

SCHEDULE 3A

Article 4

Provisions of the UK Borders Act 2007 as extended to Guernsey

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5 Registration regulations

(1) The Committee may make regulations—

(a) requiring a person subject to immigration control to apply for the issue of a document recording biometric information (a “biometric immigration document”);

(b) requiring a biometric immigration document to be used—

(i) for specified immigration purposes;

(ii) in connection with specified immigration procedures; or

(iii) in specified circumstances, where a question arises about a person’s status in relation to nationality or immigration;

(c) requiring a person who produces a biometric immigration document by virtue of paragraph (b) to provide information for comparison with information provided in connection with the application for the document.

(2) Regulations under subsection (1)(a) may, in particular—

(a) apply generally or only to a specified class of persons subject to immigration control (for example, persons making or seeking to make a specified kind of application for immigration purposes);

(b) specify the period within which an application for a biometric immigration document must be made;

(c) make provision about the issue of biometric immigration documents;

(d) make provision about the content of biometric immigration documents (which may include non-biometric information);

(e) make provision permitting a biometric immigration document to be combined with another document;

(f) make provision for biometric immigration documents to begin to have effect, and cease to have effect, in accordance with the regulations;

(g) require a person who acquires a biometric immigration document, without the consent of the person to whom it relates or of the prescribed authority, to surrender it to the prescribed authority as soon as is reasonably practicable;

(h) permit the prescribed authority to require the surrender of a biometric immigration document in other specified circumstances;

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(i) permit the prescribed authority on issuing a biometric immigration document to require the surrender of other documents connected with immigration or nationality.

(3) Regulations under subsection (1)(a) may permit the prescribed authority to cancel a biometric immigration document—

(a) if the prescribed authority thinks that information provided in connection with the document was or has become false, misleading or incomplete,

(b) if the prescribed authority thinks that the document has been lost or stolen,

(c) if the prescribed authority thinks that the document (including any information recorded in it) has been altered, damaged or destroyed (whether deliberately or not),

(d) if the prescribed authority thinks that an attempt has been made (whether successfully or not) to copy the document or to do anything to enable it to be copied,

(e) if the prescribed authority thinks that a person has failed to surrender the document in accordance with subsection (2)(g) or (h),

(f) if the prescribed authority thinks that the document should be re-issued (whether because the information recorded in it requires alteration or for any other reason),

(g) if the prescribed authority thinks that the holder is to be given leave to enter or remain in the Bailiwick of Guernsey,

(h) if the prescribed authority thinks that the holder's leave to enter or remain in the Bailiwick of Guernsey is to be varied, cancelled or invalidated or to lapse,

(i) if the prescribed authority thinks that the holder has died,

(j) if the prescribed authority thinks that the holder has been removed from the Bailiwick of Guernsey (whether by deportation or otherwise),

(k) if the prescribed authority thinks that the holder has left the Bailiwick of Guernsey without retaining leave to enter or remain, and

(l) in such other circumstances as the regulations may specify.

(4) Regulations under subsection (1)(a) may require notification to be given to the prescribed authority by the holder of a biometric immigration document—

(a) who knows or suspects that the document has been lost or stolen,

(b) who knows or suspects that the document has been altered or damaged (whether deliberately or not),

(c) who knows or suspects that information provided in connection with the document was or has become false, misleading or incomplete,

(d) who was given leave to enter or remain in the Bailiwick of Guernsey in accordance with a provision of rules under section 3 of the Immigration Act 1971 (c 77) (immigration rules) or

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directions under section 3A or 3B of that Act and knows or suspects that owing to a change of the holder's circumstances the holder would no longer qualify for leave under that provision, or

(e) in such other circumstances as the regulations may specify.

(5) Regulations under subsection (1)(a) may require a person applying for the issue of a biometric immigration document to provide information (which may include biographical or other non-biometric information) to be recorded in it or retained by the prescribed authority; and, in particular, the regulations may—

(a) require, or permit an authorised person to require, the provision of information in a specified form;

(b) require an individual to submit, or permit an authorised person to require an individual to submit, to a specified process by means of which biometric information is obtained or recorded;

(c) confer a function (which may include the exercise of a discretion) on an authorised person;

(d) permit the prescribed authority, instead of requiring the provision of information, to use or retain information which is (for whatever reason) already in the prescribed authority's possession.

(6) Regulations under subsection (1)(b) may, in particular, require the production or other use of a biometric immigration document that is combined with another document.

(7) Regulations under subsection (1)(b) may not make provision the effect of which would be to require a person to carry a biometric immigration document at all times.

(8) Regulations under subsection (1)(c) may, in particular, make provision of a kind specified in subsection (5)(a) or (b).

(9) Rules under section 3 of the Immigration Act 1971 (c 77) or directions under section 3A or 3B of that Act may require a person applying for the issue of a biometric immigration document to provide non-biometric information to be recorded in it or retained by the prescribed authority.

6 Regulations: supplemental

(1) This section applies to regulations under section 5(1).

(2) 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.

(3) In so far as regulations require an individual under the age of 16 to submit to a process for the recording of biometric information, or permit an authorised person to require an individual under the age of 16 to submit to a process of that kind, the regulations must make provision similar to section 141(3) to (5) and (13) of the Immigration and Asylum Act 1999 (c. 33) (fingerprints: children).

(4) Rules under section 3 of the Immigration Act 1971 (immigration rules) or directions under section 3A or 3B of that Act may make provision by reference to compliance or non-compliance with regulations.

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(5) Information in the prescribed authority's possession which is used or retained in accordance with regulations under section 5(5)(d) shall be treated, for the purpose of requirements about treatment and destruction, as having been provided in accordance with the regulations at the time at which it is used or retained in accordance with them.

7 Effect of non-compliance

(1) Regulations under section 5(1) must include provision about the effect of failure to comply with a requirement of the regulations.

(2) In particular, the regulations may—

(a) require or permit an application for a biometric immigration document to be refused;

(b) require or permit an application or claim in connection with immigration to be disregarded or refused;

(c) require or permit the cancellation or variation of leave to enter or remain in the Bailiwick of Guernsey;

(d) require the prescribed authority to consider giving a notice under section 9;

(e) provide for the consequence of a failure to be at the discretion of the prescribed authority.

(2A) If the regulations require a biometric immigration document to be used in connection with an application or claim, they may require or permit the application or claim to be disregarded or refused if that requirement is not complied with.

(3) The regulations may also permit the prescribed authority to designate an adult as the person responsible for ensuring that a child complies with requirements of the regulations; and for that purpose—

(a) “adult” means an individual who has attained the age of 18,

(b) “child” means an individual who has not attained the age of 18, and

(c) sections 9 to 13 shall apply (with any necessary modifications) to a designated adult's failure to ensure compliance by a child with a requirement of regulations as they apply to a person's own failure to comply with a requirement.

8 Use and retention of biometric information

(1) The Committee must by regulations make provision about the use and retention by the prescribed authority of biometric information provided in accordance with regulations under section 5(1).

(2) The regulations must provide that biometric information may be retained only if the prescribed authority 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.

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(3) The regulations may include provision permitting biometric information retained by virtue of subsection (2) also to be used—

- (a) in connection with the prevention, investigation or prosecution of an offence,
- (b) for a purpose which appears to the prescribed authority 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,
- (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, and
- (e) for such other purposes (whether in accordance with functions under an enactment or otherwise) as the regulations may specify.

(4) The regulations must include provision about the destruction of biometric information.

(5) In particular the regulations must require the prescribed authority to take all reasonable steps to ensure that biometric information is destroyed if the prescribed authority—

- (a) no longer thinks that it is necessary to retain the information for use as mentioned in subsection (2), or
- (b) 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 Bailiwick of Guernsey as a result of section 2(1)(b) of the Immigration Act 1971.

(6) The regulations must also—

(a) require that any requirement to destroy biometric information by virtue of the regulations also applies to copies of the information, and

(b) require the prescribed authority to take all reasonable steps to ensure—

- (i) that data held in electronic form which relates to biometric information which has to be destroyed by virtue of the regulations is destroyed or erased, or
- (ii) that access to such data is blocked.

(7) But a requirement to destroy biometric information or data is not to apply if and in so far as the information or data is retained in accordance with and for the purposes of another power.

(8) The regulations must include provision—

(a) entitling a person whose biometric information has to be destroyed by virtue of the regulations, on request, to a certificate issued by the prescribed authority to the effect that the prescribed authority has taken the steps required by virtue of subsection (6)(b); and

(b) requiring such a certificate to be issued within the period of 3 months beginning with the date on which the request for it is received by the prescribed authority.

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9 Penalty

- (1) The Committee may by notice require a person to pay a civil penalty for failing to comply with a requirement of regulations under section 5(1).
- (2) The notice must—
 - (a) specify the amount of the penalty,
 - (b) specify a date before which the penalty must be paid to the States of Guernsey,
 - (c) specify methods by which the penalty may be paid,
 - (d) explain the grounds on which the Committee thinks the person has failed to comply with a requirement of the regulations, and
 - (e) explain the effect of sections 10 to 12.
- (3) The amount specified under subsection (2)(a) may not exceed –
 - (a) £1,000, or
 - (b) any other amount that may be prescribed by order of the Lieutenant Governor to reflect a change in the value of money.
- (4) The date specified under subsection (2)(b) must be not less than 14 days after the date on which the notice is given.
- (5) A person who has been given a notice under subsection (1) for failing to comply with regulations may be given further notices in the case of continued failure; but a person may not be given a new notice—
 - (a) during the time available for objection or appeal against an earlier notice, or
 - (b) while an objection or appeal against an earlier notice has been instituted and is neither withdrawn nor determined.
- (6) For the avoidance of doubt, the Guernsey Statutory Instruments (Registration) Ordinance, 1949 applies to an order under subsection (3)(b).

10 Penalty: objection

- (1) A person (P) who is given a penalty notice under section 9(1) may by notice to the Committee object on the grounds—
 - (a) that P has not failed to comply with a requirement of regulations under section 5(1),
 - (b) that it is unreasonable to require P to pay a penalty, or
 - (c) that the amount of the penalty is excessive.
- (2) A notice of objection must—

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- (a) specify the grounds of objection and P's reasons,
 - (b) comply with any prescribed requirements as to form and content, and
 - (c) be given within the prescribed period.
- (3) The Committee shall consider a notice of objection and—
- (a) cancel the penalty notice,
 - (b) reduce the penalty by varying the penalty notice,
 - (c) increase the penalty by issuing a new penalty notice, or
 - (d) confirm the penalty notice.
- (4) The Committee shall act under subsection (3) and notify P—
- (a) in accordance with any prescribed requirements, and
 - (b) within the prescribed period or such longer period as the Committee and P may agree.

11 Penalty: appeal

- (1) A person (P) who is given a penalty notice under section 9(1) may appeal to the Court.
- (2) An appeal may be brought on the grounds—
- (a) that P has not failed to comply with a requirement of regulations under section 5(1),
 - (b) that it is unreasonable to require P to pay a penalty, or
 - (c) that the amount of the penalty is excessive.
- (3) The Court may—
- (a) cancel the penalty notice,
 - (b) reduce the penalty by varying the penalty notice,
 - (c) increase the penalty by varying the penalty notice (whether because the Court thinks the original amount insufficient or because the Court thinks that the appeal should not have been brought), or
 - (d) confirm the penalty notice.
- (4) An appeal may be brought—
- (a) whether or not P has given a notice of objection, and
 - (b) irrespective of the Committee's decision on any notice of objection.

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(5) The Court may consider matters of which the Committee was not and could not have been aware before giving the penalty notice.

(6) Rules of court may make provision about the timing of an appeal under this section, but in the absence of such rules, an appeal must be brought within 28 days of P being given the penalty notice under section 9(1).

(7) In this section, “the Court”, in relation to any appeal, means –

(a) if the appellant is ordinarily resident in Alderney, the Court of Alderney,

(b) if the appellant is ordinarily resident in Sark, the Court of the Seneschal, and

(c) in any other case, the Royal Court of Guernsey.

12 Penalty: enforcement

(1) Where a penalty has not been paid before the date specified in the penalty notice in accordance with section 9(2)(b), it may be recovered as a debt due to the Committee.

(2) Where a notice of objection is given in respect of a penalty notice, the Committee may not take steps to enforce the penalty notice before—

(a) deciding what to do in response to the notice of objection, and

(b) informing the objector.

(3) The Committee may not take steps to enforce a penalty notice while an appeal under section 11—

(a) could be brought (disregarding any possibility of an appeal out of time with permission), or

(b) has been brought and has not been determined or abandoned.

(4) In proceedings for the recovery of a penalty no question may be raised as to the matters specified in sections 10 or 11 as grounds for objection or appeal.

(5) Money received by the Committee in respect of a penalty must be paid into the general revenue account of the States of Guernsey.

13 Penalty: code of practice

(1) The Committee may issue a code of practice setting out the matters to be considered in determining—

(a) whether to give a penalty notice under section 9(1), and

(b) the amount of a penalty.

(2) The code may, in particular, require the Committee to consider any decision taken by virtue of section 7.

(3) A court shall, when considering an appeal under section 11, have regard to the code.

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(4) The Committee may revise and re-issue the code.

(5) Before issuing or re-issuing the code the Committee must—

(a) publish proposals, and

(b) consult members of the public.

[...]

(6) The code (or re-issued code) comes into force at the prescribed time.

14 Penalty: prescribed matters

(1) In sections 10 to 13, “prescribed” means prescribed by the Committee by regulations.

(2) Regulations under this Act—

(a) may be amended or repealed by subsequent regulations made under this Act,

(b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the Committee to be necessary or expedient, and

(c) must be laid before a meeting of the States of Deliberation as soon as possible and, if at that or the next meeting the States of Deliberation resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

(3) Any power conferred by this Act to make regulations may be exercised –

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;

(b) so as to make, as respects the cases in relation to which it is exercised-

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise);

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes;

(iii) any such provision either unconditionally or subject to any conditions specified in the regulations.

15 Interpretation

(1) For the purposes of this Act —

(a) “person subject to immigration control” means a person who under the Immigration Act 1971 (c 77) requires leave to enter or remain in the Bailiwick of Guernsey (whether or not such leave has been given),

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- (d) “document” includes a card or sticker and any other method of recording information (whether in writing or by the use of electronic or other technology or by a combination of methods),
- (e) “authorised person” has the meaning given by section 141(5) of the Immigration and Asylum Act 1999 (c. 33) (authority to take fingerprints),
- (ea) “the Committee” means the States of Guernsey Committee for Home Affairs,
- (eb) “prescribed authority” means the Committee, the Lieutenant Governor, any other person or any two or more of these persons, as prescribed by the regulations,
- (f) “immigration” includes asylum, and
- (g) regulations permitting something to be done by a prescribed authority may (but need not) permit it to be done only where a prescribed authority is of a specified opinion.
- (1A) For the purposes of this Act “biometric information” means—
- (a) information about a person’s external physical characteristics (including in particular fingerprints and features of the iris), and
- (b) any other information about a person’s physical characteristics prescribed by regulations made by the Committee.
- (1B) Regulations under subsection (1A)(b)—
- (a) may prescribe only information that can be obtained or recorded by an external examination of a person, and
- (b) must not prescribe information about a person’s DNA.
- [...]
- (2) An application for a biometric immigration document is an application in connection with immigration for the purposes of sections 67A, 67B, 67C and 68 of the Immigration Act 2014; and in the application of any of those sections to an application for a biometric immigration document, the prescribed consequences of non-compliance may include any of the consequences specified in section 7(2) above.

61 Citation

- (1) This Act may be cited as the UK Borders Act 2007.
- (2) A reference (in any enactment, including one passed or made before this Act) to “the Immigration Acts” is to –
- (a) the Immigration Act 1971 (c 77),
- (b) the Immigration Act 1988 (c 14),

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(d) the Asylum and Immigration Act 1996 (c 49),

(e) the Immigration and Asylum Act 1999 (c 33),

(f) the Nationality, Immigration and Asylum Act 2002 (c 41),

[...]

(h) the Immigration, Asylum and Nationality Act 2006 (c 13),

(i) this Act, and

(j) the Immigration Act 2014,

to the extent that those enactments are extended (with modifications, if any) to the Bailiwick of Guernsey.
