

*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**

<i>Made</i>	- - - -	2008
<i>Coming into force</i>	- -	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).

(3) A biometric immigration document ceases to have effect on 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.

Content of a biometric immigration document

- 15.** A biometric immigration document may contain the following information —
- (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 nationality;
 - (f) the sex of the holder;
 - (g) the period of leave to remain which the person is granted;
 - (h) the class of leave to remain which the person is granted;
 - (i) any conditions to which the limited leave to remain is subject or remarks relating to those conditions;
 - (j) the place and date of issue of the document;
 - (k) the holder's facial image;
 - (l) a machine readable code;
 - (m) a hologram;
 - (n) an emblem of the United Kingdom and the words "United Kingdom";
 - (o) any additional security features.

Surrender of a biometric immigration document

16. The Secretary of State may require the surrender of a biometric immigration document 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 in the United Kingdom is to be varied, cancelled, invalidated or to lapse; or
- (f) the document has ceased to have effect under regulation 14(3) or has been cancelled under regulation 17.

Cancellation of a biometric immigration document

- 17.** The Secretary of State may cancel a biometric immigration document if he thinks that —
- (a) information provided in connection with the document was or has become false, misleading or incomplete;

- (b) the document has been lost or stolen;
- (c) the document (including any information recorded in it) has been altered, damaged or destroyed (whether deliberately or not);
- (d) an attempt has been made (whether successfully or not) to copy the document or to do anything to enable it to be copied;
- (e) a person has failed to surrender the document when required to do so under regulation 16(a) to (e);
- (f) the document should be re-issued (whether because the information recorded in it requires alteration or for any other reason); or
- (g) the holder has died.

Consequences of a failure to comply with a requirement of these Regulations

18. Where a person who is required to make an application for the issue of a biometric immigration document in accordance with regulation 3 fails to comply with a requirement of these Regulations, the Secretary of State may do any, or any combination of, the following —

- (a) refuse an application for a biometric immigration document;
- (b) disregard the person’s application for leave to remain; or
- (c) refuse the person’s application for leave to remain.

Home Office
Date

Name
Minister of State

SCHEDULE

Regulation 3(3)(a)

E1, E2, E3, E4, E5, E6, E7, E8, E9, E10, E11, E12, E13, E14, E15, E16, E17, E18
EC1, EC2, EC3, EC4
N1, N2, N3, N4, N5, N6, N7, N8, N9, N10, N11, N12, N13, N14, N15, N16, N17, N18, N19,
N20, N21, N22
NW1, NW2, NW3, NW4, NW5, NW6, NW7, NW8, NW9, NW10, NW11
SE1, SE2, SE3, SE4, SE5, SE6, SE7, SE8, SE9, SE10, SE11, SE12, SE13, SE14, SE15, SE16,
SE17, SE18, SE19, SE20, SE21, SE22, SE23, SE24, SE25, SE26, SE27, SE28
SW1, SW2, SW3, SW4, SW5, SW6, SW7, SW8, SW9, SW10, SW11, SW12, SW13, SW14,
SW15, SW16, SW17, SW18, SW19, SW20
W1, W2, W3, W4, W5, W6, W7, W8, W9, W10, W11, W12, W13, W14
WC1, WC2

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations require certain persons subject to immigration control to apply for a biometric immigration document.

Regulation 3 sets out who must apply for a biometric immigration document. A person who applies for leave to remain in the UK in one of the specified categories under the immigration rules set out in regulation 4 must apply for a document, as must his dependant. This is provided that the person lives in one of the specified areas if he is applying for leave to remain by post, or if he applies for leave to remain in person at the public enquiry unit of the Home Office in Croydon. This is also provided he makes the application for leave to remain on one of the dates specified in regulation 5.

The specified categories under the immigration rules concern some student applications and some family applications.

Regulation 6 permits an authorised person to require a person who applies for a biometric immigration document to provide biometric information, that is, a record of his fingerprints and a photograph of his face.

Regulation 7 allows the Secretary of State to use fingerprints or photographs relating to the person which he already has in his possession, rather than requiring the person to provide them again.

Regulation 8 provides certain safeguards in respect of children under 16. Regulation 9 sets out the various processes which an authorised person may require a person to submit to so that his fingerprints or photograph can be recorded.

Regulations 10 to 13 make provision for the use, retention and destruction of biometric information provided under these Regulations.

Regulation 14 and 15 make provision about the issue and content of a biometric immigration document.

Regulation 16 and 17 make provision about the surrender and cancellation of a biometric immigration document.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Immigration (Biometric Registration) (Pilot) Regulations 2008 No. 1183*

Regulation 18 makes provision about the consequences of a failure to comply with a requirement of the Regulations. These do not include the imposition of a civil penalty under section 9 of the UK Borders Act 2007.