

Draft Regulations laid before Parliament under section 41(8)(b) of the British Nationality Act 1981, section 166(5)(d) of the Immigration and Asylum Act 1999, section 126(8)(b) of the Nationality, Immigration and Asylum Act 2002 and section 6(6)(e) of the UK Borders Act 2007, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2021 No. XXXX

IMMIGRATION

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

Made - - - - *******
Coming into force - - *1st July 2021*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 41(1)(bza) and (3) of the British Nationality Act 1981(1) (“the 1981 Act”), sections 144(1), 144A and 166(3) of the Immigration and Asylum Act 1999(2) (“the 1999 Act”), section 126(1) of the Nationality, Immigration and Asylum Act 2002(3) (“the 2002 Act”) and sections 5, 6(6) and 8 of the UK Borders Act 2007(4) (“the 2007 Act”).

In accordance with section 41(8)(b) of the 1981 Act, section 166(5)(d) of the 1999 Act(5), section 126(8)(b) of the 2002 Act and section 6(6)(e) of the 2007 Act, a draft of these Regulations was laid before and approved by a resolution of each House of Parliament.

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- (1) 1981 c. 61 (“the 1981 Act”). Section 41(1)(bza) was inserted by section 10(2) of the Immigration Act 2014 (c. 22). Section 41(3) was amended by Schedule 1 to the Nationality, Immigration and Asylum Act 2002 (c. 41) (“the 2002 Act”) and Schedule 3 to the Immigration, Asylum and Nationality Act 2006 (c. 13).
 - (2) 1999 c. 33 (“the 1999 Act”). Section 144 was amended by section 128 of the 2002 Act and paragraph 2 of Schedule 2 and paragraph 17(3) of Schedule 9 to the Immigration Act 2014. Section 144A was inserted by section 14(2) of the Immigration Act 2014. See section 167(1) for the definition of “prescribed”.
 - (3) 2002 c.41. Section 126(1) was amended by paragraph 3 of Schedule 2 to the Immigration Act 2014.
 - (4) 2007 c. 30. Section 8 was substituted by section 14(1) of the Immigration Act 2014. By virtue of section 41(1ZC) of the 1981 Act, section 144A(1) of the 1999 Act and section 126(8A) of the 2002 Act, section 8 applies to biometric information provided in accordance with regulations made under the relevant sections of those Acts as it applies to such information provided in accordance with regulations under section 5 of that Act. Section 144A(2) and (3) of the 1999 Act makes further provision about regulations made by virtue of section 144A(1). Section 6(6) is applied to regulations under section 8 by section 8(9) of that Act.
 - (5) Section 166(5) was amended but that amendment is not relevant.

PART 1

PRELIMINARY

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Immigration (Collection, Use and Retention of Biometric Information and Related Amendments) Regulations 2021 and come into force on 1st July 2021.

(2) In these Regulations—

“the 1971 Act” means the Immigration Act 1971⁽⁶⁾;

“the 1999 Act” means the Immigration and Asylum Act 1999;

“the 2016 Act” means the Immigration Act 2016⁽⁷⁾;

“protection claim” means a claim made by a person that removal of that person from the United Kingdom—

(a) would breach the United Kingdom’s obligations under the Refugee Convention; or

(b) would breach the United Kingdom’s obligations in relation to persons eligible for a grant of humanitarian protection;

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention.

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;

(6) 1971 c. 77.

(7) 2016 c. 19.

- (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**(8)**.
- (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 mentioned in paragraph 2(1)(c) or (d) of that Schedule, if an immigration officer reasonably suspects that B might break the condition**(9)**;
 - (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 **(10)** or arrested under paragraph 17 of that Schedule**(11)**;
 - (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 **(12)**).

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

(9) 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.

(10) 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](#).

(11) 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.

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

- (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
 - (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(13).

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.

(13) 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.

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.

PART 3

TRANSITIONAL PROVISION

Transitional provision

10.—(1) In the period between the coming into force of these Regulations and the coming into force of paragraph 4(b) of Schedule 11 to the 2016 Act, references in regulation 2(7)(f), (11)(f) and (12)(a)(vi) to a protection claim are to be read as references to a claim for asylum.

(2) For the purposes of this regulation “claim for asylum” means a claim that it would be contrary to the United Kingdom’s obligations under the Refugee Convention, or under Article 3 of the Human Rights Convention, for the claimant to be removed from, or required to leave, the United Kingdom.

(3) In paragraph (2) “the Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms⁽¹⁴⁾, agreed by the Council of Europe at Rome on 4 November 1950, as it has effect for the time being in relation to the United Kingdom.

PART 4

AMENDMENTS TO RELATED SECONDARY LEGISLATION

11. The Schedule (which makes amendments to related secondary legislation) has effect.

Date

Name
Parliamentary Under Secretary of State
Home Office

(14) https://www.echr.coe.int/documents/convention_eng.pdf.

SCHEDULE

Regulation 11

AMENDMENTS TO RELATED SECONDARY LEGISLATION

Amendment of the British Nationality (General) Regulations 2003

- 1.—(1) The British Nationality (General) Regulations 2003⁽¹⁵⁾ are amended as follows.
(2) After regulation 7E insert—

“Power to use and retain existing biometric information

7EA.—(1) This regulation applies where—

- (a) a person makes an application for registration or naturalisation as a British citizen; and
- (b) the Secretary of State already has a record of the person’s fingerprints or a photograph of the person’s face in their 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.”.

- (3) In regulation 7G—

(a) in paragraph (1)—

- (i) for “ten” substitute “15”;
- (ii) for the words from “the date” to the end substitute—
“—

- (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.”;

(b) at the end insert—

- “(5) 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.”.

Amendment of the Immigration (Provision of Physical Data) Regulations 2006

- 2.—(1) The Immigration (Provision of Physical Data) Regulations 2006⁽¹⁶⁾ are amended as follows.
(2) After regulation 8 insert—

“Power to use and retain existing biometric information

8A.—(1) This regulation applies where—

- (a) a person makes an application; and

⁽¹⁵⁾ S.I. 2003/548. Relevant amending instrument is S.I. 2015/738.

⁽¹⁶⁾ S.I. 2006/1743. Relevant amending instrument is S.I. 2015/737.

- (b) the Secretary of State already has a record of the person’s fingerprints or a photograph of the person’s face in their 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.”.
- (3) In regulation 10—
 - (a) in paragraph (1)—
 - (i) for “ten” substitute “15”;
 - (ii) for the words from “the date” to the end substitute—
 - “—
 - (a) the date on which the fingerprints were provided; or
 - (b) the date on which they are reused in connection with an application made by the person which comes within paragraph (5),
 - whichever is the later.”;
 - (b) at the end insert—
 - “(5) An application comes within this paragraph if it is an application for—
 - (a) entry clearance;
 - (b) leave to enter;
 - (c) leave to remain; or
 - (d) registration or naturalisation as a British citizen.”.

Amendment of the Immigration (Biometric Registration) Regulations 2008

- 3.—**(1) The Immigration (Biometric Registration) Regulations 2008(17) are amended as follows.
- (2) In regulation 2 insert in the appropriate places—
 - ““biometric card” means a card which forms part of a biometric immigration document and which is issued to a person who has made an application under regulation 3 or 3A recording the holder’s immigration status;”;
 - ““biometric sticker” means a sticker which forms part of a biometric immigration document which—
 - (a) is issued to a person who has made an application under regulation 3 or 3A recording the holder’s immigration status; and
 - (b) consists of a stamp or other attachment in a passport or other document which indicates that the holder has been granted entry clearance or limited or indefinite leave to enter or remain in the United Kingdom;”.
- (3) In regulation 11—
 - (a) in paragraph (1)—
 - (i) for “ten” substitute “15”;
 - (ii) for the words from “the date” to the end substitute—
 - “—
 - (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,

(17) S.I. 2008/3048. Relevant amending instruments are S.I. 2009/819, 2012/594 and 2015/433.

- whichever is the later.”;
- (b) at the end insert—
- “(5) 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.”.

(4) In regulation 13—

 - (a) in paragraph (1), omit “, known as a biometric residence permit,”;
 - (b) after paragraph (1) insert—

“(1A) The reference to the issue of a biometric immigration document in paragraph (1) includes allowing the person to view their biometric immigration document electronically.”;

 - (c) in paragraph (4)—
 - (i) in sub-paragraphs (b) and (c), for “immigration document” substitute “card or biometric sticker”;
 - (ii) in sub-paragraph (d), for “document” substitute “biometric card or biometric sticker where issued to the person”;
 - (d) at the end insert—

“(5) Where the person is issued with a biometric card or biometric sticker, the information contained on that card or sticker is to be read subject to the information on the person’s biometric immigration document.”.

(5) In regulation 13A—

 - (a) in paragraph (1), omit “, known as a biometric residence permit,”;
 - (b) after paragraph (1) insert—

“(1A) The reference to the issue of a biometric immigration document in paragraph (1) includes allowing the person to view their biometric immigration document electronically.”;

 - (c) in paragraph (6)—
 - (i) in sub-paragraphs (b) and (c), for “immigration document” substitute “card or biometric sticker”;
 - (ii) in sub-paragraph (d), for “document” substitute “biometric card or biometric sticker where issued to the person”;
 - (d) after paragraph (6) insert—

“(6A) Where the person is issued with a biometric card or biometric sticker, the information contained on that card or sticker is to be read subject to the information on the person’s biometric immigration document.”.

(6) Omit regulation 13B.

(7) In regulation 15—

 - (a) in paragraph (1) omit “on the face of the document”;
 - (b) after paragraph (1)(j) insert—

“(ja) other information connected with the holder’s immigration status or nationality;”.

- (8) In regulation 16—
- (a) in the heading, the opening words of paragraph (1), paragraph (1)(f) and paragraph (2), for “immigration document” substitute “card”;
 - (b) in paragraph (1)(a), (b), (c), (d) and (g), for “document” substitute “card”;
 - (c) in paragraph (1)(g), for “, 13A(5) or 13B(3)” substitute “or 13A(5)”.
- (9) After regulation 16 insert—

“Cancelling access to a biometric immigration document

16A. The Secretary of State may cancel access to a person’s biometric immigration document electronically if the Secretary of State thinks that—

- (a) the holder’s leave to enter or remain has been varied, cancelled or invalidated, or has lapsed; or
 - (b) another person has gained access to the biometric immigration document without the consent of the holder or of the Secretary of State.”.
- (10) In regulation 19, in paragraph (1), for “, 13A(1) or 13B(1)” substitute “or 13A(1)”.

(11) In regulation 21—

- (a) omit paragraph (3);
- (b) after paragraph (5) insert—

“(5A) The references in paragraphs (1), (2) and (4) to the provision of a biometric immigration document include provision of evidence of the holder’s immigration status held electronically on their biometric immigration document.”.

(12) After regulation 22 insert—

“Requirement to provide a new photograph

22A.—(1) This regulation applies where the holder of a biometric immigration document, other than in a case to which regulation 16A applies, satisfies an authorised person that they are unable to access their biometric immigration document electronically.

(2) An authorised person may require the holder of the biometric immigration document to provide an additional photograph of the holder’s face to that provided on the application for the document.”.

(13) In regulation 23, in paragraphs (1)(b) and (4)(b), for “must” substitute “may”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2 of these Regulations makes provision for photographs to be taken of certain persons who are subject to immigration control. It also makes provision about the use and retention of these photographs and of fingerprints taken under equivalent provisions in sections 141 and 142 of the Immigration and Asylum Act 1999 (c. 33) (“the 1999 Act”).

Regulation 2 deals with who may be photographed, by whom and during what time period. It provides safeguards for children under sixteen and others.

Regulation 3 sets out the procedure for taking such photographs. The Secretary of State may require a person to attend at a specified place to be photographed, and a person who fails to comply with such a requirement may be arrested and photographed before being released.

“Biometric information” is defined in section 144(2) of the 1999 Act by reference to the definition in section 15 of the UK Borders Act 2007 (c. 30), and in this context refers to photographs and fingerprint records.

Regulation 4 makes provision about the uses for which biometric information provided under these Regulations or under section 141 of the 1999 Act may be retained.

Regulation 5 provides that where the Secretary of State already holds biometric information about a person (for whatever reason), the Secretary of State may reuse that information for the purposes of the 1999 Act or of these Regulations.

Regulations 6 and 8 respectively make provision about the destruction of biometric information and of electronic data relating to such information. Regulation 7 makes specific provision about the period for which a record of fingerprints may be retained.

Regulation 9 provides that the requirements in these Regulations to destroy biometric information or data do not apply if the data is retained in accordance with other powers. Those powers are contained in section 127 of the Nationality, Immigration and Asylum Act 2002 (c. 41), the British Nationality (General) Regulations 2003 (S.I. 2003/548) (“the 2003 Regulations”), the Immigration (Provision of Physical Data) Regulations 2006 (S.I. 2006/1743) (“the 2006 Regulations”) and the Immigration (Biometric Registration) Regulations 2008 (S.I. 2008/3048) (“the 2008 Regulations”).

Part 3 (regulation 10) makes transitional provision for any period between the coming into force of these Regulations and relevant amendments made to the 1999 Act by the Immigration Act 2016 (c. 19).

Part 4 (regulation 11 and the Schedule) makes related amendments to the 2003 Regulations, the 2006 Regulations and the 2008 Regulations. In particular, those amendments align the period for which biometric information may be retained under those Regulations with that prescribed for the retention of a record of fingerprints in regulation 7. The 2008 Regulations are also amended to make different provision in relation to different types of biometric immigration document.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.