

GUERNSEY STATUTORY INSTRUMENT

2024 No. 65

**The Immigration (Provision of Physical Data)
Regulations, 2024**

<i>Made</i>	<i>6th August, 2024</i>
<i>Coming into operation</i>	<i>7th August, 2024</i>
<i>Laid before the States</i>	<i>, 2024</i>

THE COMMITTEE FOR HOME AFFAIRS, in exercise of the powers conferred on it by section 126 of the Nationality, Immigration and Asylum Act 2002^a, as extended to the Bailiwick by the Immigration (Guernsey) Order 2020^b, and all other powers enabling it in that behalf, makes the following Regulations:-

Power of an authorised person to require individual to provide fingerprints and facial photograph.

1. Subject to regulations 2 and 3, an authorised person may require an individual who makes an application to provide a record of the individual's fingerprints and a photograph of the individual's face.

^a An Act of Parliament, 2002 c. 41. This enactment has been amended.

^b UK S.I. No. 1560 of 2020, registered on the records of the Island of Guernsey on the 18th December, 2020.

Provision in relation to applicants under the age of 16 years.

2. (1) An authorised person must not require an applicant younger than 16 years old ("**the child**") to provide a record of the child's fingerprints or a photograph of the child's face unless the conditions in paragraphs (2) and (3) are satisfied.

(2) Subject to paragraph (4), the condition in this paragraph is satisfied if the authorised person is satisfied that the fingerprints or the photograph will be taken in the presence of a person who is 18 years of age or older who is -

- (a) the child's parent or guardian, or
- (b) a person who for the time being takes responsibility for the child.

(3) The condition in this paragraph is satisfied if the authorised person's decision to require the provision of the record of the child's fingerprints or photograph of the child's face is confirmed by a person designated for this purpose by a relevant authority.

(4) The person mentioned in paragraph (2)(b) must not be -

- (a) an authorised person, or
- (b) any other person acting on behalf of an authorised person as part of a process specified under regulation 4.

(5) This regulation does not apply if the authorised person reasonably believes that the applicant is 16 years of age or older.

Exceptions in relation to section 141 of the Immigration and Asylum Act 1999.

3. An applicant must not be required to provide a record of the applicant's fingerprints or a photograph of the applicant's face under regulation 1 if the applicant is a person to whom section 141 of the Immigration and Asylum Act 1999^c as extended to the Bailiwick applies, during the relevant period within the meaning of that section.

Requirements for providing fingerprints or photographs.

4. (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 1 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

^c An Act of Parliament, 1999 c. 33. Extended to the Bailiwick and modified by various UK statutory instruments.

- (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.

Consequences of failure to provide fingerprints or photographs.

5. (1) Subject to paragraph (2), where an individual does not provide a record of the individual's fingerprints or a photograph of the individual's face in accordance with a requirement imposed under regulation 1 or 4, the individual's application may be treated as invalid.

(2) A Convention application –

- (a) must not be treated as invalid under paragraph (1), but
- (b) may be refused.

(3) In paragraph (2), "**a Convention application**" means an application for leave to enter the Bailiwick where the person seeking leave to enter presents a Convention travel document endorsed with an entry clearance for that journey to the Bailiwick.

Recording of biometric information.

6. Biometric information provided under regulation 1 or 4 may be recorded on any document issued as a result of the application in relation to which the information was provided.

Use and retention of biometric information.

7. (1) A relevant authority may retain biometric information provided in accordance with regulation 1 or 4 only if the relevant authority thinks that it is necessary to retain it for use in connection with -

- (a) the exercise of a function under the Immigration Acts,
or
- (b) the exercise of a function in relation to nationality.

(2) Biometric information retained under 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 relevant authority 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, or
- (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.

Use and retention of existing biometric information.

8. (1) This regulation applies where -

- (a) an individual makes an application, and

- (b) a relevant authority already has a record of the individual's fingerprints or a photograph of the individual's face in the possession of the relevant authority (for whatever reason).

(2) Where this regulation applies, the relevant authority may use or retain that information for the purposes of and in accordance with these Regulations.

Requirement to destroy biometric information when no longer needed.

9. (1) A relevant authority must take all reasonable steps to ensure that biometric information held by the relevant authority under these Regulations, including any copies, is destroyed if the relevant authority -

- (a) no longer thinks that it is necessary to retain the information for use as mentioned in regulation 7(1), or
- (b) subject to the exception in paragraph (2), is satisfied that the person to whom the information relates is -
 - (i) a British citizen, or
 - (ii) a Commonwealth citizen who has a right of abode in the United Kingdom or the Bailiwick as a result of section 2(1)(b) of the Immigration Act 1971^d, as it has effect in the United Kingdom or as extended to the Bailiwick.

^d An Act of Parliament, 1971 c. 77; extended to the Bailiwick by the Immigration (Guernsey) Order 1993 (No. 1796).

(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.

Requirement to destroy fingerprints at the end of 15 years.

10. (1) Unless the record is destroyed earlier in accordance with regulation 9, and subject to paragraphs (2) and (3), a relevant authority must take all reasonable steps to ensure that any record of a person's fingerprints held by the relevant authority under these Regulations, including any copies, is destroyed at the end of the period of 15 years beginning with the later of -

- (a) the date on which the fingerprints were provided, or
- (b) the date on which they are last reused in connection with a relevant application made by the person.

(2) However, fingerprints may be held beyond that period if they are -

- (a) the fingerprints of an individual who is, or at any time has been, subject to a deportation order, exclusion order or decision to exclude, issued or made under any of the Immigration Acts,
- (b) the fingerprints of an individual 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 any of the Immigration Acts extended to the Bailiwick,

- (c) fingerprints that the relevant authority deems it necessary for national security reasons to retain for use in connection with one of the functions specified in regulation 7(1),
- (d) the fingerprints of an individual with indefinite leave to enter or remain in the Bailiwick, or
- (e) the fingerprints of an individual whose indefinite leave to enter or remain in the Bailiwick lapses, is revoked or is cancelled, in which case they must be destroyed by the relevant authority at the end of ten years beginning with the date of the lapse, revocation or cancellation (as the case may be).

(3) A relevant authority is only required to take steps to destroy, under paragraph (2)(e), the fingerprints of a person whose leave has lapsed on the application, supported by evidence to the satisfaction of the relevant authority, of that person.

(4) In this regulation –

"immigration rules" means rules made under section 3(2) of the Immigration Act 1971 as extended to the Bailiwick, and

"relevant application" means an application -

- (a) for entry clearance for entry into the United Kingdom or the Bailiwick,

- (b) for leave to enter or remain in the United Kingdom or the Bailiwick, or
- (c) for registration or naturalisation as a British citizen.

Further provisions relating to electronic data and certification.

11. (1) Where a relevant authority holds data in electronic form which relates to biometric information which has to be destroyed under these Regulations, the relevant authority must take all reasonable steps to ensure that -

- (a) the data is destroyed or erased, or
- (b) that access to such data is blocked.

(2) A person whose biometric information has to be destroyed under these Regulations is entitled, on written request, to a certificate issued by the relevant authority to the effect that the relevant authority has taken the steps required by paragraph (1).

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

Exceptions to requirement to destroy information.

12. 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 conferred by any other enactment in force in the United Kingdom or the Bailiwick.

Interpretation.

13. In these Regulations, unless the context requires otherwise -

"**application**", in relation to an individual, means -

- (a) an application by the individual for entry clearance, except where that individual is required to apply simultaneously for a biometric immigration document, or
- (b) an application by the individual for leave to enter the Bailiwick where that individual presents a Convention travel document endorsed with an entry clearance for the journey to the Bailiwick.

"**applicant**" means an individual making an application,

"**authorised person**" has the meaning given by section 141(5) of the Immigration and Asylum Act 1999 as extended to the Bailiwick,

"**biometric information**" means photographs or fingerprints provided under regulation 1,

"**the Committee**" means the States of Guernsey Committee for Home Affairs,

"**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,

"Immigration Acts" means the enactments referred to as the Immigration Acts under -

- (a) section 61(2) of the UK Borders Act 2007 as it has effect in the United Kingdom, or
- (b) section 61(2) of the UK Borders Act 2007 as extended to the Bailiwick,

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

"relevant authority" means -

- (a) the Secretary of State,
- (b) the Lieutenant Governor, or
- (c) the Committee, and

"Secretary of State" has the meaning given by Schedule 1 to the Interpretation Act 1978^e.

Citation.

14. These Regulations may be cited as the Immigration (Provision of Physical Data) Regulations, 2024.

^e An Act of Parliament, 1978 c. 30; this enactment has been amended.

Commencement

15. These Regulations shall come into force on the 7th August, 2024.

Dated this 6th day of August, 2024

A handwritten signature in black ink, consisting of a circular scribble followed by a long diagonal stroke extending upwards and to the right.

Deputy Robert Prow
President of the Committee for Home Affairs
For and on behalf of the Committee

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, as extended to the Bailiwick.

Under regulation 1, 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 the applicant's fingerprints and a photograph of the applicant's face. An "authorised person" is defined in section 141(5) of the Immigration and Asylum Act 1999, as extended to the Bailiwick, and includes immigration officers of both the UK and the Bailiwick, officers authorised by the Secretary of State or the Committee for Home Affairs, and a range of other officers that may be requested to verify the identity of an applicant for the purposes of the application.

Under regulation 4, the authorised person may require the applicant to submit to any process listed under paragraph (1) for the applicant's fingerprints or a photograph of the applicant's face to be taken. For example, the applicant 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 the applicant's fingerprints or photograph to be taken.

Where an individual makes an application for entry clearance or leave to enter, but does not comply with a requirement imposed by these Regulations, the application may be treated as invalid (regulation 5(1)). Where an individual makes an application for leave to enter with a Refugee Convention travel document, but does not comply with a requirement imposed by these Regulations, the individual's application may be refused (regulations 5(2) and (3)).

Fingerprints or a photograph can only be taken from an applicant under the age of 16 years where the authorised person is satisfied this will be done in the presence of a responsible adult, and the decision has been confirmed by a person designated for the purpose by a "relevant authority" (the Secretary of State, the Committee for Home Affairs or the Lieutenant Governor). An adult who takes responsibility for the applicant may not be an authorised person or any other person acting on behalf of an authorised person as part of a process specified under regulation 4. These provisions do not apply where it is reasonably believed that the applicant is aged 16 years or over (regulation 2(5)).

These Regulations also require that any record of fingerprints, photograph or a copy of fingerprints or a photograph held by a relevant authority pursuant to these Regulations is destroyed when it is no longer necessary to retain the information for use in accordance with regulation 7, 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). In any case, regulation 10 requires records of fingerprints to be destroyed at the end of 15 years, subject to a few exceptions. A person whose biometric data is held in electronic form by a relevant authority is entitled, within three months of having made a written request, to a certificate issued by the relevant authority to the effect that the authority has taken steps to destroy or block access to that data.

These Regulations will come into force on the 7th August, 2024.