

IMMIGRATION (BIOMETRICS) REGULATIONS, 2015

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S.I. 2015 No. 18

Immigration Act

CAP. 190

IMMIGRATION (BIOMETRICS) REGULATIONS, 2015

The Minister, in exercise of the powers conferred on him by sections 31(g) and 31(h) of the *Immigration Act*, makes the following Regulations:

PART I

PRELIMINARY

Citation

1. These Regulations may be cited as the *Immigration (Biometrics) Regulations, 2015*.

Interpretation

2. For the purposes of these Regulations,

“biometric data” includes data relating to a facial image, a fingerprint, the shape of a hand, the size of a palm, the length and width of a finger, voice recognition or a scan of the retina of a person;

“biometric system” means a system utilised by the Immigration Department to obtain, retain, process, verify and identify biometric data;

“CARICOM skilled national” means a community national who holds a qualification in accordance with the *First Schedule to the Caribbean Community, (Movement of Skilled Nationals) Act, Cap. 186A*;

“organisational measures” includes guidelines for

- (a) the operation and management of biometric data and biometric systems;
- (b) the access and security of biometric data and biometric systems; and
- (c) disaster recovery and business continuity management of biometric data and biometric systems;

“port” means the port of entry and departure specified in the *Immigration (Ports of Entry and Departure) Regulations, 2014* (S.I. 2014 No. 39);

“special entry permit” means a permit which the Chief Immigration Officer grants to a non-national for the purposes of residing in Barbados for a period of up to 10 years or indefinitely, but the permit shall not confer on the non-national the right to

- (a) engage in employment unless specified by the Minister responsible for Immigration;
- (b) have the time granted, for the purpose of residing in Barbados, count towards automatically acquiring citizenship under section 3A(1)(a) of the *Constitution of Barbados*;

“state agency” means the Customs Department or the Police Force;

“technical security measures” includes measures that

- (a) monitor, audit and test the
 - (i) authentication of biometric data;
 - (ii) biometric system and the network of the biometric system;
 - (iii) security of the biometric data, biometric system and the network of the biometric system;
- (b) regulate the access and control of biometric data and the biometric system;

“working day” does not include Saturday or Sunday.

PART II

BIOMETRIC DATA AND BIOMETRIC SYSTEMS

Ports

3.(1) Where a person

- (a) seeks to enter or depart from a port; or
- (b) enters or departs from a port,

that person shall provide an immigration officer with biometric data through the use of a biometric system.

(2) The Chief Immigration Officer shall specify the type of biometric data that a person shall provide.

(3) Notwithstanding paragraph (2), where a person who

- (a) seeks to enter or depart from a port; or
- (b) enters or departs from a port,

is physically incapable of providing the type of biometric data that the Chief Immigration Officer specifies, the person shall permit the immigration officer to capture another type of biometric data, to scan his travel documents and to record the measurement of his height.

(4) Notwithstanding section 4 of the Act, a person shall not be permitted entry into Barbados unless that person complies with paragraph (1) or (3).

(5) Where a person who seeks to depart or departs a port fails to comply with paragraph (1) or (3), an immigration officer shall refuse to allow that person to re-enter Barbados where the person does not have legal status in Barbados.

(6) Where a person who

- (a) submits documents to an immigration officer that state that that person has legal status in Barbados as a citizen or permanent resident; and

(b) seeks to depart a port,

fails to comply with paragraph (1) or (3), the immigration officer may refuse to allow that person to depart Barbados from any port.

(7) Where a person fails to comply with paragraph (1) or (3), the immigration officer shall record the following information in the ports of entry and departure logbook:

- (a) the name and address of the person;
- (b) the age of the person;
- (c) the nationality of the person;
- (d) whether the person has legal status in Barbados and, where applicable, the category of status;
- (e) the passport number of the person;
- (f) the jurisdiction that issued the passport and the expiry date of the passport;
- (g) the date and time the person fails to comply with paragraph (1) or (3);
- (h) the name of the immigration officer who records the information in the ports of entry and departure logbook.

Biometric data

4. An immigration officer shall utilise the biometric data that the Immigration Department obtains through the use of a biometric system for the purposes of

- (a) examining a person who
 - (i) seeks to enter or depart from a port; or
 - (ii) enters or departs from a port;
- (b) verifying the authenticity of documents required to be presented to the immigration officer; and

- (c) verifying the identity of a person to whom the documents apply.

Applications

5.(1) Where a person makes an application to the Chief Immigration Officer

- (a) for a passport;
- (b) for status of citizenship;
- (c) to be registered as a permanent resident;
- (d) for permission to become an immigrant;
- (e) for status of CARICOM skilled national in accordance with the Treaty;
- (f) for status for right of establishment in accordance with the Treaty;
- (g) for provision of services in accordance with the Treaty;
- (h) for a special entry permit;
- (i) for a work permit;
- (j) for permission to reside and work in Barbados;
- (k) for a student visa;
- (l) for an extension of stay in Barbados,

that person shall provide an immigration officer with biometric data through the use of a biometric system.

(2) Where the Chief Immigration Officer approves an application submitted under sub-paragraph (1) and issues the relevant document to the person and the person loses, misplaces or damages the document, that person may apply to the Chief Immigration Officer to have the document replaced.

(3) Where a person makes an application in accordance with sub-paragraph (2), that person shall provide an immigration officer with biometric data through the use of a biometric system.

(4) The Chief Immigration Officer shall specify the type of biometric data that a person shall provide.

(5) Notwithstanding paragraph (1), (3) or (4), where a person who makes an application is physically incapable of providing the type of biometric data that the Chief Immigration Officer specifies, the person shall permit the immigration officer to

- (a) capture another type of biometric data;
- (b) record the measurement of his height;
- (c) scan a picture identification of the person where the person is 18 years or older;
- (d) scan the identification of the minor where the person is a minor.

(6) Where a person fails to comply with paragraph (1), (3) or (5), the immigration officer shall not process the application and the Minister may order that the person be removed from Barbados if the person does not have legal status in Barbados.

Minors

6.(1) Where a minor is at a port, an immigration officer shall scan the travel documents of the minor and record the measurement of the height of the minor.

(2) Notwithstanding regulation 3, a minor shall not be subject to the use of a biometric system at a port without the consent of his parent or guardian.

(3) Notwithstanding regulation 5, where a parent or guardian makes an application to the Chief Immigration Officer on behalf of a minor

- (a) for a passport;
- (b) for status of citizenship;

- (c) to be registered as a permanent resident;
- (d) for permission to become an immigrant;
- (e) for a student visa; or
- (f) for an extension of stay in Barbados,

the biometric system shall not be used on the minor without the consent of the minor's parent or guardian.

(4) Where a parent or guardian does not consent to the use of the biometric system on a minor, the parent or guardian of the minor shall

- (a) present to an immigration officer a photograph of the minor in accordance with the specifications of the Chief Immigration Officer and identification of the minor that contains the measurement of the height of the minor and is issued by a jurisdiction; and
- (b) permit the immigration officer to scan the identification.

(5) Where a parent or guardian does not comply with paragraph (4), the immigration officer shall not process the application.

PART III

SECURITY OF BIOMETRIC DATA AND BIOMETRIC SYSTEMS

Security measures

7.(1) The Chief Immigration Officer shall establish organisational measures and technical security measures in respect of biometric data and biometric systems.

- (2) The measures referred to in paragraph (1) shall be for the protection of
- (a) biometric data from
 - (i) loss;

- (ii) unauthorised receipt, removal, utilisation, processing, disclosure, destruction, alteration, modification, transferral, access; or
 - (iii) other misuse;
- (b) the biometric system from
- (i) loss;
 - (ii) unauthorised receipt, removal, utilisation, processing, destruction, alteration, modification, access; or
 - (iii) other misuse; and
- (c) the network on which the biometric system operates.

Logbooks

8.(1) The Chief Immigration Officer shall establish the following logbooks:

- (a) an officer biometric logbook;
 - (b) a biometric access logbook;
 - (c) a transfer of biometric data logbook; and
 - (d) a ports of entry and departure logbook.
- (2) The Chief Immigration Officer shall ensure that
- (a) an officer biometric logbook; and
 - (b) a ports of entry and departure logbook,

are at each port.

(3) The logbooks shall be in a written and an electronic form.

Use of biometric data and biometric system by officers

9.(1) An immigration officer shall not obtain, process or retain biometric data or utilise a biometric system

- (a) without the authorisation of the Chief Immigration Officer; or

- (b) for any purpose other than one specified under these Regulations.
- (2) Where an immigration officer utilises a biometric system, he shall record his name, the date and time at which he
- (a) utilises the biometric system; or
 - (b) retains biometric data,
- in the officer biometric logbook.
- (3) An immigration officer shall ensure that he complies with the organisational measures and technical security measures implemented by the Chief Immigration Officer in respect of biometric data and the biometric system.
- (4) The Chief Immigration Officer and every immigration officer who utilises the biometric system shall treat all information in respect of biometric data and the biometric system as confidential.
- (5) Where the Chief Immigration Officer or an immigration officer is re-assigned to another post in the public service or leaves the public service, he shall continue to treat all information in respect of the biometric data and the biometric system as confidential.
- (6) A person who contravenes paragraph (5) is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000 or to imprisonment for 5 years or to both.

Use of biometric data or biometric system by persons and agencies

- 10.(1) Notwithstanding regulations 12 and 14, a person, a state agency or an agency shall not obtain, utilise, remove, destroy, alter, modify, process, have access to or engage in any other use of biometric data obtained, processed or retained by the Immigration Department without the written authorisation of the Chief Immigration Officer.
- (2) Notwithstanding regulations 12 and 14, a person, a state agency or an agency shall not obtain, utilise, remove, destroy, alter, modify, have access to or

engage in any other use of a biometric system without the written authorisation of the Chief Immigration Officer.

- (3) The Chief Immigration Officer shall
- (a) state in the written authorisation the purpose for which the person, state agency or agency is authorised to engage in the use of the biometric data or the biometric system; and
 - (b) retain a copy of the authorisation.
- (4) A person, a state agency or an agency shall not
- (a) lose biometric data or a biometric system; or
 - (b) utilise biometric data or a biometric system other than for the purpose for which authorisation is granted.
- (5) Notwithstanding paragraph (4)(a), where a
- (a) person; or
 - (b) representative acting on behalf of a state agency or an agency,
- loses biometric data or a biometric system, it is a defence if the person or representative establishes that he took reasonable measures to ensure that neither the biometric data or the biometric system was lost.
- (6) Subject to regulations 12 and 15, a person, a state agency or an agency shall not transfer biometric data obtained, processed or retained by the Immigration Department to any other system for any purpose.
- (7) A person who contravenes paragraph (1), (2), (4) or (6) is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000 or to imprisonment for 5 years or to both.

Record of use of biometric data or biometric system by persons and agencies

11.(1) Where the Chief Immigration Officer authorises a person, a state agency or an agency to obtain, utilise, remove, destroy, alter, modify, process,

have access to or engage in any other use of biometric data obtained, processed or retained by the Immigration Department, the Chief Immigration Officer shall cause there to be a record of the information set out in paragraph (2) in the biometric access logbook.

(2) The record referred to in paragraph (1) shall state the following information:

- (a) the name, address and telephone number of the person, state agency or agency;
- (b) where applicable, the name of the representative of the state agency or agency that acts on behalf of the state agency or agency;
- (c) the date and time at which the person, state agency or agency engages in the use of the biometric data;
- (d) the purpose for which the person, state agency or agency engages in the use of the biometric data and a description of that use.

(3) Where the Chief Immigration Officer authorises a person, a state agency or an agency to obtain, utilise, remove, destroy, alter, modify, have access to or engage in any other use of a biometric system, the Chief Immigration Officer shall cause there to be a record of the information set out in paragraph (4) in the biometric access logbook.

(4) The record referred to in paragraph (3) shall state the following information:

- (a) the name, address and telephone number of the person, state agency or agency;
- (b) where applicable, the name of the representative of the state agency or agency that acts on behalf of the state agency or agency;
- (c) the date and time at which the person, state agency or agency engages in the use of the biometric system;

- (d) the purpose for which the person, state agency or agency obtains, utilises, removes, destroys, alters, modifies, processes, has access to or engages in the use of the biometric system and a description of that use.

Request to Minister

12.(1) Where a person, a state agency or an agency desires to

- (a) engage in the use of biometric data or information on biometric data;
- (b) engage in the use of a biometric system or information on the biometric system;
- (c) disclose information in respect of biometric data or a biometric system;
- (d) transfer biometric data,

the person, state agency or agency shall, in writing, through the Chief Immigration Officer, submit the relevant request to the Minister and the request shall contain the information set out in paragraph (2).

(2) The request referred to in paragraph (1) shall state the following information:

- (a) the name, address and telephone number of the person, state agency or agency making the request;
- (b) the reason for making the request;
- (c) the period within which the person, state agency or agency making the request desires the request to be granted;
- (d) whether the person, state agency or agency making the request desires to disclose the information in respect of the biometric data or the biometric system to a third party;
- (e) whether the person, state agency or agency making the request desires to transfer the biometric data to a third party.

(3) Where there is a request for disclosure of information pursuant to paragraph (2)(d), the person, state agency or the agency shall state in the request the

- (a) name, address and telephone number of the third party; and
- (b) reason for the disclosure.

(4) Where there is a request for the transfer of biometric data pursuant to paragraph 2(e), the person, state agency or agency shall state in the request the

- (a) name, address and telephone number of the third party; and
- (b) reason for the transfer.

(5) Where the reason for the request relates to an investigation, the person, state agency or agency shall attach to the request the

- (a) nature and details of the investigation; and
- (b) period within which the investigation shall commence or has commenced.

(6) Where the reason for the request relates to a judicial proceeding, the person, state agency or agency shall attach a certificate to the request from the relevant court verifying that the request relates to a judicial proceeding before that court and the certificate shall

- (a) identify the court before which the judicial proceeding is being heard;
- (b) state the details of the judicial proceeding;
- (c) state the date on which the judicial proceeding commenced;
- (d) indicate the stage of the judicial proceeding; and
- (e) state the identity of the person to whom the judicial proceeding relates or shall relate.

(7) Notwithstanding paragraph (1), (2), (3) (4), (5) or (6), the Minister may require the person, state agency or agency making the request to provide additional information in respect of the request.

(8) The Minister shall reply to each request in writing within 30 days.

Refusal of request

13. A request submitted to the Minister in accordance with regulation 12 shall be refused where

- (a) the granting of the request would be contrary to the provisions of the *Constitution of Barbados*;
- (b) the Minister reasonably believes that the granting of the request would not be in the interest of
 - (i) national security or any other public policy of Barbados;
 - (ii) diplomatic relations;
- (c) the request cannot be accommodated within relevant legal practices and procedures in Barbados.

Disclosure of information to persons and agencies

14.(1) Before the Chief Immigration Officer authorises the disclosure of information on biometric data or a biometric system to a person, a state agency or an agency, the Chief Immigration Officer shall

- (a) be satisfied that the person, state agency or agency has organisational measures and technical security measures to protect the information from
 - (i) loss;
 - (ii) unauthorised receipt; removal, utilisation, processing, disclosure, destruction, alteration, modification, transferral, access; or
 - (iii) other misuse;
- (b) be satisfied that the person, state agency or agency has organisational measures and technical security measures to protect the confidentiality and use of the information;

- (c) where applicable, be satisfied that the jurisdiction of the person or agency has appropriate laws and rules to protect the confidentiality and use of the information; and
 - (d) have obtained the written consent of the Minister to disclose the information to the person, state agency or agency.
- (2) Before the Chief Immigration Officer authorises a person, a state agency or an agency to disclose information on biometric data or a biometric system to a third party, the Chief Immigration Officer shall
 - (a) be satisfied that the third party has organisational measures and technical security measures to protect the information from misuse referred to in clauses (i) to (iii) of paragraph (1)(a) and to protect the confidentiality of the information;
 - (b) where applicable, be satisfied that the jurisdiction of the third party has appropriate laws and rules which protect the confidentiality and use of the information; and
 - (c) have obtained the written consent of the Minister in respect of the disclosure of the information to the third party.
- (3) Where the Chief Immigration Officer, pursuant to paragraph (2), authorises a person, a state agency or an agency to disclose information to a third party, the
 - (a) person, state agency or agency shall only disclose that information
 - (i) to the third party so named, in writing, by the Chief Immigration Officer; and
 - (ii) in the manner specified, in writing, by the Chief Immigration Officer;
 - (b) person, state agency or agency shall, in writing, notify the Chief Immigration Officer of the date and time of the disclosure on the working day after the disclosure is made.

(4) A person who contravenes paragraph (3) is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000 or to imprisonment for 5 years or to both.

(5) The Chief Immigration Officer shall

- (a) retain all notifications received in accordance with paragraph (3)(b); and
- (b) cause a record of the notifications to be made in the biometric access logbook.

Transfer of biometric data to persons or agencies

15.(1) Before the Chief Immigration Officer authorises the transfer of biometric data to a person, state agency or agency, the Chief Immigration Officer shall

- (a) be satisfied that the person, state agency or agency has organisational measures and technical security measures to protect the
 - (i) biometric data from misuse referred to in clauses (i) to (iii) of regulation 14(1)(a);
 - (ii) confidentiality and use of the biometric data;
- (b) where applicable, be satisfied that the jurisdiction of the person or agency has appropriate laws and rules to protect the confidentiality and use of the biometric data; and
- (c) have obtained the written consent of the Minister to transfer the biometric data to the person, state agency or agency.

(2) Before the Chief Immigration Officer authorises a person, a state agency or an agency to transfer biometric data to a third party outside of Barbados, the Chief Immigration Officer shall

- (a) be satisfied that the third party has organisational measures and technical security measures that protect the biometric data from misuse referred to in clauses (i) to (iii) of regulation 14(1)(a);
- (b) where applicable, be satisfied that the jurisdiction of the third party has appropriate laws and rules which protect the confidentiality and use of the biometric data; and
- (c) have obtained the written consent of the Minister in respect of the transfer of the biometric data to the third party.

(3) Where the Chief Immigration Officer, pursuant to paragraph (2), authorises a person, a state agency or an agency to transfer biometric data to a third party, the

- (a) person, state agency or agency shall only transfer the biometric data
 - (i) to the third party so named, in writing, by the Chief Immigration Officer; and
 - (ii) in the manner specified, in writing, by the Chief Immigration Officer;
- (b) person, state agency or agency shall, in writing, notify the Chief Immigration Officer of the date and time of the transfer on the working day after the transfer occurs.

(4) A person who contravenes paragraph (3) is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000 or to imprisonment for 5 years or to both.

(5) The Chief Immigration Officer shall

- (a) retain all notifications received in accordance with paragraph (3)(b); and

- (b) cause a record of the notifications to be made in the biometric access logbook.

Treatment of disclosed information and biometric data

16.(1) A person, a state agency or an agency who receives

- (a) disclosed information in respect of biometric data or a biometric system; or
- (b) transferred biometric data,

shall treat the information or the biometric data as confidential.

(2) The person, state agency or agency shall not disclose or transfer the information or biometric data received to any person without authorisation in accordance with this Act.

(3) A person who contravenes paragraph (1) or (2) is guilty of an offence and is liable on conviction on indictment to a fine of \$25 000 or to imprisonment for 5 years or to both.

Record of disclosed information

17.(1) Where the Chief Immigration Officer authorises the disclosure of information in respect of biometric data or a biometric system to a person, a state agency, an agency or a third party, the Chief Immigration Officer shall cause a record of the information set out in paragraph (2) to be placed in the biometric access logbook.

(2) The record referred to in paragraph (1) shall, where applicable, state the following information:

- (a) the name, address and telephone number of the person to whom the information is disclosed;
- (b) the name, address and telephone number of the state agency or agency to which the information is disclosed and the name of the representative

- that receives the disclosed information on behalf of the state agency or agency;
- (c) the name, address and telephone number of the third party to whom the information is disclosed;
 - (d) the disclosed information;
 - (e) the reason for the disclosure of the information;
 - (f) the manner in which the person, state agency, agency or third party shall store the disclosed information;
 - (g) the date and time the information is disclosed to the person, state agency, agency or third party;
 - (h) the name of the person, state agency or agency who discloses the information to a third party;
 - (i) the name of the immigration officer who discloses the information.

Record of transferred biometric data

18.(1) Where the Chief Immigration Officer authorises the transfer of biometric data to a person, a state agency, an agency or a third party, he shall cause a record of the information set out in paragraph (2) to be kept in the transfer of biometric data logbook.

(2) The record referred to in paragraph (1) shall, where applicable, state the following information:

- (a) the name, address and telephone number of the person to whom biometric data is transferred;
- (b) the name, address and telephone number of the state agency or agency to which the biometric data is transferred and the name of the representative that receives the biometric data on behalf of the state agency or agency;

- (c) the name, address and telephone number of the third party to whom the biometric data is transferred;
- (d) the biometric data transferred;
- (e) the purpose of the transfer;
- (f) the manner in which the person, state agency, agency or third party shall store the biometric data;
- (g) the date and time of the transfer of the biometric data to the person, state agency, agency or third party;
- (h) the name of the immigration officer who executes the transfer of the biometric data.

Made by the Minister this 17th day of April, 2015.

FREUNDEL J. STUART

Minister Responsible for Immigration