Draft Regulations laid before Parliament under section 6(6)(e) of the UK Borders Act 2007, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No.

IMMIGRATION

The Immigration (Biometric Registration) (Amendment) Regulations 2009

Made - - - -	***
Coming into force - -	***

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 5 and 6(6) of the UK Borders Act 2007(**a**).

In accordance with section 6(6)(e) of that Act, a draft of this instrument was laid before and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Immigration (Biometric Registration) (Amendment) Regulations 2009 and shall come into force on the day after the day on which they are made.

(2) In these Regulations—

"the 2008 Regulations" means the Immigration (Biometric Registration) Regulations 2008(**b**).

Amendments to the Immigration (Biometric Registration) Regulations 2008

2. The 2008 Regulations shall be amended as follows.

3. For regulation 3 of the 2008 Regulations (Requirement to apply for a biometric immigration document) substitute—

"Requirement to apply for a biometric immigration document

3.—(1) A person subject to immigration control must apply for the issue of a biometric immigration document where he satisfies—

(a) one of the conditions in paragraph (2); and

(b) the condition in paragraph (3).

(2) The conditions are that the person makes an application—

(a) for limited leave to remain under one of the categories of the immigration rules specified in regulation 4;

(**a**) 2007 c.30.
(**b**) S.I. 2008/3048.

(b) for limited leave to remain as a dependant of a person who is applying for limited leave to remain under one of those categories; or

(c) whilst in the United Kingdom to replace his passport or other document in which there was a stamp, sticker or other attachment which indicated that he had been granted limited leave to enter, or remain in, the United Kingdom.

(3) The condition is that the person makes the application under paragraph (2) on the form specified for that purpose in accordance with the immigration rules.".

4. For regulation 4 of the 2008 Regulations (Specified categories) substitute—

"**Specified categories**

4. The specified categories under the immigration rules are—

(a) as a Tier 4 (General) Student;

(b) as a Tier 4 (Child) Student;

(c) as a postgraduate doctor or dentist;

(d) as an Academic Visitor granted leave in the United Kingdom for a period exceeding 6 months;

(e) as the spouse or civil partner of a person present and settled in the United Kingdom;

(f) as the unmarried or same-sex partner of a person present and settled in the United Kingdom;

(g) as a visitor for private medical treatment;

(h) as a domestic worker in a private household;

(i) on the grounds of United Kingdom ancestry;

(j) as a retired person of independent means;

(k) as the spouse or civil partner of a person with limited leave to enter or remain in the United Kingdom as a retired person of independent means;

(l) as the child of a person with limited leave to enter or remain in the United Kingdom as a retired person of independent means; or

(m) as a sole representative.".

5. Subject to regulation 9, in regulation 13(4)(b) and (c) of the 2008 Regulations (Issue of a biometric immigration document) for "eighteen" substitute "sixteen".

6. In regulation 16(1) of the 2008 Regulations (Surrender of a biometric immigration document)—

(a) in sub-paragraph (g) omit "or"; and

(b) after sub-paragraph (h) insert—

"(i) the holder has failed to produce a valid passport or travel document when required to do so by an immigration officer; or

(j) the holder has proved that he is a British citizen or a Commonwealth citizen who has a right of abode in the United Kingdom as a result of section 2(1)(b) of the Immigration Act 1971 (statement of right of abode in the United Kingdom)(**a**).".

7. In regulation 17 of the 2008 Regulations (Cancellation of a biometric immigration document)—

(a) in paragraph (e) for "16(a) to (f) or (h)" substitute "16(a) to (f), (h), (i) or (j);";

(b) in paragraph (g) omit "or"; and

(**a**) Section 2(1)(b) was substituted by section 39(2) of the British Nationality Act 1981 (c.61).

(c) after paragraph (h) insert—

"or

(i) the holder has proved that he is a British citizen or a Commonwealth citizen who has a right of abode in the United Kingdom as a result of section 2(1)(b) of the Immigration Act 1971 (statement of right of abode in the United Kingdom).".

8. In regulation 19(1)(a) of the 2008 Regulations (Requirement to apply for a replacement biometric immigration document) after "under" insert "paragraphs (a) to (g) of".

Savings

9. The amendment made by regulation 5 to regulation 13(4)(b) and (c) of the 2008 Regulations (Issue of a biometric immigration document) does not affect a biometric immigration document issued prior to the coming into force of these Regulations.

Home Office
Date

Name
Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Immigration (Biometric Registration) Regulations 2008 S.I 2008/3048, ("the 2008 Regulations") so as to extend the categories of persons who are required to apply for a biometric immigration document and make certain other necessary changes for the effective operation of the scheme.

Regulation 3 substitutes in its entirety regulation 3 of the 2008 Regulations to extend the requirement to apply for a biometric immigration document to those individuals who are subject to immigration control and who opt or are required to update or replace their passport or travel document containing a stamp, sticker or other attachment which evidences that they have been granted limited leave to enter, or remain in, the United Kingdom.

Regulation 4 substitutes in its entirety regulation 4 of the 2008 Regulations to extend the categories of limited leave to which the 2008 Regulations apply and to reflect changes made to the immigration rules.

Regulation 5 amends regulation 13 of the 2008 Regulations to lower the age which determines the date on which a biometric immigration document ceases to have effect. In the case of a biometric immigration document which was issued to a person aged sixteen or over, it will cease to have effect after the expiry of ten years beginning with the date of issue. In the case of a person aged under sixteen, it will cease to have effect after the expiry of five years beginning with the date of issue.

Regulation 6 amends regulation 16 of the 2008 Regulations to include a further two instances when the Secretary of State may require a holder of a biometric immigration document to surrender it. The first of these is where the holder has failed to produce a valid passport or travel document when required to do so by an immigration officer. Secondly where an individual demonstrates he is a British citizen or a Commonwealth citizen who has a right of abode in the United Kingdom as a result of section 2(1)(b) of the Immigration Act 1971.

Regulation 7 amends regulation 17 of the 2008 Regulations to enable the Secretary of State to cancel a biometric immigration document in circumstances where an individual has proved he is a

British citizen or a Commonwealth citizen who has a right of abode in the United Kingdom as a result of section 2(1)(b) of the Immigration Act 1971.

Regulation 8 amends regulation 19 of the 2008 Regulations to reflect the amendments made to Regulation 17. A person who has proved he has British or Commonwealth citizenship need not apply for a replacement biometric immigration document.

Regulation 9 saves the provisions of regulation 13(4)(b) and (c) as originally enacted in relation to biometric identity documents issued before these Regulations come into force.

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