

# STATES OF JERSEY



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

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Lodged au Greffe on 24th September 2018  
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 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 extend to Jersey, with appropriate modifications –

- (a) section 145 of the Immigration and Asylum Act 1999;
- (b) sections 126 to 128 and section 164 of the Nationality, Immigration and Asylum Act 2002; and
- (c) sections 8 and 14(3), paragraphs 3 and 4 of Schedule 2, section 73(6), and paragraph 19 of Schedule 9 of the Immigration Act 2014,

as summarised in the 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 certain provisions of –
  - (a) the Immigration and Asylum Act 1999 (“the 1999 Act”);
  - (b) the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”); and
  - (c) the Immigration Act 2014 (“the 2014 Act”).
2. The relevant sections concern –
  - enabling powers regarding the provision of biometric information in connection with applications for a visa or entry clearance, or for leave to enter or remain (including variation of such leave);
  - codes of practice in connection with immigration officers’ powers of entry, arrest, seizure and fingerprinting.

### Purpose of the Proposition

3. There are only limited powers in Jersey under the Immigration Acts to require persons to furnish biometric information in connection with applications for leave to remain in Jersey (*see* paragraph 7 *below*).
4. The draft Order in Council would not itself impose any requirement to furnish biometric details; it would merely allow the States to make Regulations for this purpose (as described in more detail in paragraphs 8–10 *below*). The merits of any proposal to require biometric information would therefore be for debate by the States when the draft Regulations were lodged *au Greffe*.
5. The immediate need for such enabling powers arises in connection with the grant to EU citizens and their family members, and family members of certain British citizens, of leave to remain in Jersey after the withdrawal of the United Kingdom from the European Union.
6. The other purpose in lodging this Proposition is set out at paragraphs 11–13 *below*.

### The existing provisions in Jersey

7. Sections 141 to 144 of the 1999 Act (as extended to Jersey) presently govern the taking of fingerprints and other biometric information. These sections are limited in their scope to certain categories of person, *e.g.* someone who has failed to produce a valid passport, someone given only temporary admission pending removal from Jersey, or someone who has claimed asylum.

## **The enabling powers**

8. In the United Kingdom, sections 126–128 of the 2002 Act enable Regulations to be made –
  - (a) requiring any immigration application, *i.e.* any application for –
    - (i) entry clearance,
    - (ii) leave to enter or remain in the United Kingdom, or
    - (iii) variation of leave to enter or remain in the United Kingdom, to be accompanied by specified biometric information; or
  - (b) enabling an authorised person to require an individual who makes an immigration application to provide such information.
9. These sections are not confined to the specific categories referred to in the 1999 Act. As matters rest in Jersey, the powers to require biometric information apply only to the specific categories mentioned in section 141 of the 1999 Act. The effect of the Order in Council would be to empower the States to make Regulations for the purposes set out in paragraph 8 *above*. This would place Jersey on the same footing as the United Kingdom in terms of the relevant Regulation-making powers.
10. For these purposes, “biometric information” will mean –
  - (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.

## **Exercise of powers by immigration officers – codes of practice**

11. Section 145 of the 1999 Act (“section 145”) provides in the United Kingdom that an immigration officer exercising any specified power to –
  - (a) arrest, question, search or take fingerprints from a person;
  - (b) enter and search premises; or
  - (c) seize property found on persons or premises,

must have regard to such provisions of a code as may be specified in a direction given by the Secretary of State. The provisions thus specified are provisions in any code of practice under the Police and Criminal Evidence Act 1984 (“PACE”).

12. When the 1999 Act was extended to Jersey there was no local counterpart to PACE, and section 145 was not included in the extended provisions. Now that Jersey has broadly equivalent provisions to PACE, it is appropriate to extend section 145.
13. The Order in Council would therefore extend section 145 to require a Jersey immigration officer to have regard to such provisions of a code as may be specified in a direction given by the Minister. The provisions thus specified would be the provisions in any code of practice under the Police Procedures and Criminal Evidence (Jersey) Law 2003.

#### **Immigration Acts – note on extension generally**

14. The task of updating Jersey's immigration legislation is part of a continual process of ensuring that provisions that apply in Jersey are consistent, where appropriate, with provisions in other parts of the Common Travel Area. Much work to this end has been done at officer level in the last 18 months including, notably, the transfer of functions under the Immigration Acts from the Lieutenant-Governor to the Minister for Home Affairs.
15. This Order in Council, whilst addressing a present requirement to empower the States as described above, is a further step towards an eventual consolidation of the Immigration Acts in their extended form.

**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.

#### **Financial and manpower implications**

There are no resource implications in deciding that the States should have the power to make Regulations to require immigration applications to be accompanied by specified biometric information, or to enable an authorised person to require an individual who makes an immigration application to provide such information.

Any further resource implications will depend on the provisions contained in the Regulations brought forward pursuant to powers conferred under the relevant Acts as extended.

There are also no resource implications in requiring immigration officers exercising powers of arrest, seizure, *etc.* to have regard to the provisions of a code specified in a direction given by the Minister.

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STATUTORY INSTRUMENTS

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2018 No.

**IMMIGRATION**

**The Immigration (Biometric Information) (Jersey) Order 2018**

Made - - - - - 2018

*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 170(7) of the Immigration and Asylum Act 1999(a), section 163(4) of the Nationality, Immigration and Asylum Act 2002(b) and section 76(6) of the Immigration Act 2014(c), 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 Information) (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 1999 Act” means the Immigration and Asylum Act 1999;

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;

“the 2014 Act” means the Immigration Act 2014;

“Jersey” means the Bailiwick of Jersey.

(3) For the purposes of construing provisions of the 1999 Act, the 2002 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 1999 Act to Jersey**

2. Section 145 of the 1999 Act (Codes of practice) shall extend to Jersey subject to the modifications specified in Schedule 1 to this Order.

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(a) 1999 c. 33.  
(b) 2002 c. 41.  
(c) 2014 c. 22.

**Extension of the 2002 Act to Jersey**

3. The following provisions of the 2002 Act shall extend to Jersey—

- (a) sections 126 to 128 (Provision of information by traveller); and
- (b) section 164 (Short title),

subject to the modifications, if any, specified in Schedule 2 to this Order.

**Extension of the 2014 Act to Jersey**

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

- (a) section 8 (Provision of biometric information with immigration applications);
- (b) section 14(3) (Use and retention of biometric information: amendment of section 126 of the 2002 Act);
- (c) paragraphs 3 and 4 of Schedule 2 (amendment of sections 126 and 127 of the 2002 Act);  
and
- (d) section 73(6) and paragraph 19 of Schedule 9 (Transitional and consequential provision),

subject to the modifications, if any, specified in Schedule 3 to this Order.

**Consequential amendments**

5. In the Schedule to the Immigration and Asylum Act 1999 (Jersey) Order 2003(a), the entry relating to section 144 of the 1999 Act (other methods of collecting data about physical characteristics) is omitted.

6. In Schedule 2 to the Immigration (Biometric Registration) (Jersey) Order 2018(b) in paragraph 3, in sub-paragraph (a)(ii) and sub-paragraph (b) for “directions” substitute “Orders”.

Clerk of the Privy Council

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(a) S.I. 2003/1252.  
(b) S.I. 2018/619

SCHEDULE 1

Article 2

Modifications of section 145 of the Immigration and Asylum Act 1999 as  
it extends to Jersey

1. In section 145 (Codes of practice)—

- (a) in subsection (4) for “Secretary of State” substitute “Minister”;
- (b) for subsection (6) substitute—

“(6) “Code” means any code of practice for the time being in force under the Police  
Procedures and Criminal Evidence (Jersey) Law 2003.”;

- (c) omit subsection (7).



## SCHEDULE 2

Article 3

### Modifications of sections 126, 127 and 128 of the Nationality, Immigration and Asylum Act 2002 as they extend to Jersey

1. In section 126 (Physical data: compulsory provision)—
  - (a) in subsection (1) for “Secretary of State may by regulations” substitute “States may by Regulations”;
  - (b) in subsection (2) for “the United Kingdom” in both places it occurs substitute “Jersey”;
  - (c) in subsection (4)(f) for “Secretary of State” substitute “Minister”;
  - (d) in subsection (7) for “regulations” in both places it occurs substitute “Regulations”;
  - (e) omit subsection (8);
  - (f) in subsection (9) after the definition of “entry clearance” insert—

““Jersey” means the Bailiwick of Jersey, and  
“Minister” means the Minister for Home Affairs.”.
2. In section 127 (Physical data: voluntary provision)—
  - (a) in subsection (1) for “the United Kingdom” substitute “Jersey”;
  - (b) in subsections (1) and (2) for “Secretary of State” substitute “Minister”.
3. In section 128 (Data collection under Immigration and Asylum Act 1999)—
  - (a) for subsection (1) substitute—

“(1) For section 144 of the Immigration and Asylum Act 1999 (c. 33) (collection of data about external physical characteristics) substitute—

**“144 Power to make provision about other biometric information**

(1) The Minister may make Orders containing provisions equivalent to sections 141, 142 and 143 in relation to such other methods of collecting biometric information as may be prescribed.

(2) “Biometric information” has the meaning given by section 15 of the UK Borders Act 2007.”;
  - (b) in subsection (2) (in the inserted subsection (2A)) for “regulations” substitute “an Order”.

### SCHEDULE 3

Article 4

#### Modifications of sections 8 and 14(3) of, and Schedule 2 to, the Immigration Act 2014 as they extend to Jersey

1. In section 8 (Provision of biometric information with immigration applications) in subsection (2)—
  - (a) omit the inserted paragraph (d);
  - (b) in the inserted paragraph (e)—
    - (i) for “the United Kingdom” substitute “Jersey”;
    - (ii) after “section 2(2) of the European Communities Act 1972” insert “or Article 2 of the European Union Legislation (Implementation) (Jersey) Law 2014.”
2. In section 14(3) (Use and retention of biometric information) in the inserted subsection (8A) for “regulations” in both places it occurs substitute “Regulations”.
3. In paragraph 4 of Schedule 2 (amendment of section 127 of the Nationality, Immigration and Asylum Act 2002) in subparagraph (4)—
  - (a) in paragraph (a) omit “and”;
  - (b) omit paragraph (b), and
  - (b) for paragraph (c) substitute—
    - “(c) for paragraph (c) substitute—
      - “(c) “Jersey”, and
      - (d) “Minister”.”.

## EXPLANATORY NOTE

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

This Order extends to Jersey, with modifications, sections 126 to 128 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”) and amendments of those sections, and of section 144 of the Immigration and Asylum Act 1999 (“the 1999 Act”), made by the Immigration Act 2014. The Order also extends to Jersey section 145 of the 1999 Act.

The sections of the 2002 Act in their extended form make the following provisions—

Section 126 enables the States of Jersey to provide by Regulations that a person who makes an application for a visa or entry clearance, or for leave to enter or remain (including variation of such leave) will be required to provide biometric information specified in the Regulations when making such an application, or to provide on demand such information to an “authorised person”, who is enabled by the Regulations to collect such information (for example, an entry clearance officer or immigration officer).

Under section 127 the Jersey Minister for Home Affairs may operate a scheme that enables people voluntarily to provide information of the type covered by section 126 with a view to assisting and accelerating their entry into Jersey. Regulations made by the States of Jersey under this provision may impose or permit imposition of a charge on participants and may provide for safeguards regarding the use and retention of data.

Section 128 substitutes section 144(1) of the 1999 Act (as it extends to Jersey) to provide that the Minister for Home Affairs may make Orders (rather than give directions) containing provisions equivalent to sections 141, 142 and 143 of that Act (which relate to fingerprinting) in relation to such other methods of collecting biometric information as may be prescribed.

Section 145 of the 1999 Act in its extended form requires immigration officers to have regard to specified provisions of a code of practice under the Police Procedures and Criminal Evidence (Jersey) Law 2003 when exercising certain powers of arrest and search, etc.

The Order makes consequential amendments to the Immigration and Asylum Act 1999 (Jersey) Order 2003 and the Immigration (Biometric Registration) (Jersey) Order 2018.

**Immigration and Asylum Act 1999**

**144. ~~Power to make provision about other biometric information~~~~Other methods of collecting data about physical characteristics.~~**

- (1) The ~~Minister~~Secretary of State may make ~~Orders~~regulations containing provisions equivalent to sections 141, 142 and 143 in relation to such other methods of collecting biometric information as may be prescribed.
- (2) "Biometric information" has the meaning given by section 15 of the UK Borders Act 2007.

**145 Codes of practice.**

- (1) An immigration officer exercising any specified power to—
  - (a) arrest, question, search or take fingerprints from a person,
  - (b) enter and search premises, or
  - (c) seize property found on persons or premises,
 must have regard to such provisions of a code as may be specified.
- (2) Subsection (1) also applies to an authorised person exercising the power to take fingerprints conferred by section 141.
- (2A) A person exercising a power under ~~an Order~~regulations made by virtue of section 144 must have regard to such provisions of a code as may be specified.
- (3) Any specified provision of a code may have effect for the purposes of this section subject to such modifications as may be specified.
- (4) "Specified" means specified in a direction given by the Secretary of State.
- (5) "Authorised person" has the same meaning as in section 141.
- (6) "Code" means ~~any code of practice for the time being in force under the Police and Criminal Procedures and Criminal Evidence (Jersey) Law 2003—~~
  - ~~(a) in relation to England and Wales, any code of practice for the time being in force under the Police and Criminal Evidence Act 1984;~~
  - ~~(b) in relation to Northern Ireland, any code of practice for the time being in force under the Police and Criminal Evidence (Northern Ireland) Order 1989.~~
- ~~(7) This section does not apply to any person exercising powers in Scotland.~~

**Nationality, Immigration and Asylum Act 2002**

**126 Physical data: compulsory provision**

- (1) The ~~States~~Secretary of State may by ~~r~~Regulations—
  - (a) require an immigration application to be accompanied by specified biometric information;

- (b) enable an authorised person to require an individual who makes an immigration application to provide biometric information;
  - (c) enable an authorised person to require an entrant to provide biometric information.
- (2) In subsection (1) “immigration application” means an application for—
- (a) entry clearance,
  - (b) leave to enter or remain in ~~Jersey~~the United Kingdom,
  - (c) variation of leave to enter or remain in ~~Jersey~~the United Kingdom, or
  - ~~{(d) a transit visa (within the meaning of section 41 of the Immigration and Asylum Act 1999), or~~
  - (e) a document issued as evidence that a person who is not a national of an EEA state or Switzerland is entitled to enter or remain in ~~Jersey~~the United Kingdom by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972 or Article 2 of the European Union Legislation (Implementation) (Jersey) Law 2014.
- (3) Regulations under subsection (1) may not—
- (a) impose a requirement in respect of a person to whom section 141 of the Immigration and Asylum Act 1999 (c. 33) (fingerprinting) applies, during the relevant period within the meaning of that section, or
  - (b) enable a requirement to be imposed in respect of a person to whom that section applies, during the relevant period within the meaning of that section.
- (4) Regulations under subsection (1) may, in particular—
- (a) require, or enable an authorised person to require, the provision of biometric information in a specified form;
  - (b) require an individual to submit, or enable an authorised person to require an individual to submit, to a specified process by means of which biometric information is obtained or recorded;
  - (c) make provision about the effect of failure to provide biometric information or to submit to a process (which may, in particular, include provision for an application to be disregarded or dismissed if a requirement is not satisfied);
  - (d) confer a function (which may include the exercise of a discretion) on an authorised person;
  - (e) require an authorised person to have regard to a code (with or without modification);
  - (f) require an authorised person to have regard to such provisions of a code (with or without modification) as may be specified by direction of the Secretary of State;
  - (fa) provide for biometric information to be recorded on any document issued as a result of the application in relation to which the information was provided;
  - (g) ...
  - (h) make provision which applies generally or only in specified cases or circumstances;
  - (i) make different provision for different cases or circumstances.
- (5) ...
- (6) In so far as ~~the~~Regulations under subsection (1) require an individual under the age of 16 to submit to a process, ~~the~~the ~~Regulations~~Regulations must make provision similar to section 141(3) to (5) and (13) of the Immigration and Asylum Act 1999 (fingerprints: children).

(7) In so far as ~~the~~ Regulations under subsection (1) enable an authorised person to require an individual under the age of 16 to submit to a process, the ~~the~~ Regulations must make provision similar to section 141(3) to (5), (12) and (13) of that Act (fingerprints: children).

~~(8) Regulations under subsection (1)—~~

~~(a) must be made by statutory instrument, and~~

~~(b) shall not be made unless a draft of the regulations has been laid before and approved by resolution of each House of Parliament.~~

(8A) Section 8 of the UK Borders Act 2007 (power to make ~~the~~ Regulations about use and retention of biometric information) applies to biometric information provided in accordance with ~~the~~ Regulations under subsection (1) as it applies to biometric information provided in accordance with regulations under section 5(1) of that Act.

(9) In this section—

“authorised person” has the meaning given by section 141(5) of the Immigration and Asylum Act 1999 (authority to take fingerprints),

“biometric information” has the meaning given by section 15 of the UK Borders Act 2007,

“code” has the meaning given by section 145(6) of that Act (code of practice),

“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),

“entrant” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation), and

“entry clearance” has the meaning given by section 33(1) of that Act.

## 127 Physical data: voluntary provision

(1) The ~~Minister~~ Secretary of State may operate a scheme under which an individual may supply, or submit to the obtaining or recording of, biometric information to be used (wholly or partly) in connection with entry to ~~Jersey~~ the United Kingdom.

(2) In particular, the ~~Minister~~ Secretary of State may—

(a) require an authorised person to use biometric information supplied under a scheme;

(b) make provision about the collection, use and retention of biometric information supplied under a scheme (which may include provision requiring an authorised person to have regard to a code);

(c) charge for participation in a scheme.

(3) In this section the following expressions have the same meaning as in section 126—

(a) “authorised person”,

(aa) “biometric information”, ~~and~~

(b) “code”;

(c) “Jersey”, ~~and~~

~~(d) “Minister”.~~

## 128 Data collection under Immigration and Asylum Act 1999



~~(1) The following shall be added at the end of section 144 of the Immigration and Asylum Act 1999 (c. 33) (collection of data about external physical characteristics) (which becomes subsection (1))—~~

~~“(2) In subsection (1) “external physical characteristics” includes, in particular, features of the iris or any other part of the eye.~~

~~(1) For section 144 of the Immigration and Asylum Act 1999 (c. 33) (collection of data about external physical characteristics) substitute—~~

“144 Power to make provision about other biometric information

(1) The Minister may make Orders containing provisions equivalent to sections 141, 142 and 143 in relation to such other methods of collecting biometric information as may be prescribed.

(2) “Biometric information” has the meaning given by section 15 of the UK Borders Act 2007.”

(2) The following shall be inserted after section 145(2) of that Act (codes of practice)—

“(2A) A person exercising a power under an Order regulations made by virtue of section 144 must have regard to such provisions of a code as may be specified.”

#### **Immigration Act 2014**

[Sections 8 and 14(3) of the 2014 Act amended section 126 of the Nationality, Immigration and Asylum Act 2002. The amendments to s.126 made by those provisions in the form extended by the draft Order in Council are incorporated in s. 126 already shown tracked *above*.

Paragraphs 3 and 4 of Schedule 2 to the 2014 Act amended sections 126 and 127 of the Nationality, Immigration and Asylum Act 2002. The amendments to ss.126 and 127 made by those provisions in the form extended by the draft Order in Council are incorporated in ss. 126 and 127 already shown tracked *above*.

Section 73(6) of, and paragraph 19 of Schedule 9 to, the 2014 Act amended section 126 of the Nationality, Immigration and Asylum Act 2002. The amendments to s.126 made by those provisions in the form extended by the draft Order in Council are incorporated in s. 126 already shown tracked *above*.]