

## LEAVE TO ENTER AND REMAIN DIRECTIONS 2017

**THE MINISTER FOR HOME AFFAIRS**, in exercise of the powers conferred by sections 3A(1), (2), (3), (4), (6) and (10) and 3B(2)(a) and (c) and (3)(a) of the Immigration Act 1971, as extended to Jersey by the Immigration (Jersey) Order 1993, as amended by the Immigration (Jersey) (Amendment) Order 2017, hereby gives the following directions.

### PART 1 GENERAL

#### Definitions

1. In these directions

"the Act" means the Immigration Act 1971 as extended to Jersey;

"control port" means a port in which a control area is designated under paragraph 26(3) of Schedule 2 to the Act;

"Crown service" means service of the Crown, whether within Her Majesty's dominions or elsewhere, under Her Majesty's government in the United Kingdom or under the government of any other part of the United Kingdom and islands;

"Her Majesty's Forces" has the same meaning as in the Armed Forces (Offences and Jurisdiction) (Jersey) Law 2017;

"the Immigration Acts" means the Immigration Acts of the United Kingdom having effect for the time being as extended to Jersey;

"Jersey" means the Bailiwick of Jersey;

"the Jersey Immigration Rules" means the Immigration Rules contained in directions of the Minister made pursuant to section 1(4A) of the Act;

"the Minister" means the Minister for home Affairs;

"responsible third party" means a person appearing to an immigration officer to be –

- (a) in charge of a group of people arriving in Jersey together or intending to arrive in Jersey together;
- (b) a tour operator;
- (c) the owner or agent of a ship, aircraft, hydrofoil or hovercraft;
- (d) the person responsible for the management of a control port or that person's agent; or
- (e) an official at a British Diplomatic Mission or at a British Consular Post or at the office of any person outside the United Kingdom and Islands who has been authorised by the Secretary of State to accept applications for entry clearance;

"tour operator" means a person who, otherwise than occasionally, organises and provides holidays to the public or a section of it; and

"visit visa" means an entry clearance granted for the purpose of entry to Jersey as a visitor under directions of the Minister.

## **PART 2**

### **ENTRY CLEARANCE AS LEAVE TO ENTER**

#### **Entry clearance as Leave to Enter**

2. Subject to paragraph 6(3), an entry clearance which complies with the requirements of paragraph 3 shall have effect as leave to enter Jersey to the extent specified in paragraph 4, but subject to the conditions referred to in paragraph 5.

#### **Requirements**

3. (1) An entry clearance shall not have effect as leave to enter unless it complies with the requirements of this paragraph.
  - (2) The entry clearance must specify the purpose for which the holder wishes to enter Jersey.
  - (3) The entry clearance must be endorsed with –
    - (a) the conditions to which it is subject; or
    - (b) a statement that it is to have effect as indefinite leave to enter Jersey.

#### **Extent to which Entry Clearance is to be Leave to Enter**

4. (1) A visit visa, during its period of validity, shall have effect as leave to enter Jersey on an unlimited number of occasions, in accordance with sub-paragraph (2).
  - (2) On each occasion the holder arrives in Jersey, he or she shall be treated for the purposes of the Immigration Acts as having been granted, before arrival, leave to enter Jersey for a limited period beginning on the date of arrival, being –
    - (a) 6 months if 6 months or more remain of the visa's period of validity; or
    - (b) the visa's remaining period of validity, if less than 6 months.
  - (3) In the case of any other form of entry clearance, it shall have effect as leave to enter Jersey on one occasion during its period of validity; and, on arrival in Jersey, the holder shall be treated for the purposes of the Immigration Acts as having been granted, before arrival, leave to enter Jersey –

- (a) in the case of an entry clearance which is endorsed with a statement that it is to have effect as indefinite leave to enter Jersey, for an indefinite period; or
  - (b) in the case of an entry clearance which is endorsed with conditions, for a limited period, being the period beginning on the date on which the holder arrives in Jersey and ending on the date of expiry of the entry clearance.
- (4) In this paragraph "period of validity" means the period beginning on the day on which the entry clearance becomes effective and ending on the day on which it expires.

### **Conditions**

5. An entry clearance shall have effect as leave to enter subject to any conditions, being conditions of a kind that may be imposed on leave to enter given under section 3 of the Act, to which the entry clearance is subject and which are endorsed on it.

### **Incidental, supplementary and consequential provisions**

6. (1) Where an immigration officer exercises his or her power to cancel leave to enter under paragraph 2A(8) of Schedule 2 to the Act or paragraph 13(7) below in respect of an entry clearance which has effect as leave to enter, the entry clearance shall cease to have effect.
- (2) If the holder of an entry clearance –
- (a) arrives in Jersey before the day on which it becomes effective; or
  - (b) seeks to enter Jersey for a purpose other than the purpose specified in the entry clearance,
- an immigration officer may cancel the entry clearance.
- (3) If the holder of an entry clearance which does not, at the time, have effect as leave to enter Jersey seeks leave to enter Jersey at any time before the holder's departure for, or in the course of his or her journey to, Jersey and is refused leave to enter under paragraph 7, the entry clearance shall not have effect as leave to enter.

## **PART 3**

### **FORM AND MANNER OF GIVING AND REFUSING LEAVE TO ENTER**

#### **Grant and refusal of leave to enter before arrival in Jersey**

7. (1) An immigration officer, whether or not in Jersey, may give or refuse a person leave to enter Jersey at any time before the person's departure for, or in the course of his or her journey to, Jersey.

- (2) In order to determine whether or not to give leave to enter under this paragraph (and, if so, for what period and subject to what conditions), an immigration officer may seek such information, and the production of such documents or copy documents, as an immigration officer would be entitled to obtain in an examination under paragraph 2 or 2A of Schedule 2 to the Act.
- (3) An immigration officer may also require the person seeking leave to supply an up to date medical report.
- (4) Failure by a person seeking leave to supply any information, documents, copy documents or medical report requested by an immigration officer under this paragraph shall be a ground, in itself, for refusal of leave.

#### **Grant or refusal of leave otherwise than by notice in writing**

8. (1) A notice giving or refusing leave to enter may, instead of being given in writing as required by section 4(1) of the Act, be given as follows.
  - (2) The notice may be given by facsimile or electronic mail.
  - (3) In the case of a notice giving or refusing leave to enter Jersey as a visitor, it may be given orally, including by means of a telecommunications system.
  - (4) In sub-paragraph (3), "leave to enter Jersey as a visitor" means leave to enter as a visitor under the Jersey Immigration Rules for a period not exceeding 6 months, subject to conditions prohibiting employment and recourse to public funds.

#### **Grant or refusal of leave by notice to a responsible third party**

9. (1) Leave to enter may be given or refused to a person by means of a notice given (in such form and manner as is permitted by the Act or these directions for a notice giving or refusing leave to enter) to a responsible third party acting on his or her behalf.
  - (2) A notice under sub-paragraph (1) may refer to a person to whom leave is being granted or refused either by name or by reference to a description or category of persons which includes that person.

#### **Notice of refusal of leave**

10. (1) Where a notice refusing leave to enter to a person is given under paragraph 8(3) or 9, an immigration officer shall as soon as practicable give to the person a notice in writing stating that he or she has been refused leave to enter Jersey and stating the reasons for the refusal.
  - (2) Any notice required by sub-paragraph (1) to be given to any person may be delivered, or sent by post to –
    - (a) that person's last known or usual place of abode; or

- (b) any address provided by the person for receipt of the notice.

**Burden of proof**

- 11. Where any question arises under the Immigration Acts as to whether a person has leave to enter Jersey and the person alleges that he or she has such leave by virtue of a notice given under paragraph 8(3) or 9, the onus shall lie upon the person to show the manner and date of his or her entry into Jersey.
- 12. (1) This paragraph applies where –
  - (a) an immigration officer has commenced examination of a person ('the applicant') under paragraph 2(1)(c) of Schedule 2 to the Act (examination to determine whether or not leave to enter should be given);
  - (b) that examination has been adjourned, or the applicant has been required (under paragraph 2(3) of Schedule 2 to the Act) to submit to a further examination, whilst further inquiries are made (including, where the applicant has made an asylum claim, as to the Minister decision on that claim); and
  - (c) upon the completion of those inquiries, an immigration officer considers that he or she is in a position to decide whether or not to give or refuse leave to enter without interviewing the applicant further.
- (2) Where this paragraph applies, any notice giving or refusing leave to enter which is on any date thereafter sent by post to the applicant (or is communicated to the applicant in such form or manner as is permitted by these directions) shall be regarded, for the purposes of the Act, as having been given within the period of 24 hours specified in paragraph 6(1) of Schedule 2 to the Act (period within which notice giving or refusing leave to enter must be given after completion of examination).

**PART 4**

**LEAVE WHICH DOES NOT LAPSE ON TRAVEL OUTSIDE  
COMMON TRAVEL AREA**

- 13. (1) In this paragraph "leave" means –
  - (a) leave to enter Jersey (including leave to enter conferred by means of an entry clearance under paragraph 2); and
  - (b) leave to remain in Jersey.
- (2) Subject to sub-paragraph (3), where a person has leave which is in force and which was –
  - (a) conferred by means of an entry clearance (other than a visit visa) under paragraph 2; or

- (b) given by an immigration officer or the Minister for a period exceeding 6 months, such leave shall not lapse when the person goes to a country or territory outside the common travel area.
- (3) Sub-paragraph (2) shall not apply –
  - (a) where a limited leave has been varied by the Minister ; and
  - (b) following the variation the period of leave remaining is 6 months or less.
- (4) Leave which does not lapse under sub-paragraph (2) shall remain in force either indefinitely (if it is unlimited) or until the date on which it would otherwise have expired (if limited), but –
  - (za) where the holder has unlimited leave granted by virtue of Appendix EU(J) to the Jersey Immigration Rules (including unlimited leave granted by virtue of Appendix EU(J) before this paragraph comes into force), subject to paragraph 13C, the unlimited leave lapses if the holder stays outside the United Kingdom and Islands for a continuous period of more than—
    - (i) four years, in the case of unlimited leave granted by virtue of Appendix EU to the Jersey Immigration Rules as a Swiss national or a family member of a Swiss national;
    - (ii) five years, in all other cases;
  - (a) subject to paragraphs 13A and 13B, where the holder has stayed outside the United Kingdom and Islands for a continuous period of more than two years, the leave (where the leave is unlimited) or any leave then remaining (where the leave is limited) shall thereupon lapse; and
  - (b) any conditions to which the leave is subject shall be suspended for such time as the holder is outside the United Kingdom and Islands.
- (5) For the purposes of paragraphs 2 and 2A of Schedule 2 to the Act (examination by immigration officers, and medical examination), leave to remain which remains in force under this paragraph shall be treated, upon the holder's arrival in Jersey, as leave to enter which has been granted to the holder before his or her arrival.
- (6) Without prejudice to the provisions of section 4(1) of the Act, where the holder of leave which remains in force under this paragraph is outside Jersey, the Minister may vary that leave (including any conditions to which it is subject) in such form and manner as permitted by the Act or these directions for the giving of leave to enter.
- (7) Where a person is outside Jersey and has leave which is in force by virtue of this paragraph, that leave may be cancelled –
  - (a) in the case of leave to enter, by an immigration officer; or
  - (b) in the case of leave to remain, by the Minister .

- (8) In order to determine whether or not to vary (and, if so, in what manner) or cancel leave which remains in force under this paragraph and which is held by a person who is outside Jersey, an immigration officer or, as the case may be, the Minister may seek such information, and the production of such documents or copy documents, as an immigration officer would be entitled to obtain in an examination under paragraph 2 or 2A of Schedule 2 to the Act and may also require the holder of the leave to supply an up to date medical report.
- (9) Failure to supply any information, documents, copy documents or medical report requested by an immigration officer or, as the case may be, the Minister under this paragraph shall be a ground, in itself, for cancellation of leave.
- (10) Section 3(4) of the Act (lapsing of leave upon travelling outside the common travel area) shall have effect subject to this paragraph.

**13A.— Partners and children of members of HM Forces**

- (1) Any period of time spent by a person to whom this paragraph applies accompanying their partner or, as the case may be, parent, who is posted outside the United Kingdom and Islands as a member of Her Majesty's Forces does not count towards the period mentioned in paragraph 13(4)(a).
- (2) This paragraph applies to a person who has leave—
  - (a) as the spouse, civil partner, unmarried or same-sex partner, or child of a member of HM Forces under Part 7 of the Jersey Immigration Rules; or
  - (b) as the spouse, civil partner, unmarried or same-sex partner, or child of a British citizen or person who is settled in Jersey under Part 8 of the Jersey Immigration Rules where that British Citizen or, as the case may be, settled person, is a member of Her Majesty's Forces.
- (3) In paragraph (1)—
  - (a) the reference to a person's "partner" means in relation to a person falling within sub-paragraph (2)(a) or (2)(b), the spouse, civil partner, unmarried or same sex partner in respect of whom they have leave under Part 7 or, as the case may be, Part 8, of the Jersey Immigration Rules; and
  - (b) the reference to a person's "parent" means the parent in respect of whom they have leave under Part 7 or Part 8 of the Jersey Immigration Rules.

**13B.— Partners and children of Crown servants *etc***

- (1) This paragraph applies to a person who has—
  - (a) limited leave –
    - (i) as the partner or child of a British citizen or person who is settled in Jersey under Appendix

- FM to the Jersey Immigration Rules (“Appendix FM”), or
- (ii) outside the provision of the Jersey Immigration Rules on the basis of family life under article 8 of the European Convention on Human Rights (“article 8”), or
  - (b) indefinite leave, other than unlimited leave granted by virtue of Appendix EU(J) to the Jersey Immigration Rules.
- (2) The period mentioned in paragraph 13(4)(a) does not include any period during which the person is accompanying their partner or parent if—
- (a) the partner or parent is posted outside the United Kingdom and Islands in employment falling within sub-paragraph (3); and
  - (b) the partner or parent—
    - (i) is a British citizen,
    - (ii) has indefinite leave, or
    - (iii) would have a right of permanent residence in the United Kingdom by virtue of an enforceable EU right or any provision made under section 2(2) of the European Communities Act 1972.
- (3) Employment falls within this paragraph if it is—
- (a) employment in the British Council as a permanent member of that Council; or
  - (b) employment on Crown service.
- (4) In this paragraph—
- (a) a person's partner means—
    - (i) in relation to a person to whom sub-paragraph (1)(a) applies, the partner in respect of whom the person has limited leave under Appendix FM or outside the provision of the Jersey Immigration Rules on the basis of family life under article 8;
    - (ii) in relation to a person to whom sub-paragraph (1)(b) applies—
      - (aa) the spouse or civil partner of that person,
      - (bb) the fiancé(e) or proposed civil partner of that person, or
      - (cc) someone who has been living together with that person in a relationship akin to a marriage or civil partnership for at least two years;
  - (b) a person's parent—



- (i) in relation to a person to whom sub-paragraph (1)(a) applies, means the parent in respect of whom they have limited leave under Appendix FM or outside the provisions of the Jersey Immigration Rules on the basis of family life under article 8;
- (ii) in relation to a person to whom sub-paragraph (1)(b) applies, is to be construed in accordance with paragraph 6 (interpretation) of the Jersey Immigration Rules.

**13C Crown servants *etc* with leave granted by virtue of Appendix EU(J) to the Jersey Immigration Rules**

- (1) Any period of time spent outside the United Kingdom and Islands by a person to whom this paragraph applies does not count towards the period mentioned in paragraph 13(4)(za) or 13(4)(a).
- (2) This paragraph applies to a person who has leave granted by virtue of Appendix EU(J) to the Jersey Immigration Rules and who is—
  - (a) a member of Her Majesty’s Forces posted outside the United Kingdom and Islands;
  - (b) a national of a member State, Iceland, Liechtenstein, Norway or Switzerland posted outside the United Kingdom and Islands in employment—
    - (i) on Crown service, or
    - (ii) in the British Council as a permanent member of that Council;
  - (c) accompanying a person who is posted outside the United Kingdom and Islands—
    - (i) in employment on Crown service,
    - (ii) in employment in the British Council as a permanent member of that Council, or
    - (iii) as a member of Her Majesty’s Forces.

**PART 5**

**TRANSITIONAL PROVISIONS**

- 14. (1) Paragraph 12 shall apply where an applicant's examination has begun before the date that paragraph comes into force, as well as where it begins on or after that date.
- (2) Paragraph 13 shall apply with respect to leave to enter or remain in Jersey which is in force on the date that paragraph comes into force, as well as to such leave given after that date.

- 15.** (1) These directions may be cited as the Leave to Enter and Remain Directions 2017.<sup>1</sup>
- (2) The Leave to Enter and Remain Directions 2003 are revoked and replaced by these directions.

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<sup>1</sup> These Directions came into force on 10<sup>th</sup> November 2017 and were amended by the Leave to Enter and Remain (Amendment) Directions 2019 which came into force on 30<sup>th</sup> March 2019.