
STATUTORY INSTRUMENTS

2021 No. 772

The Immigration (Collection, Use and Retention of Biometric Information and Related Amendments) Regulations 2021

PART 2

PROVISIONS RELATING TO THE USE, RETENTION AND DESTRUCTION OF BIOMETRIC INFORMATION FOR CERTAIN PERSONS WHO ARE SUBJECT TO IMMIGRATION CONTROL

Photographs

2.—(1) A photograph may be taken, by an authorised person, of a person to whom this regulation applies.

(2) A photograph may be taken under this regulation only during the relevant period.

(3) A photograph may not be taken under this regulation of a person under the age of sixteen (“the child”) except in the presence of a person of full age who is—

- (a) the child’s parent or guardian; or
- (b) a person who for the time being takes responsibility for the child.

(4) The person mentioned in paragraph (3)(b) may not be—

- (a) an authorised person; or
- (b) any other person who is an officer of the Secretary of State.

(5) In this regulation “authorised person” means—

- (a) a constable;
- (b) an immigration officer;
- (c) a prison officer;
- (d) an officer of the Secretary of State authorised for the purpose; or
- (e) a person who is employed by a contractor in connection with the discharge of the contractor’s duties under a removal centre contract.

(6) In paragraph (5)(e), “contractor” and “removal centre contract” have the same meaning as in section 147 of the 1999 Act⁽¹⁾.

(7) This regulation applies to—

- (a) any person (“A”) who, on arrival in the United Kingdom, is required by an immigration officer to produce a valid passport with photograph or some other document satisfactorily establishing A’s identity and nationality or citizenship and fails to do so;
- (b) any person (“B”) who has been refused leave to enter the United Kingdom but has been granted immigration bail under Schedule 10 to the 2016 Act subject to a condition

(1) Section 147 was amended by section 66 of the 2002 Act; there are other amendments not relevant to these Regulations.

mentioned in paragraph 2(1)(c) or (d) of that Schedule, if an immigration officer reasonably suspects that B might break the condition(2);

- (c) any person (“C”) in respect of whom—
 - (i) the Secretary of State has decided to make a deportation order; or
 - (ii) section 32(5) of the UK Borders Act 2007 (automatic deportation of foreign criminals) applies;
 - (d) any person (“D”) who requires leave to enter or remain in the United Kingdom but does not have it;
 - (e) any person (“E”) who has been detained under paragraph 16 of Schedule 2 to the 1971 Act (3) or arrested under paragraph 17 of that Schedule(4);
 - (f) any person (“F”) who has made a protection claim; and
 - (g) any person (“G”) who is—
 - (i) a member of the family of a person within any of sub-paragraphs (a), (b) or (d) to (f); or
 - (ii) a dependant of a person within sub-paragraph (c)(i).
- (8) For the purposes of paragraph (7)(g)(i), a person is a member of the family of another person (“P”) if—
- (a) the person is—
 - (i) P’s partner;
 - (ii) P’s child, or a child living in the same household as P in circumstances where P has care of the child;
 - (iii) in a case where P is a child, P’s parent; or
 - (iv) an adult dependant relative of P; and
 - (b) the person does not have a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom, and is not an Irish citizen who does not require leave to enter or remain in the United Kingdom (see section 3ZA of the 1971 Act (5)).
- (9) For the purposes of paragraph (7)(g)(ii), a person is a dependant of another person (“P”) if—
- (a) the person is P’s partner or child, and
 - (b) the person does not have a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom, and is not an Irish citizen who does not require leave to enter or remain in the United Kingdom (see section 3ZA of the 1971 Act).
- (10) In paragraphs (8) and (9) “child” means a person who is under the age of 18.
- (11) “The relevant period” begins—
- (a) for A, on A’s failure to produce the passport or other document;
 - (b) for B, on the decision to grant B immigration bail;
 - (c) for C, when C—
 - (i) is notified of the decision mentioned in paragraph (7)(c)(i); or

(2) Under paragraph 2 of Schedule 10 to the Immigration Act 2016, where immigration bail is granted to a person, it must be granted subject to one or more conditions listed in paragraph 2(1), including a condition requiring the person to report to the Secretary of State or such other person as may be specified.

(3) Paragraph 16 was amended by section 140(1) of and paragraph 60 of Schedule 14 to the 1999 Act, section 73(5) of the 2002 Act, section 42(3) of the Immigration, Asylum and Nationality Act 2006, section 5(2) of the Immigration Act 2014, section 60(10) of the Immigration Act 2016 and [S.I. 1993/1813](#).

(4) Paragraph 17 was amended by Schedule 4 to the Asylum and Immigration Act [1996 \(c. 49\)](#), section 140(2) of the 1999 Act and sections 63 and 64 of the 2002 Act.

(5) Section 3ZA was inserted by section 2 of the Immigration and Social Security Co-ordination (EU Withdrawal) Act [2020 \(c.20\)](#).

- (ii) when the provision mentioned in paragraph (7)(c)(ii) applies;
 - (d) for D, when D becomes a person to whom this regulation applies;
 - (e) for E, on E's detention or arrest;
 - (f) for F, on the making of F's protection claim; and
 - (g) for G, at the same time as for the person of whose family G is a member or whose dependant G is.
- (12) "The relevant period" ends—
- (a) on the earliest of the following—
 - (i) the grant of leave to enter or remain in the United Kingdom;
 - (ii) for A, B, C, D or E, the person's removal or deportation from the United Kingdom;
 - (iii) for C—
 - (aa) the time when the decision mentioned in paragraph (7)(c)(i) ceases to have effect, whether as a result of an appeal or otherwise; or
 - (bb) if a deportation order has been made against C, its revocation or its otherwise ceasing to have effect;
 - (iv) for D, when D no longer requires leave to enter or remain in the United Kingdom;
 - (v) for E, E's release if E is no longer liable to be detained under paragraph 16 of Schedule 2 to the 1971 Act; and
 - (vi) for F, the final determination or abandonment of F's protection claim;
 - (b) for G, at the same time as for the person of whose family G is a member or whose dependant G is.
- (13) No photograph may be taken of A if the immigration officer considers that A has a reasonable excuse for the failure concerned.
- (14) No photograph may be taken of B unless the decision to take it has been confirmed by a chief immigration officer.
- (15) Where a person under the age of sixteen ("the child") is in the presence of a person referred to in paragraph (3)(a) or (b), an authorised person may not take a photograph of the child unless the decision to take it has been confirmed—
- (a) if the authorised person is a constable, by a person designated for the purpose by the chief constable of the constable's police force;
 - (b) if the authorised person is a person mentioned in paragraph (5)(b) or (e), by a chief immigration officer;
 - (c) if the authorised person is a prison officer, by a person designated for the purpose by the governor of the prison; or
 - (d) if the authorised person is an officer of the Secretary of State, by a person designated for the purpose by the Secretary of State.
- (16) Neither paragraph (3) nor paragraph (15) prevents an authorised person from taking a photograph if the authorised person reasonably believes that the person of whom it is to be taken is aged sixteen or over.

Attendance to be photographed

3.—(1) The Secretary of State may, by notice in writing, require a person to whom regulation 2 applies to attend at a specified place for the person to be photographed.

(2) In the case of a notice given to a person of a kind specified in regulation 2(7)(a) to (e) or (g) (in so far as it applies to a member of the family of, or a dependant of, a person of a kind specified in regulation 2(7)(a) to (e)), the notice—

- (a) must require the person to attend during a specified period of at least seven days beginning with a day not less than seven days after the date given in the notice as its date of issue; and
- (b) may require the person to attend at a specified time of day or during specified hours.

(3) In the case of a notice given to a person of a kind specified in regulation 2(7)(f) or (g) (in so far as it applies to a member of the family of a person of a kind specified in regulation 2(7)(f)), the notice—

- (a) may require the person to attend during a specified period beginning with a day not less than three days after the date given in the notice as its date of issue;
- (b) may require the person to attend on a specified day not less than three days after the date given in the notice as its date of issue; and
- (c) may require the person to attend at a specified time of day or during specified hours.

(4) A constable or immigration officer may arrest without warrant a person who has failed to comply with a requirement imposed on the person under this regulation (unless the requirement has ceased to have effect).

(5) Before a person arrested under paragraph (4) is released—

- (a) the person may be removed to a place where a photograph of the person may conveniently be taken; and
- (b) a photograph of the person may be taken (whether or not the person is so removed).

(6) A requirement imposed under paragraph (1) ceases to have effect at the end of the relevant period (as defined by regulation 2).

Use and retention of biometric information

4.—(1) Biometric information to which paragraph (3) applies 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; and
- (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.

(3) This paragraph applies to biometric information provided in accordance with—

- (a) these Regulations; and
- (b) section 141 of the 1999 Act⁽⁶⁾.

(6) Section 141 was amended by section 66(2) of the 2002 Act, section 15(4) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), section 28 of the Immigration, Asylum and Nationality Act 2006 (c. 13), section 51 of the Borders, Citizenship and Immigration Act 2009 (c. 11), paragraph 29 of Schedule 9 to the Immigration Act 2014, section 57 of, and paragraph 30 of Schedule 10 to, the Immigration Act 2016 and S.I. 2017/617.

Use and retention of existing biometric information

- 5.—(1) Paragraph (2) applies where—
- (a) a person’s photograph may be taken by virtue of regulation 2; and
 - (b) the Secretary of State already has a photograph of that person in the Secretary of State’s possession (for whatever reason).
- (2) Where this paragraph applies, the Secretary of State may use or retain the photograph for the purposes of these Regulations.
- (3) Paragraph (4) applies where—
- (a) a person’s fingerprints may be taken by virtue of section 141 of the 1999 Act; and
 - (b) the Secretary of State already has a record of the fingerprints of that person in the Secretary of State’s possession (for whatever reason).
- (4) Where this paragraph applies, the Secretary of State may use or retain the record of the fingerprints for the purposes of the 1999 Act or of these Regulations.

Destruction of biometric information

- 6.—(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 4(1);
 - (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 1971 Act; or
 - (c) is satisfied that—
 - (i) the biometric information was taken from a person by virtue of section 141(7)(f) of the 1999 Act or by virtue of regulation 2(7)(g), as a family member or dependant of a person (“P”), and
 - (ii) the biometric information taken from P has been destroyed.
- (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

- 7.—(1) Save where regulation 6 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 15 years beginning with—
- (a) the date on which the fingerprints were provided; or
 - (b) the date on which they are reused in connection with a relevant application made by the person,
- whichever is the later.
- (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 4(1);
- (d) the fingerprints of a person with indefinite leave to enter or remain in the United Kingdom; or
- (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 15 years beginning with the date of the lapse, revocation or cancellation (as the case may be).

(3) The Secretary of State is only required to take steps to destroy, pursuant to paragraph (2)(e), the fingerprints of a person whose leave has lapsed on the application, supported by evidence to the satisfaction of the Secretary of State, of that person.

- (4) A relevant application for the purposes of paragraph (1) is an application for—
- (a) entry clearance;
 - (b) leave to enter;
 - (c) leave to remain; or
 - (d) registration or naturalisation as a British citizen.

Destruction etc. of electronic data

8.—(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.

(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 three months beginning with the date on which the request for it is received by the Secretary of State.

Biometric information: retention under another power

9. The requirements in this Part 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.