

STATES OF JERSEY



DRAFT IMMIGRATION (RELEVANT BIOMETRIC INFORMATION) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 29th January 2019
by the Minister for Home Affairs**

STATES GREFFE



Jersey

DRAFT IMMIGRATION (RELEVANT BIOMETRIC INFORMATION) (JERSEY) REGULATIONS 201-

REPORT

The main purpose of these Regulations is to provide the legal authority for immigration officers and certain other authorised persons (being a police officer or prison officer, or an officer of the Minister authorised to take fingerprints for immigration purposes) to require applicants under the Jersey EU Settlement Scheme to provide a photograph with the application.

The Regulations are proposed to be made under s. 126 of the Nationality, Immigration and Asylum Act 2002, as extended to Jersey by the [Immigration \(Biometric Information\) \(Jersey\) Order 2018](#). The relevant Proposition to extend s. 126 to Jersey was debated and approved by the States Assembly on 6th November 2018 ([P.105/2018](#)). The Order in Council was then approved by the Privy Council on 12th December 2018, registered by the Royal Court on 21st December 2018, and came into force on 28th December 2018.

As was made clear in the debate on P.105/2018, the biometrics required in connection with an application for leave to remain under the Settled Status Scheme will be confined to a photograph of the applicant's face. The draft Appendix EU(J) of the Jersey Immigration Rules (published by [MD-HA-2018-0087](#)) refers to the need for a photograph to accompany an application; and these Regulations provide the legal authority for an immigration officer, etc. to make that requirement. Where an individual does not comply with a requirement imposed by these Regulations, their application may be treated as invalid.

The Regulations also provide for safeguards in relation to photographing children, and in relation to destroying any record of a photograph after it is no longer needed.

A photograph can only be taken from an applicant under the age of 16 where the immigration officer or other authorised person is satisfied that this will be done in the presence of a parent or guardian, or other responsible person who is independent of the Minister, and where his or her decision has been confirmed by a person designated for the purpose by the Minister.

These Regulations provide that any photograph or record of a photograph (including biometric information derived from a photograph) held by the Minister pursuant to the Regulations must be destroyed if the Minister considers that it is no longer needed for use in connection with functions relating to immigration laws or nationality.

A photograph, and relevant information, may also be used in connection with criminal investigations or prosecutions, and for purposes of national security, as well as for identifying dead persons or persons suffering from illness or injury. It may also be

used to ascertain whether someone has acted unlawfully, or tried to obtain something to which they were not entitled.

A photograph is no longer needed for the above purpose if the applicant becomes a British Citizen and is issued with a passport, or a Commonwealth citizen who has a right of abode in Jersey.

The Regulations make it clear that destroying biometric information includes, in the case of information in an electronic record, erasing that information or blocking all access to it.

Finally, in circumstances where the Regulations provide that biometric information is destroyed (under Regulation 7), a person whose biometric information is held (by the Minister) is entitled, within 3 months of making a written request, to a certificate issued by the Minister to the effect that the Minister has taken the steps required under the Regulations to destroy such information.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

Explanatory Note

These Regulations provide authority for an authorised person to require a person to provide a photograph of his or her face for an application for leave to remain in Jersey, in a case in which the Jersey Immigration Rules enable an EU citizen, or family member, to apply for that leave. The application may be treated as invalid if the applicant fails to comply.

An authorised person is a police officer, immigration officer or prison officer, or an officer of the Minister for Home Affairs (the “Minister”) who is authorised to take fingerprints for immigration purposes.

The requirement does not apply to certain persons who are required to provide fingerprints, nor generally to persons aged under 16. However, the requirement can be applied to an applicant aged under 16 if the authorised person reasonably believes the applicant is 16 or over, or if a person designated by the Minister confirms the decision and the authorised person is satisfied that a person aged 18 or over will be present, who is the applicant’s parent or guardian, or who takes responsibility for the child (but not as a States’ employee or a person acting on behalf a Sates’ employee).

The authorised person can require the applicant to provide a photograph of a particular specification, or require the applicant to attend premises for the authorised person (or someone else on the authorised person’s behalf) to take the photograph.

The photograph, and information derived from it, may be recorded on a card or other document given as a result of the application. The Minister must not retain the photograph or information unless necessary for functions relating to immigration or nationality. If it is needed for those purposes, it may also be used for certain other purposes to do with crime, national security, identifying dead or injured people, or ascertaining whether a person has acted unlawfully (or has sought anything to which the person is not entitled).

The Minister must take all reasonable steps to ensure the photograph and information are destroyed when no longer needed (unless there is some other power to retain them). In particular they are no longer needed if the applicant becomes a British Citizen and is issued with a passport. A person whose photograph or information is to be destroyed may request the Minister to confirm the destruction, and the Minister must provide a confirmatory certificate within 3 months.

The Regulations would come into force on the day after they are made.



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Arrangement

Regulation

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Jersey

DRAFT IMMIGRATION (RELEVANT BIOMETRIC INFORMATION) (JERSEY) REGULATIONS 201-

Made [date to be inserted]
Coming into force [date to be inserted]

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
 - (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 201- and come into force on the day after they are made.

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