STATUTORY INSTRUMENTS

2015 No. 737

IMMIGRATION

The Immigration (Provision of Physical Data) (Amendment) Regulations 2015

Made - - - - 16th March 2015

Coming into force in accordance with regulation 1(1)

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 126 of the Nationality, Immigration and Asylum Act 2002(**1**).

In accordance with section 126(8)(b) of that Act, a draft of these Regulations was laid before and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Immigration (Provision of Physical Data) (Amendment) Regulations 2015 and come into force at the end of the period of 21 days beginning with the day on which they are made.

(2) In these Regulations, "the 2006 Regulations" means the Immigration (Provision of Physical Data) Regulations 2006(**2**).

Amendments to the 2006 Regulations

2. The 2006 Regulations are amended as follows.

3. In regulation 2—

(a) in the definition of "application"—

(i) in paragraph (a) after "clearance" insert "save for when the applicant is required to apply simultaneously for a biometric immigration document";

(ii) at the end of paragraph (a) omit "or"; and

(iii) after paragraph (b) insert—

(**1**) 2002 c. 41; section 126 was amended by sections 8(3) and 14(3) of, paragraph 3 of Schedule 2 to, and paragraph 19 of Schedule 9 to, the Immigration Act 2014 (c. 22). In particular, section 126(8A) was inserted by section 14(3) of the Immigration Act 2014 (c. 22); this has the effect of section 8 of the UK Borders Act 2007 (c.30) applying to biometric information provided in accordance with these Regulations.

(**2**) S.I. 2006/1743. This was amended by S.I. 2011/1779 but that instrument has expired.

"(c) an application for a transit visa (meaning a visa issued to a person for the purpose of arriving in the United Kingdom in order to pass through to another country or territory without entering the United Kingdom); or

(d) an application for a document issued as evidence that a person who is not a national of an EEA state or Switzerland is entitled to enter or remain in the United Kingdom by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972(**3**).";

(b) after the definition of "application" insert—

""biometric information" means photographs or fingerprints provided under regulation 3;";

(c) after the definition of "Convention travel document" insert—

""immigration rules" means rules made under section 3(2) of the Immigration Act 1971(**4**);".

4. In regulation 4(2)(c) for "regulation 6(2)" substitute "regulation 6".

5. For regulation 6 (process by which the applicant's fingerprints and photograph may be obtained and recorded) substitute—

"**Process by which an individual's fingerprints and photograph may be obtained and recorded**

6.—(1) An authorised person who requires an individual to provide a record of the individual's fingerprints or a photograph of the individual's face under regulation 3 may do any one or more of the following—

(a) require the individual to make an appointment before a specified date, which the individual must attend, to enable a record of the individual's fingerprints or a photograph of the individual's face to be taken by an authorised person or by a person acting on behalf of an authorised person;

(b) specify the date, time and place for the appointment;

(c) require the individual to attend premises before a specified date to enable a record of the individual's fingerprints or a photograph of the individual's face to be taken by an authorised person or by a person acting on behalf of an authorised person; and

(d) specify any documents which the individual must bring to the appointment or premises, or action which the individual must take to confirm the individual's identity.

(2) An authorised person may require a record of fingerprints or photograph to be of a particular specification.".

6. After regulation 6 insert—

"**Documents recording biometric information**

6A. Biometric information provided under these Regulations may be recorded on any document issued as a result of the application in relation to which the information was provided.".

(**3**) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51), and by section 3(3) of, and Part 1 of Schedule 1 to, the European Union (Amendment) Act 2008 (c. 7).
(**4**) 1971 c. 77.

7. For regulations 8 to 10 (destruction of information) substitute—

"**Use and retention of biometric information**

8.—(1) Biometric information provided in accordance with these Regulations may be retained only if the Secretary of State thinks that it is necessary to retain it for use in connection with—

(a) the exercise of a function by virtue of the Immigration Acts; or

(b) the exercise of a function in relation to nationality.

(2) Biometric information retained by virtue of paragraph (1) may also be used—

(a) in connection with the prevention, investigation or prosecution of an offence;

(b) for a purpose which appears to the Secretary of State to be required in order to protect national security;

(c) in connection with identifying persons who have died, or are suffering from illness or injury;

(d) for the purpose of ascertaining whether a person has acted unlawfully, or has obtained or sought anything to which the person is not legally entitled; and

(e) in connection with the exercise of a function concerning the entitlement of a person who is not a national of an EEA state or Switzerland to enter or remain in the United Kingdom by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972.

Destruction of biometric information

9.—(1) The Secretary of State must take all reasonable steps to ensure that biometric information held by the Secretary of State by virtue of these Regulations, including any copies, is destroyed if the Secretary of State—

(a) no longer thinks that it is necessary to retain the information for use as mentioned in regulation 8(1); or

(b) subject to the exception in paragraph (2), is satisfied that the person to whom the information relates is a British citizen, or a Commonwealth citizen who has a right of abode in the United Kingdom as a result of section 2(1)(b) of the Immigration Act 1971.

(2) The exception is that photographs of a person who is registered or naturalised as a British citizen may be retained until the person is issued with a United Kingdom passport describing the person as a British citizen.

Retention of fingerprints

10.—(1) Save where regulation 9 applies and subject to paragraphs (2) and (3), the Secretary of State must take all reasonable steps to ensure that any record of a person's fingerprints held by the Secretary of State by virtue of these Regulations, including any copies, is destroyed at the end of the period of ten years beginning with the date on which the fingerprints were provided.

(2) But fingerprints can be held beyond that period if they are—

(a) the fingerprints of a person who is, or at any time has been, subject to a deportation order, exclusion order or decision to exclude;