

*Draft Regulations laid before Parliament under section 41(8)(b) of the British Nationality Act 1981,
for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

2015 No.

BRITISH NATIONALITY

**The British Nationality (General)
(Amendment) Regulations 2015**

*Made - - - - - ***
Coming into force in accordance with regulation 1(1)*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 41(1)(bza), (1ZB), (1ZC), (1ZD) and (3) of the British Nationality Act 1981(1).

In accordance with section 41(8)(b) of that Act(2), a draft of these Regulations was laid before and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the British Nationality (General) (Amendment) Regulations 2015 and come into force at the end of the period of 21 days beginning with the day on which they are made.

(2) In these Regulations “the 2003 Regulations” means the British Nationality (General) Regulations 2003(3).

Amendment of the 2003 Regulations

2.—(1) The 2003 Regulations are amended as follows.

(2) In regulation 2(1) (interpretation), in the appropriate place insert—

““immigration rules” means rules made under section 3(2) of the Immigration Act 1971(4);”.

(3) After regulation 7 insert—

(1) 1981 c. 61; section 41(1)(bza) was inserted by section 10(2) of the Immigration Act 2014 (c. 22) and section 41(1ZB), (1ZC) and (1ZD) was inserted by section 10(3) of that Act.
(2) Section 41(8)(b) was inserted by section 41(5) of the Borders, Citizenship and Immigration Act 2009 (c. 11) and amended by section 10(4) of the Immigration Act 2014.
(3) S.I. 2003/548, amended by S.I. 2007/3137. There are other amending instruments but none is relevant.
(4) 1971 c. 77.

“PART IIA

Biometric Information and Citizenship

Provision of biometric information with citizenship applications

7A.—(1) Subject to regulation 7B, where an individual makes an application for registration or naturalisation as a British citizen, an authorised person may require the individual to provide biometric information.

(2) Where an authorised person requires an individual to provide biometric information in accordance with paragraph (1), the individual must provide it.

Applicants under the age of sixteen

7B.—(1) An applicant under the age of sixteen (“the child”) must not be required to provide biometric information in accordance with regulation 7A except where the authorised person is satisfied that the biometric information 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 authorised person or any officer of the Secretary of State;
- (b) any other person acting on behalf of an authorised person as part of a process specified under regulation 7C(1)(a) or (c).

(3) An authorised person shall not require an applicant under the age of sixteen to provide biometric information unless the decision to do so has been confirmed by a person designated for the purpose by the Secretary of State.

(4) This regulation does not apply if the authorised person reasonably believes that the applicant whose biometric information is to be taken is aged sixteen or over.

Process by which an individual’s biometric information may be obtained and recorded

7C.—(1) An authorised person who requires an individual to provide a record of the individual’s fingerprints or a photograph of the individual’s face under regulation 7A may do any one or more of the following—

- (a) require the individual to make an appointment before a specified date, which the individual must attend, to enable a record of the individual’s fingerprints or a photograph of the individual’s face to be taken by an authorised person or by a person acting on behalf of an authorised person;
- (b) specify the date, time and place for the appointment;
- (c) require the individual to attend premises before a specified date to enable a record of the individual’s fingerprints or a photograph of the individual’s face to be taken by an authorised person or by a person acting on behalf of an authorised person; and
- (d) specify any documents which the individual must bring to the appointment or premises, or action which the individual must take to confirm the individual’s identity.

(2) An authorised person may require a record of fingerprints or photograph to be of a particular specification.

(3) Where an authorised person requires an individual to submit to any requirement in accordance with paragraph (1), the individual must submit to it.

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

7D. Where an individual who is required to provide biometric information as part of an application for registration or naturalisation as a British citizen fails to comply with the process, or combination of processes, required by an authorised person in accordance with regulation 7C, the Secretary of State may treat the individual's application as invalid.

Use and retention of biometric information

7E.—(1) Biometric information provided in accordance with these Regulations 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;
- (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) in connection with the exercise of a function concerning the entitlement of a person who is not a national of an EEA state or Switzerland to enter or remain in the United Kingdom by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972⁽⁵⁾.

Destruction of biometric information

7F.—(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 7E(1); or
- (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 Immigration Act 1971.

(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.

(5) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51), and by section 3(3) of, and Part 1 of Schedule 1 to, the European Union (Amendment) Act 2008 (c. 7).

Retention of fingerprints

7G.—(1) Save where regulation 7F 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 ten years beginning with the date on which the fingerprints were provided.

(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 7E(1);
- (d) the fingerprints of a person with indefinite leave to enter or remain in the United Kingdom;
- (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 ten years beginning with the date of the lapse, revocation or cancellation (as the case may be); or
- (f) the fingerprints of a person who—
 - (i) is not a national of an EEA state or Switzerland; and
 - (ii) is the holder of a document which recognises the right of permanent residence in the United Kingdom by virtue of an enforceable EU right or any provision made under section 2(2) of the European Communities Act 1972,

in which case they must be destroyed by the Secretary of State at the end of ten years beginning with the date on which the holder ceased to enjoy the right of permanent residence.

(3) The Secretary of State is only required to take steps to destroy, pursuant to paragraph (2) (e) or (f), the fingerprints of a person whose leave has lapsed or who no longer enjoys the right of permanent residence on the application, supported by evidence to the satisfaction of the Secretary of State, of that person.

(4) In paragraphs (2)(f)(ii) and (3), “the right of permanent residence” has the same meaning as in Article 16 of Council [Directive 2004/38/EC](#)(6).

Destruction etc. of electronic data

7H.—(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).

(6) OJ No L 158, 30.04.2004, p77.

(3) A certificate issued under paragraph (2) must be issued within the period of 3 months beginning with the date on which the request for it is received by the Secretary of State.

Biometric information: retention under another power

71. The requirements in these Regulations 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.”.

Date

Name
Minister of State
Home Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the British Nationality (General) Regulations 2003 (“the 2003 Regulations”) to make provision for biometric information to be required with an application for registration or naturalisation as a British citizen.

Regulation 2 inserts a new Part IIA on biometric information and citizenship into the 2003 Regulations, comprising of new regulations 7A to 7I.

Inserted regulation 7A means that an applicant for registration or naturalisation as a British citizen must provide biometric information with this application when such information is required by an authorised person. This requirement is subject to inserted regulation 7B, which provides certain safeguards in respect of children under sixteen.

Section 10(3) of the Immigration Act 2014 inserts section 41(1ZA) into the British Nationality Act 1981. This section provides that “biometric information” and “authorised person” have the same meaning as in section 126 of the Nationality, Immigration and Asylum Act 2002 (as amended by section 12 of and Schedule 2 to the Immigration Act 2014).

Inserted regulation 7C sets out the various requirements that an authorised person may make of an individual regarding providing a record of the individual’s biometric information.

Inserted regulation 7D provides for the consequences of a failure to comply with a requirement of the Regulations.

Inserted regulations 7E to 7I make provision for the use, retention and destruction of biometric information provided under these Regulations. The other principal powers to retain biometric information referred to in new regulation 7I are currently, the Immigration (Biometric Registration) Regulations 2008(7), the British Nationality (General) Regulations 2003(8), section 143 of the Immigration and Asylum Act 1999(9) and section 127 of the Nationality, Immigration and Asylum Act 2002(10).

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

(7) S.I. 2008/3048, amended by S.I. 2009/819, S.I. 2012/594 and S.I. 2015/[].

(8) S.I. 2003/548, amended by S.I. 2007/3137 and S.I. 2015/[]. There are other amending instruments but none is relevant.

(9) 1999 c. 33.

(10) 2002 c. 41.