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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made under section 126 of the Nationality, Immigration and Asylum Act 2002. Under regulation 3 an “authorised person” may require a person who makes an application for entry clearance or leave to enter (in certain circumstances) to provide a record of his fingerprints and a photograph of his face. An “authorised person” is defined under section 141(5) of the Immigration and Asylum Act 1999 and includes immigration officers and certain officers of the Secretary of State.

Under regulation 6, the authorised person may require the individual to submit to any process listed under paragraph (2) for his fingerprints or a photograph of his face to be taken. He may be required to attend a British Diplomatic mission or Consular post, a Diplomatic mission or Consular post of another State, or other premises nominated by an authorised person, for his fingerprints or photograph to be taken.

Where an individual makes an application for entry clearance, but does not comply with a requirement imposed by these Regulations his application may be treated as invalid (regulation 7(1)). Where an individual makes an application for leave to enter to which these Regulations apply, but does not comply with a requirement imposed by these Regulations, his application may be refused (regulation 7(2) and (3)).

Fingerprints or a photograph can only be taken from an applicant under the age of sixteen where the authorised person is satisfied this will be done in the presence of a responsible adult, and his decision has been confirmed by a person designated for the purpose by the Secretary of State.

An adult who takes responsibility for the applicant may not be an authorised person, an officer of the Secretary of State or any other person acting on behalf of the authorised person as part of a process specified under regulation 6(2). These provisions do not apply where it is reasonably believed that the applicant is aged sixteen or over (regulation 4(4)).

These Regulations also require that any record of fingerprints, photograph or a copy of fingerprints or a photograph held by the Secretary of State pursuant to these Regulations must be destroyed within ten years (regulation 8), or as soon as reasonably practicable if the person proves he is a British citizen or a Commonwealth citizen with a right of abode under section 2(1)(b) of the Immigration Act 1971 (regulation 9). Regulation 10(1) makes provision for electronic data which relate to any record of fingerprints or photograph to be destroyed or erased, or access to the data blocked. A person whose data are held by the Secretary of State is entitled, within three months of having made a written request, to a certificate issued by the Secretary of State to the effect that he has taken the steps required by regulation 10(1) (regulation 10(2) and (3)).

These Regulations revoke the Immigration (Provision of Physical Data) Regulations 2003 (the “2003 Regulations”) subject to transitional provisions (regulation 11). These Regulations differ from the 2003 Regulations which required any application for entry clearance from a country specified in the Regulations to be accompanied by a record of an applicant's fingerprints, where that applicant was aged five or over. The 2003 Regulations also required an application for leave to enter to be accompanied by a record of fingerprints where the applicant (aged five or over) presented a Convention travel document endorsed with an entry clearance, except where the applicant had already given their fingerprints when applying for the entry clearance.

**Changes to legislation:**

There are currently no known outstanding effects for the The Immigration (Provision of Physical Data) Regulations 2006.