

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (BIOMETRIC REGISTRATION)(PILOT) REGULATIONS 2008

2008 No. 1183

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 These Regulations enable the Secretary of State to operate a pilot for issuing “biometric immigration documents” – also known as an identity card for foreign nationals. The Regulations require certain persons who are subject to immigration control to apply for a biometric immigration document when they make an application for leave to remain in the United Kingdom. The person may be required to provide biometric information - fingerprints and a photograph of their face. The Regulations make provision for the processes for registering the biometric information, including safeguards for children under the age of 16; for the issue and content of the document; for the use and retention of the biometric information; the surrender and cancellation of the document, and the consequences of a failure to comply with a requirement of these Regulations.

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

3.1 None

4. Legislative Background

4.1 These are the first Regulations made under the biometric registration provisions of the UK Borders Act 2007 – section 5 to 8 and section 15. Section 5 and 6 of the Act confer powers on the Secretary of State to make regulations to require those subject to immigration control to apply for a document recording external physical characteristics - a "biometric immigration document". The Regulations may apply generally or to a specified class; make provision for the issue and content of the document; for the surrender and cancellation of the document. They may permit an authorised person to require the provision of biometric information (such as fingerprints), and according to a specified process for collecting the biometric information.

4.2 Section 7 provides for the effect of non-compliance with a requirement of the Regulations. Section 8 makes provision for the use and retention of information provided in accordance with the Regulations. Section 15 makes provision for the interpretation of the biometric registration provisions.

5. Extent

5.1 This instrument extends to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Liam Byrne has made the following statement regarding Human Rights:

In my view the provisions of the Immigration (Biometric Registration) (Pilot) Regulations 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 better managing and reducing identity abuses. The Government is therefore introducing a National Identity Scheme for registering and verifying identity, which will eventually cover all citizens, both British and foreign nationals, legally resident in the UK.

7.2 The introduction of identity cards for foreign nationals under the biometric registration provisions of the UK Borders Act 2007 will allow the Government to link securely a person to a single identity and provide clear evidence of the holder's immigration status. 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 pilot is designed to test the biometric enrolment processes before further Regulations are made for the main roll out of the project. The Regulations impose a requirement to apply for the document only on a specified class of foreign nationals who are subject to immigration control. It is limited to those who apply for leave to remain in specified marriage, partner and student categories under the Immigration Rules, and their dependants. Where the person applies for leave to remain by post, they will only be required to apply for the document if they live in one of the postcodes specified in the Schedule to the Regulations. In addition, a person will only be subject to a requirement to apply for a document if they apply for leave to remain on one of the dates specified in the Regulations.

7.4 The Border and Immigration Agency will not issue an identity card for the purposes of this limited pilot. Where an applicant is successful, they will be issued a biometric immigration document that will be in the form of a vignette. The Secretary of State does not have the power to issue civil penalties or to curtail existing leave under these Regulations. However, where an applicant fails to comply with a requirement of the Regulations, the Secretary of State may disregard or refuse the person's application for leave to remain and refuse to issue the biometric immigration document.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 This regulation should only impact the Border and Immigration Agency as it is designed to enable it to test its biometric enrolment processes in preparation to the planned rollout of "Identity Cards for Foreign Nationals", described in the UK Borders Act 2007 as biometric immigration documents.

9. Contact

9.1 Wendy DuChense at the Border and Immigration Agency Tel: 020 8760 3253 or e-mail: wendy.duchesne@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.