

**The Immigration (Control after Entry) (Commonwealth
Citizens) (Guernsey) Rules, 1973**

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Laid before the States ...	1973.
Coming into Operation ...	1st July, 1973.

ARRANGEMENT OF RULES

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THE STATES BOARD OF ADMINISTRATION, in exercise of the powers conferred upon it by subsection (2) of section three of the Immigration Act 1971, as extended to the Bailiwick by the Immigration (Guernsey) Order 1972, hereby makes the following Rules:

Interpretation

1. In these rules "the Bailiwick" means the Bailiwick of Guernsey; "the Act" means the Immigration Act 1971, as extended to the Bailiwick of Guernsey; "Immigration Officer" includes a Customs Officer acting as an Immigration Officer. A person is "settled" in the Bailiwick when he is ordinarily resident here without having entered or remained in breach of the immigration laws, and is free from any restriction on the period for which he may remain.

Part A. VARIATION OF LEAVE TO ENTER OR REMAIN

2. Under sections 3 and 4 of the Act an Immigration Officer, when admitting to the Bailiwick a person subject to control under the Act, may give leave to enter for a limited period and, if he does, may impose conditions restricting employment or occupation in the Bailiwick. Under section 24 of the Act it is an offence to remain beyond the time limit or to fail to comply with such a condition.

3. Under section 3(3) of the Act a limited leave to enter or remain in the Bailiwick may be varied by extending or restricting its duration, by adding, varying or revoking conditions or by removing the time limit (whereupon any conditions attached to the leave cease to apply). The main purpose of this part of the rules is to set out, in relation to the chief categories concerned, the principles on which leave to enter or remain will, on application, be varied. In the following paragraphs "leave to enter" includes leave to remain.

General considerations

4. The succeeding paragraphs set out the main categories of people who may be given limited leave to enter and who may seek variation of their leave, and the principles to be followed in dealing with their applications, or in initiating any variation of their leave. In deciding these matters account is to be taken of all the relevant facts; the fact that the applicant satisfies the formal requirements of these rules for stay, or further stay, in the proposed capacity is not conclusive in his favour. It will, for example, be relevant whether the person has observed the time limit and conditions subject to which he was admitted; whether in the light of his character, conduct or associations it is undesirable to permit him to remain; whether he represents a danger to national security; or whether, if allowed to remain for the period for which he wishes to stay, he might not be returnable to another country.

5. In regard to variation of leave to enter with a view to employment, the general position is that where a person wishes to come to work in the Bailiwick the employer must have obtained a work permit before the person sets out; and people admitted as visitors or students or for other temporary purposes have under these rules no claim to stay here in employment. Applications for this purpose by people who were admitted subject to a condition prohibiting employment are normally to be refused. In cases where no such condition was imposed, if the States Board of Administration is prepared in the particular case to approve the proposed employment, an appropriate extension of stay may be granted; if not, an extension should be refused.

Crew members

6. A person who has been given leave to enter to join a ship or an aircraft as a member of its crew, or a crew member who has been given leave to enter for hospital treatment, repatriation or transfer to another ship or aircraft in the Bailiwick, should be granted an extension of stay only when this is necessary to fulfill the purpose for which he was given leave to enter.

Visitors

7. People admitted as visitors will have satisfied the Immigration Officer that their intention was to come for a limited period. Most of them will have been admitted for a stay of 6 months; but the Immigration Officer may have authorised entry for a shorter or longer period, and may have imposed a condition prohibiting employment.

8. Where a visitor wishes to extend his visit, and provided that he has sufficient means to support himself and any dependants without working for the remainder of his proposed stay and intends to leave at the end of it, an extension should be granted. If the applicant appears to have a *prima facie* case for settlement as a person of independent means (*paragraph 29*) the application should be dealt with on that basis. Otherwise, if it appears that he is attempting to settle here the application should be refused.

9. Where a visitor wishes to stay here in some other temporary capacity, for example as an "au pair" girl or student, the request may be granted and the conditions varied appropriately if the requirements for stay here in the proposed new capacity are met, but not otherwise.

10. Where a visitor applies for an extension of stay to undergo or continue private medical treatment, information should be obtained about the progress made with the treatment, its likely duration and the visitor's ability to meet the cost. Depending on the outcome of the enquiries, an extension of stay may be granted.

Working holidays

11. Young Commonwealth citizens who have come to the Bailiwick on working holidays will normally have been admitted for 12 months in the first instance and may, on application, be granted an extension of stay. Having been admitted, however, for employment which is only incidental to

a holiday, they should not be allowed to remain indefinitely, and a total of 5 years is the maximum period permitted.

Students

12. A person who satisfied the Immigration Officer that he had been accepted here for a full-time course as a student, could maintain himself during his stay, and would leave when his studies were completed, is likely to have been admitted for an initial period of up to 12 months, depending on the length of his course, with a condition restricting his freedom to take employment. If the Immigration Officer was not so satisfied, the student may have been given leave to enter for a short period, with a prohibition on employment, and advised to apply to the Immigration Office, Guernsey, for a variation of his leave when he had completed his arrangements for study.

13. Applications from students or would-be students for variation of their leave will consist mainly of applications for extension of stay as a student. An extension for an appropriate period, normally up to 12 months, may be granted if the applicant produces evidence, which is verified on a check being made, that he has enrolled for a full-time course of daytime study which meets the requirements for admission as a student; that he is giving regular attendance; and that he has adequate funds available for his maintenance and that of any dependants. When an extension is granted the student may be reminded that he will be expected to leave at the end of his studies.

14. Doctors, dentists and nurses admitted as postgraduate students will be permitted to take full-time employment which is associated with their studies. Other *bona fide* students may, with the approval of the States Board of Administration, work in their free time or vacations and there is no restriction on the freedom of their wives to take employment: earnings so obtained may be taken into account in assessing the adequacy of their arrangements for maintenance. If the Immigration Officer imposed a condition prohibiting employment on someone who later establishes satisfactorily that he is engaged on a full-time course of studies, the condition may be varied to one permitting him to take approved employment. Except as mentioned in this paragraph, employment is inconsistent with student status.

Trainees

15. A person coming with a permit from the States Board of Administration for training on the job in some profession or employment will have been admitted for 12 months or the period of the training, whichever is the shorter, and subject to a condition restricting him to approved employment. When a trainee who is subject to such a condition applies for an extension of stay in order to complete the training for which he was admitted, the application may be granted if he is continuing his training and that this is still satisfactory, but transfers to ordinary employment will not be allowed.

16. Visitors and students may be granted extensions to stay as trainees if the States Board of Administration considers the offer of training to be satisfactory: otherwise an extension should be refused.

"Au pair"

17. Where the Immigration Officer is satisfied that an "au pair" arrangement has been made, the girl will normally have been admitted for up to 12 months, with a condition restricting her freedom to take employment. Where she subsequently applies for an extension of stay in the "au pair" capacity, an extension of up to 12 months may be granted if the "au pair" arrangement is satisfactory. Where an extension giving a total of 2 years' stay as "au pair" is granted, the applicant should be informed that this is the maximum period permitted.

18. Applications from girls admitted on a temporary basis for variation of leave to permit them to change to "au pair" status are to be considered on their merits, and may be granted if there is evidence that a genuine "au pair" arrangement has been made.

Work permit holders

19. A person coming here to work, and having a work permit issued by the States Board of Administration, will normally have been admitted for the period specified in the permit up to a maximum of 12 months. At the end of that period an extension of stay may be granted if the applicant is still engaged in the employment specified in the permit, or other employment approved by the Board, and the employer confirms that he wishes to continue to employ him. A corresponding extension should be granted to the applicant's wife and children, where appropriate. Cases where the applicant is no longer in approved employment should be considered in the light of all the relevant circumstances.

20. No application by the holder of a permit for unskilled seasonal work for an extension to stay in that capacity beyond 31 October in any year is to be granted.

Businessmen and self-employed persons

21. People admitted as visitors may apply for the consent of the States Board of Administration to their establishing themselves here for the purpose of setting up in business, whether on their own account or as partners in a new or existing business. Any such application is to be considered on merits. Permission will depend on a number of factors, including evidence that the applicant will be devoting assets of his own to the business, proportional to his interest in it, that he will be able to bear his share of any liabilities the business may incur, and that his share of its profits will be sufficient to support him and any dependants. The applicant's part in the business must not amount to disguised employment, and it must be clear that he will not have to supplement his business activities by employment for which a work permit is required. Where the applicant intends to join an existing business, audited accounts should be produced to establish its financial position, together with a written statement of the terms on which he is to enter into it; evidence should be sought that he will be actively concerned with its running and that there is a genuine need for his services and investment. Where the application is granted the applicant's stay may

be extended for a period of up to 12 months, on a condition restricting his freedom to take employment. A person admitted as a businessman in the first instance may be granted an appropriate extension of stay if the conditions set out above are still satisfied at the end of the period for which he was admitted initially.

22. Where a person, for example a writer or an artist, was admitted because the Immigration Officer was satisfied that he could support himself without taking work for which a permit is necessary, an extension of stay not exceeding 12 months may be granted if the applicant can produce satisfactory evidence that he is so supporting himself and his dependants.

Marriage

23. A woman who satisfied the Immigration Officer that she was coming to the Bailiwick for early marriage to a man settled here will normally have been admitted for 3 months and may be subject to a condition prohibiting her from taking employment. If the marriage takes place within the 3 months' period, the time limit should be removed. If it does not, an extension of stay is to be granted only if good cause is shown for the delay and there is satisfactory evidence that the marriage will take place at an early date.

24. A woman admitted in a temporary capacity who marries a man settled here should on application have the time limit on her stay removed. If she marries a person who has only limited leave to enter, her leave should, if necessary, be varied by extending its duration so that it coincides with his.

25. If a man who was admitted as a visitor, student or fiancé, or in some other temporary capacity, marries a woman who is settled in the Bailiwick, he is not on that account to be granted any variation of his leave to enable him to settle here unless

- (a) he is a Commonwealth citizen and one of his grandparents was born in the United Kingdom and Islands, or
- (b) refusal would be undesirable because of the degree of hardship which, in the particular circumstances of the case, would be caused if the woman had to live outside the Bailiwick in order to be with her husband after marriage.

26. Fiancés arriving with entry clearances authorising settlement on this basis are normally admitted for 3 months. On receipt of satisfactory evidence that the marriage has taken place the time limit should be removed.

Holders of restricted travel documents and passports

27. The holder of a passport or travel document which is endorsed with a restriction on the period for which he may remain outside his country of normal residence is not to have his stay in the Bailiwick extended beyond the period of his authorised absence and, if a person's permission to enter another country is limited, his stay in the Bailiwick should not be extended to come nearer than 2 months to the expiry of that permission. This paragraph does not apply to a person who qualifies for removal of the time limit on his stay.

Settlement

28. When a person who is admitted in the first instance for a limited period has remained here for 4 years in approved employment or as a businessman or a self-employed person or a person of independent means, the time limit on his stay may be removed. Applications for removal of the time limit are to be considered in the light of all the relevant circumstances, including those set out in paragraph 4. If the time limit is removed no further permission from the States Board of Administration is needed to engage in any kind of business or employment. Applications for variation of leave to enter with a view to settlement may also be received from people originally admitted as, for example, visitors; but permission has to be limited to close relatives of people already accepted for settlement. Particulars are set out in *paragraphs* 39-46 of the Rules for Control of Entry.

29. Where a visitor applies for permission to settle here as a person of independent means evidence is to be sought that he has means under his own control and disposable in this country sufficient to support himself and his dependants for the foreseeable future without working. If the evidence is satisfactory, the applicant may be granted an extension of stay, not exceeding 12 months initially.

Political asylum

30. A person who does not otherwise qualify for an extension of stay may claim that, if an extension were not granted, he would have to go to a country to which he is unwilling to go owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.* Any such claim is to be carefully considered in the light of all the relevant circumstances.

Right of abode

31. Some Commonwealth citizens who have been given limited leave to enter may later claim to have the right of abode. If an applicant for variation of leave to enter establishes such a claim, the time limit on his stay should be removed.

Procedure

32. When leave to enter is varied an entry is to be made in the applicant's passport or travel document or the decision may be made known in writing in some other appropriate way.

* The criterion for the grant of asylum is in accordance with Article 1 of the Convention Relating to the Status of Refugees (Cmd. 9171).

PART B. DEPORTATION

Ambit of the power to deport

33. Under sections 3 (5)-(6) and 5 (1)-(4) of the Act the Lieutenant-Governor may, if he thinks fit, make a deportation order requiring a person who is not patrial to leave and to remain thereafter out of the Bailiwick:

- (i) if the person has failed to comply with a condition attached to his leave to enter or remains beyond the authorised time;
- (ii) if the Lieutenant-Governor deems the person's deportation to be conducive to the public good;
- (iii) if the person is the wife or the child under 18 of a person ordered to be deported;
- (iv) if the person, after reaching the age of 17, is convicted of an offence for which he is punishable with imprisonment and the court recommends deportation.

34. The power to deport applies generally to all people subject to control under the Act, but under section 8 (3), it does not apply to any member of a mission (within the meaning of the Diplomatic Privileges Act 1964), any person who is a member of the family and forms part of the household of such a member, and any other person entitled within the United Kingdom to the like immunity from jurisdiction as is conferred by that Act on a diplomatic agent. Under section 7 a Commonwealth citizen who has been ordinarily resident in the Bailiwick continuously since the coming into force of the Act is not liable to be deported on the ground that his deportation is conducive to the public good; and if he was ordinarily resident here on the coming into force of the Act and has been so resident for the preceding 5 years he is not liable to deportation on any ground.

Rights of appeal

35. Against the making of a deportation order on the recommendation of a court there is a right of appeal to a higher court against the recommendation itself. An order may not be made while it is still open to the person to appeal against the relevant conviction, sentence or recommendation, or while an appeal is pending.

Consideration of the merits

36. In considering whether deportation is the right course on the merits, the public interest will be balanced against any compassionate circumstances of the case. While each case will be considered in the light of the particular circumstances, the aim is an exercise of the power of deportation that is consistent and fair as between one person and another, although one case will rarely be identical with another in all material respects.

37. Most of the cases in which deportation may be the appropriate course fall into two main categories. There are, first, those cases which come to notice following a conviction for a criminal offence and in which it is fitting that, because of his conduct, a person should no longer be allowed

to remain here; and, second, those cases in which the person is here, or is remaining here, in defiance of the immigration control.

Deportation following a conviction

38. In considering whether to give effect to a recommendation for deportation made by a court on conviction the Lieutenant-Governor will take into account every relevant factor, including—

- age;
- length of residence in the Bailiwick;
- strength of connections with the Bailiwick;
- personal history, including character, conduct and employment record;
- domestic circumstances;
- the nature of the offence of which the person was convicted;
- previous criminal record;
- compassionate circumstances;
- any representations received on the person's behalf.

39. Where the court has not recommended deportation there may nevertheless be grounds, in the light of all the relevant information, for curtailment of stay or a refusal to extend stay followed, after departure, by a prohibition on re-entry.

Deportation for breach of condition or unauthorised stay

40. Deportation will normally be the proper course where the person has persistently contravened or failed to comply with a condition or has remained without authorisation. (So also where he has been recommended for deportation on conviction of entering the Bailiwick unlawfully.) But full account is to be taken of all the relevant circumstances before a decision is reached.

Deportation on conducive grounds

41. The cases in which deportation is justified on the ground that it will be conducive to the public good are likely to continue to be few in number. Judging from past experience, most of the cases in this category will be cases in which a court has convicted the person but has decided to leave the question of deportation to the Lieutenant-Governor. General rules cannot be laid down and each case will be considered carefully in the light of the particular circumstances.

Deportation of members of families

42. There is power to make a deportation order against the wife or children under 18 of a person ordered to be deported on any of the grounds mentioned in *paragraphs* 38-41 unless more than 8 weeks have elapsed since that person left the Bailiwick following the making of an order against him. Where the Lieutenant-Governor decides that it would be appropriate to deport a member of a family as such the decision will be notified and it will

at the same time be explained that it is open to the member of the family to leave the Bailiwick voluntarily.

43. In considering whether to require a wife and children to leave with the head of the family the Lieutenant-Governor will take account of all relevant factors, including—

length of residence in the Bailiwick;

any ties which the wife or children have with the Bailiwick otherwise than as dependants of the principal deportee;

the ability of the wife to maintain herself and the children in the Bailiwick, or to be maintained by relatives or friends without charge to public funds, not merely for a short period but for the foreseeable future;

any compassionate or other special circumstances;

any representations received from or on behalf of the wife and children.

44. Where the wife has qualified for settlement in the Bailiwick in her own right, for example as the holder of a work permit or employment voucher, she has a valid claim to remain notwithstanding the expulsion of her husband and her deportation will not normally be contemplated. Where the wife has been living apart from the principal deportee it will not normally be right to include her, or any children living with her, in the deportation order.

45. Children cease to be members of the family, as defined in the Act, at 18, and their deportation will not normally be contemplated if they have spent some years in the Bailiwick and are near that age. Nor will deportation normally be appropriate if the child left the family home on taking employment and has established himself on an independent basis, or if he married before deportation came into prospect. In the case of children of school age it will be right to take into account, on the one hand, the disruptive effect of removal on their education and on the other, whether plans for their care and maintenance in the Bailiwick if one or both parents were deported are realistic and likely to be effective.

46. In some cases it may be relevant to take into account the possibility of the eventual return of members of the family to the Bailiwick after deportation. When a child reaches 18 he will cease to be subject to the deportation order and it will be open to him to qualify for re-admission under the immigration rules. The wife would cease to be subject to the order if the marriage came to an end, and could similarly qualify for re-admission; but her return would otherwise be dependent on revocation of the order made against her or her husband.

Refugees

47. Where a person is a refugee full account is to be taken of the provisions of the relevant international agreements to which the United Kingdom is a party.

Political asylum

48. A deportation order will not be made against a person if the only country to which he can be removed is one to which he is unwilling to go owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular group or political opinion.*

Returned deportees

49. Where a person returns to the Bailiwick notwithstanding that a deportation order is in force against him, he may lawfully be deported under the original order and it will normally be right to deport him. But every such case is to be considered in the light of all the relevant circumstances before the intention to enforce the order is notified to the person.

Arrangements for removal

50. Provision is made in the Act for the removal from the Bailiwick of a person against whom a deportation order has been made. The power should be exercised so as to secure the person's return to the country of which he is a national, or which has most recently provided him with a travel document, unless he can show that another country will receive him notwithstanding his deportation from the Bailiwick; but, in considering any departure from the normal arrangements, regard should be had to the public interest generally, and to any additional expense that may fall on public funds.

Revocation of deportation orders

51. Revocation of a deportation order does not entitle the person concerned to re-enter the Bailiwick; it renders him eligible to qualify for admission under the immigration rules. Application for revocation of the order may be made to the appropriate British representative overseas or direct to the Immigration Office, Guernsey.

Applications for revocation of deportation orders

52. Applications for the revocation of a deportation order will be carefully considered in the light of the grounds on which the order was made and of the case made in support of the application. The interests of the community, including the maintenance of an effective immigration control, are to be balanced against the interests of the applicant, including any circumstances of a compassionate nature. In the case of an applicant with a serious criminal record continued exclusion, for a long term of years, will normally be the proper course. In other cases revocation of the order will not normally be authorised unless the situation has been materially altered either by a change of circumstances since the order was made or by fresh information coming to light which was not before the court that made the recommendation or the Lieutenant-Governor. The passage of time since the person was deported may also, in itself, amount to such a change of circum-

* The criterion for the grant of asylum is in accordance with Article 1 of the Convention Relating to the Status of Refugees (Cmd. 9171).

stances as to warrant revocation of the order. Since so much depends on other relevant circumstances, it is not practicable to specify periods as appropriate in relation to particular grounds of deportation. All applications for revocation will be carefully considered when made, but the Lieutenant-Governor does not himself initiate the review of deportation orders, with a view to deciding whether they need be maintained, until they have been in force for at least 3 years.

Commencement

53. These Rules shall come into force on the 1st day of July, nineteen hundred and seventy-three.

Dated this 26th day of June, nineteen hundred and seventy-three.

J. G. DOREY

President of the States Board of
Administration for and on behalf
of the Board.

EXPLANATORY NOTE

These Rules make provision as to the practice to be followed in the administration of the Immigration Act 1971, as extended to the Bailiwick of Guernsey, for regulating the stay in the Bailiwick of Commonwealth citizens and British protected persons. The powers conferred by the Act are to be exercised without regard to a person's race, colour or religion. Any reference to deportation, to a time factor or to a duration of stay has been included with the concurrence of the Lieutenant-Governor whose concurrence has also been given with regard to the directions contained herein attached to the variation, extension, removal or curtailment of any limit imposed upon the length of time a person has leave to enter or remain in the Bailiwick.