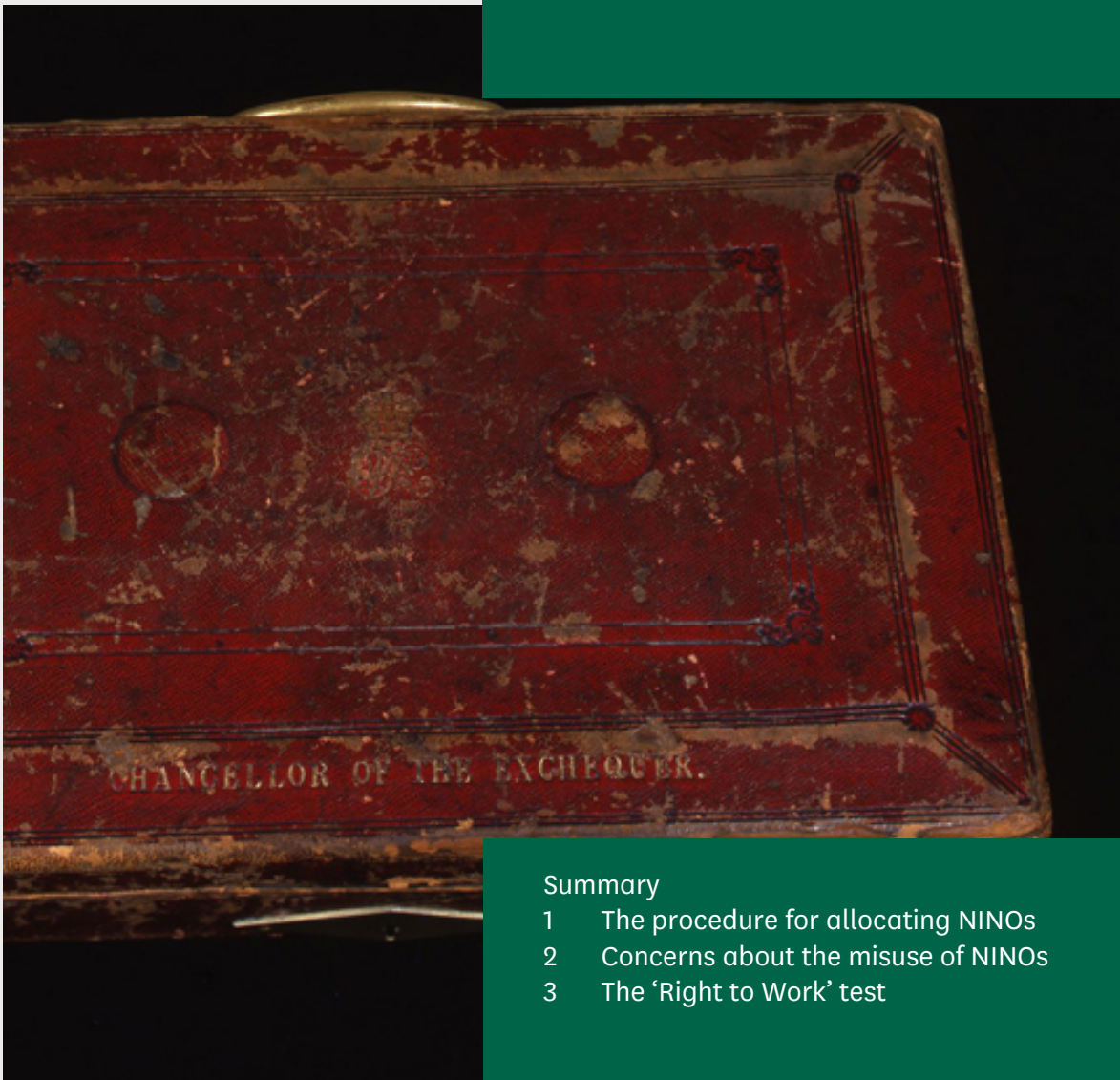


By Antony Seely

19 July 2021

National Insurance numbers (NINOs)



Summary

- 1 The procedure for allocating NINOs
- 2 Concerns about the misuse of NINOs
- 3 The 'Right to Work' test

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Summary

Each person's entitlement to contributory benefit, based on their record of paying National Insurance contributions (NICs) on their earnings or profits, is tracked by their own National Insurance number (NINO). Most people are automatically given a number as they approach age 16. Anyone who is resident or present in Great Britain and over 16, who is employed or self-employed or who wishes to pay voluntary (Class 3) NICs, and who is not already in possession of a NINO, is required to make an application for one. HM Revenue & Customs (HMRC) publish guidance on Gov.uk for individuals [making a NINO application](#), as well as for those who need [find their NINO](#).

It is important to note that a NINO is not proof of identity, and should not be relied on by employers as proof that someone has the right to work in the UK.

Individuals making an application for a NINO may be required to attend an interview at a JobCentre Plus office to explain why they need a NINO and to confirm their identity. During 2020 these face-to-face interviews were suspended due to Covid-19, although HMRC's guidance has underlined that applicants waiting to receive a NINO may still take up employment *provided* they can [prove they can work in the UK](#), and can still apply for benefits or a student loan.¹

Last autumn the Government announced plans to set up a digital solution to "reduce the length of the NINO interview and ... enable the reinstatement of a shortened face-to-face service."² On 1 March this year DWP Minister Guy Opperman said, "In January, we gained Government Digital Service approval as a result we were no longer required to limit the number of applicants we can serve, although we do not have an identity solution for all potential applicants yet. Our current plan is that by the end of March 2021 we will be able to offer a service to all applicants who do not require their identity to be verified face to face."³ On 20 April the Minister confirmed that "the National Insurance Number Service is now available to all applicants living in England and Wales and, in line with Scottish Government guidelines, will be available, in Scotland, from week commencing 26th April when our face to face service resumes."⁴

HMRC's current guidance underlines that if someone has a [biometric residence permit \(BRP\)](#), they may have a NINO already. If so, it will be printed on the back of their BRP. If someone needs to make a NINO application to apply for benefits or a student loan, they may apply as part of their

¹ HMRC, [Apply for a National Insurance number](#), retrieved 19 July 2021

² [PQ HL 8489](#), 2 October 2020

³ [PQ157313](#), 1 March 2021

⁴ [PQ181336](#), 20 April 2021

application. This guidance goes on to note that once applicants have proven their identity, “it can take up to 16 weeks to get your National Insurance number.”⁵

In its report on immigration control published in July 2006, the Home Affairs Committee expressed concerns that in some cases NINOs had been issued to individuals without a check on the applicant’s immigration status or their right to work or to benefits.⁶ At this time the Government announced changes both in the administrative arrangements for allocating NINOs and in the statutory requirements placed on individuals to apply for a NINO, so as to prevent illegal workers being allocated a number.⁷ Regulations to give effect to these changes were introduced in November that year. As a consequence, individuals who wish to apply for a NINO because they have started work must present specific evidence that they have the right to work in this country.⁸

This note discusses the process by which NINOs are allocated and the impact that Covid-19 has had on this procedure, before discussing the background to the introduction of the ‘Right to Work’ test for individuals requiring a NINO for employment purposes.

⁵ HMRC, [Apply for a National Insurance number](#), retrieved 19 July 2021. See also, [PQ17703](#), 25 June 2021

⁶ [Fifth report: Immigration Control](#), HC 775, 23 July 2006 para 462

⁷ [HC Deb 18 July 2006 c20WS](#)

⁸ SI 2006/2897, as amended by SI 2008/223

1 The procedure for allocating NINOs

No one has the right to a NINO. Rather, the law in this area is framed in terms of the circumstances where someone should apply for one, although most people are automatically given a NINO as they approach age 16.

Individuals resident or present in Great Britain and over 16, who are employed or self-employed or who wish to pay voluntary (Class 3) National Insurance contributions, and who are not already in possession of a NINO, are required to make an application for one, under reg 9(1)(1A)(2) of the *Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulation 2001/769*.

HMRC's *National Insurance Manual* summarises these criteria as follows:

Registration of a new NINO: Adult Registration: applying for a NINO through DWP's Jobcentre Plus

This guidance applies to:

- adults who were not issued with a number under the Juvenile Registration processes [that is, given a number when they reached their 16th birthday]
- children who have not been part of a Child Benefit claim⁹ ...
- people coming in to the UK from abroad

In order to get a NINO, they must satisfy legislative criteria. They must be either:

- working, about to start work or actively seeking employment, and have the right to work in the UK, or
- be liable to UK Class 1 NICs
- making a claim to benefit, or
- be entitled to and wish to pay voluntary Class 3 NICs or be entitled to credits

⁹ [The automatic issuing on NINOs is based on the receipt of child benefit. When a claim for Child Benefit is made, the child is allocated a Child Reference Number (CRN). When the child reaches 15 years 9 months, this information is passed over to the NI recording system, the CRN is converted into that person's NINO, which HMRC sends them. See also, [PQ233515](#), 25 February 2019; [PQ29728](#), 12 July 2021.]

- be referred by student loan company.¹⁰

Applicants need to begin their application by calling HMRC's NINO application line : 0800 141 2075 (Monday to Friday, 8am to 6pm). After this applicants normally attend an interview at a DWP JobCentrePlus office, although this procedure was interrupted by Covid-19. HMRC's guidance published **before** the outbreak of the pandemic explained how this worked:

After you've applied

You'll get a letter from the Department for Work and Pensions (DWP) asking you to come to a National Insurance number interview at Jobcentre Plus. The letter will also tell you which documents to bring to prove your identity, such as:

- passport or identity card
- residence permit
- birth or adoption certificate
- marriage or civil partnership certificate
- driving licence

At the interview, you'll be asked about your circumstances and why you need a National Insurance number. You'll also be told how long it'll take to get your National Insurance number. If you change your address before you get your letter, tell DWP by contacting the National Insurance number application line ...

You can start work before your National Insurance number arrives if you can [prove you can work in the UK](#). You should tell your employer that you've applied for one, and give it to them when you have it.¹¹

The Low Incomes Tax Reform Group publishes guidance on obtaining a NINO, which says a little more about the format of these interviews:

What is a National Insurance interview?

During the telephone call the adviser will make sure that you need a NINO and may arrange for an interview. The interview will usually be one-to-one (unless, for example, an interpreter is required) and the purpose is to find out why you need a NINO and whether you can be given one. DWP will also need to confirm your identity and this part of the interview (sometimes called the 'evidence of identity

¹⁰ *National Insurance Manual* para NIM39325, retrieved July 2021. The Manual is available [on Gov.uk](#).

¹¹ HMRC, [Apply for a National Insurance Number](#), retrieved 2 March 2020. The ability of applicants to take up work without a NINO has also been underlined in answer to PQs: for example, [PQ266768, 24 June 2019](#)

interview’) may be needed by HMRC for benefits such as tax credits and child benefit.

The interviewer will ask you questions about your background and circumstances and ask to see all your official documents, including your passport and any other proof of identity documents, such as national identity card, residence permit, birth certificate, driving licence, marriage or civil partnership certificate. You should take the original documents with you to the interview.

Jobcentre Plus will write to you following the interview to let you know whether or not your application was successful. If it was successful, they will send a NINO to you. It is important to keep the letter as a reminder of the number as plastic NINO cards are no longer issued.

Please note that you can start work before your NINO arrives if you can prove you have the right to work in the UK. You should tell your employer that you have applied for a NINO and give it to them when you have it.¹²

In March 2020 the face to face interview process was suspended. In September 2020 DWP Minister Justin Tomlinson acknowledged that “it is not possible, due to the requirement to examine ID documents, to offer a virtual service” but that the Department were “working on a digital solution that, once in place, will enable us to restart the process.”¹³ In answer to a second PQ at this time the Minister confirmed, “an individual can apply for a job and take up employment without a NINO and the HMRC standard process allows payment of salary and collection of tax and NI without a NINO.”¹⁴ Further details were given in answer to a PQ in early October:

Lord Wei : To ask Her Majesty's Government whether they have stopped issuing (1) National Insurance numbers, and (2) other documents required to prove identity, as a result of the COVID-19 pandemic; and if so, what measures they are putting in place to allow this service to resume.

Baroness Stedman-Scott : The Department for Work and Pensions (DWP) continues to allocate National Insurance Numbers (NiNo), however, at present this service is currently limited to specific customer groups.

On 17 March, due to COVID-19, the face-to-face interview process for NINO applications was suspended, this was then extended to all employment inspired NINO activity, on 25 March. The suspension of this service enabled DWP to deploy the people engaged in this activity to support the processing of the substantial number of

¹² LITRG, [How do I get a National Insurance number?](#), 30 June 2021

¹³ [PQ76859, 1 September 2020](#)

¹⁴ [PQ81914, 7 September 2020](#)

requests received for financial support for citizens impacted by COVID-19.

Applications for those requiring a NINO for the payment of Social Security benefits has continued throughout the pandemic.

On 1 June a limited service was reinstated for NINO applicants, requiring a NINO for employment purposes, who did not need a face-to-face interview to verify their identity.

When applying for a NINO, all applicants are required to have their identity verified. Where applicants have had their identity verified by another UK Government Department, primarily the Home Office as part of their visa application, their application for a NINO can be dealt with by post.

However, for those who have not had their identity verified, primarily UK and European Union/European Economic Area nationals, the process requires them to attend a face-to-face interview with DWP. During the face-to-face interview, the applicant will be asked to present photo identity documents such as a passport or National Identity Card, issued by their country of origin, which is then checked for authenticity using specialist document examination equipment.

DWP is currently working on a digital solution that will reduce the length of the NINO interview and will enable the reinstatement of a shortened face-to-face service. This service is expected to be available by mid-October, but will be to a limited number of applicants (initially 550 a day), as the digital solution is tested with the expectation that it will be available to all applicants later in the year.¹⁵

The following month DWP Minister Mims Davies has stated that DWP was aiming “to reduce the reliance on a single Identity Verification Service by Quarter 2 in 2021.”¹⁶ On 1 March 2021 DWP Minister Guy Opperman provided an update:

Zarah Sultana : To ask the Secretary of State for Work and Pensions, what steps she has taken to (a) mitigate the effects of the pause in face-to-face interviews and issuing of National Insurance numbers and (b) bring in alternative plans in the interim.

Guy Opperman : The Department is aware of the effect that not having a National Insurance Number (NINO) may be having on some individuals. However, Her Majesty’s Revenue and Customs’ [employer checklist](#) makes it clear that a NINO is not required to start work.

¹⁵ [PQ HL8489](#), 2 October 2020

¹⁶ [PQ109436](#), 6 November 2020. See also, [PQ109656](#), 4 November 2020

Individuals seeking work in the UK can start work before they receive a NINO as long as they are able to prove they have the [Right to Work](#) in the UK.

The Department started testing a partial digital solution, on a small scale, in mid-October, to support the allocation of National Insurance Numbers. This solution enables the collection of an applicant's data, but not the online verification of their identity. Alternative identity verification solutions to reduce the need for a face to face identity check for some customer groups, including EU nationals with Settled or Pre-Settled status, was part of that test.

In January, we gained Government Digital Service approval as a result we were no longer required to limit the number of applicants we can serve, although we do not have an identity solution for all potential applicants yet. Our current plan is that by the end of March 2021 we will be able to offer a service to all applicants who do not require their identity to be verified face to face.

This means that we have moved from a position in March 2020 of only offering a NINO service to the most vulnerable, to a place where we are able to provide a service to the majority.¹⁷

In a second written answer at this time the Minister stated that a face-to-face service would be resumed "in line with the easing of Covid-19 restrictions."¹⁸ In a written answer on 20 April the Minister confirmed that "the National Insurance Number Service is now available to all applicants living in England and Wales and, in line with Scottish Government guidelines, will be available, in Scotland, from week commencing 26th April when our face to face service resumes."¹⁹

During this period HMRC reiterated the point, in its [Employer Bulletin](#), that employers could take on someone before that person obtains their NINO.²⁰ HMRC set out the current position in its June 2021 edition, as follows:

National Insurance number allocation

The [National Insurance number application digital service](#) for adults who have not been allocated a number is now open.

DWP have also opened their face to face service, for those who may still need to attend an office to have their identity verified. Applications should be made online initially and applicants will be advised if they need to book a face to face appointment.

¹⁷ [PQ157313](#), 1 March 2021. See also, [PQ157312](#), 1 March 2021

¹⁸ [PQ164619](#), 16 March 2021. See also, [PQ156524](#), 25 February 2021

¹⁹ [PQ181336](#), 20 April 2021

²⁰ HMRC, [Employer Bulletin: Issue 86](#), October 2020 pp3-4. This point has also been made in answer to PQs: for example, [PQ164620](#), 16 March 2021.

Demand is currently high for the service and applications can take up to 16 weeks to be processed.

If an employee already has a National Insurance number, the quickest way to confirm or share their number is by using their personal tax account to download a confirmation letter or follow the [lost National Insurance number guidance](#).²¹

In answer to a PQ on 25 June the Minister noted that, “due to the suspension last year of the employment inspired NINo service, because of Covid 19 restrictions, demand for the NINo service is extremely high. The average time taken to process applications, including British Passport holders, is around 10/12 weeks.”²²

Prior to the re-opening of JobCentre Plus offices the Work and Pensions Committee wrote to the Minister to raise their concerns that many EU/EEA nationals had been unable to apply for benefits or be furloughed under the [Coronavirus Job Retention Scheme](#) because of the delays in NINOs being issued.²³ DWP Minister Barpmess Stedman-Scott, wrote back to the Committee on 8 June, and part of their response is reproduced below:

Whilst a NINo is required to pay social security benefits, a NINo is not required to make an application. Once entitlement to a social security benefit is established, an internal process ensures that a NINo is allocated, without delay, to enable payments to be made. HMRC confirmed that a NINo is not required for applicants to apply for the Coronavirus Job Retention Scheme ...

Our NINo offices in England and Wales opened on 14th April, and in Scotland from 26th April 2021, which means the NINo service is now open to all applicants, including those who require a face-to-face identity check.

Our digital service, Apply for a NINo, went live on GOV.UK on 28th April. As part of our response to Covid-19, we explored ways in which to confirm the identity of applicants who have already had their identity verified by another government department e.g. the Home Office or the UK Passport Agency. As a result of this work DWP are now able to corroborate these checks against Home Office and Passport Agency data. This removed the need for a face-to-face identity appointment which enabled us to offer a service to a greater number of applicants. This process was successfully implemented in January 2021 as part of our digital service.

To ensure the integrity of the NINo allocation process, the identity of all applicants needs to be validated. EU/EEA nationals, who have yet

²¹ HMRC, [Employer Bulletin: June 2021](#), 9 June 2021

²² [PQ17703](#), 25 June 2021

²³ [Letter from the Chair to the Pensions Minister about EU nationals and National Insurance Numbers \(30.03.21\)](#), 26 April 2021

to make an application to the EUSS, will be required to attend a face-to-face appointment. EU/EEA nationals who arrived in the UK after the end of the transition period, and have been granted a work visa, are able to access the service without the need for a face-to-face identity check.²⁴

The Institute for Chartered Accountants has noted that individuals who need to register with HMRC as self-employed will also need a NINO: “a NINO is a prerequisite for registering a [self-employment](#) with HMRC and those who have been unable to obtain a NINO have therefore been prevented from registering a self-employment and obtaining a Unique Taxpayer Reference (UTR)”:

HMRC advises that, as an interim measure, an individual without a NINO who needs to register a self-employment should do so by completing an [SA1](#) instead of the usual [CWF1](#). The SA1 is the form that is generally used by those that need to register for self assessment for a reason other than self-employment.

When completing the form:

- In the “reason for no national insurance number” box on the form, the taxpayer or agent should enter: “Unable to get a NINO as DWP are currently not holding face to face interviews due to COVID-19.”
- In the section “why do you need to complete a tax return?”, the box “any other reason” should be completed as “self-employed” and state the nature of the self-employment.

Once the taxpayer has been allocated a NINO, they need to remember to call the newly self-employed helpline on 0300 200 3500 to register for Class 2 national insurance. HMRC’s systems will not charge Class 2 national insurance until this step has been followed.²⁵

In the past individuals were issued with a plastic card with their NINO, but these were discontinued in 2010. An archive page from HMRC’s *National Insurance Manual* gives a short history to these changes:

The NINO card (form RD3) is a small plastic card, the size of a credit card. The card is red and blue with black and white text.

The NINO card was first introduced in 1975 as a manila card to remind customers of their NINO. It was replaced in 1984 with a plastic card. The card may be shown to a new employer on starting

²⁴ [Correspondence from the Minister for Work and Pensions \(Lords\) relating to National Insurance Numbers \(08.06.2020\)](#), 16 July 2021

²⁵ ICAEW, [Registering a self-employment with no national insurance number](#), 28 October 2020

work or in connection with any business the customer may have with HMRC or DWP.

Prior to October 2010, a customer could apply for one replacement card if they had lost their card or changed their name. The card was sent on a Card Carrier. The card and carrier are also available in alternative formats. The NINO card carrier (form RD3A) was used as a means of sending out the NINO card itself and as a way to pass on relevant information to the owner of the NINO. It contained advice about their NINO, its importance and has a tear-off portion that may be used to notify us if any of their details are incorrect or have changed.

In September 2010 the Chancellor announced that the plastic NINO card would be replaced with a letter. In October 2010 HMRC stopped issuing replacement NINO cards and instead sends written confirmation of the NINO in a letter. In July 2011 HMRC stopped sending NINO cards to customers who apply for a National Insurance number via DWP. Instead these customers receive a letter from DWP telling them their NINO and other important information.

From October 2011 HMRC stopped issuing plastic NINO cards altogether.²⁶

In May 2006 Jonathan Portes, then Chief Economist at the DWP, gave evidence to the Home Affairs Committee, as part of their report on immigration control; Mr Portes noted “the important point for us is that NINOs ... are an internal reference number that lets us link an individual with their social security, or their child support, or their tax or their contribution record.”²⁷ (Mr Portes’ evidence is discussed in more detail below, in the context of the Committee’s concerns about illegal workers receiving NINOs.)

From this perspective one can see that having a NINO is vital when one is paying contributions (whether deducted from your earnings or profits, or paid voluntarily), or making an application for benefits; this is why the application test is framed in this way. On this theme, HMRC’s *National Insurance Manual* gives more details of how NINOs are used:

An individual must apply for a NINO if they are:

- workers who are employees or self-employed
- entitled and want to pay voluntary Class 3 NICs to maintain their NI record and would benefit from making the payment
- claiming state benefit or tax credits

²⁶ *National Insurance Manual* para NIM39220 (January 2017 version)

²⁷ *Fifth report: immigration control*, HC 775-II, 23 July 2006 Q801 Ev147

- advised by Student Loan Company that they need to supply their NINO in connection with an application for a student loan.

NINOs are used by:

- HMRC to record Tax, NICs and Credits, administer Child Benefit and Tax Credits
- DWP - if a person makes a claim to benefit, DWP use the NI account to check entitlement based on their NICs and credits record. Claimants are required by law to produce their NINO or sufficient information to trace or allocate a NINO when they claim benefit.
- employers who need to record Tax and NICs - an employee is required to tell their employer their NINO so it can be entered on the payroll records.).²⁸

Contrary to popular belief, the numbers of a person's NINO do not represent a code that reflects their age, employer, address, etc.²⁹

There is a general trend for the total number of NINOs in issue each year to rise,³⁰ but it is worth bearing in mind that this is not the same as the number of people using NINOs, as noted in written answers:

Mark Pritchard: To ask the Secretary of State for Work and Pensions what steps he is taking to align the number of national insurance numbers with the number of working people.

Chris Grayling: National insurance numbers (NINOs) are required for both working and non-working people. This is because NINOs are also required for the administration and payment of benefits for people who are not in work and for those who have worked previously and have a call upon the national insurance contributions they have made such as State Pensioners. Once allocated, a NINO remains on the Department's computer system. This is because the NINO provides a permanent numerical link between the individual and their national insurance contribution record which determines entitlement to contributory benefits and state pension.

The NINOs of deceased individuals are retained on the system as a partner may make a claim for a contributory benefit, which is dependant on the contribution record of the deceased. The retention of the NINO for deceased persons on our systems—clearly marked

²⁸ *National Insurance Manual* para NIM 39125

²⁹ *Tolley's National Insurance Contributions 2019/20* para 49.2

³⁰ A PQ in 2007 stated that the number of NINOs in issue had risen from about 66 million in 1997 to 76.8 million in 2006 (HC Deb 16 April 2007 cc246-7). In September 2016 the figure was 92 million ([PQ HL 2937, 15 November 2016](#)).

as such to DWP staff—also provides an important counter-fraud measure in that it prevents fraudsters from hi-jacking these numbers.³¹

Finally, for those who have been issued a NINO but have lost or forgotten it, someone's NINO will appear on a variety of official documents – a payslip, tax return or PAYE coding notice – and individuals can ask HMRC to confirm their NINO – either by using the [NINO telephone helpline](#), or by [submitting a written request](#). In answering a request, HMRC will only confirm someone's NINO in writing, and will not give it over the phone.³²

³¹ HC Deb 13 June 2012 c469-70W. see also, [PQ HI 2610](#), 26 November 2017

³² HMRC, [Find a lost National Insurance number](#), retrieved 19 July 2021

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Concerns about the misuse of NINOs

It is worth underlining that although some employers may believe that a new employee must have a NINO before they are taken on, this is *not* the case.³³ This may be because some employers regard a NINO as proof of someone being entitled to work in this country, although again, this is not the case. Employers are under a statutory duty to check that potential employees are allowed to work in the UK but someone having a NINO would have to provide some other official documentation – such as a full UK birth certificate – to meet this test.³⁴

In their guidance for employers, HMRC explain the importance of employees providing their employers with their NINO, even though they may apply for one *after* they start work:

A National Insurance number is the unique reference number used by HMRC and the DWP to identify an individual's National Insurance contributions record. It makes sure that contributions paid by, and credited to, an individual are put on the right record so that whenever a claim to benefit is made, the correct amount can be paid.

You must record an employee's National Insurance number on payroll records. It's important, therefore, that you ask employees for their National Insurance number as soon as possible after they start working for you. Your employees are required by law to give their National Insurance number to you, although they can start work before providing the number ...

Employees can get confirmation of their National Insurance number from their personal tax account, HMRC App, or by contacting HMRC. If your new employee does not know their National Insurance number and you've not yet included them on an FPS, you should ask them if they have an old payslip or form P60, you'll usually be able to find it there. ...

The National Insurance number card or letter should not be accepted by anyone as proof of identity. The fact that a person has a

³³ See, *Tolley's National Insurance Contributions 2019/20* para 49.3

³⁴ For details of these rules see, Home Office, [Comprehensive guidance for employers on preventing illegal working](#). October 2013. This makes clear employers cannot accept a NINO in isolation as sufficient proof of a right to work (p10).

National Insurance number does not mean that the person has the right to work or live in the UK. It's not a passport to employment.³⁵

In March 2000 the Labour Government published a report on the hidden economy by Lord Grabiner; in this the author discussed the NINO application process, and recommended that the procedures for ensuring someone's professed identity was correct should be tightened up. Notably the author made no reference to any test of the individual's right to work in this country being part of the application:

4.19 Most people (more precisely, all children whose parents or guardians receive Child Benefit on their behalf) are issued with a NINo automatically when they reach the age of 16. Others must apply for a NINo at the point they need to start work or claim a benefit ... The adult applications present the greater risk of fraud.

4.20 The first problem is that, although the procedures for allocating NINos have been tightened, it is still too easy for fraudulent applications to succeed. There are security procedures which should be followed, but in many cases applicants are not checked thoroughly. Because document forgery is now widespread and increasingly sophisticated, checking documents alone is not enough. Instead, it is necessary to check applicants' details fully, to ensure that the story they tell is consistent.

4.21 It is also important to have the same level of security whether an applicant is applying for a NINo in order to work or to claim benefit. Traditionally, employment-inspired applications have been treated less thoroughly than those relating to benefit claims, probably because they appear to involve gaining new revenue rather than paying out money. It is clear, however, that once a NINo has been allocated, it may be used to claim benefit as well as to pay NICs. There is no doubt that many people have taken temporary jobs as a means of obtaining a NINo, and then used it to claim benefit.

4.22 The most promising answer to this problem is the approach used in Balham, in southwest London (and 70 per cent of NINO applications are made within Greater London), namely, to set up "centres of excellence" solely for issuing NINos. By using specially trained staff to interview applicants, with the expertise and equipment to detect forged documents, it is possible to carry out the security procedures more effectively than in most areas. The result is that many more fraudulent applications are found. Many of these lead on to wider fraud investigations, and the police are called and may arrest people with forged papers or who are suspected of being illegal immigrants. People are regularly discovered using counterfeit or stolen ID cards and passports. Since the new team was set up in

³⁵ Under the PAYE system, employers are required to give HMRC payroll information for each employee whenever they are paid, in a 'Full Payment Submission'. HMRC, *Employer Further Guide to PAYE and NICs (CWG2)*, 2021/22 ed para 1.2.1-4

Balham, 162 NINO applicants have been arrested; 50 arrests have been made altogether in the other six Benefits Agency offices in the area.

4.23 I recommend extending this approach across the country ... In Balham, each NINO application takes more than twice as long to process than is generally budgeted for elsewhere. However, when weighed against all the fraudulent benefit payments that can potentially be claimed for every NINO that is wrongly allocated, this investment must be worthwhile.³⁶

In May 2000 the Labour Government confirmed that this approach to tackling benefit fraud would be rolled out across the country,³⁷ something which was to be completed by March 2001.³⁸ Details of the new approach were set out in answer to a PQ in October 2002:

The National Insurance number (NINO) allocation process for persons from abroad is known as the Enhanced NINO Process and is administered by Jobcentre Plus. The process involves a rigorous face to face interview, scrutiny of supporting documentation, and corroborative checks made on the information provided prior to the allocation of a NINO. The process applies to all foreign nationals requiring a NINO. Anyone actively seeking work may apply for a NINO regardless of their immigration status. If during the allocation process suspicions are raised as to the legitimacy of an individual's right to be in the country, the case is referred to the Department's National Identity Fraud Unit for further action.

Upon arrival in this country asylum seekers are initially supported by the Home Office National Asylum Support Service. Contact with this Department for the allocation of a NINO will therefore not normally take place until a decision has been made by the Home Office on the person's application for asylum. Once this has taken place (or if the person has been in the country for more than 6 months and is still awaiting a decision), an application for a NINO can be made through the Enhanced NINO Process.³⁹

As noted above, the use of NINOs was discussed by the then Chief Economist at the DWP, Jonathan Portes, in evidence to the Home Affairs Committee in May 2006. Mr Portes noted that a NINO "is not proof of identity, and it is not supposed to be proof that you are entitled to work. The interviewing process that we go through is basically about identity fraud. It is to ensure you are who you say you are. It is not supposed to provide a rigorous check on

³⁶ HMT, *The informal economy: a report by Lord Grabiner QC*, March 2000 pp 17-18

³⁷ Dept of Social Security press notice 00/141, 16 May 2000. This was also confirmed in a written answer at the time: HC Deb 10 May 2000 c423W.

³⁸ HC Deb 6 February 2001 c469W

³⁹ HC Deb 24 October 2002 c 488W

immigration status. There can be quite legitimate reasons why you might require a NINO even if you are not entitled to work in this country.”⁴⁰

In order to claim most social security benefits and tax credits it is necessary to satisfy the ‘NINO requirement’. This test was introduced under the *Social Security Administration (Fraud) Act 1997*.⁴¹ It must be satisfied by the claimant and anyone 16 or over they are claiming for. Equivalent provision is made for those who wish to claim tax credits.⁴² The ability of claimants to obtain NINOs so as to apply for benefits is not examined in detail in this note, though in the past there has been some criticism that the NINO requirement presents particular difficulties for claimants from ethnic minorities.⁴³ In addition it is worth underlining that individuals who have to apply for a NINO for the purposes of a benefit claim – ‘benefit inspired applications’ as they are known – do not have to satisfy the ‘right to work’ condition.⁴⁴

⁴⁰ *Fifth report: Immigration Control*, HC 775, 23 July 2006 para 460

⁴¹ It now forms ss1(A), 1(B) of the *Social Security Administration Act 1992*. See, *The Social Security Administration (Fraud) Bill*, Library Research Paper 96/107, 20 November 1996 pp 32-34.

⁴² Under [reg 5\(4\)-\(6\)](#) of the *Tax Credits (Claims and Notifications) Regulations* SI 2002/2014

⁴³ In April 2003 the Child Poverty Action Group (CPAG) raised this issue in evidence to the Work and Pensions Committee (*Fourth report: DWP Service Delivery to Ethnic Minority Clients*, HC 268-II, 6 April 2005 Ev114-5).

⁴⁴ See, DWP, *Secure National Insurance number allocation process: staff guide*, 2014; appendix 1 to [section 6](#) gives an example of someone legally in the UK without the right to work being allocated a NINO. DWP withdrew this guidance in June 2016; this page now simply refers to [HMRC’s NINO application service](#).

3

The ‘Right to Work’ test

On 1 June 2006 – while the Home Affairs Committee were conducting their inquiry into immigration control – the *Times* newspaper published a leaked DWP memo, which suggested that Jobcentre staff would issue NINOs even where there was evidence that immigration status was falsified;⁴⁵ one section of this leaked memo is reproduced below:

- The NINO does not in itself constitute a right to work in the UK (despite perceptions to the contrary)
- There are circumstances where a NINO can be allocated to an individual without there being a right to work (eg the foreign partner of a UK national claiming benefits or tax credits would still need a NINO for that purpose, even if his / her immigration status denied them the right to work). Therefore, if there were any changes proposed to NINO Policy, we would need to take account of such situations.
- The onus of establishing an individual’s right to work rests with employers. This aspect was strengthened by changes to Section 8 of the *1996 Immigration & Asylum Act* which reduced the role of the NINO in this respect.
- HMRC has a duty to collect Tax and National Insurance Contributions from all employees irrespective of their immigration or right to work status. DWP is obliged to allocate a NINO even under those circumstances if the individual is in employment. Regulation 9, Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations 2001 stipulates that employed earners should obtain a NINO. It makes no allowance for those who may be employed illegally. However, under such scenarios, DWP has established processes in place to advise IND so that they can take any appropriate action as necessary.⁴⁶

(Readers will appreciate one has to treat this extract with a little caution, given its source, though in October 2006 the Department published material

⁴⁵ “Working the system”, *Times*, 1 June 2006

⁴⁶ “Memo to chief investigation officer at the Department of Work and Pensions: Clarification of NINO Prosecution Cases”, *Times*, 1 June 2006

on NINO procedure following a request under the *Freedom of Information Act*.⁴⁷)

Following this, on 5 June 2006 the then Parliamentary Under-Secretary of State for Work and Pensions, James Plaskitt, announced a change in the procedure for allocating NINOs:

From July 2006 the Department for Work and Pensions will introduce a “right to work” condition into Jobcentre Plus’s National Insurance Numbers (NINOs) allocation and decision making process for employment related applications. Regulation 9 of the Social Security (Credits and Treatment of Contributions and National Insurance Numbers) Regulation 2001 will be amended to enable this change. Any individual applying for a NINO in connection with employment who does not have the right to work here legally will be refused one. This change follows a review conducted by the Department into the existing legislation governing the allocation of NINOs.⁴⁸

In their report, which was completed on 13 July, the Committee welcomed the announcement, though it went on to recommend that “the Government also consider withdrawing NINOs from people who no longer have the right to work in the UK.”⁴⁹ The Minister confirmed the Government’s plans in a second statement on 18 July:

I announced on 5 June that the DWP would introduce a “right to work” condition into Jobcentre Plus’s National Insurance Numbers allocation and decision making process for employment related applications from July. I can confirm that appropriate administrative arrangements are now in place making it a condition for the allocation of a NINO that there is a right to work. To further support this change, I intend to bring forward amendments to regulation 9 of the Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations 2001 to make explicit the evidence which must be produced to demonstrate that the “right to work” condition has been satisfied.⁵⁰

In their response to the Committee’s report published in September 2006, the Government argued it would not be appropriate to withdraw NINOs, as the Committee had suggested:

The purpose of the NINO is to act as a unique reference number linking an individual and their National Insurance Contributions (NICs) record and as a reference number for DWP for Social Security benefits and HMRC for Tax Credits.

⁴⁷ DWP, *Secure National Insurance Number Application Process (SNAP) Guide*, October 2006. This is now [on the National Archives site](#).

⁴⁸ HC Deb 5 June 2006 cc12-13WS

⁴⁹ *Fifth report: Immigration Control*, HC 775, 23 July 2006 para 467

⁵⁰ HC Deb 18 July 2006 c20WS

It would not be appropriate to withdraw NINOs from people who no longer have the right to work in the UK. The reasons for this include:

- Presenting a NINO by itself does not convey proof of the right to work, nor does it indicate the duration of a person's right to work. Even with DWP's new proof of right to work condition for NINO applicants it remains important that employers continue to fulfil their obligations under section 8 of the *Asylum and Immigration Act 1996* and ensure that a prospective employee's right to work remains valid.
- Over the course of their lifetime an individual may have a number of separate periods where they have the right to work. In order to retain an accurate record of their National Insurance contributions the details need to be retained under one number rather than issuing and withdrawing one number and then subsequently issuing another number.⁵¹

As mentioned above, the statutory requirement placed on individuals to apply for a NINO is set out in [reg 9](#) of the *Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulation 2001/769*. Initially reg 9(1)(2) of the regulations read:

(1) Subject to the provisions of paragraph (2) below, every person, who is over the age of 16 and satisfies the conditions specified in regulation 87 or 119 of the Contributions Regulations (conditions of domicile or residence and conditions as to residence or presence in Great Britain respectively), shall, unless he has already been allocated a national insurance number under the Act, the Social Security Act 1975 or the National Insurance Act 1965, apply either to the Secretary of State or to the Inland Revenue for the allocation of a national insurance number and shall make such application at such time and in such manner as the Secretary of State shall direct.

(2) As respects any person who is neither an employed earner nor a self-employed earner the provisions of paragraph (1) above shall not apply unless and until that person wishes to pay a Class 3 contribution.⁵²

Regulations were laid to amend these rules in November 2006.⁵³ These inserted a requirement – para 9(1A) – which requires those making an application under reg 9(1) to present, with their application, evidence they

⁵¹ Home Office, *Immigration Control*, Cm 6910 September 2006 p52. The statutory requirement established by s8 of the *Asylum and Immigration Act 1996*, is now replaced by ss15-25 of the *Immigration, Asylum and Nationality Act 2006*.

⁵² The text refers to regs 87 and 119 of the "Contributions Regulations" ([SI 1979/591](#)). Conditions regarding domicile and residence with regard to NICs are now set out in [SI 2001/1004](#), which replaced them (specifically, regs 117 and 145).

⁵³ HC Deb 7 November 2006 c42WS. [SI 2006/2897](#) – amended by [SI 2008/223](#), to take account of the changes to immigration law made by the *Immigration, Asylum and Nationality Act 2006*.

have the right to work in this country.⁵⁴ The new ‘right to work’ condition came into force on 11 December 2006. In the explanatory memorandum accompanying the regulations it was stated that the change would affect “relatively small numbers of people. During 2005-06, a total of 2,500 NINOs were allocated to people who would not be allocated under the provisions of these regulations.”⁵⁵ The regulations also created a new requirement on students applying for a student loan to apply for a NINO if they do not already have one. This dovetailed with changes made in the regulations governing student loans introduced in early 2007.⁵⁶

Subsequently the regulations have been amended to take account of the introduction of [Biometric Residence Permits](#). Individuals making visa applications whilst abroad have been able to apply for a NINO while applying for a BRP, aligning the two processes.⁵⁷

⁵⁴ set out in [Schedule 1 to SI 2001/769](#)

⁵⁵ *Explanatory Memorandum to ... SI 2006/2897*, November 2006 para 7.6

⁵⁶ specifically, reg 101 of [SI 2007/176](#). The new requirement is contained in para 9(4) of SI 2001/769.

⁵⁷ SI 2015/76 and SI 2015/1818, which inserted a new subsection 2(A) to para 9. See, UK Visas and Immigration, [Biometric residence permits: overseas applicant and sponsor information](#), July 2016.

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