EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (BIOMETRIC REGISTRATION) (CIVIL PENALTY CODE OF PRACTICE) ORDER 2015

2015 No. 565

THE IMMIGRATION (BIOMETRIC REGISTRATION) (OBJECTION TO CIVIL PENALTY) (AMENDMENT) ORDER 2015

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

2. Purpose of the Instruments

2.1 Section 9(1) of the UK Borders Act 2007 enables the Secretary of State to impose a civil penalty 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 These orders provide for amendments to the Code of Practice resulting from the requirement for foreign nationals, who are subject to immigration control and apply for leave to enter the United Kingdom for more than six months, to apply for a biometric immigration document[1].

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

3.1 None.

4. Legislative Context

4.1 The Immigration (Biometric Registration) (Civil Penalty Code of Practice) Order 2015 provides for the coming into force of the first revision of the Code of Practice about the sanctions for non-compliance with the biometric registration regulations[2].

4.2 The Immigration (Biometric Registration) (Objection to Civil Penalty) (Amendment) Order 2015 prescribes the requirements as to the form and content of the objection notice to a civil penalty notice and the time limits for an objection notice being given and responded to. The notice is in the schedule to the Order and has been updated to reflect organisational change and to improve the guidance on completing it.

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[1] References to a biometric immigration document include both biometric residence permits and short stay permits (where appropriate).

[2] The 2008 Code is available to view here, https://www.gov.uk/government/publications/non-compliance-with-the-biometric-registration-regulations.

4.3 These orders replace the Immigration (Biometric Registration) (Civil Penalty Code of Practice) Order 2008[3] and the Immigration (Biometric Registration) (Objection to Civil Penalty) Order 2008[4].

5. Territorial Extent and Application

5.1 These orders extend to all of the United Kingdom.

6. European Convention on Human Rights

6.1. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 All foreign nationals subject to immigration control applying for or granted permission to stay in the UK for more than six months have to apply for a biometric immigration document to evidence their immigration status and any entitlements in the UK, such as the right to work or access to public benefits and services.

7.2 The phased roll-out of in-country applications began on 25 November 2008, and was completed in February 2012. Since this began the Home Office has issued over 1.8 million biometric immigration documents. In that time the Home Office has issued 117 civil penalty notices under the existing Code of Practice which came into force in July 2008.

7.3 The introduction of overseas applications for biometric immigration documents for foreign nationals subject to immigration control applying for entry clearance which will have effect as leave to enter the UK for more than six months is scheduled to be phased in between March and July 2015. As a result new collection requirements have been introduced, that the successful applicant must collect their biometric immigration document from a specified location within a prescribed time following their arrival in the UK. This has necessitated an update to the Code of Practice.

7.4 The UK Borders Act 2007 requires the Secretary of State to publish proposals; consult members of the public; and lay a draft before Parliament before re-issuing the Code.

8. Consultation outcome

8.1 The public consultation closed on 23 December 2014. It sought responses in general to the revised draft and did not pose specific questions. The layout of the Code of Practice was changed to bring it more into line with current design standards and to make it easier to read. At the same time there was a general review of the existing text which was changed where this could improve understanding of the Code, make clearer the current operation of the Code, and remove duplication.

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[3] S.I. 2008/3049.
[4] S.I. 2008/2830.

8.2 Seventeen responses were received. The vast majority of responses sought clarification about the proposed introduction of overseas applications for biometric immigration documents and the impact on students and educational institutions of their introduction, and as such had little or no specific bearing on the drafting of the Code of Practice.

Each of those responding to the consultation received a substantive response from the Home Office. The formal response to the public consultation was published on the Home Office website on 3rd March 2015[5].

9. Guidance

9.1 The Code of Practice is published on the Home Office website. Specific outward facing communications involving direct contact with stakeholders and partner organisations commenced in January 2015, providing detailed information on the new collection requirements. As the system goes live information for customers will appear on relevant Home Office web pages and the Visa4UK visa application system.

10. Impact

10.1 There is no perceived negative impact on business, charities, voluntary bodies or the public sector as a result of these orders. Accordingly an Impact Assessment has not been prepared for these orders.

11. Regulating small business

11.1 Not applicable.

12. Monitoring and review

12.1 Procedures are in place to monitor compliance under the Code of Practice, maintaining statistical data that currently indicates a compliance rate of 99.2%. In addition, with the new collection requirements in the Code of Practice, all biometric immigration documents not collected will be returned to the Home Office by Post Office Ltd. This will generate checks to ensure the migrant arrived in the United Kingdom, and if they did then they will be contacted by the Home Office. There will be an ongoing review to make sure that the collection process is working effectively and that migrants are not adversely affected.

13. Contact

13.1 Ben Judah at the Home Office. Tel: 0207 035 0097 or e-mail: ben.judah@homeoffice.gsi.gov.uk

[5] Public consultation response – https://www.gov.uk/government/consultations/uk-borders-act-2007-sanctions-for-non-compliance-with-the-biometric-registration-regulations.