

SCHEDULE 5A

Provisions of the Nationality, Immigration and Asylum Act 2002 as extended to Jersey

PART 6

IMMIGRATION PROCEDURE

Commencement Information

II Sch. 5A Pt. 6 comes into force in accordance with **art. 1(1)**

Provision of information by traveller

Physical data: compulsory provision.

126.—(1) The States may by 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, or
- (c) variation of leave to enter or remain in Jersey.

(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 (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;

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- (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 Minister;
- (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;
- (h) make provision which applies generally or only in specified cases or circumstances;
- (i) make different provision for different cases or circumstances.

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

(8A) Section 8 of the UK Borders Act 2007 (power to make Regulations about use and retention of biometric information) applies to biometric information provided in accordance with 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” –

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

(b) in relation to an immigration application made outside Jersey, includes an authorised person within the meaning of the said section 141(5) as it has effect in the United Kingdom,

“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 (interpretation),

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

“the Minister” means the Minister for Home Affairs.

Physical data: voluntary provision.

127.—(1) The Minister 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.

(2) In particular, the Minister 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”,

(b) “code”, and

(c) “the Minister”.

Disclosure of information

Medical inspectors.

133.—(1) This section applies to a person if an immigration officer acting under Schedule 2 to the Immigration Act 1971 (control on entry, &c.) has brought the person to the attention of—

(a) a medical inspector appointed under paragraph 1(2) of that Schedule, or

(b) a person working under the direction of a medical inspector appointed under that paragraph.

(2) A medical inspector may disclose to a health service body—

(a) the name of a person to whom this section applies,

(b) his place of residence in Jersey,

(c) his age,

(d) the language which he speaks,

(e) the nature of any disease with which the inspector thinks the person may be infected,

(f) relevant details of the person’s medical history,

(g) the grounds for an opinion mentioned in paragraph (e) (including the result of any test or examination which has been carried out), and

(h) the inspector’s opinion about action which the health service body should take.

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(3) A disclosure may be made under subsection (2) only if the medical inspector thinks it necessary for the purpose of—

- (a) preventative medicine,
- (b) medical diagnosis,
- (c) the provision of care or treatment, or
- (d) the management of health care services.

(4) For the purposes of this section “health service body” in relation to a person means the Health and Social Services Department.

Employer.

134.—(1) The Minister may require an employer to supply information about an employee whom the Minister reasonably suspects of having committed an offence under section 24(1)(a), (b), (c), (e) or (f), 24A(1) or 26(1)(c) or (d) of the Immigration Act 1971 (illegal entry, deception, &c.).

(2) The power under subsection (1) may be exercised to require information about an employee only if the information—

- (a) is required for the purpose of establishing where the employee is, or
- (b) relates to the employee’s earnings or to the history of his employment.

(3) In this section—

- (a) a reference to an employer or employee includes a reference to a former employer or employee, and
- (b) “employment” means employment under a contract of service or apprenticeship, whether or not express, and (if express) whether or not in writing; and “employer” and “employee” shall be construed accordingly.

(4) Where—

- (a) a business (the “employment agency”) arranges for one person (the “worker”) to provide services to another (the “client”), and
- (b) the worker is not employed by the employment agency or the client, this section shall apply as if the employment agency were the worker’s employer while he provides services to the client.

Notice.

136.—(1) A requirement to provide information under section 134 must be imposed by notice in writing specifying—

- (a) the information,
- (b) the manner in which it is to be provided, and
- (c) the period of time within which it is to be provided.

- (2) A period of time specified in a notice under subsection (1)(c)—
 - (a) must begin with the date of receipt of the notice, and
 - (b) must not be less than ten working days.
- (3) A person on whom a notice is served under subsection (1) must provide the Minister with the information specified in the notice.
- (4) Information provided under subsection (3) must be provided—
 - (a) in the manner specified under subsection (1)(b), and
 - (b) within the time specified under subsection (1)(c).
- (5) In this section “working day” means a day which is not—
 - (a) Saturday,
 - (b) Sunday,
 - (c) Christmas Day,
 - (d) Good Friday, or
 - (e) a day which is a bank holiday under the Public Holidays and Bank Holidays (Jersey) Law 1951.

Disclosure of information: offences.

137.—(1) A person commits an offence if without reasonable excuse he fails to comply with section 136(3).

- (2) A person who is guilty of an offence under subsection (1) shall be liable to—
 - (a) imprisonment for a term not exceeding three months,
 - (b) a fine not exceeding level 3 on the standard scale, or
 - (c) both.

Offence by body.

138.—(1) Subsection (2) applies where an offence under section 137 is committed by a body corporate and it is proved that the offence—

- (a) was committed with the consent or connivance of an officer of the body, or
 - (b) was attributable to neglect on the part of an officer of the body.
- (2) The officer, as well as the body, shall be guilty of the offence.
- (3) In this section a reference to an officer of a body corporate includes a reference to—
 - (a) a director, manager or secretary,

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- (b) a person purporting to act as a director, manager or secretary, and
- (c) if the affairs of the body are managed by its members, a member.
- (4) Where an offence under section 137 is committed by a partnership (other than a limited partnership), each partner shall be guilty of the offence.
- (5) Subsection (1) shall have effect in relation to a limited partnership as if—
 - (a) a reference to a body corporate were a reference to a limited partnership, and
 - (b) a reference to an officer of the body were a reference to a partner.

Privilege against self-incrimination.

139.—(1) Information provided by a person pursuant to a requirement under section 134 shall not be admissible in evidence in criminal proceedings against that person.

(2) This section shall not apply to proceedings for an offence under section 137.

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