

# STATES OF JERSEY



## IMMIGRATION (BIOMETRIC REGISTRATION) (JERSEY) ORDER 2018: EXTENSION TO JERSEY BY ORDER IN COUNCIL

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Lodged au Greffe on 26th February 2018  
by the Chief Minister

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STATES GREFFE

## **PROPOSITION**

**THE STATES are asked to decide whether they are of opinion –**

to signify, pursuant to Article 31 of the States of Jersey Law 2005, that they agree that a request be made to Her Majesty in Council for the making of an Order in Council that would extend to Jersey, with appropriate modifications –

- (a) sections 5 to 15, and 61, of the UK Borders Act 2007; and
- (b) sections 9, 12(4), 13, 14, 77 of, and Schedule 2 to, the Immigration Act 2014,

as summarised in the Chief Minister's Report attached to this Proposition.

**CHIEF MINISTER**

## REPORT

### *Introduction*

1. The purpose of this Proposition is to request the States to consider whether to agree to the extension to Jersey by Order in Council of sections 5 to 15 of the UK Borders Act 2007 and associated provisions of the Immigration Act 2014 relating to biometric registration.
2. These provisions (in their proposed extended form) will empower the States to make Regulations in relation to biometric registration, in particular requiring biometric immigration documents to be used for specified immigration purposes and in connection with specified immigration procedures or in specified circumstances, where a question arises about a person's status in relation to immigration or nationality.
3. The provisions will also empower the Minister for Home Affairs to require persons to pay a penalty for failing to comply with a requirement of such Regulations, subject to a right of appeal.

### *UK Borders Act 2007 – proposed extended provisions*

4. [Sections 5 and 6](#) confer the power to make the necessary Regulations requiring a person subject to immigration control to apply for the issue of a document recording information about his or her external physical characteristics. The Regulations would be able to make various other related provisions.
5. [Section 7](#) contains provision about the effect of non-compliance with the Regulations made by the States, and for the Regulations to set out when applications may be refused or disregarded or when the Minister should consider issuing a penalty notice (under section 9). Section 7 also contains provision for the Regulations to permit the Minister to designate an adult as the person responsible for ensuring that a child complies with requirements of the Regulations.
6. Under [section 8\(1\)](#), Regulations made by the States will need to make provision about use and retention of biometric information provided in accordance with the Regulations.
7. [Section 8\(2\)](#) sets out the purposes for which biometric information collected under the Regulations can be used. [Section 8\(2\)](#) also includes provision to specify further uses for biometric information collected.
8. Under [Section 8\(3\)](#), Regulations made by the States must include provision about the destruction of biometric information held by the Minister which has been obtained or recorded by virtue of the Regulations. They must require the destruction of information if the Minister thinks that it is no longer likely to be of use in accordance with the relevant Regulations. The Regulations must include provision about the destruction of certain fingerprint data.
9. Under [Section 8\(4\)](#), a requirement to destroy information shall not apply to the extent that the information is retained in accordance with and for the purposes of another enactment.

10. [Sections 9 to 14](#) make provision for a civil penalty scheme for failure to comply with a requirement under Regulations made by the States (under section 5). Under [section 9](#) the Minister for Home Affairs will be able by notice to require a person to pay a penalty for failing to comply with a requirement of the Regulations. The notice will have to specify certain particulars, including an explanation of how the person can object to the penalty and appeal the penalty, and how the penalty may be enforced.
11. [Section 9\(3\)](#) sets the maximum amount of penalty that may be levied – £1,000. The Minister will be able, by Order, to amend this figure. Any such Order will be subject to tabling in the States in the usual way.
12. [Section 9\(5\)](#) provides that a person who has been given a penalty notice may be given a further penalty notice in the case of continued failure. However, the further notice may not be given during the time available for objection or appeal against the previous notice, nor while an objection or appeal is pending.
13. [Section 10\(1\)](#) provides that a person who has been given a penalty notice may by notice object to the Minister on the grounds that he or she has not failed to comply with a requirement of the Regulations, it is unreasonable to expect him or her to pay the penalty or the amount of the penalty is excessive.
14. Under [section 10\(3\)](#) the Minister will within a certain time have to consider the notice of objection and cancel the penalty notice, reduce the penalty by varying the original penalty notice, increase the penalty by issuing a new penalty notice, or confirm the penalty notice.
15. [Section 11](#) provides that a person given a penalty notice may appeal that notice to the Petty Debts Court on certain specified grounds. The Court may then cancel the penalty notice, reduce the penalty by varying the penalty notice, increase the penalty notice, or confirm the penalty notice.
16. [Section 12](#) makes provision for enforcement of a penalty. It also provides that any money received by the Minister in respect of a penalty under [section 9](#) forms part of the annual income of the States.
17. [Section 13](#) makes provision for a code of practice in respect of the civil penalty scheme.
18. Sections 14 and 15 contain several interpretation and drafting provisions.
19. Section 61 is the usual citation provision for the Act.

*Immigration Act 2014 – proposed extended provisions*

20. The provisions amend existing Immigration Acts (as extended to Jersey) in relation to powers to take biometric information.
21. The amendments are to the Immigration Act 1971 (“the 1971 Act”) and to the Immigration and Asylum Act 1999 (“the 1999 Act”) –

- (a) section 9 amends Schedule 2 to the 1971 Act in relation to identifying persons liable to detention;
- (b) section 12(4) and Schedule 2 amend Schedule 2 to the 1971 Act and section 144 of the 1999 Act in relation to the meaning of “biometric information”;
- (c) section 13 amends Schedule 2 to the 1971 Act in relation to safeguards for children;
- (d) section 14 inserts section 144A in the 1999 Act in relation to the use and retention of fingerprints.

22. Section 77 is the usual citation provision for the Act.

**Appendix 1** to this Report contains the current draft of the Order in Council.

**Appendix 2** to this Report shows the relevant statutory provisions in the modified (tracked) form in which it is intended that they be extended.

### **Collective responsibility under Standing Order 21(3A)**

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Minister for Home Affairs, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Under Standing Order 68A, this Proposition will be proposed by the Minister for Home Affairs. Paragraph 5 of the Code of Conduct and Practice for Ministers and Assistant Ministers states that the principle of collective responsibility extends to the Assistant Ministers of the Minister proposing a matter to the States Assembly.

### **Financial and manpower implications**

There are no resource implications in deciding only that the States should have the power to make Regulations requiring persons subject to immigration control to apply for the issue of a biometric document, and to make related provision.

Any further resource implications will depend on the provisions contained in the Regulations brought forward to enact these powers.

The current draft of the Order in Council

The Immigration (Biometric Registration) (Jersey) Order  
2018

Made - - - - - \*\*\*

Coming into force in accordance with article 1(1)

At the Court at Buckingham Palace, the \*\*\* day of \*\*\*

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 60(4) of the UK Borders Act 2007(1) and section 76(6) of the Immigration Act 2014(2), is pleased, by and with the advice of Her Privy Council, to order as follows:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Immigration (Biometric Registration) (Jersey) Order 2018 and comes into force on the seventh day after the day on which it is registered by the Royal Court of Jersey.

(2) In this Order—

“the 2007 Act” means the UK Borders Act 2007;

“the 2014 Act” means the Immigration Act 2014;

“Jersey” means the Bailiwick of Jersey.

(3) For the purposes of construing provisions of the 2007 Act and the 2014 Act as part of the law of Jersey, a reference to an enactment which extends to Jersey is construed as a reference to that enactment as it has effect in Jersey.

**Extension of the 2007 Act to Jersey**

2. The following provisions of the 2007 Act shall extend to Jersey—

(a) sections 5 to 15 (Biometric registration);

(b) section 61(1) (Citation),

subject to the modifications, if any, specified in Schedule 1 to this Order.

**Extension of the 2014 Act to Jersey**

3. The following provisions of the 2014 Act shall extend to Jersey—

(a) section 9 (Identifying persons liable to detention);

(b) section 12(4) and Schedule 2 (Meaning of “biometric information”);

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(1) 2007 c. 30.

(2) 2014 c. 22.

- (c) section 13 (Safeguards for children);
  - (d) section 14 (Use and retention of biometric information);
  - (e) section 77 (Short title),
- subject to the modifications, if any, specified in Schedule 2 to this Order.

*Richard Tilbrook*  
Clerk of the Privy Council

## SCHEDULE 1

Article 2

### Modifications of sections 5, 6, 7, 9, 10, 11, 12, 13, 14 and 15 of the UK Borders Act 2007 as they extend to Jersey

1. In section 5 (Registration regulations)—
  - (a) in the heading for “regulations” substitute “Regulations”;
  - (b) in subsection (1) —
    - (i) for “Secretary of State” substitute “States”;
    - (ii) for “regulations” substitute “Regulations”;
  - (c) in subsection (2)(f) for “regulations” substitute “Regulations”;
  - (d) in subsection (2)(g), (h) and (i) for “Secretary of State” wherever it occurs substitute “Minister”;
  - (e) in subsection (3) —
    - (i) for “Secretary of State” wherever it occurs substitute “Minister”;
    - (ii) for “the United Kingdom” wherever it occurs substitute “Jersey”;
    - (iii) in sub-paragraph (l) for “regulations” substitute “Regulations”;
  - (f) in subsection (4) —
    - (i) for “Secretary of State” substitute “Minister”;
    - (ii) for sub-paragraph (d) substitute —
      - “(d) who was given leave to enter or remain in Jersey in accordance with a provision of directions under section 1(4A) of the Immigration Act 1971 (as extended to Jersey by the Immigration (Jersey) Order 1993) and knows or suspects that owing to a change of the holder's circumstances the holder would no longer qualify for leave under that provision, or”;
    - (iii) in sub-paragraph (e) for “regulations” substitute “Regulations”;
  - (g) in subsection (5) —
    - (i) for “Secretary of State” wherever it occurs substitute “Minister”;
    - (ii) for “regulations” substitute “Regulations”;
  - (f) in subsection (6) omit “; and section 16 of the Identity Cards Act 2006 (c. 15) (prohibition of requirement to produce ID card) is subject to this subsection”;

(g) for subsection (9) substitute –

“(9) Directions under section 1(4A) of the Immigration Act 1971 (as extended to Jersey by the Immigration (Jersey) Order 1993) may require a person applying for the issue of a biometric immigration document to provide non-biometric information to be recorded in it or retained by the Minister.”;

(h) omit subsection (10).

**2. In section 6 (Regulations: supplemental) —**

(a) for “regulations” wherever it occurs substitute “Regulations”;

(b) in subsection (3) for “(c. 33)” substitute “(as extended to Jersey by the Immigration and Asylum Act 1999 (Jersey) Order 2003)”;

(c) in subsection (4) for “Rules under section 3 of the Immigration Act 1971 (immigration rules)” substitute “Directions under section 1(4A) of the Immigration Act 1971 (as extended to Jersey by the Immigration (Jersey) Order 1993)”;

(d) in subsection (5) for “Secretary of State’s” substitute “Minister’s”;

(e) in subsection (6) –

(i) at the end of sub-paragraph (b) add “and”;

(ii) omit sub-paragraphs (d) and (e).

**3. In section 7 (Effect of non-compliance)—**

(a) in subsection (1) for “regulations” in the second place it occurs substitute “Regulations”;

(b) in subsection (2) –

(i) for “regulations” substitute “Regulations”;

(ii) for “the United Kingdom” substitute “Jersey”;

(iii) for “Secretary of State” in both places it occurs substitute “Minister”;

(c) after subsection (2) insert –

“(2A) If the Regulations require a biometric immigration document to be used in connection with an application or claim, they may require or permit the application or claim to be disregarded or refused if that requirement is not complied with.”;

(d) in subsection (3)

(i) for “regulations” wherever it occurs substitute “Regulations”;

(ii) for “Secretary of State” substitute “Minister”

**4. In section 9 (Penalty) —**

(a) in subsection (1) –

(i) for “Secretary of State” substitute “Minister”;

(ii) for “regulations” substitute “Regulations”;

(b) in subsection (2) –

(i) for “Secretary of State” in both places it occurs substitute “Minister”;

(ii) for “regulations” substitute “Regulations”;

(c) in subsection (5) for “regulations” substitute “Regulations”;

(d) for subsection (6) substitute –

“(6) The Minister may by Order amend subsection (3) to reflect a change in the value of money since 25 November 2008.



(7) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under subsection (6).”.

**5. In section 10 (Penalty: objection) —**

(a) in subsection (1) –

(i) for “Secretary of State” substitute “Minister”;

(ii) for “regulations” substitute “Regulations”;

(b) in subsections (3) and (4) for “Secretary of State” wherever it occurs substitute “Minister”.

**6. In section 11 (Penalty: appeal) —**

(a) for subsection (1) substitute –

“(1) A person (P) who is given a penalty notice under section 9(1) may appeal to the Petty Debts Court.”;

(b) in subsection (2)(a) for “regulations” substitute “Regulations”;

(c) in subsection (3) for “court or sheriff” wherever it occurs substitute “Petty Debts Court”;

(d) in subsection (4)(b) for “Secretary of State’s” substitute “Minister’s”;

(e) in subsection (5) –

(i) for “court or sheriff” substitute “Petty Debts Court”;

(ii) for “Secretary of State” substitute “Minister”;

**7. In section 12 (Penalty: enforcement) —**

(a) for “Secretary of State” wherever it occurs substitute “Minister”;

(b) in subsection (5) for “be paid into the Consolidated Fund” substitute “form part of the annual income of the States”.

**8. In section 13 (Penalty: code of practice) —**

(a) for “Secretary of State” wherever it occurs substitute “Minister”;

(b) in subsection (3) for “A court or sheriff” substitute “The Petty Debts Court”;

(c) in subsection (5) for sub-paragraphs (a), (b) and (c) substitute –

“(a) publish proposals, and

(b) consult members of the public.”

**9. For section 14 (Penalty: prescribed matters) substitute—**

**“14 Penalty: prescribed matters**

(1) In sections 10 and 13 “prescribed” means prescribed by the Minister by Order.

(2) An Order under subsection (1)—

(a) may make provision generally or only for specified purposes, and

(b) may make different provision for different purposes.

(3) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under subsection (1).”.

**10. For section 15 (Interpretation) substitute—**

## **“15 Interpretation**

- (1) For the purposes of section 5—
  - (a) “person subject to immigration control” means a person who under the Immigration Act 1971 (as extended to Jersey by the Immigration (Jersey) Order 1993) requires leave to enter or remain in Jersey (whether or not such leave has been given),
  - (b) “document” includes a card or sticker and any other method of recording information (whether in writing or by the use of electronic or other technology or by a combination of methods),
  - (c) “authorised person” has the meaning given by section 141(5) of the Immigration and Asylum Act 1999 (as extended to Jersey by the Immigration and Asylum Act 1999 (Jersey) Order 2003) (authority to take fingerprints),
  - (d) “immigration” includes asylum,
  - (e) “Jersey” means the Bailiwick of Jersey,
  - (f) “Minister” means the Minister for Home Affairs, and
  - (g) Regulations or an Order permitting something to be done by the Minister may (but need not) permit it to be done only where the Minister is of a specified opinion.
- (2) For the purposes of section 5 “biometric information” means—
  - (a) information about a person's external physical characteristics (including in particular fingerprints and features of the iris), and
  - (b) any other information about a person's physical characteristics specified in Regulations made by the States.
- (3) Regulations under subsection (2)(b)—
  - (a) may specify only information that can be obtained or recorded by an external examination of a person;
  - (b) must not specify information about a person's DNA.
- (4) Section 6(6) applies to Regulations under subsection (2)(b).
- (5) An application for a biometric immigration document is an application in connection with immigration for the purposes of sections 67A and 68 of the Immigration Act 2014 (as extended to Jersey by the Immigration (Jersey) Order 2016) (fees); and, in the application of those sections to an application for a biometric immigration document, the prescribed consequences of non-compliance may include any of the consequences specified in section 7(2) above.”.

**Modifications of sections 13 and 14 of, and Schedule 2 to, the  
Immigration Act 2014 as they extend to Jersey**

1. In section 13 (Safeguards for children) in the inserted paragraph (8)(b) for “Secretary of State” substitute “Minister”.
2. In section 14(1), in the inserted section 8 –
  - (a) in subsection (1) –
    - (i) for “Secretary of State” in the first place it occurs substitute “States”;
    - (ii) for “Secretary of State” in the second place it occurs substitute “Minister”;
    - (iii) for “regulations” in both places it occurs substitute “Regulations”;
  - (b) in subsection (2) –
    - (i) for “regulations” substitute “Regulations”;
    - (ii) for “Secretary of State” substitute “Minister”;
  - (c) after subsection (2) insert –
 

“(2A) In subsection (2) “the Immigration Acts” means the Immigration Acts of the United Kingdom having effect for the time being as extended to Jersey.”;
  - (d) in subsection (3) –
    - (i) for “regulations” in both places it occurs substitute “Regulations”;
    - (ii) for “Secretary of State” substitute “Minister”;
  - (e) in subsection (4) for “regulations” substitute “Regulations”;
  - (f) in subsection (5) –
    - (i) for “regulations” substitute “Regulations”;
    - (ii) for “Secretary of State” in both places it occurs substitute “Minister”;
    - (iii) for “the United Kingdom” substitute “Jersey”;
    - (iv) after “Immigration Act 1971” insert “(as extended to Jersey by the Immigration (Jersey) Order 1993)”.
  - (g) in subsection (6) –
    - (i) for “regulations” in both places it occurs substitute “Regulations”;
    - (ii) for “Secretary of State” substitute “Minister”;
  - (h) in subsection (8) –
    - (i) for “regulations” in both places it occurs substitute “Regulations”;
    - (ii) for “Secretary of State” wherever it occurs substitute “Minister”;
  - (i) in subsection (9) for “regulations” in both places it occurs substitute “Regulations”.
3. In section 14(2), in the inserted section 144A –
  - (a) in subsection (1) –
    - (i) for “regulations” in the first place it occurs substitute “Regulations”;
    - (ii) for “regulations” in the second place it occurs substitute “directions”;
    - (iii) for “regulations” in the third place it occurs substitute “Regulations”;
  - (b) in subsection (3) for “regulations” substitute “directions”.

4. Omit section 14(3).
5. In Schedule 2 omit the entries under “Nationality, Immigration and Asylum Act 2002 (c. 41)” and “Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)”.

#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order extends to Jersey, with modifications, sections 5 to 15 of the UK Borders Act 2007 (c. 30) and associated provisions of the Immigration Act 2014 (c. 22) relating to biometric registration.

The provisions in their extended form empower the States of Jersey to make Regulations in relation to biometric registration, in particular requiring biometric immigration documents to be used for specified immigration purposes and in connection with specified immigration procedures or in specified circumstances, where a question arises about a person’s status in relation to immigration or nationality.

The provisions also empower the Jersey Minister for Home Affairs to require persons to pay a penalty for failing to comply with a requirement of such Regulations, subject to a right of appeal.

## APPENDIX 2

*The proposed extended provisions in modified form (tracked)*

### UK Borders Act 2007

#### 2007 CHAPTER 30

##### *Biometric registration*

#### 5 Registration ~~regulations~~ Regulations

- (1) The ~~Secretary of State~~ States may make ~~regulations~~ Regulations—
- (a) requiring a person subject to immigration control to apply for the issue of a document recording biometric information (a “biometric immigration document”);
  - (b) requiring a biometric immigration document to be used—
    - (i) for specified immigration purposes,
    - (ii) in connection with specified immigration procedures, or
    - (iii) in specified circumstances, where a question arises about a person’s status in relation to nationality or immigration;
  - (c) requiring a person who produces a biometric immigration document by virtue of paragraph (b) to provide information for comparison with information provided in connection with the application for the document.
- (2) Regulations under subsection (1)(a) may, in particular—
- (a) apply generally or only to a specified class of persons subject to immigration control (for example, persons making or seeking to make a specified kind of application for immigration purposes);
  - (b) specify the period within which an application for a biometric immigration document must be made;
  - (c) make provision about the issue of biometric immigration documents;
  - (d) make provision about the content of biometric immigration documents (which may include non-biometric information);
  - (e) make provision permitting a biometric immigration document to be combined with another document;

- (f) make provision for biometric immigration documents to begin to have effect, and cease to have effect, in accordance with the ~~regulations~~Regulations;
  - (g) require a person who acquires a biometric immigration document, without the consent of the person to whom it relates or of the ~~Secretary of State~~Minister, to surrender it to the ~~Secretary of State~~Minister as soon as is reasonably practicable;
  - (h) permit the ~~Secretary of State~~Minister to require the surrender of a biometric immigration document in other specified circumstances;
  - (i) permit the ~~Secretary of State~~Minister on issuing a biometric immigration document to require the surrender of other documents connected with immigration or nationality.
- (3) Regulations under subsection (1)(a) may permit the ~~Secretary of State~~Minister to cancel a biometric immigration document—
- (a) if the ~~Secretary of State~~Minister thinks that information provided in connection with the document was or has become false, misleading or incomplete,
  - (b) if the ~~Secretary of State~~Minister thinks that the document has been lost or stolen,
  - (c) if the ~~Secretary of State~~Minister thinks that the document (including any information recorded in it) has been altered, damaged or destroyed (whether deliberately or not),
  - (d) if the ~~Secretary of State~~Minister thinks that an attempt has been made (whether successfully or not) to copy the document or to do anything to enable it to be copied,
  - (e) if the ~~Secretary of State~~Minister thinks that a person has failed to surrender the document in accordance with subsection (2)(g) or (h),
  - (f) if the ~~Secretary of State~~Minister thinks that the document should be re-issued (whether because the information recorded in it requires alteration or for any other reason),
  - (g) if the ~~Secretary of State~~Minister thinks that the holder is to be given leave to enter or remain in ~~the United Kingdom~~Jersey,
  - (h) if the ~~Secretary of State~~Minister thinks that the holder's leave to enter or remain in ~~the United Kingdom~~Jersey is to be varied, cancelled or invalidated or to lapse,
  - (i) if the ~~Secretary of State~~Minister thinks that the holder has died,

- (j) if the [Secretary of State/Minister](#) thinks that the holder has been removed from [the United Kingdom/Jersey](#) (whether by deportation or otherwise),
  - (k) if the [Secretary of State/Minister](#) thinks that the holder has left [the United Kingdom/Jersey](#) without retaining leave to enter or remain, and
  - (l) in such other circumstances as the [regulations/Regulations](#) may specify.
- (4) Regulations under subsection (1)(a) may require notification to be given to the [Secretary of State/Minister](#) by the holder of a biometric immigration document—
- (a) who knows or suspects that the document has been lost or stolen,
  - (b) who knows or suspects that the document has been altered or damaged (whether deliberately or not),
  - (c) who knows or suspects that information provided in connection with the document was or has become false, misleading or incomplete,
  - (d) who was given leave to enter or remain in [the United Kingdom/Jersey](#) in accordance with a provision of [rules under section 3 of the Immigration Act 1971 \(e. 77\) \(immigration rules\)](#) ~~directions under section 1(4A) of the Immigration Act 1971 (as extended to Jersey by the Immigration (Jersey) Order 1993)~~ and knows or suspects that owing to a change of the holder's circumstances the holder would no longer qualify for leave under that provision, or
  - (e) in such other circumstances as the [regulations/Regulations](#) may specify.
- (5) Regulations under subsection (1)(a) may require a person applying for the issue of a biometric immigration document to provide information (which may include biographical or other non-biometric information) to be recorded in it or retained by the [Secretary of State/Minister](#); and, in particular, the [regulations/Regulations](#) may—
- (a) require, or permit an authorised person to require, the provision of information in a specified form;
  - (b) require an individual to submit, or permit an authorised person to require an individual to submit, to a specified process by means of which biometric information is obtained or recorded;
  - (c) confer a function (which may include the exercise of a discretion) on an authorised person;
  - (d) permit the [Secretary of State/Minister](#), instead of requiring the provision of information, to use or retain information which is (for whatever reason) already in the [Secretary of State/Minister's](#) possession.

- (6) Regulations under subsection (1)(b) may, in particular, require the production or other use of a biometric immigration document that is combined with another document.
- (7) Regulations under subsection (1)(b) may not make provision the effect of which would be to require a person to carry a biometric immigration document at all times.
- (8) Regulations under subsection (1)(c) may, in particular, make provision of a kind specified in subsection (5)(a) or (b).
- ~~(9) Rules under section 3 of the Immigration Act 1971 (c. 77) Directions under section 1(4A) of the Immigration Act 1971 (as extended to Jersey by the Immigration (Jersey) Order 1993) may require a person applying for the issue of a biometric immigration document to provide non-biometric information to be recorded in it or retained by the Secretary of State/Minister.~~
- ~~(10) Subsections (5) to (9) are without prejudice to the generality of section 50 of the Immigration, Asylum and Nationality Act 2006 (c. 13) (procedure).~~

## 6 Regulations: supplemental

- (1) This section applies to ~~regulations~~Regulations under section 5(1).
- (2) Regulations amending or replacing earlier ~~regulations~~Regulations may require a person who holds a biometric immigration document issued under the earlier ~~regulations~~Regulations to apply under the new ~~regulations~~Regulations.
- (3) In so far as ~~regulations~~Regulations require an individual under the age of 16 to submit to a process for the recording of biometric information, or permit an authorised person to require an individual under the age of 16 to submit to a process of that kind, the ~~regulations~~Regulations must make provision similar to section 141(3) to (5) and (13) of the Immigration and Asylum Act 1999 (as extended to Jersey by the Immigration and Asylum Act 1999 (Jersey) Order 2003)(c. 33) (fingerprints: children).
- (4) ~~Rules~~Directions under section 1(4A) ~~under section 3~~ of the Immigration Act 1971 (as extended to Jersey by the Immigration (Jersey) Order 1993)



~~(immigration rules)~~ may make provision by reference to compliance or non-compliance with ~~regulations~~Regulations.

- (5) Information in the ~~Secretary of State~~Minister's possession which is used or retained in accordance with ~~regulations~~Regulations under section 5(5)(d) shall be treated, for the purpose of requirements about treatment and destruction, as having been provided in accordance with the ~~regulations~~Regulations at the time at which it is used or retained in accordance with them.
- (6) Regulations—
- (a) may make provision having effect generally or only in specified cases or circumstances,
  - (b) may make different provision for different cases or circumstances, and
  - (c) may include incidental, consequential or transitional provision,
  - ~~(d) shall be made by statutory instrument, and~~
  - ~~(e) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.~~

#### 7 Effect of non-compliance

- (1) Regulations under section 5(1) must include provision about the effect of failure to comply with a requirement of the ~~regulations~~Regulations.
- (2) In particular, the ~~regulations~~Regulations may—
- (a) require or permit an application for a biometric immigration document to be refused;
  - (b) require or permit an application or claim in connection with immigration to be disregarded or refused;
  - (c) require or permit the cancellation or variation of leave to enter or remain in ~~the United Kingdom~~Jersey;
  - (d) require the ~~Secretary of State~~Minister to consider giving a notice under section 9;
  - (e) provide for the consequence of a failure to be at the discretion of the ~~Secretary of State~~Minister.
- [ (2A) If the ~~regulations~~Regulations require a biometric immigration document to be used in connection with an application or claim, they may require or permit the

application or claim to be disregarded or refused if that requirement is not complied with. ]

- (3) The ~~regulations~~Regulations may also permit the ~~Secretary of State~~Minister to designate an adult as the person responsible for ensuring that a child complies with requirements of the ~~regulations~~Regulations; and for that purpose—
  - (a) “adult” means an individual who has attained the age of 18,
  - (b) “child” means an individual who has not attained the age of 18, and
  - (c) sections 9 to 13 shall apply (with any necessary modifications) to a designated adult’s failure to ensure compliance by a child with a requirement of ~~regulations~~Regulations as they apply to a person’s own failure to comply with a requirement.

#### [8 Use and retention of biometric information

- (1) The ~~Secretary of State~~States must by ~~regulations~~Regulations make provision about the use and retention by the ~~Secretary of State~~Minister of biometric information provided in accordance with ~~regulations~~Regulations under section 5(1).
- (2) The ~~regulations~~Regulations must provide that biometric information may be retained only if the ~~Secretary of State~~Minister thinks that it is necessary to retain it for use in connection with—
  - (a) the exercise of a function by virtue of the Immigration Acts, or
  - (b) the exercise of a function in relation to nationality.

(2A) In subsection (2) “the Immigration Acts” means the Immigration Acts of the United Kingdom having effect for the time being as extended to Jersey.

- (3) The ~~regulations~~Regulations may include provision permitting biometric information retained by virtue of subsection (2) also to be used—
  - (a) in connection with the prevention, investigation or prosecution of an offence,
  - (b) for a purpose which appears to the ~~Secretary of State~~Minister 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,

- (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, and
  - (e) for such other purposes (whether in accordance with functions under an enactment or otherwise) as the ~~regulations~~Regulations may specify.
- (4) The ~~regulations~~Regulations must include provision about the destruction of biometric information.
- (5) In particular the ~~regulations~~Regulations must require the ~~Secretary of State~~Minister to take all reasonable steps to ensure that biometric information is destroyed if the ~~Secretary of State~~Minister—
- (a) no longer thinks that it is necessary to retain the information for use as mentioned in subsection (2), or
  - (b) is satisfied that the person to whom the information relates is a British citizen, or a Commonwealth citizen who has a right of abode in ~~the United Kingdom~~Jersey as a result of section 2(1)(b) of the Immigration Act 1971 *(as extended to Jersey by the Immigration (Jersey) Order 1993)*.
- (6) The ~~regulations~~Regulations must also—
- (a) require that any requirement to destroy biometric information by virtue of the ~~regulations~~Regulations also applies to copies of the information, and
  - (b) require the ~~Secretary of State~~Minister to take all reasonable steps to ensure—
    - (i) that data held in electronic form which relates to biometric information which has to be destroyed by virtue of the ~~regulations~~Regulations is destroyed or erased, or
    - (ii) that access to such data is blocked.
- (7) But a requirement to destroy biometric information or data is not to apply if and in so far as the information or data is retained in accordance with and for the purposes of another power.
- (8) The ~~regulations~~Regulations must include provision—
- (a) entitling a person whose biometric information has to be destroyed by virtue of the ~~regulations~~Regulations, on request, to a certificate issued by the ~~Secretary of State~~Minister to the effect that the ~~Secretary of State~~Minister

~~State~~Minister has taken the steps required by virtue of subsection (6)(b), and

- (b) requiring such a certificate to be issued within the period of 3 months beginning with the date on which the request for it is received by the ~~Secretary of State~~Minister.

- (9) Section 6(6) applies to ~~regulations~~Regulations under this section as it applies to ~~regulations~~Regulations under section 5(1).]

## 9 Penalty

- (1) The ~~Secretary of State~~Minister may by notice require a person to pay a penalty for failing to comply with a requirement of ~~regulations~~Regulations under section 5(1).
- (2) The notice must—
  - (a) specify the amount of the penalty,
  - (b) specify a date before which the penalty must be paid to the ~~Secretary of State~~Minister,
  - (c) specify methods by which the penalty may be paid,
  - (d) explain the grounds on which the ~~Secretary of State~~Minister thinks the person has failed to comply with a requirement of the ~~regulations~~Regulations, and
  - (e) explain the effect of sections 10 to 12.
- (3) The amount specified under subsection (2)(a) may not exceed £1,000.
- (4) The date specified under subsection (2)(b) must be not less than 14 days after the date on which the notice is given.
- (5) A person who has been given a notice under subsection (1) for failing to comply with ~~regulations~~Regulations may be given further notices in the case of continued failure; but a person may not be given a new notice—
  - (a) during the time available for objection or appeal against an earlier notice, or
  - (b) while an objection or appeal against an earlier notice has been instituted and is neither withdrawn nor determined.

- (6) The ~~Secretary of State~~Minister may by ~~order~~Order amend subsection (3) to reflect a change in the value of money since 25 November 2008.

#### 10 Penalty: objection

- (1) A person (P) who is given a penalty notice under section 9(1) may by notice to the ~~Secretary of State~~Minister object on the grounds—
- (a) that P has not failed to comply with a requirement of ~~regulations~~Regulations under section 5(1),
  - (b) that it is unreasonable to require P to pay a penalty, or
  - (c) that the amount of the penalty is excessive.
- (2) A notice of objection must—
- (a) specify the grounds of objection and P's reasons,
  - (b) comply with any prescribed requirements as to form and content, and
  - (c) be given within the prescribed period.
- (3) The ~~Secretary of State~~Minister shall consider a notice of objection and—
- (a) cancel the penalty notice,
  - (b) reduce the penalty by varying the penalty notice,
  - (c) increase the penalty by issuing a new penalty notice, or
  - (d) confirm the penalty notice.
- (4) The ~~Secretary of State~~Minister shall act under subsection (3) and notify P—
- (a) in accordance with any prescribed requirements, and
  - (b) within the prescribed period or such longer period as the ~~Secretary of State~~Minister and P may agree.

#### 11 Penalty: appeal

- (1) A person (P) who is given a penalty notice under section 9(1) may appeal to—
- (a) ~~[the county court in England and Wales or a county court in] Northern Ireland, or~~
  - (b) ~~the sheriff, in Scotland~~ the Petty Debts Court.
- (2) An appeal may be brought on the grounds—
- (a) that P has not failed to comply with a requirement of ~~regulations~~Regulations under section 5(1),
  - (b) that it is unreasonable to require P to pay a penalty, or

- (c) that the amount of the penalty is excessive.
- (3) The ~~Petty Debts Court~~ ~~or sheriff~~ may—
  - (a) cancel the penalty notice,
  - (b) reduce the penalty by varying the penalty notice,
  - (c) increase the penalty by varying the penalty notice (whether because the court or sheriff thinks the original amount insufficient or because the court or sheriff thinks that the appeal should not have been brought), or
  - (d) confirm the penalty notice.
- (4) An appeal may be brought—
  - (a) whether or not P has given a notice of objection, and
  - (b) irrespective of the ~~Secretary of State~~ ~~Minister~~'s decision on any notice of objection.
- (5) The ~~Petty Debts Court~~ ~~or sheriff~~ may consider matters of which the ~~Secretary of State~~ ~~Minister~~ was not and could not have been aware before giving the penalty notice.
- (6) Rules of court may make provision about the timing of an appeal under this section.

## 12 Penalty: enforcement

- (1) Where a penalty has not been paid before the date specified in the penalty notice in accordance with section 9(2)(b), it may be recovered as a debt due to the ~~Secretary of State~~ ~~Minister~~.
- (2) Where a notice of objection is given in respect of a penalty notice, the ~~Secretary of State~~ ~~Minister~~ may not take steps to enforce the penalty notice before—
  - (a) deciding what to do in response to the notice of objection, and
  - (b) informing the objector.
- (3) The ~~Secretary of State~~ ~~Minister~~ may not take steps to enforce a penalty notice while an appeal under section 11—
  - (a) could be brought (disregarding any possibility of an appeal out of time with permission), or
  - (b) has been brought and has not been determined or abandoned.



(4) In proceedings for the recovery of a penalty no question may be raised as to the matters specified in sections 10 and 11 as grounds for objection or appeal.

(5) Money received by the ~~Secretary of State~~ Minister in respect of a penalty shall ~~be paid into the Consolidated Fund~~ form part of the annual income of the States.

### 13 Penalty: code of practice

(1) The ~~Secretary of State~~ Minister shall issue a code of practice setting out the matters to be considered in determining—

- (a) whether to give a penalty notice under section 9(1), and
- (b) the amount of a penalty.

(2) The code may, in particular, require the ~~Secretary of State~~ Minister to consider any decision taken by virtue of section 7.

(3) A ~~Petty Debts Court~~ court or the sheriff shall, when considering an appeal under section 11, have regard to the code.

(4) The ~~Secretary of State~~ Minister may revise and re-issue the code.

(5) Before issuing or re-issuing the code the ~~Secretary of State~~ Minister must—

- (a) publish proposals, ~~and~~
- (b) consult members of the public, ~~and~~
- ~~(c) lay a draft before Parliament.~~

(6) The code (or re-issued code) shall come into force at the prescribed time.

### 14 Penalty: prescribed matters

(1) In sections 10 ~~and~~ 13 “prescribed” means prescribed by the ~~Secretary of State~~ Minister by ~~order~~ Order.

(2) An ~~order~~ Order under subsection (1) ~~or under section 9(6)~~—

- (a) may make provision generally or only for specified purposes, ~~and~~
- (b) may make different provision for different purposes;
- ~~(c) shall be made by statutory instrument, and~~

~~(d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.~~

(3) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under subsection (1).

~~(3) But the first order under section 13(6) shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament (and shall not be subject to annulment).~~

## 15 Interpretation

(1) For the purposes of section 5—

(a) “person subject to immigration control” means a person who under the Immigration Act 1971 ~~(e-77 as extended to Jersey by the Immigration (Jersey) Order 1993)~~ requires leave to enter or remain in ~~the United Kingdom~~Jersey (whether or not such leave has been given),

~~(b) .....~~

~~(c) .....~~

~~(b)~~ “document” includes a card or sticker and any other method of recording information (whether in writing or by the use of electronic or other technology or by a combination of methods),

~~(c)~~ “authorised person” has the meaning given by section 141(5) of the Immigration and Asylum Act 1999 ~~(e-33)~~ (as extended to Jersey by the Immigration and Asylum Act 1999 (Jersey) Order 2003) (authority to take fingerprints),

~~(d)~~ “immigration” includes asylum, ~~and~~

~~(e)~~ “Jersey” means the Bailiwick of Jersey.

~~(f)~~ “Minister” means the Minister for Home Affairs, ~~and~~

~~(g)~~ ~~regulations~~Regulations or an Order permitting something to be done by the ~~Secretary of State~~Minister may (but need not) permit it to be done only where the ~~Secretary of State~~Minister is of a specified opinion.

[(1A) For the purposes of section 5 “biometric information” means—

(a) information about a person's external physical characteristics (including in particular fingerprints and features of the iris), and

(b) any other information about a person's physical characteristics specified in ~~an order~~Regulations made by the ~~Secretary of State~~States.



- (1B) ~~An order~~Regulations under subsection (1A)(b)—
- (a) may specify only information that can be obtained or recorded by an external examination of a person;
  - (b) must not specify information about a person's DNA.

(1C) Section 6(6) applies to ~~an order~~Regulations under subsection (1A)(b) ~~as it applies to regulations under section 5(1).~~

(2) An application for a biometric immigration document is an application in connection with immigration for the purposes of—

~~(a) section 50(1) and (2) of the Immigration, Asylum and Nationality Act 2006 (c. 13) (procedure), and~~

[ (b) sections 67A and 68 of the Immigration Act 2014 (as extended to Jersey by the Immigration (Jersey) Order 2016) (fees);]

and in the application ~~of either~~ of those sections to an application for a biometric immigration document, the prescribed consequences of non-compliance may include any of the consequences specified in section 7(2) above.

**61 Citation**

- (1) This Act may be cited as the UK Borders Act 2007.