

2006 No. 1743

IMMIGRATION

The Immigration (Provision of Physical Data) Regulations 2006

Made - - - - *3rd July 2006*

Coming into force - - *4th July 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(a).

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.

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

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

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(a) 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.

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.

(a) 1999. c.33.

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^(a),

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^(b) (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).

Home Office
3rd July 2006

Joan Ryan
Parliamentary Under-Secretary of State

^(a) 1971. c.77. Section 2(1)(b) was substituted by section 39(2) of the British Nationality Act 1981 (c.61).
^(b) S.I. 2003/1875 amended by S.I. 2004/474, S.I. 2004/1834 and S.I. 2005/3127.

SCHEDULE

Regulation 11

<i>(1)</i>	<i>(2)</i>
<i>Orders revoked</i>	<i>References</i>
The Immigration (Provision of Physical Data) Regulations 2003	S.I. 2003/1875
The Immigration (Provision of Physical Data)(Amendment) Regulations 2004	S.I. 2004/474
The Immigration (Provision of Physical Data)(Amendment)(No. 2) Regulations 2004	S.I. 2004/1834
The Immigration (Provision of Physical Data)(Amendment) Regulations 2005	S.I. 2005/3127

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 126 of the Nationality, Immigration and Asylum Act 2002. Under regulation 3 an “authorised person” may require a person who makes an application for entry clearance or leave to enter (in certain circumstances) to provide a record of his fingerprints and a photograph of his face. An “authorised person” is defined under section 141(5) of the Immigration and Asylum Act 1999 and includes immigration officers and certain officers of the Secretary of State.

Under regulation 6, the authorised person may require the individual to submit to any process listed under paragraph (2) for his fingerprints or a photograph of his face to be taken. He may be required to attend a British Diplomatic mission or Consular post, a Diplomatic mission or Consular post of another State, or other premises nominated by an authorised person, for his fingerprints or photograph to be taken.

Where an individual makes an application for entry clearance, but does not comply with a requirement imposed by these Regulations his application may be treated as invalid (regulation 7(1)). Where an individual makes an application for leave to enter to which these Regulations apply, but does not comply with a requirement imposed by these Regulations, his application may be refused (regulation 7(2) and (3)).

Fingerprints or a photograph can only be taken from an applicant under the age of sixteen where the authorised person is satisfied this will be done in the presence of a responsible adult, and his decision has been confirmed by a person designated for the purpose by the Secretary of State. An adult who takes responsibility for the applicant may not be an authorised person, an officer of the Secretary of State or any other person acting on behalf of the authorised person as part of a process specified under regulation 6(2). These provisions do not apply where it is reasonably believed that the applicant is aged sixteen or over (regulation 4(4)).

These Regulations also require that any record of fingerprints, photograph or a copy of fingerprints or a photograph held by the Secretary of State pursuant to these Regulations must be destroyed within ten years (regulation 8), or as soon as reasonably practicable if the person proves he is a British citizen or a Commonwealth citizen with a right of abode under section 2(1)(b) of the Immigration Act 1971 (regulation 9). Regulation 10(1) makes provision for electronic data which relate to any record of fingerprints or photograph to be destroyed or erased, or access to the data blocked. A person whose data are held by the Secretary of State is entitled, within three months of having made a written request, to a certificate issued by the Secretary of State to the effect that he has taken the steps required by regulation 10(1) (regulation 10(2) and (3)).

These Regulations revoke the Immigration (Provision of Physical Data) Regulations 2003 (the “2003 Regulations”) subject to transitional provisions (regulation 11). These Regulations differ from the 2003 Regulations which required any application for entry clearance from a country specified in the Regulations to be accompanied by a record of an applicant’s fingerprints, where that applicant was aged five or over. The 2003 Regulations also required an application for leave to enter to be accompanied by a record of fingerprints where the applicant (aged five or over) presented a Convention travel document endorsed with an entry clearance, except where the applicant had already given their fingerprints when applying for the entry clearance.

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