



UK Borders Act 2007

2007 CHAPTER 30

Biometric registration

5 Registration regulations

- (1) The Secretary of State 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;

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- (g) require a person who acquires a biometric immigration document, without the consent of the person to whom it relates or of the Secretary of State, to surrender it to the Secretary of State as soon as is reasonably practicable;
 - (h) permit the Secretary of State to require the surrender of a biometric immigration document in other specified circumstances;
 - (i) permit the Secretary of State 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 Secretary of State to cancel a biometric immigration document—
- (a) if the Secretary of State thinks that information provided in connection with the document was or has become false, misleading or incomplete,
 - (b) if the Secretary of State thinks that the document has been lost or stolen,
 - (c) if the Secretary of State thinks that the document (including any information recorded in it) has been altered, damaged or destroyed (whether deliberately or not),
 - (d) if the Secretary of State 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 Secretary of State thinks that a person has failed to surrender the document in accordance with subsection (2)(g) or (h),
 - (f) if the Secretary of State 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 Secretary of State thinks that the holder is to be given leave to enter or remain in the United Kingdom,
 - (h) if the Secretary of State thinks that the holder's leave to enter or remain in the United Kingdom is to be varied, cancelled or invalidated or to lapse,
 - (i) if the Secretary of State thinks that the holder has died,
 - (j) if the Secretary of State thinks that the holder has been removed from the United Kingdom (whether by deportation or otherwise),
 - (k) if the Secretary of State thinks that the holder has left the United Kingdom 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 Secretary of State 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 United Kingdom in accordance with a provision of rules under section 3 of the Immigration Act 1971 (c. 77) (immigration rules) 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.

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- (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 Secretary of State; 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 Secretary of State, instead of requiring the provision of information, to use or retain information which is (for whatever reason) already in the Secretary of State'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; and section 16 of the Identity Cards Act 2006 (c. 15) (prohibition of requirement to produce ID card) is subject to this subsection.
- (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) 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 Secretary of State.
- (10) Subsections (5) to (9) are without prejudice to the generality of section 50 of the Immigration, Asylum and Nationality Act 2006 (c. 13) (procedure).

Commencement Information

II S. 5 in force at 31.1.2008 by [S.I. 2008/99](#), [art. 2\(b\)](#)

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) may make provision by reference to compliance or non-compliance with regulations.

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- (5) Information in the Secretary of State'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.
- (6) Regulations—
- (a) may make provision having effect generally or only in specified cases or circumstances,
 - (b) may make different provision for different cases or circumstances,
 - (c) may include incidental, consequential or transitional provision,
 - (d) shall be made by statutory instrument, and
 - (e) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

Commencement Information

I2 S. 6 in force at 31.1.2008 by [S.I. 2008/99](#), [art. 2\(b\)](#)

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 United Kingdom;
 - (d) require the Secretary of State to consider giving a notice under section 9;
 - (e) provide for the consequence of a failure to be at the discretion of the Secretary of State.
- (3) The regulations may also permit the Secretary of State 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.

Commencement Information

I3 S. 7 in force at 31.1.2008 by [S.I. 2008/99](#), [art. 2\(b\)](#)

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8 Use and retention of information

- (1) Regulations under section 5(1) must make provision about the use and retention by the Secretary of State of biometric information provided in accordance with the regulations.
- (2) The regulations may include provision permitting the use of information—
 - (a) in connection with the exercise of a function by virtue of the Immigration Acts,
 - (b) in connection with control of the United Kingdom's borders,
 - (c) in connection with the exercise of a function in relation 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, and
 - (f) for such other purposes (whether in connection with functions under an enactment or otherwise) as the regulations may specify.
- (3) Regulations under section 5(1)—
 - (a) must include provision about the destruction of biometric information held by the Secretary of State having been obtained or recorded by virtue of the regulations,
 - (b) must, in particular, require the destruction of biometric information held by the Secretary of State if the Secretary of State thinks that it is no longer likely to be of use in accordance with provision made by virtue of subsection (1) above, and
 - (c) must, in particular, include provision similar to section 143(2) and (10) to (13) of the Immigration and Asylum Act 1999 (c. 33) (fingerprints: destruction of copies and electronic data).
- (4) But 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.

Commencement Information

I4 S. 8 in force at 31.1.2008 by S.I. 2008/99, art. 2(b)

VALID FROM 25/11/2008

9 Penalty

- (1) The Secretary of State may by notice require a person to pay a 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 Secretary of State,
 - (c) specify methods by which the penalty may be paid,
 - (d) explain the grounds on which the Secretary of State thinks the person has failed to comply with a requirement of the regulations, and
 - (e) explain the effect of sections 10 to 12.

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- (3) The amount specified under subsection (2)(a) may not exceed £1,000.
- (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) The Secretary of State may by order amend subsection (3) to reflect a change in the value of money.

10 Penalty: objection

- (1) A person (P) who is given a penalty notice under section 9(1) may by notice to the Secretary of State 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—
 - (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 Secretary of State 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 Secretary of State 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 Secretary of State and P may agree.

Commencement Information

I5 S. 10 in force at 31.1.2008 for specified purposes by [S.I. 2008/99](#), [art. 2\(c\)](#)

11 Penalty: appeal

- (1) A person (P) who is given a penalty notice under section 9(1) may appeal to—
 - (a) a county court, in England and Wales or Northern Ireland, or
 - (b) the sheriff, in Scotland.

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- (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 or sheriff 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 or sheriff thinks the original amount insufficient or because the court or sheriff 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 Secretary of State's decision on any notice of objection.
- (5) The court or sheriff may consider matters of which the Secretary of State 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.

Commencement Information

I6 S. 11 in force at 31.1.2008 for specified purposes by [S.I. 2008/99](#), [art. 2\(d\)](#)

VALID FROM 25/11/2008

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 Secretary of State.
- (2) Where a notice of objection is given in respect of a penalty notice, the Secretary of State 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 Secretary of State 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 and 11 as grounds for objection or appeal.

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(5) Money received by the Secretary of State in respect of a penalty shall be paid into the Consolidated Fund.

13 Penalty: code of practice

- (1) The Secretary of State shall 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 Secretary of State to consider any decision taken by virtue of section 7.
- (3) A court or the sheriff shall, when considering an appeal under section 11, have regard to the code.
- (4) The Secretary of State may revise and re-issue the code.
- (5) Before issuing or re-issuing the code the Secretary of State must—
 - (a) publish proposals,
 - (b) consult members of the public, and
 - (c) lay a draft before Parliament.
- (6) The code (or re-issued code) shall come into force at the prescribed time.

Commencement Information

I7 S. 13 in force at 31.1.2008 for specified purposes by [S.I. 2008/99](#), [art. 2\(e\)](#)

14 Penalty: prescribed matters

- (1) In sections 10 to 13 “prescribed” means prescribed by the Secretary of State by order.
- (2) An order under subsection (1) or under section 9(6)—
 - (a) may make provision generally or only for specified purposes,
 - (b) may make different provision for different purposes,
 - (c) shall be made by statutory instrument, and
 - (d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) But the first order under section 13(6) shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament (and shall not be subject to annulment).

Commencement Information

I8 S. 14 in force at 31.1.2008 by [S.I. 2008/99](#), [art. 2\(f\)](#)

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15 Interpretation

- (1) For the purposes of section 5—
- (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 United Kingdom (whether or not such leave has been given),
 - (b) “biometric information” means information about external physical characteristics,
 - (c) “external physical characteristics” includes, in particular—
 - (i) fingerprints, and
 - (ii) features of the iris or any other part of the eye,
 - (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),
 - (f) “immigration” includes asylum, and
 - (g) regulations permitting something to be done by the Secretary of State may (but need not) permit it to be done only where the Secretary of State is of a specified opinion.
- (2) An application for a biometric immigration document is an application in connection with immigration for the purposes of—
- (a) section 50(1) and (2) of the Immigration, Asylum and Nationality Act 2006 (c. 13) (procedure), and
 - (b) section 51 of that Act (fees);
- and in the application of either 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.

Commencement Information

19 S. 15 in force at 31.1.2008 by [S.I. 2008/99](#), [art. 2\(f\)](#)

Status:

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