**EXPLANATORY MEMORANDUM TO**

**THE IMMIGRATION (PROVISION OF PHYSICAL DATA) (AMENDMENT) REGULATIONS 2005**

**2005 No. 3127**

**1.** This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

## 2. Description

2.1 These Regulations amend the Immigration (Provision of Physical Data) Regulations 2003 ("the 2003 Regulations") by adding the Democratic Republic of Congo, the Netherlands and Vietnam to the list of countries where an application for entry clearance made at a British Diplomatic Mission or a British Consular Post is required to be accompanied by a record of the applicant's fingerprints. They also amend the meaning of application in Regulation 2 paragraph (b) of the 2003 Regulations (as amended) so that a 1951 Convention Travel Document holder, if he is fingerprinted when he makes an application for entry clearance in a country to which the fingerprinting Regulations apply will not be fingerprinted a second time upon arrival in the UK. These Regulations shall come into force on the expiry of 7 days beginning with the date on which they are made.

## 3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

## 4. Legislative Background

4.1 These regulations are made in exercise of the powers conferred by section 126 of the Immigration and Asylum Act 2002 ("NIA Act"). Section 126 enables the secretary of State by regulations to provide that specified information about the external characteristics of individuals shall accompany an immigration application or that an authorized person may require an entrant to provide information of this sort. This power has previously been exercised to make the 2003 Regulations, the Immigration (Provision of Physical Data) (Amendment) Regulations 2004, and the Immigration (Provision of Physical Data) (Amendment) (No.2) Regulations 2004.

4.2 As amended, the 2003 Regulations require applications for entry clearance made in Djibouti, Ethiopia, Eritrea, Kenya, Rwanda, Sri Lanka, Tanzania, and Uganda to be accompanied by a record of the applicants' fingerprints. The 2003 Regulations also provide for various safeguards to apply where a record of the applicant's fingerprints is required to be provided.

## 5. Extent

5.1 This instrument applies to all of the United Kingdom including Northern Ireland.

5.2 The requirements imposed apply to all applicants who lodge an application for entry clearance in the specified countries, irrespective of nationality.

## 6. European Convention on Human Rights

The Minister of State for Immigration, Citizenship and Nationality has made the following statement regarding Human Rights:

These Regulations are compatible with the European Convention on Human Rights.

## 7. Policy background

7.1 These draft Regulations require an application for entry clearance made at the British Diplomatic missions in the Democratic Republic of the Congo, the Netherlands and Vietnam, to be accompanied by a record of the applicant's fingerprints. We are introducing fingerprinting in the Democratic Republic of the Congo and Vietnam as they are countries from which significant numbers of people enter the UK and then go on to claim asylum. In the case of the Netherlands, significant numbers of overseas nationals apply for visas to enter the UK and then go on to claim asylum once they are in the UK.

7.2 These draft Regulations also amend Regulation 2, paragraph (b) of the Immigration (Provision of Physical Data) Regulations 2003 (as amended) so that a person that has been granted entry clearance in a country listed in the Schedule to the

Regulations, and fingerprinted at the point at which they made an entry clearance, will not be fingerprinted a second time upon arrival in the United Kingdom.

7.3 The intention is that the fingerprints will be taken at the Diplomatic Mission or Consular Post and that a record of those fingerprints will be made on the application form. The fingerprint data will be transmitted to the UK and entered on the Immigration and Nationality Directorate fingerprint database. This data will then be available for examination against all other fingerprint data held by the Immigration and Nationality Fingerprint Database.

7.4 The intention is that this data will allow for the identification of those who, having obtained prior entry clearance abroad, make asylum or other immigration applications after arrival in the UK using a different identity. Identifying such persons will assist in our efforts to reduce identity fraud in the immigration field. The data collected under these Regulations will be checked against where fingerprint data is collected in the UK under separate statutory authorities (section 141 of the Immigration and Asylum Act 1999 and paragraph 18 of Schedule 2 of the Immigration Act 1971) from people whose identity and nationality is unknown. If a match is found the fingerprint data collected in the UK will be used to satisfy the authorities of the countries, where entry clearance was applied for, or the country of refuge in the case of refugees, that the person is a national of that country, or a refugee there, by linking it to the earlier application. Additionally, where necessary, the information may also be used for identification purposes in the interests of national security and for the prevention or detection of crime.

7.5 The provisions governing the collection and use of fingerprint data, established by the 2003 Regulations, will apply to the applications made under the Immigration (Provision of Physical Data) (Amendment) Regulations 2005.

## 8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The Regulations are expected to have only a limited impact on those making entry clearance applications in the Democratic Republic of the Congo, the Netherlands

and Vietnam as it will involve an additional process when applying for entry clearance. However, this impact has not been significant following its introduction to the countries referred to in paragraph 2.1 of this memorandum. Furthermore, it is not considered that the impact will be disproportionate to the likely reduction in abuse of the UK's immigration control.

## 9. Contact

Grahame Jupp, Room 1105, Apollo House, 40, Wellesley Road, Croydon, CR9 3RR (Tel. 020 8760 8255, fax 020 8 760 8111) can answer any queries regarding the instrument.