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STATUTORY INSTRUMENTS

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**2016 No. 996**

**IMMIGRATION**

**The Immigration (Guernsey) Order 2016**

*Made - - - - 12th October 2016*

*Coming into force in accordance with article 1(1)*

At the Court at Buckingham Palace, the 12th day of October 2016

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 170(7) of the Immigration and Asylum Act 1999<sup>(1)</sup> and section 76(6) of the Immigration Act 2014<sup>(2)</sup>, is pleased, by and with the advice of Her Privy Council, to order as follows:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Immigration (Guernsey) Order 2016 and comes into force the day after the day on which it is registered by the Royal Court of Guernsey.

(2) In this Order—

“the 2014 Act” means the Immigration Act 2014; and

“Guernsey” means the Bailiwick of Guernsey.

(3) For the purposes of construing provisions of the 2014 Act as part of the law of Guernsey, any reference to an enactment which extends to Guernsey is construed as a reference to that enactment as it has effect in Guernsey.

**Consequential amendment**

2. In the Schedule to the Immigration and Asylum Act 1999 (Guernsey) Order 2003<sup>(3)</sup>, omit the item relating to section 5 of the Immigration Act 1999 (charges).

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(1) 1999 c. 33.

(2) 2014 c. 22.

(3) SI. 2003/2900.

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### **Savings**

3. Notwithstanding article 2, the following Orders continue to have effect as if they were Orders duly made under the provisions of the Immigration Act 2014 as extended to Guernsey by this Order—

- (a) the Immigration (Work Permit Fee) (Bailiwick of Guernsey) Order, 2016<sup>(4)</sup>; and
- (b) the Immigration and Asylum Act 1999 (Fees) (Bailiwick of Guernsey) Order, 2011<sup>(5)</sup>.

### **Extension of the Immigration Act 2014 to Guernsey**

4. Sections 68 to 70 of the 2014 Act shall extend to Guernsey subject to the modifications specified in the Schedule to this Order.

*Richard Tilbrook*  
Clerk of the Privy Council

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(4) G.S.I. No. 33 of 2016.

(5) G.S.I. No. 50 of 2011, as amended by G.S.I. No. 34 of 2016.

SCHEDULE

Article 4

Modifications of sections 68 to 70 of the Immigration Act 2014 as they extend to Guernsey

1. Before section 68 insert the following sections 67A, 67B and 67C—

**“67A Fees (the Committee)**

(1) The Committee may by Order provide for fees to be charged in respect of the exercise of any function in connection with immigration or nationality by—

- (a) the Lieutenant-Governor;
- (b) the Committee, any other committee, or any authority, board or council of the States;
- (c) an immigration officer (within the meaning of the Immigration Act 1971); or
- (d) any employee of the States,

other than a function exercised by the Lieutenant-Governor under arrangements made with the Secretary of State under section 43 of the British Nationality Act 1981.

(2) An Order under subsection (1) may not provide for a fee to be charged in respect of the exercise of a function otherwise than in connection with an application or claim, or on request.

(3) An Order under subsection (1) may set fees—

- (a) of a fixed amount; or
- (b) of an amount calculated by reference to an hourly rate or any other factor.

(4) In respect of any fee set by an Order under subsection (1), the Order may—

- (a) provide for exceptions;
- (b) provide for the reduction, waiver or refund of part or all of a fee (whether by conferring a discretion or otherwise);
- (c) make provision about—
  - (i) the consequences of failure to pay a fee;
  - (ii) enforcement;
  - (iii) when a fee may or must be paid.

(5) This section is without prejudice to any other power to charge a fee.

(6) In this section and sections 67B and 67C—

“Committee” means the States Committee for Home Affairs;

“costs” includes—

- (a) the costs of the Committee; and
- (b) the costs of any other person (whether or not funded from public money);

“enactment” includes any Act of Parliament, Law, Ordinance or subordinate legislation having effect in Guernsey;

“function” includes a power or a duty;

“function in connection with immigration or nationality” includes a function in connection with an enactment that relates wholly or partly to immigration or nationality;

“Guernsey” means the Bailiwick of Guernsey;

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“the States” means the States of Guernsey; and

“subordinate legislation” means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect.

(7) Any reference in this section or section 67C to the exercise of a function includes a reference to its exercise in particular circumstances, including its exercise—

- (a) at particular times or in a particular place;
- (b) under particular arrangements;
- (c) otherwise in particular ways,

and, for this purpose, “arrangements” includes arrangements for the convenience of applicants, claimants or persons making requests for the exercise of a function.

#### **67B Fees orders (the Committee): supplemental**

- (1) A fee under section 67A may relate to something done outside Guernsey.
- (2) Fees payable by virtue of section 67A may be recovered as a debt due to the States.
- (3) Fees charged under an Order made under section 67A shall be paid to the States.

#### **67C Power to charge fees (chargeable by Order of the Committee) for attendance services in particular cases**

(1) This section applies where a person exercises a function in connection with immigration or nationality in respect of which a fee is chargeable by virtue of an Order made under section 67A (a “chargeable function”) in a particular case and—

- (a) in doing so attends at a place outside Guernsey, and time, agreed with a person (“the client”); and
- (b) does so at the request of the client.

It is immaterial whether or not the client is a person in respect of whom the chargeable function is exercised.

(2) In this section “attendance service” means the service described in subsection (1) except so far as it consists of the exercise of a chargeable function.

(3) The following are to be disregarded in determining whether a fee is chargeable in respect of a function by virtue of an Order made under section 67A—

- (a) any exception provided for by the Order;
- (b) any power so provided to waive or refund a fee.

(4) The person exercising the chargeable function may charge the client such fee for the purposes of recovering the costs of providing the attendance service as the person may determine.

- (5) Fees payable by virtue of subsection (4) may be recovered as a debt due to the States.
- (6) Fees charged under subsection (4) shall be paid to the States.
- (7) This section is without prejudice to section 67A or any other power to charge a fee.”.

#### **2. In section 68—**

- (a) in subsection (1) after “immigration or nationality” insert “, other than functions for which a fee may be charged by virtue of an Order under section 67A or by virtue of section 67C.”; and
- (b) in subsection (12)—

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- (i) in the definition of “function in connection with immigration or nationality” for “the United Kingdom” substitute “Guernsey”;
  - (ii) after the definition of “function in connection with immigration or nationality”, insert the following definition –
    - ““Guernsey” means the Bailiwick of Guernsey”;
  - (iii) for the full stop at the end of the definition of “specified”, substitute a semi-colon; and
  - (iv) after the definition of “specified”, insert the following definition—
    - ““the States” means the States of Guernsey”.
- 3.** In section 69—
- (a) in subsection (2) for “the United Kingdom” substitute “Guernsey”; and
  - (b) after subsection (4) insert—
    - “(4A) Despite subsections (3) and (4), where a fee payable by virtue of section 68 is charged in respect of a function exercised by the Lieutenant Governor under arrangements made with the Secretary of State under section 43 of the British Nationality Act 1981, the fee—
    - (a) may be recovered as a debt due to the States; and
    - (b) shall be paid to the States.”.
- 4.** In section 70—
- (a) in subsection (1)(a) for “the United Kingdom” substitute “Guernsey”; and
  - (b) after subsection (6) insert—
    - “(6A) Despite subsections (5) and (6), where a fee payable by virtue of this section is charged in respect of a function exercised by the Lieutenant Governor under arrangements made with the Secretary of State under section 43 of the British Nationality Act 1981, the fee—
    - (a) may be recovered as a debt due to the States; and
    - (b) shall be paid to the States.”.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order extends to the Bailiwick of Guernsey, with modifications, sections 68 to 70 of the Immigration Act 2014 (c. 22) relating to fees. The sections in their extended form make provision as regards the respective powers of the States of Guernsey Committee for Home Affairs and the Secretary of State to provide for fees to be charged in respect of the exercise of any function in connection with immigration or nationality.