*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) Regulations 2008

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| *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) Regulations 2008 and shall 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**).

**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); and

(b) the condition in paragraph (3).

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

(a) under one of the categories of the immigration rules 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.

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

(3) The condition is that the person makes the application for limited leave to remain on the form specified for that purpose in accordance with the immigration rules.

**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.

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

**5.**—(1) Subject to regulation 7, 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**

**6.**—(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**

**7.**—(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 5 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 8(2)(d).

(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 a person's fingerprints and photograph may be obtained and recorded**

**8.**—(1) An authorised person who requires a person to provide a record of his fingerprints or a photograph of his face under regulation 5 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;

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

(d) require a person to attend premises where a record of his fingerprints or a photograph of his face is taken by a person on behalf of an authorised person.

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

(4) 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 to it.

**Use and retention of biometric information**

**9.** Subject to regulations 10 and 11, 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 gained, or sought to gain, a benefit or service, or has asserted an entitlement, to which he is not by law entitled.

**10.** Subject to regulation 11, any record of a person's fingerprints or his photograph, or any copy of them, 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 9.

**11.** 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**),

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

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

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

(a) that data held in an electronic form which relate to any record of fingerprints or photograph which has to be destroyed in accordance with regulation 10 or 11 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**

**13.**—(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) A biometric immigration document ceases to have effect on one of the dates specified in paragraph (4), whichever date occurs earliest.

(4) The specified dates are —

(a) the date that the person's leave to remain ceases to have effect, including where the leave to remain is varied, cancelled or invalidated, or is to lapse;

(b) in the case of a biometric immigration document which was issued to a person aged eighteen or over, the date after the expiry of ten years beginning with the date of issue; or

(c) in the case of a biometric immigration document which was issued to a person aged under eighteen, the date after the expiry of five years beginning with the date of issue.

**Requirement to surrender documents connected with immigration and nationality**

**14.**—(1) On issuing the biometric immigration document, the Secretary of State may require the surrender of other documents connected with immigration or nationality.

(2) Where the Secretary of State requires the surrender of other documents, the person must comply with the requirement.

**Content of a biometric immigration document**

**15.**—(1) A biometric immigration document may contain some or all of the following information on the face of the document —

(a) the title of the document;

(b) the document number;

(c) the name of the holder;

(d) the holder's date of birth;

(e) the holder's place of birth;

(f) the holder's nationality;

(g) the sex of the holder;

(h) the period of leave to remain which the person is granted;

(i) the class of leave to remain which the person is granted;

(j) any conditions to which the limited leave to remain is subject or remarks relating to those conditions;

(k) the place and date of issue of the document;

(l) the period for which the document is valid;

(m) the holder's facial image;

(n) the signature of the holder;

(o) a machine readable code;

(p) a hologram;

(q) an emblem of the United Kingdom and the words "United Kingdom";

(r) the symbol of the International Civil Aviation Organization denoting a machine readable travel document which contains a contactless microchip; and

(s) any additional security features.

(2) A biometric immigration document may contain some or all of the following within a radio frequency electronic microchip embedded in the document —

(a) any of the information specified in paragraph (1)(a) to (m);

(b) information relating to a record of any two of the holder's fingerprints; and

(c) any additional security features.

**Surrender of a biometric immigration document**

**16.**—(1) The Secretary of State may require the surrender of a biometric immigration document as soon as reasonably practicable if he thinks that —

(a) information provided in connection with the document was or has become false, misleading or incomplete;

(b) the document (including any information recorded in it) has been altered, damaged or destroyed (whether deliberately or not);

(c) an attempt has been made (whether successfully or not) to copy the document or to do anything to enable it to be copied;

(d) the document should be re-issued (whether because the information recorded in it requires alteration or for any other reason);

(e) the holder's leave to remain is to be varied, cancelled or invalidated, or is to lapse;

(f) a person has acquired the biometric immigration document without the consent of the holder or of the Secretary of State;

(g) the document has ceased to have effect under regulation 13(3) or has been cancelled under regulation 17; or

(h) the holder has died.

(2) Where a person is required to surrender the biometric immigration document under paragraph (1), the person must comply with the requirement.

**Cancellation of a biometric immigration document**

**17.** The Secretary of State may cancel a biometric immigration document if he thinks that —