STATUTORY INSTRUMENTS

2015 No. 433

IMMIGRATION

The Immigration (Biometric Registration) (Amendment) Regulations 2015

Made - - - - 25th February 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 sections 5, 6(6)(a), (b) and (c), 7, 8 and 15(1)(g) of the UK Borders Act 2007(**1**).

In accordance with section 6(6)(e) 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 (Biometric Registration) (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 2008 Regulations" means the Immigration (Biometric Registration) Regulations 2008(**2**).

Amendment of the 2008 Regulations

2. The 2008 Regulations are amended as follows.

3. In regulation 2 insert in the appropriate places—

""biometric information" means photographs or fingerprints provided under regulation 5;"; and

""leave to enter" means limited or indefinite leave to enter the United Kingdom given in accordance with the provisions of the Immigration Act 1971 or the immigration rules;".

4. In regulation 3 (requirement to apply for a biometric immigration document)—

(a) in paragraph (1) for "Subject to paragraph (6), a" substitute "A";

(b) in paragraph (2)—

(**1**) 2007 c. 30; as amended by the Immigration Act 2014 (c. 22), section 7 was amended by section 11, section 8 was substituted by section 14 and section 15(1) was amended by section 12.

(**2**) S.I. 2008/3048, amended by S.I. 2009/819 and S.I. 2012/594.

(i) for "to remain", in each place where it appears, substitute "to enter or remain"; and

(ii) in sub-paragraph (a) omit from "for a period" until the end of that sub-paragraph;

(c) in paragraph (3) for "to remain", in each place where it appears, substitute "to enter or remain"; and

(d) omit paragraph (6).

5. After regulation 3 (requirement to apply for a biometric immigration document) insert—

"**3A.**—(1) A person who is subject to immigration control and satisfies the conditions in paragraph (2) must apply for the issue of a biometric immigration document.

(2) The conditions are—

(a) that the person makes an application—

(i) for entry clearance, which, by virtue of provision made under section 3A(3) of the Immigration Act 1971(**3**), has effect as leave to enter the United Kingdom for a limited period which exceeds 6 months; or

(ii) for entry clearance, which, by virtue of provision made under section 3A(3) of the Immigration Act 1971, has effect as indefinite leave to enter the United Kingdom; or

(iii) as the dependant of a person who is making an application in accordance with paragraph (i) or (ii); and

(b) the person specifies in that application that they will enrol their biometric information in a country or territory listed in the Schedule to these Regulations.

(3) Where a person is required to apply for a biometric immigration document, that application must be made on the form or in the manner specified for that purpose (if one is specified) in the immigration rules.".

6. In regulation 5(1) (power for an authorised person to require a person to provide biometric information) after "regulation 3," insert "or regulation 3A".

7. In regulation 6(1)(a) (power for the Secretary of State to use and retain existing biometric information) after "regulation 3" insert ", or regulation 3A".

8. In regulation 7(2)(c) (provision in relation to persons under the age of sixteen) for "8(1)(d)" substitute "8(1)(a) or (c)".

9. For regulation 8 (process by which a person's fingerprints and photograph may be obtained and recorded) substitute—

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

8.—(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 5 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;

(**3**) 1971 c. 77.

(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.

(3) Where an authorised person requires an individual to submit to any requirement in accordance with paragraph (1), the individual must submit to it.".

10. For regulations 9 to 12 (use and retention of biometric information) substitute—

"**Use and retention of biometric information**

9.—(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(**4**).

Destruction of biometric information

10.—(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 9(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.

(**4**) 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).

(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

11.—(1) Save where regulation 10 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;

(b) the fingerprints of a person who can be, or at any time could have been, refused entry clearance or leave to enter for a period specified in the immigration rules because of a previous breach of the United Kingdom's immigration laws;

(c) fingerprints that the Secretary of State deems it necessary for national security reasons to retain for use in connection with one of the functions specified in regulation 9(1);

(d) the fingerprints of a person with indefinite leave to enter or remain in the United Kingdom;

(e) the fingerprints of a person whose indefinite leave to enter or remain in the United Kingdom lapses, is revoked or is cancelled, in which case they must be destroyed by the Secretary of State at the end of ten years beginning with the date of the lapse, revocation or cancellation (as the case may be); or

(f) the fingerprints of a person who—

(i) is not a national of an EEA state or Switzerland; and

(ii) is the holder of a document which recognises the right of permanent residence in the United Kingdom by virtue of an enforceable EU right or any provision made under section 2(2) of the European Communities Act 1972,

in which case they must be destroyed by the Secretary of State at the end of ten years beginning with the date on which the holder ceased to enjoy the right of permanent residence.

(3) The Secretary of State is only required to take steps to destroy, pursuant to paragraph (2)(e) or (f), the fingerprints of a person whose leave has lapsed or who no longer enjoys the right of permanent residence on the application, supported by evidence to the satisfaction of the Secretary of State, of that person.

(4) In paragraphs (2)(f)(ii) and (3), "the right of permanent residence" has the same meaning as in Article 16 of Council Directive 2004/38/EC(**5**).

Destruction etc. of electronic data

12.—(1) The Secretary of State must take all reasonable steps to ensure—

(a) that data held in electronic form which relates to biometric information which has to be destroyed by virtue of these Regulations is destroyed or erased; or

(b) that access to such data is blocked.

(**5**) OJ No L 158, 30.04.2004, p77.

(2) A person whose biometric information has to be destroyed by virtue of these Regulations is entitled, on written request, to a certificate issued by the Secretary of State to the effect that the Secretary of State has taken the steps required by paragraph (1).

(3) A certificate issued under paragraph (2) must be issued within the period of 3 months beginning with the date on which the request for it is received by the Secretary of State.

Biometric information: retention under another power

12A. The requirements in these Regulations to destroy biometric information or data do not apply if and in so far as the information or data is retained in accordance with and for the purposes of another power.".

11. In regulation 13 (issue of a biometric immigration document)—

(a) in paragraph (1)—

(i) for "to remain", in each place where it appears, substitute "to enter or remain";

(ii) after "biometric immigration document" insert ", known as a biometric residence permit,"; and

(iii) in sub-paragraph (c) after "regulation 3(2)(c), (d) or (g)" insert "where the document indicated that the person has leave to enter or remain in the United Kingdom for a total period in excess of 6 months or for an indefinite period";

(b) in paragraphs (2) and (3) after "document" insert "issued under this regulation";

(c) at the end of paragraph (4)(b) omit "or";

(d) at the end of paragraph (4)(c) insert "or"; and

(e) after paragraph (4)(c) insert—

"(d) the expiry date printed on the document.".

12. After regulation 13 (issue of a biometric immigration document) insert—

"**13A.**—(1) The Secretary of State may issue a biometric immigration document, known as a biometric residence permit, to a person who has applied in accordance with regulation 3A and has been granted—

(a) entry clearance, which, by virtue of provision made under section 3A(3) of the Immigration Act 1971, has effect as leave to enter the United Kingdom for a limited period which exceeds 6 months; or

(b) entry clearance, which, by virtue of provision made under section 3A(3) of the Immigration Act 1971, has effect as indefinite leave to enter the United Kingdom.

(2) Where an entry clearance is granted under paragraph (1) and the entry clearance officer issues a short term biometric entry clearance, the entry clearance officer must issue a written decision informing the applicant of the period of leave that their biometric immigration document will evidence and the process by which the applicant must obtain that document.

(3) A successful applicant who travels to the United Kingdom must obtain their biometric immigration document within a period, and by a process, specified in the applicant's written decision (issued under paragraph (2)).

(4) A biometric immigration document issued under this regulation begins to have effect on the date of issue.

(5) A biometric immigration document issued under this regulation ceases to have effect on one of the dates specified in paragraph (6), whichever date occurs earliest.