



IMMIGRATION (COLLECTION, USE AND RETENTION OF BIOMETRIC INFORMATION) REGULATIONS 2022

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Statutory Document No. 2022/0317



Immigration and Asylum Act 1999
Nationality, Immigration and Asylum Act 2002
UK Borders Act 2007

IMMIGRATION (COLLECTION, USE AND RETENTION OF BIOMETRIC INFORMATION) REGULATIONS 2022¹

Laid before Tynwald: 21 February 2023
Coming into Operation: 7 March 2023

The Minister for the Cabinet Office, having consulted with the Lieutenant Governor as required by section 8 of the UK Borders Act 2007, makes the following Regulations under sections 144(1), 144A and 166(3) of the Immigration and Asylum Act 1999, section 126(1) of the Nationality, Immigration and Asylum Act 2002 and sections 5 and 8 of the UK Borders Act 2007.

1 Title

These Regulations are the Immigration (Collection, Use and Retention of Biometric Information) Regulations 2022.

2 Commencement

These Regulations come into operation 14 days after they are laid before Tynwald.

PART 1 – PRELIMINARY

3 Interpretation

In these Regulations, –

“**the 1971 Act**” means the Immigration Act 1971¹;

“**the 1999 Act**” means the Immigration and Asylum Act 1999²;

¹ 1971 c. 77. As extended to the Isle of Man by the Immigration (Isle of Man) Order 2008 (2008 No. 680).

² 1999 c. 33. As extended to the Isle of Man by the Immigration (Isle of Man) Order 2008 (2008 No. 680).

“protection claim” means a claim made by a person that removal of that person from the Isle of Man, —

- (a) would breach the United Kingdom’s obligations under the Refugee Convention; or
- (b) would breach the United Kingdom’s obligations in relation to persons eligible for a grant of humanitarian protection;

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

PART 2 – PROVISIONS RELATING TO THE USE, RETENTION AND DESTRUCTION OF BIOMETRIC INFORMATION FOR CERTAIN PERSONS WHO ARE SUBJECT TO IMMIGRATION CONTROL

4 Photographs

- (1) A photograph may be taken, by an authorised person, of a person to whom this regulation applies.
- (2) A photograph may be taken under this regulation only during the relevant period.
- (3) A photograph may not be taken under this regulation if a person under the age of 16 (“the child”) except in the presence of a person of full age who is, —
 - (a) the child’s parent or guardian; or
 - (b) the person who for the time being takes responsibility for the child.
- (4) The person mentioned in paragraph (3)(b) may not be, —
 - (a) an authorised person; or
 - (b) any other person who is an officer of the Cabinet Office.
- (5) In this regulation “authorised person” means, —
 - (a) a constable;
 - (b) an immigration officer;
 - (c) a prison officer; or
 - (d) an officer of the Cabinet Office authorised for this purpose.
- (6) This regulation applies to, —
 - (a) any person (“A”) who, on arrival in the Isle of Man, is required by an immigration officer to produce a valid passport with photograph or some other document satisfactorily establishing A’s identity and nationality or citizenship and fails to do so;

- (b) any person (“B”) who is liable to detention, but has been temporarily admitted to the Isle of Man or has been granted bail, under paragraph 21 or 29 of Schedule 2 to the 1971 Act;
 - (c) any person (“C”) in respect of whom the Minister has decided to make a deportation order;
 - (d) any person (“D”) who requires leave to enter or remain in the Isle of Man, but does not have it;
 - (e) any person (“E”) who has been detained under paragraph 16 of Schedule 2 to the 1971 Act or arrested under paragraph 17 of that Schedule;
 - (f) any person (“F”) who has made a protection claim; and
 - (g) any person (“G”) who is, —
 - (i) a member of the family of a person within any of sub-paragraphs (a), (b) or (d) to (f); or
 - (ii) a dependant of a person within sub-paragraph (c).
- (7) For the purposes of paragraph 6(g)(i), a person is a member of the family of another person (“P”) if, —
- (a) the person is, —
 - (i) P’s partner’
 - (ii) P’s child, or a child living in the same household as P in circumstances where P has care of the child;
 - (iii) in a case where P is a child, P’s parent; or
 - (iv) an adult dependant relative of P; and
 - (b) the person does not have a right of abode in the Isle of Man or indefinite leave to enter or remain in the Isle of Man, and is not an Irish citizen who does not require leave to enter or remain in the Isle of Man (see section 3ZA of the 1971 Act).
- (8) For the purposes of paragraph (6)(g)(ii), a person is a dependant of another person (“P”) if, —
- (a) the person is P’s partner or child; and
 - (b) the person does not have a right of abode in the Isle of Man or indefinite leave to enter or remain in the Isle of Man, and is not an Irish citizen who does not require leave to enter or remain in the Isle of Man (see section 3ZA of the 1971 Act).
- (9) In paragraphs (7) and (8) “child” means a person who is under the age of 18.
- (10) “The relevant period” begins, —
- (a) for A, on A’s failure to produce the passport or other document;
 - (b) for B, on the decision to grant B temporary admission or bail;

- (c) for C, when C is notified of the decision mentioned in paragraph (6)(c);
 - (d) for D, when D becomes a person to whom this regulation applies;
 - (e) for E, on E's detention or arrest;
 - (f) for F, on the making of F's protection claim; and
 - (g) for G, at the same time as for the person of whose family G is a member or whose dependant G is.
- (11) "The relevant period" ends, —
- (a) on the earliest of the following, —
 - (i) the grant of leave to enter or remain in the Isle of Man;
 - (ii) for A, B, C, D or E, the person's removal or deportation from the Isle of Man;
 - (iii) for C, —
 - (aa) the time when the decision mentioned in paragraph (6)(c) ceases to have effect, whether as the result of an appeal or otherwise; or
 - (bb) if a deportation order has been made against C, its revocation or its otherwise ceasing to have effect;
 - (iv) for D, when D no longer requires leave to enter or remain in the Isle of Man;
 - (v) for E, E's release if E is no longer liable to be detained under paragraph 16 of Schedule 2 to the 1971 Act;
 - (vi) for F, the final determination or abandonment of F's protection claim.
 - (b) for G, at the same time as for the person of whose family G is a member or whose dependant G is.
- (12) No photograph may be taken of A if the immigration officer considers that A has a reasonable excuse for the failure concerned.
- (13) No photograph may be taken of B unless the decision to take it has been confirmed by a chief immigration officer.
- (14) Where a person under the age of 16 ("the child") is in the presence of a person referred to in paragraph (3)(a) or (b), an authorised person may not take a photograph of the child unless the decision to take it has been confirmed, —
- (a) if the authorised person is a constable, by a person designated for the purpose by the chief constable of the Isle of Man Constabulary;
 - (b) if the authorised person is a person mentioned in paragraph (5)(b) or (e), by a chief immigration officer;
 - (c) if the authorised person is a prison officer, by a person designated for the purpose by the governor of the prison; or

- (d) if the authorised person is an officer of the Cabinet Office, by a person designated for the purpose by the Minister.
- (15) Neither paragraph (3) nor paragraph (14) prevents an authorised person from taking a photograph if the authorised person reasonably believes that the person of whom it is to be taken is aged 16 or over.

5 Attendance to be photographed

- (1) The Minister may, by notice in writing, require a person to whom regulation 4 applies to attend at a specified place for the person to be photographed.
- (2) In the case of a notice given to a person of a kind specified in regulation 4(6)(a) to (e) or (g) (in so far as it applies to a member of the family of, or a dependant of, a person of a kind specified in regulation 6(6)(a) to (e)), the notice, —
 - (a) must require the person to attend during a specified period of at least 7 days beginning with a day not less than 7 days after the date given in the notice as its date of issue; and
 - (b) may require the person to attend at a specified time of day or during specified hours.
- (3) In the case of a notice given to a person of a kind specified in regulation 4(6)(f) or (g) (in so far as it applies to a member of the family of a person of a kind specified in regulation 4(6)(f)), the notice, —
 - (a) may require the person to attend during a specified period beginning with a day not less than 3 days after the date given in the notice as its date of issue;
 - (b) may require the person to attend on a specified day not less than 3 days after the date given in the notice as its date of issue; and
 - (c) may require the person to attend at a specified time of day or during specified hours.
- (4) A requirement imposed under paragraph (1) ceases to have effect at the end of the relevant period (as defined by regulation 4).

6 Use and retention of biometric information

- (1) Biometric information to which paragraph (3) applies may be retained only if 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.
- (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 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; and
 - (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.
- (3) This paragraph applies to biometric information provided in accordance with, —
- (a) these Regulations; and
 - (b) section 141 of the 1999 Act.

7 Use and retention of existing biometric data

- (1) Paragraph (2) applies where, —
- (a) a person's photograph may be taken by virtue of regulation 4; and
 - (b) the Minister already has a photograph of that person in the Minister's possession (for whatever reason).
- (2) Where this paragraph applies, the Minister may use or retain the photograph for the purposes of these Regulations.
- (3) Paragraph (4) applies where, —
- (a) a person's fingerprints may be taken by virtue of section 141 of the 1999 Act; and
 - (b) the Minister already has a record of the fingerprints of that person in the Minister's possession ((for whatever reason).
- (4) Where this paragraph applies, the Minister may use or retain the record of the fingerprints for the purposes of the 1999 Act or of these Regulations.

8 Destruction of biometric information

The Minister must take all reasonable steps to ensure that biometric information held by the Minister by virtue of these Regulations, including any copies, is destroyed if the Minister, —

- (a) no longer thinks that it is necessary to retain the information for use as mentioned in regulation 6(1);
- (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 Isle of Man as a result of section 2(1)(b) of the 1971 Act; or
- (c) is satisfied that, —
 - (i) the biometric information was taken from a person by virtue of section 141(7)(f) of the 1999 Act or by virtue of

- regulation 4(6)(g), as a family member or dependant of a person (“P”); and
- (ii) the biometric information taken from P has been destroyed.

9 Retention of fingerprints

- (1) Save where regulation 8 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 15 years beginning with, —
 - (a) the date on which the fingerprints were provided; or
 - (b) the date on which they are reused in connection with a relevant application made by the person,whichever is the later.
- (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 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 4(1);
 - (d) the fingerprints of a person with indefinite leave to enter or remain in the Isle of Man; or
 - (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 15 years beginning with the date of the lapse, revocation or cancellation (as the case may be).
- (3) The Minister is only required to take steps to destroy, pursuant to paragraph 2(e), the fingerprints of a person whose leave has lapsed on the application, supported by evidence to the satisfaction of the Minister, of that person.
- (4) A relevant application for the purposes of paragraph (1) is an application for, —
 - (a) entry clearance;
 - (b) leave to enter; or
 - (c) leave to remain.

10 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.

11 Biometric information: retention under another power

The requirements in this Part 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.

PART 3, — AMENDMENTS TO RELATED SECONDARY LEGISLATION**12 Amendments to related secondary legislation**

The Schedule (which makes amendments to related secondary legislation) has effect.

MADE 20 DECEMBER 2022

SCHEDULE

Regulation 12

AMENDMENTS TO RELATED SECONDARY LEGISLATION

Amendment of the Immigration (Provision of Physical Data) Regulations 2019

(1) The Immigration (Provision of Physical Data) Regulations 2019 are amended as follows.

(2) After regulation 10, insert, —

“10A Power to use and retain existing biometric information

(1) This regulation applies where, —

- (a) a person makes an application; and
- (b) the Minister already has a record of the person’s fingerprints or photograph of the person’s face in their possession (for whatever reason).

(2) Where this regulation applies, the Minister may use or retain that information for the purposes of these Regulations.”.

(3) In regulation 12, —

(a) in paragraph (1)—

- (i) for “10 years” substitute “15 years”; and
- (ii) for the words from “the date” to the end substitute, —

“ —

- (a) the date on which the fingerprints were provided; or
- (b) the date on which they are reused in connection with an application made by the person which comes within paragraph (5), whichever is the later.”; and

(b) at the end insert, —

“(5) An application comes within this paragraph if it is an application for, —

- (a) entry clearance;
- (b) leave to enter; or
- (c) leave to remain.”.

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.