

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (NATIONAL INSURANCE NUMBER INFORMATION:
EXEMPTION) REGULATIONS 2009

2009 No. 471

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The Department for Work and Pensions Benefit Regulations are to be amended so that there is no longer a requirement for a person who does not have the right to be in the UK, but who is the partner of a legitimate benefit claimant living in the UK, to be allocated a National Insurance Number (NINO).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 Currently legislation requires both the person making the claim and any other person in respect of who he / she is claiming benefit to either:
 - Provide their NINOs; or
 - Provide sufficient information for their NINOs to be traced; or
 - To make an application for a NINO to be allocated which is accompanied by information or evidence enabling a NINO to be allocated.
 - 4.2 DWP Benefit Regulations are to be amended so that there is no longer a requirement for a person who does not have the right to be in the UK, but who is the partner of a legitimate benefit claimant living in the UK, to be allocated a NINO.
 - 4.3 A Written Ministerial Statement to Parliament was made on the 9th May 2008 announcing the intention to change regulations to bring this change into effect.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to all of the Great Britain.
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 Social Security Benefit regulations are being amended so that there is no longer a requirement for a National Insurance Number (NINO) to be allocated to an individual who has no leave to enter or remain in the UK where he / she is the partner of a legitimate DWP benefit claimant.
- 7.2 This change is taking place because people, who have no right to live, work or access benefits in the UK are not entitled to be allocated with a NINO in their own right. It is consistent therefore that those individuals should not be allocated a NINO just because they happen to be a partner in a claim to benefit.
- 7.3 The requirement for a NINO for both the customer and the partner was originally introduced as an anti- fraud measure in 1997. However in a current claim to benefit there are checks within the benefit process which confirm benefit entitlement by checking nationality and immigration status and fulfil that purpose and safeguard the benefits gateway without the need for a NINO to be allocated in these limited partner cases.
- 7.4 The regulation change will improve the integrity of the NINO. The change removes the risk of a NINO granted under the benefit application route then being used inappropriately for work purposes by someone who does not have leave to enter or remain in the UK. It will ensure that the NINO is not used to legitimise someone who has no right to be in the UK.
- 7.5 As well as strengthening DWP's position on NINO allocation the change will align DWP policies more closely with Home Office immigration-related policies.

8. Consultation outcome

- 8.1 The Government Code of practice on consultation has been considered in relation to this regulation change. The purpose of this change is to strengthen the existing policy so that people with no right to live, work, or access benefits, in the UK should not be given a NINO. As a Nino is an administrative reference number for tax, contributions and benefits purposes, it follows that those to whom this change applies have no legitimate need for a national insurance number. On that basis, Ministers' right to exercise discretion not to a conduct a formal consultation under the terms of the Code was invoked.
- 8.2 Separately, the Social Security Advisory Committee (SSAC) considered the regulations in draft and chose not to exercise their power to formally refer them for consideration.

8.3 The numbers of NINO applications from persons to whom this change will apply are reported (anecdotally) to be very low. This change does not affect existing benefit entitlements.

9. Guidance

9.1 There will be minimal changes to the existing benefit and NINO allocation processes. However, benefit and NINO allocation guidance will be updated detailing how staff will progress these claims, along with how to best identify those with no right to be in the UK. DWP's Operational Businesses will pull together the necessary guidance for staff and these will be in place prior to the introduction of these regulations.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible.

10.3 A full Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The regulation change will be monitored as per standard Jobcentre Plus NINO Allocation compliance procedures.

13. Contact

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