



GUERNSEY STATUTORY INSTRUMENT

2019 No. S3

**Directions of the Lieutenant Governor Concerning Leave to
Enter and Remain, 2019**

Given

9th April , 2019

Coming into operation

10th April , 2019

In exercise of the powers conferred upon me by sections 3A(1), (2), (3), (4), (6), (7) and (10) and 3B(1), (2) and (3) of the Immigration Act 1971^a as extended to the Bailiwick of Guernsey^b, I give the following directions –

Definitions.

1. (1) In these Directions –

"**the Act**" means the Immigration Act 1971 as extended (with modifications) to the Bailiwick of Guernsey,

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

^a An Act of Parliament (Chapter 77 of 1971).

^b UK S.I. 1993 No. 1796 registered on the records of the Island on 24th August, 1993 and published in Ordres en Conseil Vol. XXXIV, p. 491; as amended by UK S.I. 2011 No. 2444 registered on the records of the Island on 7th November 2011. See also Recueil d'Ordonnances, Tome XXIX p. 406 and Ordinance No. IX of 2016.

"**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 in a Northern Ireland department or under the Scottish Administration or under the Welsh Government,

"**EEA citizen**" –

- (a) means a national of an EEA state; but
- (b) excludes a person who is also a British citizen,

"**EEA state**" means a Member State of the European Union, Liechtenstein, Iceland, Norway or Switzerland,

"**Her Majesty's Forces**" has the same meaning as in the Armed Forces Act 2006^c,

"**the immigration rules**" means the rules made from time to time by the States of Guernsey Committee for Home Affairs in exercise of the powers conferred upon it by section 3(2) of the Act,

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

- (a) in charge of a group of people arriving in the Bailiwick of Guernsey together or intending to arrive

^c An Act of Parliament (2006 c. 52).

in the Bailiwick of Guernsey 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 his 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 for the Home Department in the United Kingdom 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,

"**the United Kingdom and Islands**" has the meaning given by section 33(1) of the Act, and

"**visit visa**" means an entry clearance granted for the purpose of entry to the Bailiwick of Guernsey as a visitor under the immigration rules.

(2) A reference to "the Immigration Acts" in these Directions is a reference to the Acts for the time being specified in section 61(2) of the UK Borders Act 2007^d to the extent that those Acts are extended (with modifications, if any) to the Bailiwick of Guernsey.

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 the Bailiwick of Guernsey 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 the Bailiwick of Guernsey.

(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 the Bailiwick of Guernsey.

^d An Act of Parliament (2007 c. 30).

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 the Bailiwick of Guernsey on an unlimited number of occasions, in accordance with subparagraph (2).

(2) On each occasion the holder arrives in the Bailiwick of Guernsey, he shall be treated for the purposes of the Immigration Acts as having been granted, before arrival, leave to enter the Bailiwick of Guernsey for a limited period beginning on the date of arrival, being –

- (a) six months if six months or more remain of the visa's period of validity, or
- (b) the visa's remaining period of validity, if less than six months.

(3) In the case of any other form of entry clearance, it shall have effect as leave to enter the Bailiwick of Guernsey on one occasion during its period of validity; and, on arrival in the Bailiwick of Guernsey, the holder shall be treated for the purposes of the Immigration Acts as having been granted, before arrival, leave to enter the Bailiwick of Guernsey -

- (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 the Bailiwick of Guernsey, 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 the Bailiwick of Guernsey 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 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 the Bailiwick of Guernsey before the day on which it becomes effective, or

(b) seeks to enter the Bailiwick of Guernsey 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 the Bailiwick of Guernsey seeks leave to enter the Bailiwick of Guernsey at any time before his departure for, or in the course of his journey to, the Bailiwick of Guernsey and is refused leave to enter under paragraph 7, the entry clearance shall not have effect as leave to enter.

Grant and refusal of leave to enter before arrival in the Bailiwick of Guernsey.

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

(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 the Bailiwick of Guernsey as a visitor, it may be given orally, including by means of a telecommunications system.

(4) In subparagraph (3), "leave to enter the Bailiwick of Guernsey as a visitor" means leave to enter as a visitor under the immigration rules for a period not exceeding six months, subject to conditions prohibiting employment and recourse to public funds (within the meaning of the immigration rules).

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 permitted by the Act or these Directions for a notice giving or refusing leave to enter) to a responsible third party acting on his behalf.

(2) A notice under subparagraph (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 him.

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 him a notice in writing stating that he has been refused leave to enter the Bailiwick of Guernsey and stating the reasons for the refusal.

(2) Any notice required by subparagraph (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 him for receipt of the notice.

Grant of leave to EEA citizens.

11. (1) A person to whom this paragraph applies is given leave to enter the Bailiwick of Guernsey under section 3A(7) of the Act.

(2) This paragraph applies to a person who –

(a) is an EEA citizen,

(b) requires leave to enter the Bailiwick of Guernsey or would require leave to enter if that person were not arriving on a local journey from within the common travel area,

(c) is travelling on a valid national identity card or a valid passport issued by an EEA state,

(d) does not otherwise have leave to enter the Bailiwick of Guernsey,

- (e) does not have an entry clearance complying with the requirements of paragraph 3 of these Directions,
- (f) is not a person to whom paragraph 12 of these Directions applies,
- (g) either—
 - (i) arrives at a port in the Bailiwick of Guernsey and presents the document mentioned in item (c) to an immigration officer,
 - (ii) arrives in the Bailiwick of Guernsey on a local journey from the Republic of Ireland, or
 - (iii) otherwise arrives in the Bailiwick of Guernsey and either presents the document mentioned in item (c) to an immigration officer or disembarks in accordance with arrangements approved by an immigration officer pursuant to paragraph 27(1)(a) of Schedule 2 to the Act, and
- (h) does not apply for leave to enter the Bailiwick of Guernsey as a visitor within the meaning of the immigration rules.

Persons not granted leave under paragraph 11.

12. This paragraph applies to each of the following persons –

- (a) a person who is subject to a deportation order made under section 5 of the Act (procedure for, and further provisions as to, deportation) or a decision to make a deportation order under that section,
- (b) a person who is an excluded person for the purposes of section 8B of the Act (persons excluded from the Bailiwick of Guernsey under international obligations) or an equivalent statutory provision in force anywhere else in the United Kingdom and Islands,
- (c) a person who is subject to an exclusion order made under regulation 23(5) of the Immigration (European Economic Area) Regulations 2016^e (exclusion and removal from the United Kingdom),
- (d) a person who is subject to a removal decision made under regulation 23(6) of the Immigration (European Economic Area) Regulations 2016,
- (e) a person in respect of whom directions have been given by the Lieutenant Governor for that person not to be given entry to the Bailiwick of Guernsey on the ground that the person's exclusion is conducive to the public good, and
- (f) a person in respect of whom a removal direction has

^e UK S.I. 2016 No. 1052.

been given under section 10(7) of the Immigration and Asylum Act 1999^f (removal of persons unlawfully in the Bailiwick of Guernsey) as extended (with modifications, if any) to the Bailiwick of Guernsey or an equivalent statutory provision in force anywhere else in the United Kingdom and Islands.

Nature of leave granted under paragraph 11.

13. A person given leave to enter by virtue of paragraph 11 is to be treated for the purposes of the Immigration Acts and the immigration rules as if the person had been given the leave by notice in accordance with section 4 of the Act (administration of control).

Duration of leave granted under paragraph 11.

14. Leave given under paragraph 11 is given for a period of three months.

Grant of leave by virtue of Appendix EU to the immigration rules.

15. The Lieutenant Governor may give or refuse leave to enter the Bailiwick of Guernsey to any person who seeks leave to enter the Bailiwick of Guernsey by virtue of Appendix EU to the immigration rules.

Burden of proof.

16. Where any question arises under the Immigration Acts as to whether a person has leave to enter the Bailiwick of Guernsey and he alleges that he has such leave by virtue of a notice given under paragraph 8(3) or 9, the onus shall lie upon him to show the manner and date of his entry into the Bailiwick of Guernsey.

^f An Act of Parliament (Chapter 33 of 1999).

Examination by immigration officer.

17. (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 Lieutenant Governor's decision on that claim), and
- (c) upon the completion of those inquiries, an immigration officer considers he 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 him 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).

Lapse of leave.

18. (1) In this paragraph "leave" means –

- (a) leave to enter the Bailiwick of Guernsey (including leave to enter conferred by means of an entry clearance under paragraph 2), and
- (b) leave to remain in the Bailiwick of Guernsey.

(2) Subject to subparagraph (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 Lieutenant Governor for a period exceeding six months,

such leave shall not lapse on his going to a country or territory outside the common travel area.

(3) Subparagraph (2) shall not apply –

- (a) where a limited leave has been varied with regard to duration by the Lieutenant Governor, and
- (b) following the variation the period of leave remaining is six months or less.

(4) Leave which does not lapse under subparagraph (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 –

(a) where the holder has unlimited leave granted by virtue of Appendix EU to the immigration rules, subject to paragraph 19, 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 immigration rules as a Swiss national or a family member of a Swiss national,

(ii) five years, in all other cases,

(b) in any other case and subject to paragraphs 19 and 20, 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

(c) 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 the Bailiwick of Guernsey, as leave to enter which has been granted to the holder before his 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 the Bailiwick of Guernsey, the Lieutenant Governor 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 the Bailiwick of Guernsey 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 Lieutenant Governor.

(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 the Bailiwick of Guernsey, an immigration officer or, as the case may be, the Lieutenant Governor 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 Lieutenant Governor 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.

Crown servants etc. with leave granted by virtue of Appendix EU to the immigration rules.

19. (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 18(4)(a) or (b).

(2) This paragraph applies to a person who has leave granted by virtue of Appendix EU to the immigration rules, so far as the person is –

(a) a member of Her Majesty's Forces posted outside the United Kingdom and Islands,

(b) an EEA citizen 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, or

- (c) accompanying another 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.

Crown servants etc. with leave granted other than by virtue of Appendix EU to the immigration rules.

20. (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 18(4)(b).

(2) This paragraph applies to a person who has leave granted other than by virtue of Appendix EU to the immigration rules, so far as the person is—

- (a) a member of Her Majesty's Forces posted outside the United Kingdom and Islands,
- (b) 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, or
- (c) accompanying that person's partner or parent 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.
- (3) In subparagraph (2)(c) –
 - (a) a reference to a person's "partner" means –
 - (i) the person's spouse,
 - (ii) the person's fiancé(e), or
 - (iii) any person who has been living together with the person as an unmarried partner (whether same sex or not) of that person in a relationship akin to marriage for a period of at least two years; and
 - (b) a reference to a person's "parent" includes –

- (i) the stepfather of a child, and the reference to stepfather includes a relationship arising through a relationship between two persons of the same sex that is registered or otherwise recognised by any country or territory as a civil partnership or a marriage,
- (ii) the stepmother of a child, and the reference to stepmother includes a relationship arising through a relationship between two persons of the same sex that is registered or otherwise recognised by any country or territory as a civil partnership or a marriage,
- (iii) the father as well as the mother of an illegitimate child where he is proved to be the father, and
- (iv) an adoptive parent, where a child was adopted in accordance with a decision taken by the competent administrative authority or court in a country whose adoption orders are recognised by the Bailiwick of Guernsey or where a child is the subject of a *de facto* adoption in accordance with any relevant requirements of the immigration rules.

Application of section 9(2) of the Act.

21. Section 9(2) of the Act (further provisions as to common travel area: conditions applicable to certain arrivals on a local journey) shall have effect as if, after the words "British Citizens", there were inserted "and do not hold leave to enter or remain granted to them before their arrival".

Application of paragraphs 12 and 13 of these Directions.

22. (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 the Bailiwick of Guernsey which is in force on the date that paragraph comes into force, as well as to such leave given after that date.

Revocation of Directions of 2004.

23. The Directions of the Lieutenant-Governor Concerning Leave to Enter and Remain dated the 2nd February, 2004 are revoked.

Citation.

24. These Directions may be cited as the Directions of the Lieutenant Governor Concerning Leave to Enter and Remain, 2019.

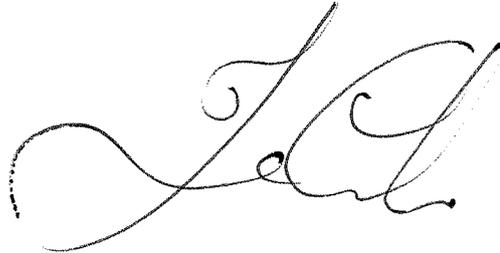
Commencement.

25. (1) Subject to subparagraph (2), these Directions come into force on the day after the day on which they are given.

(2) Paragraphs 11, 12, 13 and 14 come into force when the

Immigration (European Economic Area) Regulations 2016⁸ are revoked.

Dated this 3 day of April, 2019



Vice Admiral Sir Ian Corder KBE, CB
LIEUTENANT-GOVERNOR
BAILIWICK OF GUERNSEY

EXPLANATORY NOTE

(This note is not part of these Directions)

These Directions replace the Directions of the Lieutenant-Governor Concerning Leave to Enter and Remain dated the 2nd February, 2004, with revised directions that continue the earlier directions with a number of revisions.

These revisions are mainly a consequence of the United Kingdom leaving the European Union.

These revisions include the giving of leave to enter to EEA citizens, as well as directions concerning the giving of that leave; directions concerning leave to enter or remain granted under Appendix EU to the immigration rules (including lapse of that

⁸ UK S.I. 2016/1052, as amended.

leave); and directions concerning the lapse of other kinds of leave upon being absent from the United Kingdom and the Crown Dependencies.

Other than paragraphs 11 to 14, these Directions will come into force on the day after the day on which these directions are given. Paragraphs 11 to 14 will only come into force when the Immigration (European Economic Area) Regulations 2016 are revoked.