EXPLANATORY MEMORANDUM (SUPPLEMENTARY) TO

THE SOCIAL SECURITY (CREDITING AND TREATMENT OF CONTRIBUTIONS, AND NATIONAL INSURANCE NUMBERS) (AMENDMENT) REGULATIONS 2015

2015 No. 1828

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) (Amendment) Regulations 2015 (the Regulations) further amend regulation 9 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001by inserting a provision that where an individual has applied for a Biometric Residence Permit (BRP) from the Home Office (HO) whilst outside of the UK they do not have to make a separate application for a National Insurance Number (NINo) once they arrive in the United Kingdom (UK).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 On the 23rd February 2015 an amendment was made to regulation 9 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 (*SI 2001/769)* (http://www.legislation.gov.uk/uksi/2001/769/contents), by the Social Security (Miscellaneous Amendments) Regulations 2015 (*2015/67)* (http://www.legislation.gov.uk/uksi/2015/67/contents) This aligned these regulations with The Immigration (Biometric Registration) Regulations 2008 (*SI 2008/3048)*(http://www.legislation.gov.uk/uksi/2008/3048/contents/made) (regulation 13) and stated that where a person has applied for a BRP from the HO whilst in the UK and provided the HO with all the relevant information, they do not have to provide this again in order for a NINo to be allocated.

4.2 With effect from 17th March 2015 the Immigration (Biometric Registration) Regulations 2008 were amended by the Immigration (Biometric Registration) (Amendment) Regulations 2015 (*SI 2015/433)* (http://www.legislation.gov.uk/uksi/2015/433/contents/made), inserting a provision via regulation 13A to allow the HO to issue a BRP to persons who make an

application from abroad/outside the UK. The BRP is not issued to the applicant abroad but is collected via a secure process once they arrive in the UK.

4.3 In order to maintain the link between DWP adult NINo allocation policy and HO Immigration related policy it is necessary for DWP to mirror the HO amendment via a regulation change and reference regulation 13A in the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001. This will allow a NINo to be allocated and included on a BRP where the BRP application has been made outside of the UK.

5. Extent and Territorial Application

5.1 This instrument extends to Great Britain.

5.2 This instrument applies to Great Britain. Equivalent provisions will be made for Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 The Home Office (HO) requires non-European Economic Area (EEA) nationals who are granted leave to enter the UK for more than 6 months, to make an application for a Biometric Residence Permit (BRP) as part of their visa application, whilst they are still abroad. The BRP is then collected by the applicant via a secure process once they arrive in the UK. Department for Work and Pensions (DWP) allocate National Insurance Numbers (NINos) to adults from abroad, both processes check identity, immigration status and the right to work in the UK.

7.2 DWP and HO have collaborated and aligned the two processes to create a BRP that includes a NINo. This approach results in both a BRP and a NINo being allocated from one application, provides an improved customer journey and better supports employers conducting right to work checks.

7.3 This amendment to regulation 9 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 will make provision that where a person has applied for a BRP outside the UK and provided the HO with all the relevant information, they will not have to provide this again in order for a NINo to be allocated, nor will they have to make a separate application for a NINo to DWP.

7.4 The alignment of the NINo and BRP process means that the customer, who has a right to work in the UK, collects their BRP on arrival in the UK (they must collect their BRP either 10 days after arrival or before the expiry of their 30 day travel visa) and immediately has all of the essential information / documentation they need to provide to their employer and the provision of a NINo ensures that they pay the correct amount of Tax and National Insurance contributions.

7.5 The aligned NINo / BRP process has significant benefits to the customer as previously they could not make their NINo application until they arrived in the UK. They would have to telephone the DWP NINo Application Contact Centre to initiate a NINo

application; which may have required them to attend a Jobcentre Plus NINo office to complete a NINo application and to undertake an Evidence of Identity (EOI) interview. The NINo application would then be processed and the customer advised of their NINo by post. This process would take approximately 3-4 weeks.

7.6 The alignment of the NINo / BRP process enables the HO to capture the NINo on their IT systems, providing a common reference number for DWP, HMRC and HO. Capturing the National Insurance Number (NINo) and having a common reference number for Department for Work and Pensions (DWP), Her Majesty's Revenue and Customs (HMRC) and Home Office (HO) which is unique to the individual provides further benefits. Once the NINo and Biometric Residence Permit (BRP) have been issued, the unique common reference number enables these departments to undertake data-sharing to identify individuals who are non-compliant with their visa restrictions for example: helping to prevent benefit fraud and illegal working.

7.7 Any future data-sharing will be more effective as the NINo provides a unique reference number; matching with a unique reference number means that the amount of data shared can be reduced and there is greater assurance and validity of the match. For example: if the data match is undertaken using a name and date of birth (dob) - John Smith (dob) 24/06/68 there is likely to be multiple matches. However, if you match using a unique common reference number and name – QQ123456C John Smith – you will achieve an exact match.

Consolidation

7.8 Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/ or the National Archive website legislation.gov.uk. An explanation as to which instruments are maintained on each site is available from http://www.dwp.gov.uk/docs/lawvolnews.pdf.

8. Consultation outcome

8.1 As this is a minor technical amendment to enable NINo /BRP alignment to be applied to out of country visa / BRP applicants there would be no impact on the outcome of the policy from undertaking a consultation exercise.

8.2 The Social Security Advisory Committee (SSAC) considered the Regulations and did not require them to be formally referred.

9. Guidance

9.1 As this is a minor technical amendment procedures and guidance are already in place, any minimal changes required to internal staff guidance and learning updates will be delivered by 30th November.

9.2 When a non-EEA national makes a visa / BRP application they are informed that the information they provide may be shared with DWP who will assess if they already have a NINo and if they don't they will be allocated one if they are eligible. The applicant receives further information relating to their NINo in the visa decision letter from the HO. They will then receive further communication from the HO relating to their BRP (carrier letter and information leaflet) which provides further information about their NINo and why it is included on their BRP.

10. Impact

10.1 No impact on business or civil society is foreseen.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The National Insurance Number/ Biometric Residence Permit (NINo/BRP) alignment will be delivered via the different immigration tiers in a staged roll-out, commencing with Tier 2 General / Sports Persons /Minister of Religion migrants.

12.2 A review and lessons learned will take place before the each immigration tier is rolled out to ensure that delivery is consistent and effective. Timelines are not fixed as there is a need to be confident that each immigration tier is embedded and fully functional prior to further roll-out.

13. Contact

13.1 Lindsay Scott at the Department for Work and Pensions Tel: 01772 234157 or email: Lindsay.Scott@dwp.gsi.gov.uk can answer any queries regarding the instrument.