Draft Regulations laid before Parliament under section 126(8)(b) of the Nationality, Immigration and Asylum Act 2002, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2006 No.

IMMIGRATION

The Immigration (Provision of Physical Data) Regulations 2006

Made - - - -	*2006*
Coming into force - -	*2006*

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

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

Citation, commencement and interpretation

1. These Regulations may be cited as the Immigration (Provision of Physical Data) Regulations 2006 and shall come into force on the day after they are made.

2. In these Regulations:

"application" means:

(a) an application for entry clearance; or

(b) an application for leave to enter the United Kingdom where the person seeking leave to enter presents a Convention travel document endorsed with an entry clearance for that journey to the United Kingdom;

"Convention travel document" means a travel document issued pursuant to Article 28 of the Refugee Convention, except where that travel document was issued by the United Kingdom Government;

"Refugee Convention" means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.

(**1**) 2002. c.41. Subsections (3) to (8) of section 126 concern the powers in subsection (1).

Power for an authorised person to require an individual to provide a record of his fingerprints and a photograph of his face

3. Subject to regulations 4 and 5, an authorised person may require an individual who makes an application to provide a record of his fingerprints and a photograph of his face.

Provision in relation to applicants under the age of sixteen

4.—(1) An applicant under the age of sixteen shall not be required to provide a record of his fingerprints or a photograph of his face 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 as part of a process specified under regulation 6(2).

(3) An authorised person shall not require a person under the age of sixteen to provide a record of his fingerprints or a photograph of his face unless his decision to do so has been confirmed by a person designated for the purpose by the Secretary of State.

(4) This regulation shall not apply if the authorised person reasonably believes that the applicant is aged sixteen or over.

Provision in relation to section 141 of the Immigration and Asylum Act 1999

5. An applicant shall not be required to provide a record of his fingerprints or a photograph of his face under regulation 3 if he is a person to whom section 141 of the Immigration and Asylum Act 1999(**2**) applies, during the relevant period within the meaning of that section.

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

6.—(1) An authorised person who requires an individual to provide a record of his fingerprints or a photograph of his face under regulation 3 may require that individual to submit to any process specified in paragraph (2).

(2) A process by which the individual who makes the application:

(a) attends a British Diplomatic mission or British Consular post where a record of his fingerprints or a photograph of his face is taken;

(b) attends a Diplomatic mission or Consular post of another State where a record of his fingerprints or a photograph of his face is taken by an official of that State on behalf of an authorised person; or

(c) attends other premises nominated by an authorised person where a record of his fingerprints or a photograph of his face is taken by a person on behalf of an authorised person.

(**2**) 1999. c.33.

Consequences of failure to comply with these Regulations

7.—(1) Subject to paragraphs (2) and (3), where an individual does not provide a record of his fingerprints or a photograph of his face in accordance with a requirement imposed under these Regulations, his application may be treated as invalid.

(2) An application shall not be treated as invalid under paragraph (1) if it is for leave to enter the United Kingdom where the person seeking leave to enter presents a Convention travel document endorsed with an entry clearance for that journey to the United Kingdom.

(3) Where an application is of a type described in paragraph (2) and the applicant does not provide a record of his fingerprints or a photograph of his face in accordance with a requirement imposed under these Regulations, that application may be refused.

Destruction of information

8. Subject to regulation 9, 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 by the Secretary of State at the end of ten years beginning with the date on which the original record or photograph was provided.

9. If an applicant 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(**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.

10.—(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 have to be destroyed in accordance with regulation 8 or 9 are destroyed or erased; or

(b) that access to such data is blocked.

(2) The applicant to whom the data relates 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.

Revocation and transitional provisions

11.—(1) Subject to paragraphs (2) and (3), the Regulations specified in the Schedule are revoked.

(2) For the purposes of paragraph (3) only, "application" means an application within the meaning of regulation 2 of the Immigration (Provision of Physical Data) Regulations 2003(**4**) (the "2003 Regulations").

(3) Where a person made an application before these Regulations came into force, the 2003 Regulations will continue to apply for the purposes of that application as if they had not been revoked by paragraph (1).

(**3**) 2002. c.41. Section 2(1)(b) was substituted by section 39(2) of the British Nationality Act 1981 (c.61).
(**4**) S.I. 2003/1875 amended by S.I. 2004/474, S.I. 2004/1834 and S.I. 2005/3127.