impact assessments as the roll-out categories are extended to other foreign nationals. The working assumption is that around three years from the commencement of roll-out in 2008 we will require all of those applying for leave to enter or remain in the UK, to have a card. From 2012/2013 onwards we will start to issue identity cards to those foreign nationals already settled in

[1] End of financial year projections based on expected demand for 2008/2009 financial year

the UK.

The identity card for foreign nationals roll-out strategy is similar to that which introduces Identity Cards to British Citizens, detailed by IPS in the National Identity Scheme Delivery Plan published on 6th March 2008, which is:

- in the second half of 2009, to start issuing identity cards to people both British and foreign nationals working at airports;
- from 2010 to issue identity cards on a voluntary basis to young people; and
- from 2011/12 onward to start to enrol British citizens at high volumes offering a choice of receiving a separate identity card, passport or both.

As detailed above, from 2010 through to 2012 and beyond the ID Card for British Citizens will be issued on a voluntary basis unless a decision is made to bring in compulsion which would require further primary legislation.

By 2014 a large proportion of the UK population will have enrolled onto the National Identity Register and will have been issued with an ID card. The exact number and take up will depend on how the public perceive the benefit of having an ID card.

The main difference between the two approaches is that the requirement to apply for an Identity Card for **foreign nationals** under the UK Borders Act 2007 will be compulsory.

Will the policy have an impact on national or local people/staff?	YES
Are particular communities or groups likely to have different needs, experiences and/or attitudes in relation to the policy	YES
Are there any aspects of the policy that could contribute to equality or inequality?	YES
Could the aims of the policy be in conflict with equal opportunity, elimination of discrimination, promotion of good relations?	YES
If this is an amendment of an existing policy, was the original policy impact assessed?	Not Applicable

An equality impact assessment for identity cards was produced as part of the Regulatory Equality Impact Assessment during the passage of the UK Borders Bill 2007, which received Royal Assent October 2007. This policy has been re-screened for impact on equality in June 2008

FULL IMPACT ASSESSMENT

STATISTICS & RESEARCH

What relevant quantitative & qualitative data do you have in relation to this policy?

Equality Target Areas	**does the data identify potential or known positive impacts?** **does the data identify any potential or known adverse impacts?**
Race	**Qualitative Data** From the results from the survey there is a perception that when identity cards for foreign nationals are introduced, certain nationalities would be targeted (e.g. people from the subcontinent and Africa) by the police, potentially causing an adverse impact on community relations and so forth.
Disability	**Qualitative Data** Groups representing disability issues **Measures relating to access** • Sought reassurance that suitable arrangements would be made for the disabled to enrol their biometrics at the various locations **Measures relating to attendance** • Were concerned that processes were put into place for those unable to attend for enrolling due to severe disability **Measures relating to application requirements** • Wanted to be advised on

	the approach we would take if we considered that fingerprints would be difficult to obtain from those with upper limb deformity. • Considered what to do about persons who might have been detained or sectioned under a Mental Health Act.
Gender Identity	**Qualitative Data** • Gender and other groups raised concerns that a person's gender on the identity card would be "fixed" thus potentially causing an adverse impact on the individual who subsequently changed gender.
Religion and Belief	**Qualitative Data** • Perception that young men were often targeted by the police, particularly young Muslim men and the introduction of identity cards would make this situation worse .
Sexual Orientation	**Qualitative Data** • Perception that information gathered by the UKBA from a person applying for an identity card would lead to other private information being disclosed.
Age	**Qualitative Data** • Concern that the elderly may feel uncomfortable being made to carry identity cards, potentially causing an adverse impact.

Stakeholders

The qualitative data referred to above reflects comments from some of the organisations listed at annex A. These organisations were contacted as part of the communication process with groups representing race, faith, diversity, age and sexual orientation. In many cases the organisations had been contacted previously in connection with the consultation on the Code of Practice about the sanctions for non compliance with the biometric registration regulations. Some of the organisations are involved in regular stakeholder meetings.

To consider what impact the regulations might have on the groups they represented the organisations listed were approached and provided with background information along with a questionnaire to complete. In some cases further contact was made by telephone or by individual meeting.

Not all organisations responded. Of those that did respond not all raised concerns. One organisation stated it held no position on identity cards. Where concerns were raised they were qualitative rather than quantitative.

The need to continue stakeholder engagement and work to provide clarity around the regulation requirements processes and procedures is recognised and forms part of the action plan.

Qualitative data from consultation

The qualitative data shows that there is a belief amongst some groups that represent ethnic and minority, disability, and transgender groups that the introduction of the registration requirement may result in discrimination in areas listed below

1) The decision to commence the roll-out of identity cards to those in the United Kingdom commencing with identity cards for foreign nationals was noted; why had the requirement been placed on foreign nationals first.

Government response

The government's approach to introducing compulsory identity cards for foreign nationals was published 6 March 2008. Collecting biometric identifiers and biographical information is important for three reasons, it:

4. Secures the border – because it ensures that those subject to immigration control have a biometric, secure document to serve as evidence of their immigration status. It is not discriminatory to require foreign nationals to have the most reliable evidence of their immigration status. Foreign nationals are not comparable to British citizens in this respect because British citizens do not need leave to remain in the UK and are not subject to immigration control
5. Is the way in which the UK will comply with EU Regulation 1030/2002 as

amended by 380/2008 which requires the UK to issue a biometric card when granting leave to foreign nationals

6. Aligns with the Government's plans for the National Identity Scheme

2) There were concerns around the application processes failing to reflect the needs of the disabled.

Government response

- Existing offices which deal with public callers reflect provisions for needs of the disabled and ensure that venues are accessible. In line with policy any new offices procured will maintain the standards.
- The policy around identity cards for foreign nationals is sensitive to the needs of disabled and where required special provisions will be considered to enable compliance.

3) There were concerns that the introduction of the card might result in OGD such as the police requiring it to be produced without reasonable cause.

Government response

- Section 5(7) of the UK Borders Act prevents regulations being made to require the identity card for foreign nationals to be carried at all times.
- With the exception of nationals of the European Economic Area the requirement to apply for the identity card will affect people of all nationalities who are subject to control.
- It is unlawful for employers and public officials to discriminate on grounds of race.
- These regulations do not give any additional powers to the police to stop and search.

4) There was a perception that the elderly might feel uncomfortable in carrying the cards.

Government response

There is no obligation to carry the card at all times. The new identity card for foreign nationals will be made of a polycarbonate card which contains a highly secure embedded chip and incorporates sophisticated security safeguards to combat tampering. This means that the card will be more resistant to attack than the existing residence permits which are stickers that are placed in passports and other UK immigration status documents. It will be the approximate size of a credit card and the elderly may prefer to produce this rather than other documents such as passports or other documents to easily confirm their immigration status and entitlement to work and/or public funds in the UK. It will, for the first time, securely link a person to a single identity. This measure should provide reassurance and protection for legal migrants of all ages.

6) The processes for issuing identity cards for foreign nationals did not take into account those who gender was not fixed.

Government response

- Further engagement is scheduled to take place with representatives from gender groups to look at the best way to apply processes to maintain policy objectives and address concerns around transgender issues. By working with other government departments such as Identity Passport Service and the General Registrar's Office we will reflect and align existing procedures already consulted on to ensure confidence is maintained in a sensitive area.

Specific Equality Issues

That a process is put into place that reflects the needs of those who are transgender.

The Government will consider all the issues raised; stakeholder engagement will continue through the passage of these regulations and other regulations related to the roll out of identity cards for foreign nationals.

Other research

Pilot

In order to test the new systems processes and procedures a small pilot was introduced in April 2008 in readiness for the rollout of Identity Cards for Foreign Nationals later in 2008. The pilot aims to enrol the biometrics of around 10,000 in-country applicants. It includes student (FLR(S)) and marriage (FLR(M)) type categories of application, and part of it includes an opportunity to ensure that when roll-out commences across the country issues that require sensitive handling have been addressed within an environment which is experienced and responsive.

The Immigration (Biometric Registration)(Pilot) Regulations 2008 provided the legal requirement basis for the pilot. From April 2008 they required

- Premium FLR(S) & FLR(M) applicants(& from June 2008, their dependents) at Croydon PEO; and
- FLR(M) & FLR(S) postal applicants (& from June 2008, their dependents) who are resident within certain (London) postal code areas for a period of three months

to apply for a biometric immigration document when they applied for limited leave to remain. This required applicants to enrol their biometric identifiers, a facial image and fingerprints. The pilot does not involve the issue of an Identity Card and the successful applicants receive a vignette in line with current processes. The Civil Penalty scheme has not been in operation for the pilot.

Amongst other considerations accommodation has been arranged to ensure that

- booths for the enrolment process meet the needs of religious concerns by ensuring privacy for the removal of face coverings;

- family booths will meet needs of family groups providing sufficient room for children whilst enrolling the biometric identifiers of the main applicants; and
- booths are available to accommodate wheelchair users.

The emerging findings from the pilot (which is ongoing) are that applicants have said:

- they are concerned about their identity being stolen and are pleased that steps are being taken to secure it;
- the time taken to enrol fingerprints is less than anticipated – resulting in the minimum of inconvenience to the applicant;

The pilot will be evaluated at the end of three months and the findings will inform the processes and procedures for the main roll-out; including further stakeholder engagement.

Research for roll out strategy

The majority of those granted leave to enter or stay in the UK comply with the leave conditions. But a very small minority abuse the privileges granted to them. In determining the roll out strategy, research was undertaken, along with analysis of immigration statistics, internal information and intelligence reports to look at which types of application appear to be most targeted by those who seek to abuse the system. It considered

- Who commits criminal activity while in receipt of leave to remain?
- Who gains leave fraudulently?
- Whose identity is used for leave applications without their knowledge?
- Who breaches their leave conditions?
- What kind of documents are potential routes to abuse.

This has led to the application categories being prioritised in the roll-out strategy as

- Students
- Discretionary leave
- Marriage, civil and common law partnerships;
- Children of parents already settled in the UK; and
- Work permits

GATHERING EVIDENCE THROUGH COMMUNITY ENGAGEMENT
INTERNAL STAKEHOLDER ENGAGEMENT: Consulting & involving other Government Departments, Staff, Agencies and NDPBs

Engagement with staff, Joint Education Task Force, Ministry of Justice, HM Courts, Devolved Administrations in Wales, Northern Ireland, The Scottish Executive, and Ministry of Defence CEOP, ACPO

The measures we are proposing in the regulations result from cross-Whitehall consultation along with need to make necessary supplemental provision as part of the UK's compliance with EU Regulations.

Securing the Border

The document Securing the UK Border, Our Vision and Strategy was published in March 2007 and detailed a new approach which recognised that a single staffed physical frontier where travellers showed paper based identity documents to pass through was subject to abuse. It outlined how, by managing identity throughout all points of contact it would be possible to put into place a border security system which made life easier for legitimate travellers but would stop those who would cause harm.

Information, intelligence and identity systems allow scrutiny at key checkpoints on the journey to and from the UK; the issue of Identity Cards to Foreign Nationals under the UK Borders Act reinforce this secure approach providing for the issue of reliable, secure biometric cards as evidence of the person's leave to enter or remain, and then requiring the person to produce the secure card and biometric information to check they are the rightful holder of the card, for example, at the border or when they apply for further leave.

Complying with EU Regulations

In June 2002, Council Regulation (EC) No 1030/2002 laid down a uniform format for residence permits for third-country nationals. This set out the format and security features for residence permits, to be issued as a vignette sticker in a passport or as a card.

In November 2003 the EU Council agreed to amend the Regulations relating to the uniform format for residence permits for third-country nationals (EC No 1030/2002). These proposals provided for the mandatory storage of digitised facial images and fingerprints within 2-3 years from the date of adoption.

In March 2006 the Commission presented an amended proposal that residence permits may only be issued as a card. The revised Regulation Council Regulation (EC) No 380/2008 amending regulation EC No 1030/2002 laying down a uniform format for residence permits for third country nationals was adopted at the JHA Council on 18 April 2008. It was published in OJ L115 29 April 2008 – this introduces a time-frame of 2 – 3 years from the agreement of technical standards to implement the regulation phasing-out of residence permits in the form of vignette stickers, **requiring instead that the UK only grants leave to remain for more than 6 months in the form of cards containing certain biometric information.**

The new EC Regulation is directly applicable as part of UK law. The provisions of the UK Borders Act 2007 will be the way in which the UK fully implements this EC Regulation, providing necessary additional provision, for example, in respect of the safeguards which will apply to children, and what

biometric information can be used for.

Aligning with the National Identity Scheme

The Identity and Passport Service has responsibility for delivering the Government's aim of introducing a National Identity Scheme, which will establish a National Identity Register. Parliament approved the *Identity Cards Act 2006* in March 2006.

The issuing of identity cards for foreign nationals from 2008 under the UK Borders Act forms an integral part of the National Identity Scheme, ensuring that eventually all UK residents will have some form of recorded biometrics linked to their identity, providing significant benefits in terms of reduced identity fraud, immigration offences and abuse of public funds.

It is the Government's intention that the identity card for foreign nationals will be designated as an ID Card under section 4 of the *Identity Cards Act 2006,* as soon as it is practical. The National Identity Register will be ready for operation during 2009, with large volumes of registration occurring in 2011/12. Once the identity card for foreign nationals is designated, the card issued to the individual will serve as both an identity card for foreign nationals (i.e. a Biometric Immigration Document) and as an ID Card (with the holders' biometric and biographical details held on the National Identity Register alongside checks on British citizens issued with Identity Cards). However, a designation order (secondary legislation under the *Identity Cards Act* and subject to the affirmative order procedure, i.e. with approval of both Houses of Parliament) will first be required.

EXTERNAL CONSULTATION & INVOLVEMENT

- The passage of the UK Borders Bill included cross-government involvement around the impact of identity cards for foreign nationals.
- A Regulatory Impact Assessment (RIA) for the UK Borders Bill issued in February and March 2007.
- Consultations on the Code of practice about the sanctions for non-compliance with the biometric registration regulations – sent to over 180 parties and made available in the Houses of Parliament, raised awareness and sought input on the question of dealing with vulnerable people.
- Detailed discussions with Ministry of Justice, the devolved administrations in Scotland, Wales and Northern Ireland.
- Questionnaires focus sessions and discussions with groups with specific interest in matters relating to children, ethnicity, race, disability, and gender.

Assessment & Analysis

The decision to introduce the requirement to apply for an identity card for foreign nationals was made in response to a:

- Limited ability to precisely fix identities of some foreign nationals staying in the UK.
- Need to comply with EU Regulation, while also ensuring additional adequate safeguards for individuals in domestic legislation.
- Need to phase out insecure documents which presently serve as evidence of a person's immigration status.

The solution required primary legislation to enable the Secretary of State to make regulations requiring foreign nationals staying in the UK and subject to control to apply for a secure biometric card and to register their biometrics. This legislation will be the way in which we comply with EU Regulation which require that where a Member State grants leave to a person, the document which is issued to grant the leave shall be a biometric card of a uniform format.

The policy objective is to introduce the requirement to apply for an Identity Card for Foreign Nationals, fixing a foreign national's identity at the earliest point and allowing them to demonstrate reliably and securely that they are legally in the UK. These regulations start with some student and marriage/spouse categories. This will provide a document which is easily recognised by employers and others showing entitlements. It also supports the Government commitment to introducing a single comprehensive National Identity Scheme to cover everyone legally resident in the UK and to establish a National Identity Register.

As part of the policy development process the following options were evaluated:

Do nothing - not possible because measures are required to comply with EU regulations. While the European Regulations are directly applicable as part of UK law, additional domestic provision is essential to provide, for instance, safeguards for children or for how the biometric information collected can be used.

Partially Implement – adopt the EU standard as a minimum - issue a card where required by EU regulations but do not issue it where this is not required by the regulations e.g. if the person already has leave to enter or remain. Do not re-verify people's biometrics if already on database, or those transferring conditions or holding a "no time limit" stamp. Additionally under

this EU option, UKBA would start with only facial biometrics (photo) and widen the scope to include fingerprints in line with the EU deadline (thus missing out on at 1-2 years worth of enroling and checking fingerprints). This was discounted as all groups of foreign nationals subject to control in the UK are required to be included in the national identity scheme. Therefore, those transferring conditions or with a no time limit stamp need to be included. Without including these groups, and eventually the whole settled population, there would be gaps in the scheme, and potential abuse of the system. The option to enrol, check and re-check migrants' fingerprints even if they have already had their biometrics recorded, for example as part of a visa application, is also necessary to reduce abuse of the system.

Fully Implement - issue a high quality secure document to those legally here, easily recognisable by employers and others. Delivery approach choices considered; immediate or incremental roll-out. The last option (incremental roll out) is justified in terms of risk management, security and identity management to be delivered on an incremental harm led roll-basis.

The strategy document introducing compulsory identity cards for foreign nationals was published 6 March 2008. In order to mitigate risk and introduce changes gradually it was recommended that the roll out should be on an incremental basis – i.e. UKBA would not introduce the scheme for all foreign nationals at the same time. These include roll-out by geography, nationality, application type or a mixture of all. UKBA undertook analysis of migration statistics, internal information and intelligence reports to understand how the immigration system is targeted by those who seek to abuse the system.

It was considered that roll-out by geography would allow for displacement as people would simply move from one address to another. Roll-out by nationality was also discounted. The decision was made to introduce Identity Cards for foreign nationals on an incremental basis to initially target categories which, on the evidence, contained higher proportions of those who seek to abuse the system.

Does this policy have the potential to cause unlawful direct or indirect discrimination? Does this policy have the potential to exclude certain groups of people from obtaining services, or limit their participation in any aspect of public life?

As discussed above, the roll out of the requirement to have a biometric card by type of immigration application may indirectly discriminate against certain nationalities because more individuals from some nationalities apply, for example, in, student categories than others. However, this is justified on the basis of risk and efficiency and the evidential analysis which has been undertaken shows that the priority groups for the roll out are those where there is greatest evidence of subsequent abuse by those persons of the

immigration system.

It is not believed that the measures discriminate as suggested by stakeholders, for the reasons given above. Further discussions are planned to ensure that the policy is implemented in a way which ensures no discrimination on the basis of gender identity.

Rather than excluding a person, or making them feel excluded, holders of the card will easily and confidently be able to show their entitlement to work and other benefits, although there is no requirement for a person to carry the card with them at all times.

How does your policy promote good relations and promote equal opportunity? How does this policy make it possible for different communities to work together, build bridges between parallel communities or remove barriers that isolate groups and individuals from engaging in civic society more generally?

This policy helps promote equal opportunity by providing a highly secure document which shows the holder's immigration status and entitlements in the UK. Employers will become increasingly familiar with the card which will gradually replace old fashioned 20th Century paper documents currently issued to foreign nationals. The identity card is a versatile tool which may be utilized confidently by the employer immediately allowing them to visually compare the document with the holder, and as a reliable document should the need arise further checks can be made through the employer checking system. In due course as the card contains the benefits of new technology, an employer will be able to carry out his or her own verification process should they wish. Confidence in the card along with the cardholder's entitlement to work will help promote equal opportunity.

Educational establishments

The identity card will provide evidence that the holder has leave to enter or remain in the United Kingdom and may be used to demonstrate that a person is entitled to study at an educational institution. The identity card may increase a sense of belonging and reduce isolation within student groups by providing a common format document quickly and easily recognised by other students.

ENSURING ACCESS TO INFORMATION

How can you ensure that information used for this EIA is readily available in the future?
Information used to inform this **Equality Impact Assessment** can also be found on the website in the following documents: Introducing compulsory identity cards for foreign nationals National Identity Scheme Council Regulation (EC) 1030/2002 The final document will be published on the external website. This document was produced by the UKBA Biometric Policy Team who can be contacted for further information at: Head of UK Biometric Policy Team UKBA Stakeholder Strategy Unit 1st Floor, Peel Building 2 Marsham Street London SW1P 4DF **Tel:** 0207 035 6525 .

How will you ensure your stakeholders continue to be involved/ engaged in shaping the development/ delivery of this policy?
We will continue to consult our internal and external stakeholders as set out in the action plan.
How will you monitor this policy to ensure that the policy delivers the equality commitments required?
Through regular and ongoing stakeholder engagement the Policy Team and the Communications Team will be able to monitor and review the policy to ensure the policy delivers the equality commitments required.

Annex A

Immigration Law Practitioners' Association

Joint Council for the Welfare of Immigrants

The Employers Forum on Age

Employers' Forum on Disability

The Runnymede Trust

The Muslim Council of Britain

National Bureau for Students with Disabilities

Office for Disability Issues, Department for Work and Pensions

Disability Alliance

Royal National Institute of Blind People

Terrence Higgins Trust

The Equality and Human Rights Commission

Amnesty International

The Inter Faith Network for the UK

Mencap

A:gender

Stonewall

Spectrum

HODSnetwork

Association of Chief Police Officers

The Network

CEOP

Recommendations	Responsibility	Actions required	Success Indicators	Target Date	What progress has been made?
Data Collection	Project Team	Review of the pilot	Feed back from participants in the pilot included within the report	September 2008	Ongoing
Publication Arrangements		Publish on external website	Published on website	June 2008	EIA has been drafted
Monitoring & Review Arrangements	Policy Team, & Communications Team	Ongoing stakeholder engagement	3 Focus groups with stakeholders successfully arranged	November 2008	Communication Strategy in draft
List other recommendations that are required	Policy Team	Ongoing liaison with IPS.	Ensure our arrangements/processes are in line with IPS	Ongoing	Closer working relationships with IPS
	Policy Team	The needs of groups represented by A:Gender to be dealt with sensitively within our processes whilst maintaining wider objectives	Engagement with A:gender	June 2008	Meetings arranged
	Policy Team/ Communications	Develop a focus group of persons who have been subject to the requirement to seek their views on the process	Positive feed back and improved processes	March 2009	Focus group to be identified when roll out commences

Please ensure that the action plan is agreed by your Director/ Minister