

IMMIGRATION BILL- STATEMENT OF INTENT

Use and retention of biometric information (Clause 10)

1. Clause 10 amends section 8 of the UK Borders Act 2007 so that biometric information provided under section 5 of that Act may only be retained where its retention is necessary for immigration or nationality purposes. It also requires that regulations made under section 8 of the 2007 Act must include provision for the use and retention of biometric information provided under sections 141 and 144 of the Immigration and Asylum Act 1999 and section 126 of the Nationality, Immigration and Asylum Act 2002. This means there will be a single set of regulations covering use and retention of biometrics under immigration legislation.

Current position

2. The current legislation that allows the Secretary of State to retain the biometric information provided by foreign nationals requires such information to be destroyed when the person becomes a British citizen¹. Under the Immigration and Asylum Act 1999 and Nationality, Immigration and Asylum Act 2002 the Secretary of State may only retain biometric information provided under those Acts for up to ten years². However, biometric information provided under section 5 of the UK Borders Act 2007 need only be destroyed when the Secretary of State thinks that it is no longer likely to be of use in accordance with one or more of the purposes specified under the regulations.
3. Regulations made under both the 2007 and 2002 Acts allow the Secretary of State to use biometric information she holds for non-immigration purposes.

Post-implementation

4. After the implementation of the provisions in the Bill, we intend to make regulations that will enable us to deliver a more proportionate biometric retention and usage policy. The regulations will require approval of both Houses of Parliament.

Policy Statement

Retention policy

5. We intend to retain biometric information provided by foreign nationals for up to ten years from the date on which they enrolled their biometric information. However, different rules will apply where:
 - the person becomes a British citizen; or
 - the person has indefinite leave; or
 - the person is subject to a Deportation Order, an Exclusion Order or a re-entry ban.

¹ Also applies to a Commonwealth Citizen with the right of abode

² This can be increased by Order.

6. In the case of British citizens we will destroy their fingerprints when they are granted citizenship, but to ensure we maintain high levels of assurance that passport applications are not fraudulent we will retain their facial images until they are issued with their first British passport. HM Passport Office state that over 90% of new citizens apply for a British passport within a year of being granted citizenship.
7. The biometric information of foreign nationals who are granted indefinite leave will be retained while their leave continues. This is mainly to ensure that we can conduct anti-fraud checks should a person apply for immigration documentation or for citizenship. If their indefinite leave subsequently lapses or is revoked, the biometric information will be retained for up to ten years following the expiry of the leave or the date of the revocation.
8. We will retain biometric information from those foreign nationals who are subject to Deportation Orders, Exclusion Orders and re-entry bans for the duration of the order or re-entry ban where they exceed ten years.
9. The effect of this policy is to tighten the statutory safeguards so that retention will only be possible where it is necessary in connection with immigration and nationality purposes. For the majority of foreign nationals this will mean there will be no change to the period their biometrics will be retained and for the others whose biometric information is held for longer periods this will only be because it is necessary. For foreign nationals who come to the UK frequently and for those who reside in the UK their identities will be protected and they will find it easier when they make applications for leave or for replacement immigration documents or when entering the UK to prove their identity.

Usage policy

10. We are not seeking to extend the powers about how the Secretary of State uses biometric information beyond what is already provided in section 8 of the UK Borders Act 2007. However, clause 10 will now also allow the Secretary of State to use biometric information taken under the 1999 and 2002 Acts for the same purposes specified by the regulations made under the amended section 8 of the 2007 Act.
11. Thus we intend to replicate provision in the regulations made under section 8 of the 2007 Act to enable the Secretary of State to use biometric information in connection with the investigation, prevention or prosecution of a criminal offence. For example where a foreign national provides their biometric information to Border Force after having arrived in the UK and the Home Office information flags up that they should be stopped and the police informed, we will be able to take appropriate action.
12. In addition to verifying a foreign national's identity by comparing their biometric information against the immigration database, we also check that information against other fingerprint databases, including the police fingerprint database. This enables us to check whether they have been convicted or arrested for a recordable offence, which would be taken into account when considering whether to grant or revoke a foreign national's leave to enter or remain in the UK.