



Jersey

IMMIGRATION (RELEVANT BIOMETRIC INFORMATION) (JERSEY) REGULATIONS 2019

Arrangement

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Made

12th March 2019

Coming into force

13th March 2019

THE STATES, in pursuance of section 126 of the Nationality, Immigration and Asylum Act 2002 as extended to Jersey, with modifications, by the Immigration (Biometric Information) (Jersey) Order 2018¹, have made the following Regulations –

1 Interpretation

(1) In these Regulations –

“2002 Act” means the provisions of the Nationality, Immigration and Asylum Act 2002, of the United Kingdom, that are modified and extended to Jersey by the Immigration (Biometric Information) (Jersey) Order 2018²;

“applicant” means a person making an application, or, if a person makes an application on behalf of another person, that other person;

“application” means an application falling within Regulation 2;

“electronic record” has the meaning given by the Electronic Communications (Jersey) Law 2000³;

“relevant biometric information” means biometric information that –

- (a) consists of, or is contained in, a photograph provided under these Regulations, or a copy of such a photograph; or
- (b) is derived from such a photograph, whether in an electronic record or otherwise.

(2) Expressions defined in section 126(9) of the 2002 Act, including “authorised person” and “biometric information”, have the same meaning in these Regulations.

(3) For the purpose of these Regulations it is irrelevant whether a photograph is digital, on film or in any other format.

2 Application of Regulations

These Regulations apply in relation to any provision, made by the directions, as amended from time to time, given under section 1(4A) of the Immigration Act 1971 of the United Kingdom as extended to Jersey, to enable a person, who for the purposes of those directions is to be regarded as an EU citizen, a family member of an EU citizen or a family member of a qualifying British citizen, to make an application for leave to remain in Jersey, or for variation of such leave.

3 Power to require photograph of face

- (1) An authorised person may require an applicant to provide a photograph of the applicant's face.
- (2) If the applicant does not comply with a requirement imposed under paragraph (1), the application may be treated as invalid.
- (3) Paragraph (1) is subject to Regulation 4.
- (4) Paragraph (1) does not apply to an applicant who falls within section 126(3) of the 2002 Act.

4 Young applicants

- (1) Regulation 3(1) does not apply to a young applicant unless –
 - (a) the authorised person's decision to impose the requirement has been confirmed by a person designated for the purpose by the Minister; and
 - (b) the authorised person is satisfied that the photograph will be taken in the presence of a person aged 18 or over who is –
 - (i) the applicant's parent or guardian, or
 - (ii) a person who for the time being takes responsibility for the applicant as a child and is neither an official nor a person acting on behalf of an official.
- (2) For the purpose of paragraph (1) –
 - (a) the applicant is a young applicant if –
 - (i) the applicant is aged under 16, and
 - (ii) the authorised person does not reasonably believe that the applicant is aged 16 or over; and
 - (b) a person is an official if the person is an authorised person or any other States' employee, within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005⁴, in an administration of the States for which the Minister has responsibility.

5 Requirements as to means of obtaining photograph

An authorised person, in imposing a requirement under Regulation 3, may do any one or more of the following –

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- (a) require the photograph, if to be provided by the applicant, to be of a particular specification;
 - (b) require the applicant to make an appointment before a specified date, and to attend the appointment, to enable the photograph to be taken by an authorised person or by a person acting on behalf of an authorised person;
 - (c) specify the date, time and place for the appointment;
 - (d) require the applicant to attend premises before a specified date to enable the photograph to be taken by an authorised person or by a person acting on behalf of an authorised person;
 - (e) specify –
 - (i) any documents that the applicant must bring to the appointment or premises, or
 - (ii) any action that the applicant must take to confirm the applicant's identity.

6 Use and retention of relevant biometric information

- (1) The Minister may record relevant biometric information on any document issued as a result of the application to which it relates.
- (2) The Minister must not retain relevant biometric information unless the Minister considers that it is necessary to do so for use in connection with –
 - (a) the exercise of a function under the Immigration Acts; or
 - (b) the exercise of a function in relation to nationality.
- (3) Relevant biometric information that may be retained under paragraph (2) may also be used –
 - (a) in connection with the prevention, investigation or prosecution of an offence;
 - (b) for a purpose that appears to the 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; and
 - (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.
- (4) For the purpose of paragraph (2)(a), “Immigration Acts” means the 2002 Act and the following Acts of the United Kingdom, as they have effect in Jersey for the time being –
 - (a) the Immigration Act 1971;
 - (b) the Immigration Act 1988;
 - (c) the Immigration and Asylum Act 1999;
 - (d) the Immigration, Asylum and Nationality Act 2006;
 - (e) the UK Borders Act 2007; and

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- (f) the Immigration Act 2014.

7 Destruction of relevant biometric information

- (1) The Minister must take all reasonable steps to ensure that relevant biometric information to which this Regulation applies is destroyed.
- (2) This Regulation applies to relevant biometric information if –
 - (a) the Minister –
 - (i) no longer considers that it is necessary to retain the relevant biometric information for use as described in Regulation 6(2), or
 - (ii) subject to the exception in paragraph (3), is satisfied that the person to whom the relevant biometric information relates is a British citizen, or is a Commonwealth citizen who has a right of abode in Jersey as a result of section 2(1)(b) of the Immigration Act 1971 of the United Kingdom, as that Act has effect in Jersey for the time being; and
 - (b) the Minister is not retaining the relevant biometric information under any power under any other enactment, or under an enactment of the United Kingdom having effect in Jersey.
- (3) The exception is that this Regulation does not apply to a photograph of a person who is registered or naturalised as a British citizen until the person is issued with a passport that describes the person as a British citizen and is a United Kingdom passport, within the meaning given by the Immigration Act 1971 of the United Kingdom, as that Act has effect in Jersey for the time being.
- (4) For the purpose of this Regulation, destroying relevant biometric information includes, in the case of information in an electronic record, erasing that information or blocking all access to it.
- (5) If a person, to whose relevant biometric information this Regulation applies, requests, in writing, the Minister to confirm that the Minister has complied with paragraph (1), the Minister must, within 3 months after receiving the request, give the person a certificate to that effect.

8 Citation and commencement

These Regulations may be cited as the Immigration (Relevant Biometric Information) (Jersey) Regulations 2019 and come into force on the day after they are made.

L.-M. HART

Deputy Greffier of the States

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- ¹ *L.33/2018*
² *L.33/2018*
³ *chapter 04.280*
⁴ *chapter 16.325*