



Statutory Document No. 182/08

NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

IMMIGRATION (PROVISION OF PHYSICAL DATA) REGULATIONS 2008

Laid before Tynwald

15th April 2008

Coming into operation

1st May 2008

In exercise of the powers conferred on the Governor by 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, the following Regulations are hereby made:—

1. Citation and commencement

These Regulations may be cited as the Immigration (Provision of Physical Data) Regulations 2008 and shall come into operation on the 1st May 2008.

2. Interpretation

(1) In these Regulations —

"application" means —

- (a) an application for entry clearance; or
- (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;

"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;

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

(2) In these Regulations any reference to an Act of Parliament, or a provision of an Act of Parliament, which extends to the Isle of Man is a reference to that Act or provision as it has effect in the Isle of Man.

¹ 2002 c.41

² SI 2008/680

Price £0.85

3. Power for authorised person to require record of fingerprints and photograph

Subject to regulations 4 and 5, an authorised person may require an individual who makes an application to provide a record of his fingerprints and a photograph of his face.

4. Applicants under 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 authorised person; or
 - (b) any other person acting on behalf of an authorised person as part of a process specified under regulation 6.

(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 Governor.

(4) This regulation shall not apply if the authorised person reasonably believes that the applicant is aged 16 or over.

5. Persons to whom s.141 of 1999 Act applies

An applicant shall not be required to provide a record of his fingerprints or a photograph of his face under regulation 3 if he is a person to whom section 141 (fingerprinting) of the Immigration and Asylum Act 1999 (an Act of Parliament)³ applies, during the relevant period within the meaning of that section.

6. Process by which fingerprints and photograph may be obtained and recorded

An authorised person who requires an individual to provide a record of his fingerprints or a photograph of his face under regulation 3 may require that individual to submit to a process by which that individual —

- (a) attends a British Diplomatic mission or British Consular post where a record of his fingerprints or a photograph of his face is taken;
- (b) attends a Diplomatic mission or Consular post of another State where a record of his fingerprints or a photograph of his face is taken by an official of that State on behalf of an authorised person; or
- (c) attends other premises nominated by an authorised person where a record of his fingerprints or a photograph of his face is taken by a person on behalf of an authorised person.

³ 1999 c.33

7. Consequences of failure to comply

(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.

8. Destruction of information

Subject to regulation 9, any record of fingerprints, photograph, copy of fingerprints or copy of a photograph held by the Governor pursuant to these Regulations must be destroyed by the Governor at the end of 10 years beginning with the date on which the original record or photograph was provided.

9. Destruction of information: supplemental

If an applicant proves that he is—

- (a) a British citizen; or
- (b) 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)⁴;

any record of fingerprints, photograph, copy of fingerprints or copy of a photograph held by the Governor pursuant to these Regulations must be destroyed as soon as reasonably practicable.

10. Destruction of electronic data

(1) The Governor must take all reasonably practicable steps to secure —

- (a) that data held in electronic form which relate to any record of fingerprints or photograph which have to be destroyed in accordance with regulation 8 or 9 are destroyed or erased; or
- (b) that access to such data is blocked.

(2) The applicant to whom the data relates is entitled, on written request, to a certificate issued by the Governor to the effect that he has taken the steps required by paragraph (1).

(3) A certificate issued under paragraph (2) must be issued within 3 months of the date on which the request was received by the Governor.

⁴ 1971 c.77

MADE 19th March 2008



Lieutenant Governor

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations enable an immigration officer, police constable or prison officer to 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. They also specify the procedure for providing such a record or photograph, provide for an application to be invalid if it is not provided, and require it to be destroyed in certain circumstances.