Draft Regulations laid before Parliament under section 6(6)(e) of the UK Borders Act 2007, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No.

IMMIGRATION

The Immigration (Biometric Registration) (Pilot) Regulations 2008

Made - - - -	*2008*
Coming into force - -	*2008*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 5, 6(3), 6(6), 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 this instrument was laid before and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1. These Regulations may be cited as the Immigration (Biometric Registration) (Pilot) Regulations 2008 and come into force on the day after the day on which they are made.

2. In these Regulations —

"dependant" means a spouse or civil partner, or a child under the age of 18;

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

"public enquiry office" means the office of the Home Office in Croydon where a person can make an application in person for leave to remain.

Requirement to apply for a biometric immigration document

3.—(1) A person subject to immigration control must apply for the issue of a biometric immigration document where he satisfies —

(a) one of the conditions in paragraph (2);

(b) one of the conditions in paragraph (3); and

(c) the condition in paragraph (4).

(**1**) 2007 c.30.
(**2**) 1971 c.77.

(2) The conditions are that the person makes an application for limited leave to remain in accordance with the immigration rules —

(a) under one of the categories specified in regulation 4; or

(b) as a dependant of a person who is applying at the same time for limited leave to remain under one of those categories.

(3) The conditions are that the person makes the application for limited leave to remain —

(a) by post, provided his place of residence in the United Kingdom is in an area which has one of the postcodes specified in the Schedule; or

(b) at the public enquiry office.

(4) The condition is that the person makes the application for limited leave to remain within the period, or on or after the date, as appropriate, specified in regulation 5.

Specified categories

4. The specified categories under the immigration rules are —

(a) as a student;

(b) as a student nurse;

(c) to re-sit an examination;

(d) to write up a thesis;

(e) as a prospective student;

(f) as a sabbatical officer;

(g) as the spouse or civil partner of a person present and settled in the United Kingdom; or

(h) as the unmarried or same-sex partner of a person present and settled in the United Kingdom.

Dates when a person makes an application for limited leave to remain

5.—(1) Where the person applies for leave by post, the specified period is —

(a) 16th June 2008 to 25th July 2008 for a person —

(i) who is under the age of 18;

(ii) who applies for leave at the same time as a dependant of his applies for leave as his dependant; or

(iii) who applies for leave as a dependant.

(b) 28th April 2008 to 25th July 2008 for any other person.

(2) Where a person applies for leave at the public enquiry office, the specified date is —

(a) 16th June 2008 for a person —

(i) who is under the age of 18;

(ii) who applies for leave at the same time as a dependant of his applies for leave as his dependant; or

(iii) who applies for leave as a dependant.

(b) 28th April 2008 for any other person.

Power for an authorised person to require a person to provide biometric information

6.—(1) Subject to regulation 8, where a person makes an application for the issue of a biometric immigration document in accordance with regulation 3, an authorised person may require him to provide a record of his fingerprints and a photograph of his face.

(2) Where an authorised person requires a person to provide biometric information in accordance with paragraph (1) the person must provide it.

Power for the Secretary of State to use and retain existing biometric information

7.—(1) This regulation applies where —

(a) a person makes an application for the issue of a biometric immigration document in accordance with regulation 3; and

(b) the Secretary of State already has a record of the person's fingerprints or a photograph of the person's face in his possession (for whatever reason).

(2) Where this regulation applies the Secretary of State may use or retain that information for the purposes of these Regulations.

Provision in relation to persons under the age of sixteen

8.—(1) A person under the age of sixteen ("the child") must not be required to provide a record of his fingerprints or a photograph of his face in accordance with regulation 6 except where the authorised person is satisfied that the fingerprints or the photograph will be taken in the presence of a person aged eighteen or over who is —

(a) the child's parent or guardian; or

(b) a person who for the time being takes responsibility for the child.

(2) The person mentioned in paragraph (1)(b) may not be —

(a) an officer of the Secretary of State who is not an authorised person;

(b) an authorised person; or

(c) any other person acting on behalf of an authorised person under regulation 9(3).

(3) This regulation does not apply if the authorised person reasonably believes that the person who is to be fingerprinted or photographed is aged sixteen or over.

Process by which the person's fingerprints and photograph may be obtained and recorded

9.—(1) An authorised person who requires a person to provide a record of his fingerprints or a photograph of his face under regulation 6 may require the person to submit to any process, or any combination of processes, specified in paragraph (2).

(2) An authorised person may —

(a) require a person to make an appointment before a specified date, which the person must attend, to enable a record of his fingerprints or a photograph of his face to be taken;

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

(c) specify any documents which the person must bring to the appointment, or action which the person must take, to confirm his appointment and his identity.

(3) An authorised person may nominate a person to take fingerprints or a photograph on behalf of an authorised person.

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

(5) Where an authorised person requires a person to submit to any process, or any combination of processes, in accordance with paragraph (1) the person must submit.

Use and retention of biometric information

10. Subject to regulations 11 and 12, the Secretary of State may use a record of a person's fingerprints or a photograph of a person's face provided in accordance with these Regulations —

(a) in connection with the exercise of a function by virtue of the Immigration Acts;

(b) in connection with the control of the United Kingdom's borders;

(c) in connection with the exercise of a function related to nationality;

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

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

(f) in connection with identifying victims of an event or situation which has caused loss of human life or human illness or injury;

(g) for the purpose of ascertaining whether any person has failed to comply with the law or has sought to gain a benefit, service or other entitlement to which he is not by law entitled.

11. Subject to regulation 12, any record of fingerprints, photograph, copy of fingerprints or copy of a photograph held by the Secretary of State pursuant to these Regulations must be destroyed if the Secretary of State thinks it is no longer likely to be of use in accordance with regulation 10.

12. If a person proves that he is —

(a) a British citizen; or

(b) 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 (statement of right of abode in the United Kingdom) (**3**),

any record of fingerprints, photograph, copy of fingerprints or copy of a photograph held by the Secretary of State pursuant to these Regulations must be destroyed as soon as reasonably practicable.

13.—(1) The Secretary of State must take all reasonably practicable steps to secure —

(a) that data held in electronic form which relate to any record of fingerprints or photograph which has to be destroyed in accordance with regulation 11 or 12 are destroyed or erased; or

(b) that access to such data is blocked.

(2) The person to whom the data relate is entitled, on written request, to a certificate issued by the Secretary of State to the effect that he has taken the steps required by paragraph (1).

(3) A certificate issued under paragraph (2) must be issued within three months of the date on which the request was received by the Secretary of State.

Issue of a biometric immigration document

14.—(1) The Secretary of State may issue a biometric immigration document to a person who has applied in accordance with regulation 3, provided the Secretary of State has decided to grant limited leave to remain to the person.

(2) A biometric immigration document begins to have effect on the date of issue.

(**3**) Section 2(1)(b) was substituted by section 39(2) of the British Nationality Act 1981 (c.61).