EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (PROVISION OF PHYSICAL DATA) REGULATIONS 2006

2006 No. 1743

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 enable an authorised person (for example, entry clearance or immigration officers) to require any person who applies for entry clearance or leave to enter in certain circumstances to provide a record of his fingerprints and a photograph. The Regulations are subject to the affirmative resolution procedure and are to come into force on the day after 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 under section 126 of the Nationality, Immigration and Asylum Act 2002. Regulations under section 126 may require an immigration application to be accompanied by specified information about the external physical characteristics of the applicant *or* enable an authorised person to require an individual who makes an immigration application to provide such information. This power has previously been exercised to make the Immigration (Provision of Physical Data) Regulations 2003 which were amended by the Immigration (Provision of Physical Data) (Amendment) Regulations 2004, the Immigration (Provision of Physical Data) (Amendment) (No. 2) Regulations 2004, and the Immigration (Provision of Physical Data) (Amendment) Regulations 2005. The 2003 Regulations as amended require an application for entry clearance made in Democratic Republic of Congo, Djibouti, Eritrea, Ethiopia, Kenya, the Netherlands, Rwanda, Sri Lanka, Tanzania, Uganda and Vietnam to be accompanied by a record of the applicant's fingerprints. A person seeking leave to enter the UK who presents a 1951 Refugee Convention Travel Document issued by a country other than the UK is also required to provide fingerprints. The 2003 Regulations provide various safeguards which apply where a record of the applicant's fingerprints is required. The 2003 Regulations and amending Regulations are to be revoked and replaced by the current Regulations, subject to transitional provisions.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

In my view the provisions of the Immigration (Provision of Physical Data) Regulations 2006 are compatible with the Convention rights.

7. Policy background

7.1 These Regulations supersede the Immigration (Provision of Physical Data) Regulations 2003 which require applicants for entry clearance in certain countries to provide a record of their fingerprints as part of the application process. The operations in these countries have proved to be an effective and successful way of tackling abuse of the immigration system, and are an integral part of the Government's policy of further securing our borders. We have been able to identify asylum applicants who have sought to conceal their identity and also identify entry clearance applicants who have sought to conceal previous immigration history or who have previously been refused in a different identity. In line with the Government's commitment to fingerprint all entry clearance applicants by 2008, the Regulations will enable an authorised person to require an applicant to provide a record of his fingerprints and a photograph. In practice, authorised persons (including authorised entry clearance officers) will, of course, exercise their discretion reasonably and so will only impose such a requirement on applicants from those countries where suitable fingerprinting and digital photography technology has been installed with proper safeguards in place, and also subject to exceptions where this is appropriate in the particular case.

7.2 The installation of equipment in all consular posts before 2008 is a major undertaking. The order in which entry clearance posts are to be equipped with the necessary fingerprinting and digital photography technology is determined according to immigration, asylum and counter-terrorist priorities taking into account local security concerns and the ability of individual posts to adapt to the processes required. The policy intention is to equip posts in Europe and Africa as a priority during 2006 to address immigration, asylum and security concerns. In addition, a regional approach to the installation of the fingerprinting and digital photography technology is necessary in order to avoid displacement of fraudulent visa applicants to Consular posts in neighbouring countries.

7.3 Under the Regulations, entry clearance applicants may be required by authorised persons to submit to a specified process for their fingerprints and a photograph to be taken. An applicant may be required to attend a British Diplomatic mission or Consular post for his fingerprints and photograph to be taken by Consular officials, the Diplomatic mission or Consular post of another State for his fingerprints and photograph to be taken by an official of that State on behalf of the authorised person, or alternatively another location nominated by the authorised person for his fingerprints and photograph to be taken by a person on behalf of the authorised person. In locations where third parties are being used instead of British Consular officials, this will be for the purely administrative function of collecting the fingerprints and taking the photograph. It will not be possible for the third party to keep copies of fingerprints or photographs, and the necessary agreements to ensure the data is protected and processed lawfully will be put in place. The policy intention behind using this variety of procedures to take the fingerprints and photograph of

entry clearance applicants is to enable the UK to provide both a high quality of service and ensure robust immigration control, despite the factors which affect different posts, such as geographical constraints, the volume of applications, and security concerns, and in countries where the UK has limited or no Consular representation.

7.4 In addition to requirements for entry clearance applicants, these Regulations will enable an authorised person to require an individual who seeks leave to enter the UK who presents a 1951 Refugee Convention travel document endorsed with an entry clearance for that journey to the United Kingdom to provide a record of his fingerprints and a photograph. This requirement will not apply to those who hold convention travel documents issued by the UK. In exercising this power, immigration officers will not normally impose this requirement on those who have already had their fingerprints and photograph taken for entry to the UK on that occasion.

7.5 The fingerprint and photograph data collected under these Regulations will be transmitted securely and then entered onto the Immigration and Nationality Directorate fingerprint database. The data will then be checked against the existing fingerprint data on the database to assist the officer in his decision on whether the applicant qualifies for entry clearance or leave to enter. The data will then be retained on the database (within the limits of the Regulations) so it is available for verification against fingerprint data which is entered onto the database in the future, whether collected under these Regulations or under other provisions of the Immigration Acts (for example, section 141 of the Immigration and Asylum Act 1999).

7.6 The retention of data for future verification will assist in the identification of those who, having obtained prior entry clearance or leave to enter, go on to make asylum or other immigration applications after arrival in the UK using a different identity. The data will also be used to facilitate the return, where appropriate, of those who seek to enter or remain in the UK using a different identity from that in which they applied for entry clearance or leave to enter. The development of this identity-matching capability, both at the entry clearance post and in the UK, will greatly assist in our efforts to reduce identity fraud in the immigration field. Where appropriate the information may also be used for identification purposes in the interests of national security or for the prevention or detection of crime, where the law permits.

7.7 Similar safeguards to those in the 2003 Regulations are provided for in these Regulations. Where an applicant is under sixteen years of age, he shall not be required to provide a record of his fingerprints or a photograph except in the presence of a person aged eighteen or over who is responsible for him. The decision of an authorised person to require a person under sixteen to provide a record of his fingerprints and a photograph must be confirmed by a person designated by the Secretary of State.

7.8 These Regulations make equivalent provision to the 2003 Regulations to ensure that any record of fingerprints or photograph held by the Secretary of State is destroyed at the end of ten years from the date on which it was provided, or, where the a person proves he is a British or Commonwealth citizen who has a right of abode in the United Kingdom, as soon as reasonably practicable

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 results of the fingerprinting operations carried out previously under the 2003 Regulations provide evidence (discussed above) that the impact on applicants will not be disproportionate to the likely reduction in abuse of the UK's immigration control and the substantial improvement to border security. Furthermore, we will not be seeking to recover capital costs from visa applicants through increased fees.

9. Contact

Grahame Jupp in the Immigration and Nationality Directorate Tel: 0208 760 8255 or e-mail: grahame.jupp@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.