

# UK BORDERS ACT 2007

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: Biometric Registration**

##### ***Section 5 to 15: Registration of those subject to immigration control***

27. **Section 5(1)(a)** enables the Secretary of State to make regulations requiring a person subject to immigration control to apply for the issue of a document recording information about his external physical characteristics. This document is called a "biometric immigration document". Regulations may require a biometric immigration document to be used for specified immigration purposes, in connection with specified immigration procedures or in specified circumstances where a question arises about a person's status in relation to nationality and immigration (*subsection (1)(b)*). The regulations may also provide that a person who produces a biometric immigration document pursuant to a requirement imposed under the regulations may be required to provide information to enable a comparison to be made between that information and information provided in connection with the application for the document (e.g. fingerprints) (*subsection(1)(c)*). "External physical characteristics" includes fingerprints and features of the iris or any other part of the eye (section 15(1)(c)). "Document" includes a card or sticker and any other method of recording information, whether in writing, by the use of electronic or other technology, or by a combination of methods (section 15(1)(d)). A "person subject to immigration control" means a person who, under the Immigration Act 1971, requires leave to enter or remain in the United Kingdom, whether or not leave has been given (section 15(1)(a)).
28. **Section 5(2)** provides that the regulations requiring a person subject to immigration control to apply for the issue of a biometric immigration document (under section 5(1)(a)) may, in particular, apply generally or to a specific class of persons subject to immigration control. A specific class may include persons making or seeking to make a specified kind of application for immigration purposes. The regulations may specify a period within which the person is required to apply for the biometric immigration document (*subsection(2)(b)*). They may make provision about the issue and contents of a biometric immigration document, for a biometric immigration document to be combined with another document, and for a biometric immigration document to begin to have effect and cease to have effect (*subsection (2)(c), (d), (e) and (f)*). Regulations may also provide for the surrender of the biometric immigration document (subsection 5(2)(g) and (h)). The regulations may enable the Secretary of State to require the surrender of other documents connected with immigration or nationality on issuing a biometric immigration document (subsection (2)(i)).
29. **Section 5(3)** provides that regulations may allow the Secretary of State to cancel a Biometric Immigration Document in specified circumstances.
30. **Section 5(4)** provides that the holder of a Biometric Immigration Document may be required by regulations to notify the Secretary of State in specified circumstances.

31. **Section 5(5)** provides that a person applying for a biometric immigration document may be required by regulations to provide information, (which may include biographical and or other non-biometric information). In particular, the regulations may require or enable an authorised person to require the provision of information in a specified form (subsection (5)(a)). The regulations may require an individual to submit, or enable an authorised person to require an individual to submit, to a specified process by means of which biometric information is obtained or recorded (subsection (5)(b)). The regulations may confer a function on an authorised person, which may include the exercise of a discretion (subsection (5)(c)). They may permit the Secretary of State, instead of requiring the provision of information, to use or retain information which she already has in her possession (subsection (5)(d)). An "authorised person" means a constable, an immigration officer, a prison officer, an officer of the Secretary of State authorised for the purpose, or a person who is employed by a contractor in connection with the discharge of the contractor's duties under a removal centre contract (section 15(1)(e)).
32. **Section 5(6)** provides that regulations made under section 5(1)(b) may require the production or use of a biometric immigration document that is combined with another document, including an identity card. If a biometric immigration document were to be combined with an identity card this provision also makes it clear that section 5 take precedence over section 16 of the Identity Card Act 2006 (prohibition of requirement to produce an ID card).
33. **Section 5(7)** prevents the Secretary of State from making regulations that would in effect require a person issued with a biometric immigration document having to carry it with them at all times.
34. Clause 5(8) allows for regulations made under subsection (1)(c) (requiring a person producing a biometric immigration document to provide information for the purposes of allowing a comparison to be made) to (a) require, or permit an authorised person to require, the provision of information in a specified form and (b) require an individual to submit, or an authorised person to require a person to submit to a specified process by means of which biometric information is obtained or recorded. Subsection 5(9) provides that immigration rules made under section 3 of the Immigration Act 1971 may require a person applying for a biometric immigration document to provide non-biometric information to be recorded in it or retained by the Secretary of State.
35. **Section 5(10)** provides that *subsections (5) to (9)* are without prejudice to the generality of section 50 of the Immigration, Asylum, and Nationality Act 2006.
36. **Section 6** makes supplementary provision in respect of regulations under section 5. Regulations amending or replacing earlier regulations may require a person who holds a biometric immigration document issued under the earlier regulations to apply under the new regulations (*subsection (2)*). Provision must be made, where a person under the age of 16 is required by or in accordance with regulations to submit to a process for recording biometric information, which is similar to sections 141(3) to (5) and (13) of the Immigration and Asylum Act 1999 (section 6(3)). Section 141(3) to (5) provides that fingerprints may not be taken from a person under 16 except in the presence of an adult who is the child's parent or guardian, or a person who takes responsibility for the child for the time being. An authorised person may not act as the responsible adult in this situation.
37. **Section 6(4)** provides that rules made under section 3 of the Immigration Act 1971 (the Immigration Rules) may make provision by reference to the compliance or non-compliance with regulations. Under section 6(5), information which is in the possession of the Secretary of State which is used or retained in accordance with section 5(3)(d) shall be treated for the purposes of requirements about treatment and destruction as having been provided in accordance with the regulations at the time which it is used or retained in accordance with them.

38. [Section 6\(6\)](#) provides that regulations may make provision having effect generally or in specific cases and circumstances, may make different provision for different cases and circumstances, may include incidental, consequential or transitional provision, shall be made by statutory instrument, and shall not be made unless laid in draft before Parliament and approved by a resolution of each House.
39. [Section 7](#) makes provision for the effect of non-compliance. Regulations made under section 5(1) shall include provision about the effect of failure to comply with a requirement of the regulations. In particular, regulations may provide for an application for a biometric immigration document to be refused, an application or claim in connection with immigration to be disregarded or refused, the cancellation or variation of leave to enter or remain in the United Kingdom, the Secretary of State to consider giving a penalty notice, or the consequence of failure to be at the discretion for the Secretary of State ([section 7\(2\)](#)). In addition, [section 7\(3\)](#) allows the Secretary of State to make regulations designating an adult as the person responsible for ensuring that child complies with requirements of the regulations. Where a child fails to comply, the designated adult will be liable to a civil penalty notice on their behalf.
40. [Section 8\(1\)](#) makes provision about the use and retention of biometric information. Regulations made under section 5(1) must make provision about use and retention of biometric information provided in accordance with regulations.
41. [Section 8\(2\)](#) sets out the purposes for which biometric information collected under regulations made under section 5(1) can be used. [Section 8\(2\)](#) also includes provision to specify further uses for biometric information collected.
42. [Section 8\(3\)](#) provides that regulations under section 5(1) must include provision about the destruction of biometric information held by the Secretary of State which has been obtained or recorded by virtue of the regulations. They must require the destruction of information if the Secretary of State thinks that it is no longer likely to be of use in accordance with regulations made by virtue of [section 8\(1\)](#). The regulations must include provision similar to [section 143\(2\)](#) and (10) to (13) of the Immigration and Asylum Act 1999 (which makes provision about the destruction of fingerprint data taken under [section 141](#) of that Act).
43. [Section 8\(4\)](#) provides that a requirement to destroy information shall not apply if and in so far as the information is retained in accordance with and for the purposes of another enactment.
44. [Sections 9 to 14](#) make provision for a civil penalty scheme for failure to comply with a requirement under regulations made under section 5. Under [section 9](#) the Secretary of State may by notice require a person to pay a penalty for failing to comply with a requirement of the regulations. The notice must specify the amount of the penalty and the date before which the penalty must be paid (which must not be fewer than 14 days after the date on which the notice is given) ([subsection 9\(2\)\(a\)](#) and (b) and (4)). The notice must specify methods by which the penalty must be paid and explain the grounds on which the Secretary of State thinks the person has failed to comply with the regulations ([subsection \(2\)\(c\)](#) and (d)). The penalty notice must explain how the person can object to the penalty and appeal the penalty, and how the penalty may be enforced ([subsection \(2\)\(e\)](#)).
45. [Section 9\(3\)](#) sets the maximum amount of penalty that may be levied, £1,000. The Secretary of State may, by order, change this limit to reflect a change in the value of money ([section 9\(6\)](#)).
46. [Section 9\(5\)](#) provides that a person who has been given a penalty notice may be given a further penalty notice in the case of continued failure. However, the further notice may not be given during the time available for objection or appeal against the previous notice, nor while an objection or appeal is pending.

47. **Section 10(1)** provides that a person who has been given a penalty notice may by notice object to the Secretary of State on the grounds that she has not failed to comply with a requirement of the regulations, it is unreasonable to expect him to pay the penalty or the amount of the penalty is excessive. A notice of objection must specify the grounds of objection and the person's reasons for objecting (*subsection (2)(a)*). It must comply with any prescribed requirements as to form and content (*subsection (2)(b)*). The notice must also be given within a prescribed period (*subsection (2)(c)*). Under section 10(3) the Secretary of State shall consider the notice of objection and cancel the penalty notice, reduce the penalty by varying the original penalty notice, increase the penalty by issuing a new penalty notice, or confirm the penalty notice. The Secretary of State shall do so in accordance with any prescribed requirements and within a prescribed period, unless the person and the Secretary of State agree a longer time period (*subsection (4)*).
48. **Section 11(1)** provides that a person given a penalty notice may appeal that notice to a county court in England and Wales or Northern Ireland, or to the sheriff in Scotland. An appeal may be brought on the grounds that the person has not failed to comply with a requirement of the regulations, it is unreasonable to expect the person to pay the penalty, or the amount of the penalty is excessive. The court may then cancel the penalty notice, reduce the penalty by varying the penalty notice, increase the penalty notice, or confirm the penalty notice (*subsection (3)*). An appeal may be brought whether or not the person has objected, and irrespective of the Secretary of State's decision on any notice of objection (*subsection (4)*). The court may consider matters of which the Secretary of State was not and could not have been aware before giving the penalty notice (*subsection (5)*).
49. **Section 12** makes provision for enforcement of a penalty. Where a penalty has not been paid before the specified date, it may be recovered as a debt due to the Secretary of State (*subsection (1)*). However where an objection notice is given in respect of a penalty notice, the Secretary of State may not take steps to enforce the penalty notice before she has decided what to do in respect of the objection, and has informed the objector (*subsection (2)*). Additionally, the Secretary of State may not take steps to enforce the penalty notice while an appeal under section 11 could be brought (disregarding the possibility of an appeal out of time) or has been brought and has not been determined or abandoned (*subsection (3)*). In proceedings for the recovery of a penalty, no question may be raised in respect of matters which are grounds for objection or for appeal (section 12(3)).
50. **Section 12(5)** requires that any money received by the Secretary of State in respect of a penalty under section 9 is paid into the Consolidated Fund.
51. **Section 13** makes provision for a code of practice in respect of the civil penalty scheme. Under *subsection (1)* the Secretary of State shall issue a code of practice setting out the matters to be considered in determining whether to give a penalty notice and the amount of the penalty. The code may, in particular, require the Secretary of State to consider any decision already taken in respect of non-compliance with a requirement of the regulations (*subsection (2)*). The Secretary of State may revise and re-issue the code (*subsection (4)*). *Subsection (5)* provides that before issuing or re-issuing the code the Secretary of State must publish proposals, consult members of the public and lay a draft before Parliament. *Subsection (6)* provides that the code shall come into force at the prescribed time.
52. Where a matter is "prescribed" under the civil penalty scheme, this means prescribed by order (section 14(1)). An order may make provision generally or only for specified purposes, may make different provision for different purposes, shall be made by statutory instrument and is subject to annulment in pursuance of a resolution of either House of Parliament.
53. **Section 15(1)** makes provision for the interpretation of section 5. Section 15(1)(g) provides that regulations may (but need not) enable something to be done by the Secretary of State only where the Secretary of State is of a specified opinion.

*These notes refer to the UK Borders Act 2007 (c.30)  
which received Royal Assent on 30th October 2007*

54. [Section 15\(2\)](#) enables further provision to be made concerning the procedure to be followed, and for the charging of fees for an application for a biometric immigration document.