



IMMIGRATION (PROVISION OF PHYSICAL DATA) REGULATIONS 2019

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Statutory Document No. 2019/0145

*Nationality, Immigration and Asylum Act 2002*

IMMIGRATION (PROVISION OF PHYSICAL DATA) REGULATIONS 2019

Laid before Tynwald: 9 April 2019
Coming into operation: 30 March 2019

The Cabinet Office makes the following Regulations under section 126(1) of the Nationality, Immigration and Asylum Act 2002 (an Act of Parliament)¹ as it has effect in the Isle of Man².

1 Title

These Regulations are the Immigration (Provision of Physical Data) Regulations 2019.

2 Commencement

These Regulations come into operation on 30 March 2019.

3 Interpretation

In these Regulations-

“**application**” means-

- (a) an application for entry clearance save for when the applicant is required to apply simultaneously for a biometric immigration document;
- (b) an application for leave to enter the Isle of Man where the person seeking leave to enter presents a Convention travel document endorsed with an entry clearance for that journey to the Isle of Man;
- (c) an application for a document issued as evidence that a person who is not a national of an EEA state or Switzerland is entitled to enter or remain in the Isle of Man by virtue of an enforceable EU

¹ 2002 c.41

² S.I. 2008/680 the relevant amending instrument is S.I. 2019/562

right or of any provision made under section 2B the European Community (Isle of Man) Act 1973³ (of Tynwald); or

- (d) an application for leave to enter or remain in the Isle of Man made under Appendix EU to the immigration rules.

“biometric information” means photographs or fingerprints provided under regulation 4.

“Convention travel document” means a travel document issued pursuant to Article 28 of the Refugee Convention, except where that travel document was issued by the United Kingdom Government;

“Governor” means the Lieutenant Governor of the Isle of Man;

“immigration rules” means rules made under section 3(2) of the Immigration Act 1971⁴;

“the Minister” means the Minister for the Cabinet Office⁵;

“Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.

4 Power for an authorised person to require an individual to provide a record of his fingerprints and a photograph of his face

- (1) Subject to regulations 5 and 6, an authorised person may require an individual who makes an application to provide a record of his fingerprints and a photograph of his face.

5 Provision in relation to applicants under the age of 16

- (1) An applicant under the age of 16 shall not be required to provide a record of his fingerprints or a photograph of his face except where the authorised person is satisfied that the fingerprints or the photograph will be taken in the presence of a person aged 18 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 officer of the Minister who is not an authorised person;
 - (b) an authorised person; or
 - (c) any other person acting on behalf of an authorised person as part of a process specified under regulation 7.

³ 1973 c. 14. Section 2B (previously section 2A, renumbered by section 1 of the European Communities (Amendment) Act 1991 (of Tynwald)) was inserted by section 3 of the European Communities (Amendment) Act 1988 (of Tynwald).

⁴ SI 2008/680

⁵ The Cabinet Office is a Department of the Isle of Man Government, and its Minister is also the Chief Minister of the Isle of Man.

- (3) An authorised person shall not require a person under the age of 16 to provide a record of his fingerprints or a photograph of his face unless his decision to do so has been confirmed by a person designated for the purpose by the Minister.
- (4) This regulation shall not apply if the authorised person reasonably believes that the applicant is aged 16 or over.

6 Provision in relation to section 141 of the Immigration and Asylum Act 1999

An applicant shall not be required to provide a record of his fingerprints or a photograph of his face under regulation 4 if he is a person to whom section 141 of the Immigration and Asylum Act 1999⁶ applies, during the relevant period within the meaning of that section.

7 Process by which an individual's fingerprints and photograph may be obtained and recorded

- (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 4 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.

8 Documents recording Biometric Information

Biometric information provided under these Regulations may be recorded on any document issued as a result of the application in relation to which the information was provided.

⁶ SI 2008/680

9 Consequences of failure to comply with these Regulations

- (1) Subject to paragraphs (2) and (3), where an individual does not provide a record of his fingerprints or a photograph of his face in accordance with a requirement imposed under these Regulations, his application may be treated as invalid.
- (2) An application shall not be treated as invalid under paragraph (1) if it is for leave to enter the Isle of Man where the person seeking leave to enter presents a Convention travel document endorsed with an entry clearance for that journey to the Isle of Man.
- (3) Where an application is of a type described in paragraph (2) and the applicant does not provide a record of his fingerprints or a photograph of his face in accordance with a requirement imposed under these Regulations, that application may be refused.

10 Use and retention of biometric information

- (1) Biometric information provided in accordance with these Regulations may be retained only if -
 - (a) the Minister thinks that it is necessary to retain it for use in connection with the exercise of a function by virtue of the Immigration Acts; or
 - (b) the Minister thinks that it is necessary to retain it for use in connection with 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 Governor or Minister 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 Isle of Man by virtue of an enforceable EU right or of any provision made or having effect under section 2B of the European Community (Isle of Man) Act 1973.

11 Destruction of biometric information

- (1) The Minister and Governor must take all reasonable steps to ensure that biometric information held by virtue of these Regulations, including any copies, is destroyed if-
 - (a) the Minister no longer thinks that it is necessary to retain the information for use as mentioned in regulation 9(1)(a); or
 - (b) subject to the exception in paragraph (2), the Governor 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 Isle of Man as a result of section 2(1)(b) of the Immigration Act 1971 (an Act of Parliament)⁷.
- (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 passport describing the person as a British citizen.

12 Retention of fingerprints

- (1) Save where regulation 10 applies and subject to paragraphs (2) and (3), the Minister must take all reasonable steps to ensure that any record of a person's fingerprints held by the Minister by virtue of these Regulations, including any copies, is destroyed at the end of the period of 10 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 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 Isle of Man's immigration laws;
 - (c) fingerprints that the Minister deems it necessary for national security reasons to retain for use in connection with one of the functions specified in regulation 10(1)
 - (d) the fingerprints of a person with indefinite leave to enter or remain in the Isle of Man;
 - (e) the fingerprints of a person whose indefinite leave to enter or remain in the Isle of Man lapses, is revoked or is cancelled, in which case they must be destroyed by the Minister at the end of 10 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

⁷ 1971 c. 77, applied to the Island by SI 2008/680

- (ii) is the holder of a document which recognises the right of permanent residence in the Isle of Man by virtue of an enforceable EU right or any provision made or having effect under section 2B of the European Community (Isle of Man) Act 1973.

in which case they must be destroyed by the Minister at the end of 10 years beginning with the date on which the holder ceased to enjoy the right of permanent residence.

- (3) The Minister 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 Minister, 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/EC⁸.

13 Destruction etc. of electronic data

- (1) The Minister 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 Minister to the effect that the Minister has taken the steps required by paragraph (1).
- (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 Minister.

14 Biometric information: retention under another power

- (1) 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.

15 Revocation and transitional provisions

- (1) Subject to paragraphs (2) and (3), the Immigration (Provision of Physical Data) Regulations 2008 are revoked⁹ (the “2008 Regulations”).

⁸ OJ No L 158, 30.04.2004, p77

⁹ SD 182/08

- (2) For the purposes of paragraph (3) only, “applications” means an application within the meaning of regulation 3 of the 2008 Regulations.
- (3) Where a person made an application before these Regulations came into force, the 2008 Regulations will continue to apply for the purposes of that application as if they had not been revoked.

MADE 26TH MARCH 2019

HOWARD QUAYLE
Minister for the Cabinet Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations allow for an authorised person (a constable, immigration officer or prison officer) to be able to take and record biometric information (in particular fingerprints and features of the iris) from any person who is seeking to enter the Isle of Man or who makes an application for entry clearance or leave to remain in the Isle of Man.

The maximum retention period for biometric information taken under these Regulations is 10 years from the date that it was collected. Fingerprints may be retained for longer than 10 years if they relate to a person who falls under any of the conditions specified in regulation 11(2).

The process by which this information should be taken is also specified in these Regulations, as well as the safeguards for taking information from any person who is under the age of 16.