EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (BIOMETRIC REGISTRATION) (CIVIL PENALTY CODE OF PRACTICE) ORDER 2025

2025 No. 262

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 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 at the Home Office, telephone: 03000721271 or email: identitysecurityteam@homeoffice.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The instrument will enable the draft 'Code of Practice about the sanctions for non-compliance with the biometric registration regulations' ("the 2025 Code"), which was laid before Parliament on 3 March 2025, to come into force on 27 March 2025. The Home Office has updated the 2025 Code to reflect the transition away from physical biometric immigration documents, in the form of biometric residence permits, to digital evidence of immigration status in the form of an eVisa.

4.2 The 2025 Code sets out how the Secretary of State may impose a sanction where an individual who is subject to the Immigration (Biometric Registration) Regulations 2008 ("the 2008 Regulations") has failed to comply with one or more requirements of the 2008 Regulations.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) 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 In 2018, the Home Office started to roll out eVisas to individuals granted permission under the EU Settlement Scheme and then to other immigration routes. The Home Office continues to incrementally roll out eVisas to more routes in line with our digital strategy, which is 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. Immigration status holders with extant immigration permission who are subject to the 2008 Regulations will need to register for a UKVI customer account which will enable them to access their eVisa, to be able to prove their status in the UK.

5.3 From 27 March 2025, everyone who wants to apply for an entry clearance, permission to enter or stay in the UK, or to replace a legacy immigration document such as a visa or passport endorsement, will need to register for a customer account. They will be issued with an eVisa if granted entry clearance, permission to enter, permission to stay in the UK, or where a legacy immigration document is replaced. This does not include individuals who apply for an Electronic Travel Authorisation or for permission under the EU Settlement Scheme. For most people granted indefinite leave to remain before 29 February 2012, or those issued with indefinite leave to enter before March and July 2015, there is no requirement to register for a UKVI account as their legacy documents will remain valid proof of their status.

5.4 The 'Code of Practice about the sanctions for non-compliance with the biometric registration regulations' is therefore being updated to reflect the changes to the 2008 Regulations. In particular, the 2025 Code introduces a new sanction that empowers the Secretary of State to prevent an eVisa holder from being able to create a share code to enable them to prove their status to a third party, such as an employer.[1] The sanction is imposed where an eVisa holder fails to comply with one or more of the requirements of the 2008 Regulations. The 2025 Code enables the Home Office to avoid imposing sanctions that would be disproportionate, given the nature of the non-compliance with one or more of the requirements of the 2008 Regulations.

What was the previous policy, how is this different?

5.5 The 2025 Code updates the one issued in 2015 and reflects the transition from physical to digital documents. Biometric immigration documents will be issued in a digital format, in the form of an eVisa. They can be accessed by the immigration status holder via their UKVI account. In the 2025 Code, all foreign nationals subject to the 2008 Regulations will need to update their facial image:

a. if it has become outdated, for example, if there is a significant change following surgery or for another reason; and

b. at least once every 10 years (or 5 years if aged under 16) from the date they last uploaded their facial image, unless they are aged over 70.

5.6 Physical biometric immigration documents (BID) are only valid for up to10 years. This ensured that the status holder periodically updated their facial image when

[1] A share code is a unique reference generated by the status holder which they can email or hand-over to a third-party checker, such as an employer, landlord or another organisation that needs to check identity and status.

applying for a replacement BID so that third-party checkers, such as employers and landlords, could compare the person against the image on the document more easily. Digital BIDs (eVisas) do not expire and the 2025 Code contains alternative measures to ensure customers keep their facial image up to date.

5.7 The 2025 Code will enable the Secretary of State to prevent a share code from being generated until a status holder complies with one or more requirements of the 2008 Regulations. In most circumstances this will relate to the need to update a facial image or other biographical information, which can usually be updated within a few minutes online. The rationale is to ensure third parties who need to conduct checks can easily confirm the person's identity and status.

5.8 The 2025 Code simplifies the amounts of financial penalties that may be imposed. The amount of the penalty on each occasion will depend on the number of times a person has failed to comply or continued in their refusal to comply. The initial penalty will be £250, the second £500 and subsequent penalties will be £1,000. It also makes it clearer that financial penalties and cancellation of immigration status should only be used in circumstances where other efforts to ensure compliance have failed.

5.9 The 2025 Code also introduces a new category of vulnerable people, which includes individuals who have limited digital skills and/or limited access to suitable technology. It reflects that the move to eVisas may impact some people more than others. Therefore, provisions have been made for cases to be considered on individual merits and having alternative arrangements to assist individuals to comply.

5.10 The 2025 Code removes a requirement to collect a BID from a Post Office.

5.11 The 2025 Code is also reflective of the consideration given to the best interests of children. The 2025 Code outlines that steps should be taken to ensure a child who is subject to the 2008 Regulations complies with the requirements and is not unduly sanctioned.

6. Legislative and Legal Context

How has the law changed?

6.1 The 2025 Code has changed to reflect the updated 2008 Regulations, so that it is clear how sanctions for non-compliance with the Regulations may be applied. It also builds on the changes made in 2021 which made consideration of issuing a financial penalty a discretionary matter.

6.2 The 2025 Code also has simplified the amounts of penalties that may be imposed on someone who has not complied with one or more requirements of the 2008 Regulations. The initial penalty will be £250, the second £500 and subsequent penalties will be £1,000.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 A 12 week online survey exercise was conducted between 17 July 2023 and 8 October 2023. A total of 29 responses were collected, of which six responded to all questions asked on the proposed changes to the 2025 Code. The remaining 17 respondents provided answers to some but not all questions. Respondents comprised of individuals

representing themselves or representing groups. Types of individual respondents included landlords and employers, while types of group respondents included charitable/non-profit, private sector, and public sector organisations. A range of in-person and virtual engagement events were also conducted with stakeholders including Immigration Law Practitioners Association, the3million and representatives of educational institutions and employers, between September and November 2023.

7.2 The overall view was that the draft 2025 Code was generally proportionate. During the engagement sessions two people suggested the age at which people stop needing to update their facial images should be set lower. In response, the department explained the reason for setting the age a few years above the retirement age, which is to reflect that some people work beyond the age they are eligible to receive a state pension.

7.3 The majority of stakeholders wanted assurance that status holders would be given plenty of warnings about the need to update their facial image before any sanctions are imposed, and assurance that there are safeguards in place for vulnerable people. There was concern that the original draft of the 2025 Code did not identify people with limited digital skills or who lacked access to suitable technology as vulnerable. This has now been addressed by having a section in the draft that sets out provisions for digitally excluded people.

7.4 Stakeholders wanted to better understand how the sanctions would be applied, particularly civil penalties and immigration sanctions that could result in the revocation of an individual's immigration status. Separate guidance has been produced to set out to decision makers how they should apply the 2025 Code when they decide to impose a sanction, including the issuance of notifications and warnings.

7.5 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 2025 Code so that it better identified vulnerable people, particularly children and young people.

7.6 The department agreed with stakeholders that it would publish draft guidance on how the 2025 Code would be implemented. The department also agreed to continue to engage with our stakeholders on the development of the guidance before the draft is published.

7.7 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 consultation and Government response was published on 20 January 2025, and can be found on gov.uk.[2]

8. Applicable Guidance

8.1 The department has published draft guidance and continues to liaise with our corporate partnership groups and organisations representing foreign nationals through

[2] https://www.gov.uk/government/consultations/biometric-registration-regulations-changes-to-the-code-of-practice

stakeholder events and communications and publications on the gov.uk website.[3] The final Code of Practice was published on gov.uk on 3 March 2025.[4]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 We believe that eVisas and the 2025 Code 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.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because it only applies to individuals.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the legislation only applies to individuals.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Home Office will monitor the impact of the 2025 Code against its delivery targets. This will be conducted 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 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

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").

[3] https://www.gov.uk/government/consultations/biometric-registration-regulations-changes-to-the-code-of-practice/outcome/guidance-on-applying-the-code-of-practice

[4] https://www.gov.uk/government/consultations/biometric-registration-regulations-changes-to-the-code-of-practice/outcome/code-of-practice-about-the-sanctions-for-non-compliance-with-the-biometric-registration-regulations