

# STATES OF JERSEY



## **IMMIGRATION ACT 2014 (FEES): EXTENSION OF CERTAIN SECTIONS TO JERSEY; AND REPEAL OF AN ASSOCIATED PART OF THE IMMIGRATION AND ASYLUM ACT 1999 (JERSEY) ORDER 2003**

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Lodged au Greffe on 29th July 2016  
by the Chief Minister

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STATES GREFFE

## PROPOSITION

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

to agree, pursuant to Article 31(1)(b)(i) of the States of Jersey Law 2005, that a request be made to Her Majesty in Council for the making of an Order in Council that would –

- (a) extend to Jersey, with appropriate modifications and adaptations, the provisions of sections 68 to 70 of the Immigration Act 2014 (Fees);
- (b) repeal section 5 of the Immigration and Asylum Act 1999 (as extended to Jersey by the Immigration and Asylum Act 1999 (Jersey) Order 2003<sup>1</sup>),

as summarised in the attached Report of the Chief Minister.

CHIEF MINISTER

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<sup>1</sup> [chapter 21.770](#)

## REPORT

### Executive summary

1. The purpose of this Proposition is to request the States to consider whether to agree to the extension to Jersey of the fees provisions in sections 68–70 of the Immigration Act 2014<sup>2</sup>, subject to modifications to differentiate between the extent of –
  - (a) the power of the Minister for Home Affairs (“the Minister”); and
  - (b) the power of the Secretary of State,to prescribe fees in respect of the exercise of functions in connection with immigration and nationality.
2. At present, limited powers are conferred on the Minister by section 5 of the Immigration and Asylum Act 1999 (“section 5”)<sup>3</sup>, viz –

#### “Charges

- (1) *The [Minister] may by order prescribe fees to be paid in connection with applications for –*
  - (a) *leave to remain in the Bailiwick of Jersey;*
  - (b) *the variation of leave to enter, or remain in, the Bailiwick of Jersey;*
  - (c) *an indefinite leave stamp to be fixed on the applicant’s passport (or travel document) as the result of the renewal or replacement of his previous passport (or travel document).*
- (2) *If a fee prescribed in connection with an application of a particular kind is payable, no such application is to be entertained \* \* \* unless the fee has been paid in accordance with the order.*
- (3) *But –*
  - (a) *a fee prescribed in connection with such an application is not payable if the basis on which the application is made is that the applicant is –*
    - (i) *a person making a claim for asylum which claim either has not been determined or has been granted; or*
    - (ii) *a dependant of such a person; and*
  - (b) *the order may provide for no fee to be payable in prescribed circumstances.*
- (4) *If no fee is payable in respect of some part of the application, that part of the application must be entertained.*

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<sup>2</sup> The 2014 Act (c.22) received Royal Assent on 14th May 2014

<sup>3</sup> Section 5 has been repealed in the United Kingdom, but still extends to Jersey by virtue of the the Immigration and Asylum Act 1999 (Jersey) Order 2003 ([chapter 21.770](#))

- (5) *“Indefinite leave stamp” means a stamp which indicates that the applicant has been granted indefinite leave to enter, or remain in, the Bailiwick of Jersey.*
- (6) *“Claim for asylum” has the meaning given in subsection (15) of section 141.*
- (7) *“Dependant” has such meaning as may be prescribed.”*
3. The power of the Secretary of State under the 2014 Act is, by contrast, much wider – section 5 having been repealed in the United Kingdom [*see footnote 3 above*]. Section 68(1) of the 2014 Act provides that: *“The Secretary of State may provide, in accordance with this section, for fees to be charged in respect of the exercise of functions in connection with immigration or nationality.”*
4. The purpose of the draft Order in Council is therefore to revoke section 5 and to make provision instead that –
- “The Minister may by Order provide for fees to be charged in respect of the exercise of any function in connection with immigration or nationality exercised by –*
- (a) *the Lieutenant-Governor;*
- (b) *a Minister (within the meaning of Article 1(1) of the States of Jersey Law 2005);*
- (c) *an immigration officer or any other States’ employee within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005,*
- other than a function exercised by the Lieutenant-Governor under arrangements made with the Secretary of State under section 43 of the British Nationality Act 1981.”*
5. Under section 43 of the British Nationality Act 1981, the Secretary of State may in certain matters, including registration and naturalisation, make arrangements (“section 43 arrangements”) for his function to be exercised in any of the Crown dependencies by the Lieutenant-Governor, in cases concerning British citizens or British citizenship. Fees charged in respect of such a function, albeit that the function is exercised in Jersey, are prescribed by the Secretary of State under section 68 of the 2014 Act. The *vires* of the Secretary of State thus requires to be extended by Order in Council. However, under section 43 arrangements, the fees related to such a function are retained by Jersey. The modifications to sections 69 and 70 in the draft Order in Council will therefore make provision that fees paid in respect of functions discharged under section 43 arrangements form part of the annual income of the States [*see inserted subsections 69(4A) and 70(6A)*].
6. The provisions, as extended, will make it clear that a fee payable by virtue of the relevant section may be recovered as a debt due to the Minister, or Secretary of State, as the case may be, subject to the qualification mentioned in the previous paragraph in respect of fees retained under section 43 arrangements.

7. The draft Order in Council contains a saving provision in relation to the current fees prescribed under section 5, that is to say, a provision that, until the Minister prescribes fees under the new powers conferred on her by the 2014 Act as extended, the [Immigration \(Fees\) \(Jersey\) Order 2010](#) (as amended by [R&O.57/2015](#)) shall remain in force.
8. The **Appendix** hereto shows the text of the relevant statutory provisions in the form in which it is intended that they be extended.

### **Financial and manpower implications**

There are no financial or manpower implications for the States arising from this proposition.

## APPENDIX

### SECTIONS 67A–70 OF THE IMMIGRATION ACT 2014 (AS THEY ARE INTENDED TO HAVE EFFECT IN JERSEY)

#### 67A Fees (the Minister)

- (1) The Minister may by Order provide for fees to be charged in respect of the exercise of any function in connection with immigration or nationality exercised by –
  - (a) the Lieutenant-Governor;
  - (b) a Minister (within the meaning of Article 1(1) of the States of Jersey Law 2005<sup>4</sup>);
  - (c) an immigration officer or any other States' employee within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005<sup>5</sup>,  
other than a function exercised by the Lieutenant-Governor under arrangements made with the Secretary of State under section 43 of the British Nationality Act 1981.
- (2) An Order under subsection (1) may not provide for a fee to be charged in respect of the exercise of a function otherwise than in connection with an application or claim, or on request.
- (3) An Order under subsection (1) may set fees –
  - (a) of a fixed amount; or
  - (b) of an amount calculated by reference to an hourly rate or other factor.
- (4) In respect of any fee set by an Order under subsection (1), the Order may –
  - (a) provide for exceptions;
  - (b) provide for the reduction, waiver or refund of part or all of a fee (whether by conferring a discretion or otherwise);
  - (c) make provision about –
    - (i) the consequences of failure to pay a fee;
    - (ii) enforcement;
    - (iii) when a fee may or must be paid.
- (5) This section is without prejudice to any other power to charge a fee.
- (6) The Subordinate Legislation (Jersey) Law 1960<sup>6</sup> shall apply to Orders made under this section.
- (7) In this section and sections 67B and 67C –

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<sup>4</sup> [chapter 16.800](#)

<sup>5</sup> [chapter 16.325](#)

<sup>6</sup> [chapter 15.720](#)

“enactment” includes an enactment of the United Kingdom having effect in Jersey;

“function” includes a power or a duty;

“function in connection with immigration or nationality” includes a function in connection with an enactment that relates wholly or partly to immigration or nationality;

“Jersey” means the Bailiwick of Jersey;

“Minister” means Minister for Home Affairs.

(8) Any reference in this section and in section 67C to the exercise of a function includes a reference to its exercise in particular circumstances, including its exercise –

- (a) at particular times or in a particular place;
- (b) under particular arrangements;
- (c) otherwise in particular ways,

and, for this purpose, “arrangements” includes arrangements for the convenience of applicants, claimants or persons making requests for the exercise of a function.

#### **67B Fees orders (the Minister): supplemental**

- (1) A fee under section 67A may relate to something done outside Jersey.
- (2) Fees payable by virtue of section 67A may be recovered as a debt due to the Minister.
- (3) Fees charged under an Order made under section 67A shall form part of the annual income of the States.

#### **67C Power to charge fees for attendance services in particular cases**

(1) This section applies where a person exercises a function in connection with immigration or nationality in respect of which a fee is chargeable by virtue of an Order made under section 67A (a “chargeable function”) in a particular case and –

- (a) in doing so attends at a place outside Jersey, and time, agreed with a person (“the client”); and
- (b) does so at the request of the client.

It is immaterial whether or not the client is a person in respect of whom the chargeable function is exercised.

(2) In this section “attendance service” means the service described in subsection (1) except so far as it consists of the exercise of a chargeable function.

(3) The following are to be disregarded in determining whether a fee is chargeable in respect of a function by virtue of an Order made under section 67A –

- (a) any exception provided for by the Order;
- (b) any power so provided to waive or refund a fee.

- (4) The person exercising the chargeable function may charge the client such fee for the purposes of recovering the costs of providing the attendance service as the person may determine.
- (5) Fees payable by virtue of subsection (4) may be recovered as a debt due to the States.
- (6) Fees charged under subsection (4) shall form part of the annual income of the States.
- (7) This section is without prejudice to section 67A or any other power to charge a fee.

**68 Fees**

- (1) The Secretary of State may provide, in accordance with this section, for fees to be charged in respect of the exercise of functions in connection with immigration or nationality, other than functions for which a fee may be charged by virtue of an Order made by the Minister under section 67A or by virtue of section 67C.
- (2) The functions in respect of which fees are to be charged are to be specified by the Secretary of State by order (“a fees order”).
- (3) A fees order –
  - (a) must specify how the fee in respect of the exercise of each specified function is to be calculated, and
  - (b) may not provide for a fee to be charged in respect of the exercise of a function otherwise than in connection with an application or claim, or on request.
- (4) For any specified fee, a fees order must provide for it to comprise one or more amounts each of which is –
  - (a) a fixed amount, or
  - (b) an amount calculated by reference to an hourly rate or other factor.
- (5) Where a fees order provides for a fee (or part of a fee) to be a fixed amount, it –
  - (a) must specify a maximum amount for the fee (or part), and
  - (b) may specify a minimum amount.
- (6) Where a fees order provides for a fee (or part of a fee) to be calculated as mentioned in subsection (4)(b), it –
  - (a) must specify –
    - (i) how the fee (or part) is to be calculated, and
    - (ii) a maximum rate or other factor, and
  - (b) may specify a minimum rate or other factor.
- (7) For any specified fee, the following are to be set by the Secretary of State by regulations (“fees regulations”) –
  - (a) if the fee (or any part of it) is to be a fixed amount, that amount;



- (b) if the fee (or any part of it) is to be calculated as mentioned in subsection (4)(b), the hourly rate or other factor by reference to which it (or that part) is to be calculated.
- (8) An amount, or rate or other factor, set by fees regulations for a fee in respect of the exercise of a specified function –
- (a) must not –
    - (i) exceed the maximum specified for that amount, or rate or other factor;
    - (ii) be less than the minimum, if any, so specified;
  - (b) subject to that, may be intended to exceed, or result in a fee which exceeds, the costs of exercising the function.
- (9) In setting the amount of any fee, or rate or other factor, in fees regulations, the Secretary of State may have regard only to –
- (a) the costs of exercising the function;
  - (b) benefits that the Secretary of State thinks are likely to accrue to any person in connection with the exercise of the function;
  - (c) the costs of exercising any other function in connection with immigration or nationality;
  - (d) the promotion of economic growth;
  - (e) fees charged by or on behalf of governments of other countries in respect of comparable functions;
  - (f) any international agreement.
- This is subject to section 69(5).
- (10) In respect of any fee provided for under this section, fees regulations may –
- (a) provide for exceptions;
  - (b) provide for the reduction, waiver or refund of part or all of a fee (whether by conferring a discretion or otherwise);
  - (c) make provision about –
    - (i) the consequences of failure to pay a fee;
    - (ii) enforcement;
    - (iii) when a fee may or must be paid.
- (11) Any provision that may be made by fees regulations by virtue of subsection (10) may be included instead in a fees order (and any provision so included may be amended or revoked by fees regulations).
- (12) In this section and sections 69 and 70 –
- “costs” includes –
- (a) the costs of the Secretary of State, and
  - (b) the costs of any other person (whether or not funded from public money) “fees order” has the meaning given by subsection (2);

“fees regulations” has the meaning given by subsection (7);

“function” includes a power or a duty; “function in connection with immigration or nationality” includes a function in connection with an enactment (including an enactment of a jurisdiction outside Jersey) that relates wholly or partly to immigration or nationality;

“Jersey” means the Bailiwick of Jersey;

“Minister” means Minister for Home Affairs;

“specified” means specified in a fees order.

- (13) Any reference in this section or section 70 to the exercise of a function includes a reference to its exercise in particular circumstances, including its exercise –
- (a) at particular times or in a particular place;
  - (b) under particular arrangements;
  - (c) otherwise in particular ways, and, for this purpose, “arrangements” includes arrangements for the convenience of applicants, claimants or persons making requests for the exercise of a function.

## **69 Fees orders and fees regulations: supplemental**

- (1) A fees order or fees regulations may be made only with the consent of the Treasury.
- (2) A fee under section 68 may relate to something done outside Jersey.
- (3) Fees payable by virtue of section 68 may be recovered as a debt due to the Secretary of State.
- (4) Fees paid to the Secretary of State by virtue of section 68 must –
  - (a) be paid into the Consolidated Fund, or
  - (b) be applied in such other way as the relevant order may specify.
- (4A) Notwithstanding subsections (3) and (4), in relation to a function exercised by the Lieutenant-Governor under arrangements made with the Secretary of State under section 43 of the British Nationality Act 1981 –
  - (a) fees payable by virtue of section 68 may be recovered as a debt due to the Minister;
  - (b) fees paid by virtue of section 68 shall form part of the annual income of the States.
- (5) Section 68 is without prejudice to –
  - (a) section 1 of the Consular Fees Act 1980 (fees for consular acts, etc.);
  - (b) section 102 of the Finance (No. 2) Act 1987 (government fees and charges); or
  - (c) any other power to charge a fee.

**70 Power to charge fees for attendance services in particular cases**

- (1) This section applies where a person exercises a function in connection with immigration or nationality in respect of which a fee is chargeable by virtue of a fees order (a “chargeable function”) in a particular case and –
  - (a) in doing so attends at a place outside Jersey, and time, agreed with a person (“the client”), and
  - (b) does so at the request of the client. It is immaterial whether or not the client is a person in respect of whom the chargeable function is exercised.
- (2) In this section “attendance service” means the service described in subsection (1) except so far as it consists of the exercise of a chargeable function.
- (3) The following are to be disregarded in determining whether a fee is chargeable in respect of a function by virtue of a fees order –
  - (a) any exception provided for by a fees order or fees regulations;
  - (b) any power so provided to waive or refund a fee.
- (4) The person exercising the chargeable function may charge the client such fee for the purposes of recovering the costs of providing the attendance service as the person may determine.
- (5) Fees paid to the Secretary of State by virtue of this section must be paid into the Consolidated Fund.
- (6) A fee payable by virtue of this section may be recovered as a debt due to the Secretary of State.
- (6A) Notwithstanding subsections (5) and (6), in relation to a function exercised by the Lieutenant-Governor under arrangements made with the Secretary of State under section 43 of the British Nationality Act 1981 –
  - (a) fees paid by virtue of this section shall form part of the annual income of the States; and
  - (b) a fee payable by virtue of this section may be recovered as a debt due to the Minister.
- (7) This section is without prejudice to –
  - (a) section 68;
  - (b) section 1 of the Consular Fees Act 1980 (fees for consular acts, etc.);
  - (c) section 102 of the Finance (No. 2) Act 1987 (government fees and charges); or
  - (d) any other power to charge a fee.