

**EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (BIOMETRIC REGISTRATION)
(OBJECTION TO CIVIL PENALTY) ORDER**

2008 No. 2830

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 instrument

2.1 This Order is one of several instruments which implements the Government's programme of identity cards for foreign nationals. The main roll out of the issue of these cards will start from 25th November 2008. Under this project, certain types of foreign nationals will have to apply for a card. If they fail to comply with certain requirements of the scheme, they may be liable to pay a civil penalty. This Order provides the form if the person wants to object to the civil penalty, and the time within which they must lodge their objection.

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

3.1 None

4. Legislative Context

4.1 This Order is made under sections 10 and 14 of the UK Borders Act 2007. The related Immigration (Biometric Registration) Regulations 2008 were laid before Parliament on 11 June 2008. These Regulations concern the issue of biometric immigration documents to those subject to immigration control. They have been approved by both Houses of Parliament. The intention is for the approved regulations to be made on 24th November 2008 to come into force on the following day. Where a person fails to comply with a requirement of the 2008 Regulations (for example, a failure to notify if the document is lost or stolen) they may be liable to pay a civil penalty under section 9(1) of the 2007 Act. Further detail about the operation of the civil penalty regime is set out in the Code of Practice about the Sanctions for Non-compliance with the Biometric Registration Regulations which was laid before Parliament on 11th June 2008. The Immigration (Biometric Registration) (Civil Penalty Code of Practice) 2008 will bring the Code into force on 25th November 2008. The present Order prescribes information the procedural details for objecting to a penalty notice.

4.2 The UK Borders Act 2007 (Commencement No. 4) Order 2008 has also been made to commence the civil penalty notice provisions of the UK Borders Act 2007 on 25th November 2008.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 Identity cards for foreign nationals (referred to as biometric immigration documents in section 5 of the UK Borders Act 2007) will be rolled out from 25th November 2008. Foreign nationals subject to immigration control will, over time, be required to apply for an identity card.

7.2 To ensure compliance with requirements to apply for a card, the Government introduced a number of sanctions, including civil penalty notices. The civil penalty notice regime will be operated in accordance to the Code of Practice, which was debated in Parliament earlier in July 2008 and which will come into force on 25th November 2008.

7.3 Part of the civil penalty notice regime includes the right to object to a notice and appeal against the Secretary of State's decision to a county court or sheriff. The purpose of having a right to object to the notice is to provide an opportunity to redress any concerns using a low cost internal procedure. It will also help avoid placing added burdens on the courts.

7.4 The objection process is already used in other UK Border Agency civil penalty regimes, including the illegal working civil penalty regime. The objections will be handled independently to the issuing of civil penalties so that the person who issues a notice will not be able to consider any objection.

8. Consultation outcome

8.1 The draft Code of Practice about the Sanctions for Non-compliance with the Biometric Registration Regulations was published in February 2008 and underwent consultation. The consultation included an opportunity to comment on the process for objecting to a civil penalty.

8.2 The UK Border Agency received seventeen responses to the consultation and we took account of the comments made about the objection process by increasing the time for submitting an objection from twenty to thirty working days.

9. Guidance

9.1 The Code of Practice about the Sanctions for Non-compliance with the Biometric Registration Regulations, which was laid in Parliament on 11th June 2008, forms the guidance about the operation of the objection process. Additional guidance is being prepared which will be published on the UK Border Agency website and enclosed alongside any civil penalty notice when it is issued.

10. Impact

10.1 An Impact Assessment was prepared for The Immigration (Biometric Registration) (Civil Penalty Code of Practice) Order 2008 and The Immigration (Biometric Registration) Regulations 2008 to which this Order is linked. A separate Impact Assessment has not been prepared for this instrument accordingly.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 The UK Border Agency will monitor the operation of the objection regime against the illegal working objection scheme. It will be subject to internal review after 12 months.

13. Contact

13.1 John Allen at the UK Border Agency, Tel: 020 8760 3465 or e-mail: john.allen@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.