

STATES OF JERSEY



IMMIGRATION ACTS CONSOLIDATION AND EXTENSION TO JERSEY BY ORDER IN COUNCIL

Lodged au Greffe on 12th May 2021
by the Chief Minister
Earliest date for debate: 29th June 2021

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to signify, pursuant to Article 31 of the States of Jersey Law 2005, that they agree that a request be made to Her Majesty in Council for the making of an Order in Council to extend to Jersey with appropriate modifications various provisions contained in the –

- (a) Immigration Act 1971;
- (b) British Nationality Act 1981;
- (c) Criminal Justice Act 1982;
- (d) Immigration Act 1988;
- (e) Asylum and Immigration Appeals Act 1993;
- (f) Asylum and Immigration Act 1996;
- (g) Immigration and Asylum Act 1999;
- (h) Nationality, Immigration and Asylum Act 2002;
- (i) Asylum and Immigration (Treatment of Claimants, etc.) Act 2004;
- (j) Immigration, Asylum and Nationality Act 2006;
- (k) UK Borders Act 2007;
- (l) Borders, Citizenship and Immigration Act 2009;
- (m) Immigration Act 2014;
- (n) Counter-Terrorism and Security Act 2015;
- (o) Immigration Act 2016;
- (p) Policing and Crime Act 2017;
- (q) Sanctions and Anti-Money Laundering Act 2018; and
- (r) Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020,

as summarised in the Chief Minister's Report attached to this Proposition.

CHIEF MINISTER

REPORT

Introduction

1. The draft Order in Council would extend or, in most cases, re-extend to Jersey with modifications the Acts of Parliament listed in the Proposition. The Immigration Acts were last extended to Jersey in consolidated form in 1993, 28 years ago. Many of the provisions extended have been superseded in the United Kingdom.
2. Jersey is part of the Common Travel Area (CTA), and the updating of Jersey's immigration laws is designed to ensure a basic level of consistency with the other British CTA jurisdictions. Membership of the CTA underpins the ability for Jersey residents to travel freely and easily to other parts of the British Isles and Republic of Ireland.
3. This Proposition replaces [P.119/2020](#) lodged on 22nd September 2020, the purpose of which was also to consolidate the Orders in Council extending the Immigration Acts. That Proposition was withdrawn in view of the volume of urgent work tabled before the Assembly at that time and as it was not considered that there was sufficient time to scrutinise that Proposition before the end of 2020. Proposition P.119/2020 was therefore withdrawn in favour of [P.140/2020](#). The later proposition related to a shorter Order in Council which was confined to addressing urgent immigration reforms required by the end of the transition period provided for in the United Kingdom's Withdrawal Agreement with the EU. P.140/2020 was therefore confined to extending provision as regards –
 - (a) ending free movement of EEA nationals;
 - (b) protecting the status of Irish citizens; and
 - (c) enabling the Jersey Minister to make consequential, transitional and savings provisions in relation to the ending of free movement.
4. The Consolidation aspects of P.119/2020 were therefore held over until after the transition period in connection with the United Kingdom's final withdrawal from the European Union had run its course. Now that the transition has ended, there is a helpful window of opportunity to proceed with the consolidation in order to provide a more accessible foundation for any further reforms that may be necessary when the United Kingdom amends its immigration system now that it has left the EU.
5. [R.81/2021](#) has been presented to the States simultaneously with this Proposition. It contains the draft Order in Council which sets out (in Schedules 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, 9A, 10A, 11A and 12A) the text of the Acts in the modified form in which they would extend.
6. This Report contains –
 - i. an historical background to the extension of the Immigration Acts to Jersey since 1971;
 - ii. a note about the powers exercised in Jersey under the Immigration Acts;

- iii. a summary of developments in the United Kingdom in the last 15 years;
- iv. a statement of the overall purpose of the Order in Council;
- v. a note on provisions affording additional protection for children;
- vi. a note on provision for the protection of refugees;
- vii. a note about the issuing of warrants;
- viii. an analysis of other amended or newly extended provisions in relation to each of the Acts concerned.

Historical background

7. The Immigration Act 1971 (**1971 Act**) is the primary United Kingdom statute dealing with rules on migration. Among many other things, the 1971 Act gives legal effect to CTA which is the long-standing arrangement between the United Kingdom, the Crown Dependencies and the Republic of Ireland under which British and Irish citizens can move freely and reside in either jurisdiction.¹
8. The 1971 Act does not apply directly to Jersey, or to the other Crown Dependencies. Instead Her Majesty may extend its provisions to Jersey, Guernsey, and the Isle of Man by Order in Council subject to modifications. No such Order in Council may be put into effect unless it has been registered by the Royal Court;² and the Royal Court may not register any such Order in Council unless the States have signified their views on the proposed Order.³
9. The 1971 Act was first extended to Jersey by the [Immigration \(Jersey\) Order 1972](#). This was later replaced by the [Immigration \(Jersey\) Order 1993](#) which re-extended the 1971 Act in appropriately modified form, together with some of the provisions of other Acts, namely –
 - the British Nationality Act 1981
 - the Immigration (Carriers' Liability) Act 1987 and
 - the Immigration Act 1988.
10. Orders in Council since 1993 have extended, in modified form, provisions of –
 - the Asylum and Immigration Act 1996 (offences of assisting illegal immigration)
 - the Immigration and Asylum Act 1999 (additional powers of immigration control, removal *etc.*)
 - Nationality, Immigration and Asylum Act 2002 and the UK Borders Act 2007 (Regulation-making powers re biometrics)
 - the Immigration, Asylum and Nationality Act 2006 (powers to require disclosure of passenger & crew information)
 - the Immigration Act 2014 (embarkation checks; and immigration fees powers)

¹ The United Kingdom and Irish governments signed a [Memorandum of Understanding \(MoU\) in May 2019](#) reaffirming their commitment to maintain the CTA, and the associated rights and privileges, in all circumstances.

² See Code of Laws for the Island of Jersey 1771, under the heading *Loix Etablies par Differens Ordres du Roi & du Conseil, & Actes de Parlement*.

³ States of Jersey Law 2005, Article 31.

- the Counter-Terrorism and Security Act 2015 (seizure of travel documents, temporary exclusion orders)
- the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (ending free movement of EEA nationals; protection of Irish free movement).

Powers under the Immigration Acts in Jersey

11. Many of the immigration powers exercisable in the United Kingdom by the Home Secretary were exercisable in Jersey by the Lieutenant-Governor *e.g.* ordering deportation. Other powers originally exercisable by the Defence Committee, and then the Home Affairs Committee, became exercisable by the Minister for Home Affairs *e.g.* making work permit rules.
12. The Lieutenant-Governor was also empowered to enact directions as to the practice to be followed for regulating the entry into and stay in Jersey of persons not having right of abode. These directions were the Jersey equivalent of the Immigration Rules made by the Home Secretary in the United Kingdom.
13. The [Immigration \(Jersey\) \(Amendment\) Order 2017](#) transferred the powers of the Lieutenant-Governor in all Jersey immigration matters to the Minister for Home Affairs. The result is that, since November 2017, the Jersey Minister has exercised broadly the same immigration powers in Jersey as the Secretary of State exercises in the United Kingdom, including the power to make the Jersey equivalent of the United Kingdom Immigration Rules.

Developments in the United Kingdom

14. The last 15 years have seen much activity by the United Kingdom Parliament in the field of migration (quite apart from the United Kingdom's withdrawal from the European Union). In addition to the Acts mentioned in 10. *above*, various other provisions have been enacted by the –
 - Borders, Citizenship and Immigration Act 2009
 - Immigration Act 2016
 - Policing and Crime Act 2017 and
 - Sanctions and Anti-Money Laundering Act 2018.
15. There has also been a rapid growth in the size and complexity of UK immigration rules made by the Secretary of State. In January 2020 a [Report by the Law Commission](#) was presented to the United Kingdom Parliament. It recommended that the UK Immigration Rules be overhauled and simplified. The Home Office has acted on this recommendation, and the process of simplifying the Immigration Rules is ongoing.

The purpose of the draft Immigration (Jersey) Order 2021

16. The purpose of the draft Order is –
 - (a) to replace the Immigration (Jersey) Order 1993, and the subsequent Orders in Council extending the Immigration Acts, with a single Order in Council in consolidated form;
 - (b) to extend in appropriately modified form such provisions of the Immigration Acts as require extension, but have yet to be extended; and
 - (c) perhaps most importantly, to change the way in which the Immigration Acts, as extended, are presented in the consolidated Order in Council so that the content is more accessible to the public.

Protection for Children

17. Among the provisions newly extended in draft are those affording additional protection for children, as follows:

- *Unaccompanied children: limitations on detention*

The 1971 Act Schedule 2: the newly extended paragraph 18B places additional restrictions on the detention of unaccompanied children.

- *Independent Family Returns Panel*

The Borders, Citizenship and Immigration Act 2009, s. 54A, empowers the States to make Regulations establishing an Independent Family Returns Panel (**IFRP**). Where such Regulations have been made, the Minister must consult the IFRP in any family returns case on how best to safeguard and promote the welfare of the children of the family. A family returns case is a case where (a) a child who is living in Jersey is to be removed from or required to leave Jersey, and (b) an individual who is a parent of the child and who is living in a household in Jersey with the child, is also to be removed from or required to leave Jersey.

The IFRP in the United Kingdom provides independent advice to the Home Office on how best to safeguard children's welfare during a family's enforced return. The extension of s.54A provides a legislative framework within which an equivalent Jersey body may be constituted to serve a similar purpose, but the decision on whether to constitute an equivalent Panel will be one for the States Assembly in due course.

- *Duty regarding the welfare of children*

In its draft extended form s.55 of the Borders, Citizenship and Immigration Act 2009 imposes a duty on the Minister to make arrangements to ensure that functions in relation to immigration, asylum or nationality are carried out having regard to the need to safeguard and promote the welfare of children who are in Jersey. This section also requires the Minister to make similar arrangements to ensure that other persons, including contractors, who carry out those functions also have regard to the need to safeguard and promote the welfare of children.

This is an important development to ensure that Jersey provides similar statutory safeguards for the rights of children.

Protection for Refugees

18. The Asylum and Immigration Appeals Act 1993 is newly extended in draft to enshrine in statute that nothing in the Immigration Rules made by the Minister for Home Affairs can lay down any practice which would be contrary to the Refugee Convention (the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and the Protocol to that Convention).

This is an important step to ensure that Jersey provides equivalent statutory safeguards for the rights of refugees.

Warrants under the Immigration Acts

19. The 1971 Act, s.28AA, s.28B, s.28C and s.28D, enable the Bailiff to grant arrest and search warrants for various specific purposes. The Bailiff may similarly grant warrants for specific purposes under other provisions of the Acts in their draft extended form.
20. It had been proposed in [P.119/2020](#) that the Magistrate be empowered to issue warrants under the Immigration Acts, but this has not been proceeded with. Instead, this Proposition maintains the current position under which this jurisdiction resides with the Bailiff. A provision has however been added by the draft Order in Council to section 33 of the 1971 Act to make it clear that a Jurat may also issue any of the warrants under the Immigration Acts, as extended.

Other provisions extended by the draft Order in Council

Immigration Act 1971

21. As noted *above*, the 1971 Act is the primary statute dealing with rules on migration. The draft Order re-extends most of the 1971 Act to the same effect as it was extended by the Immigration (Jersey) Order 1993. The full text of the 1971 Act in its draft extended form is set out in [Schedule 1A](#) to the draft Order in Council.

22. Among the draft amended or newly extended provisions, the following may be noted –

- *Interpretation*

The Order in Council provides that the Interpretation (Jersey) Law 1954 applies to the Acts as extended. Hence terms such as “Jersey” and “police officer” automatically take the meanings they have under that Law, without the need to be defined in each of the Acts extended.

References to fines on a given level of the standard scale are references to fines on the relevant level of the scale in the [Criminal Justice \(Standard Scale of Fines\) \(Jersey\) Law 1993](#).

- *Work permits*

At present under s.1(4):

“The Minister [for Home affairs] may make rules as to the practice to be followed in the administration of this Act for regulating the taking of employment by persons not having the right of abode who are given leave to enter the Bailiwick...”

This will become a power under s.1(5) whereby:

“The Minister [for Home Affairs] may by Order regulate the taking of employment by persons not having the right of abode who are given leave to enter Jersey.”

A new requirement will however be imposed on the Minister to consult the Chief Minister before making any such Order.

- *Deprivation of right of abode*

S.2A empowers the Minister to order the removal of a person's right of abode in Jersey if the Minister thinks that it would be conducive to the public good for the person to be excluded or removed from Jersey.

- *Immigration Rules to be presented to the States*

S.3 will require the Minister to present Immigration Rules to the States, or any changes to the Rules, by way of a statement. If a statement is disapproved by resolution passed at the sitting at which the statement is presented or at the next following sitting of the States, then the Minister must make changes in the Rules as appear to him to be required in the circumstances and the statement of those changes must also be presented to the States.

- *Further provision as to leave to enter or remain*

At present under s.3A and s.3B the Minister may give directions with respect to the giving, refusing or varying of leave to enter or remain in Jersey. This will become a power to make further provision by Order with respect to the giving, refusing or varying of leave to enter or remain in Jersey.

- *Persons excluded from Jersey under certain instruments*

Under s.8B an excluded person must be refused leave to enter or remain in Jersey.

An excluded person will be expressed to include a person named under a provision of an Order under [Article 3 of the Sanctions and Asset-Freezing \(Jersey\) Law 2019](#).

- *Exclusion from the CTA*

S.9(5) enables the Minister to make an Order excluding Guernsey or the Isle of Man from the CTA for specified purposes "*where, by reason of differences between the immigration laws of the United Kingdom and the relevant island, the Secretary of State has done so, and references in this Act to the Islands shall apply to the island so excluded so far only as is provided by the Order*".

- *Assisting unlawful immigration etc.*

Ss.25 – 25C are updated to correspond to provisions as they currently have effect in the United Kingdom, including assisting asylum-seekers to enter where this is done for gain, and concerning forfeiture of vehicles, ships or aircraft.

- *False cards, use of stamps etc.*

Ss.26A and 26B provide for offences of making a false registration card, altering with intent to deceive *etc.* and of possessing an immigration stamp, or a replica, without reasonable excuse.

- *Retention of seized material*

S.28ZI governs the retention of anything seized by an immigration officer under the Act for the purposes of the investigation of an offence or on the basis that it may be evidence relating to an offence.

- *Maritime enforcement*

Part 3A (to be read with Schedule 4A) makes provision for Jersey immigration officers and others to exercise various powers in Jersey waters in relation to ships.

- *Embarkation and landing cards*

Schedule 2, paragraph 5: the present power of the Minister to make directions as to landing or embarkation cards becomes a power to make the necessary provision by Order.

- *Search of premises in connection with removal*

Schedule 2, paragraph 15A: this confers additional powers of search on immigration officers in relation to persons liable to be removed from Jersey.

- *Provision of passenger lists, crew, service information etc.*

Schedule 2, paragraphs 27 and 27B: the power of the Minister to issue directions requiring carriers *etc.* to provide information becomes a power to make such requirements by Order.

Immigration and Asylum Act 1999

23. The text of this Act in its draft extended form is set out in [Schedule 4A](#) to the draft Order in Council. Among other things, the 1999 Act introduced new arrangements for overstayers, people who fail to observe the conditions attached to their leave, and people who, having entered lawfully in the first instance, subsequently obtain further leave by deception.

24. Most of the Act is re-extended to the same effect as it was by the [Immigration and Asylum Act 1999 \(Jersey\) Order 2003](#). Among the draft amended or newly extended provisions are the following –

- *Removal of persons unlawfully in Jersey*

S.10 is extended as substituted by the Immigration Act 2014 which replaced separate powers of removal with a single power to remove a person who requires leave to enter or remain but does not have it.

Importantly, the text of s.10 in its draft extended form now incorporates provision protecting the rights of Irish citizens and EEA citizens and their family members who have been granted immigration status under the EU Settlement Scheme.

- *Reporting suspicious marriages/civil partnerships*

S.24 applies where there are grounds for suspecting that an intended marriage will be a sham marriage. Any such suspicion on the part of the Registrar must be reported to the Minister in writing.

S.24A makes equivalent provision in relation to civil partnerships suspected of being sham civil partnerships.

- *Penalty for carrying clandestine entrants – code of practice – appeal*

Under s.32 the Minister may require a person who is responsible for a clandestine entrant to pay a monetary penalty. The newly extended s.32A requires the Minister to issue a code of practice specifying matters to be considered in determining the amount of a penalty under s.32.

S.35A provides that a person may appeal to the Petty Debts Court against a penalty imposed on that person under s.32.

- *Detaining vehicles etc. for non-payment of penalties*

S.36A gives the Minister additional powers as regards the detention of any vehicle, small ship or small aircraft used by person liable to pay a penalty.

- *Passengers without proper documents*

Under s.40 the Minister may levy a charge on the owner of a ship or aircraft which brings a person to Jersey who does not have proper identity or other travel documents. S.40A and s.40B lay down procedures for notification and objection, and a right of appeal to the Petty Debts Court, in cases where the Minister decides to levy a charge under s.40.

- *Visas for transit passengers*

S.41 empowers the Minister to impose a requirement by Order for transit passengers to hold a transit visa.

- *Transfer of proceedings to the Royal Court.*

S.43(3) enables the Petty Debts Court to transfer proceedings under Part II of this Act to the Royal Court.

Nationality, Immigration and Asylum Act 2002

25. The text of this Act in its draft extended form is set out in Schedule 5A to the draft Order in Council.

26. Among the newly extended draft provisions are the following –

- *Right of abode: certificate of entitlement*

S.10 empowers the Minister to make provision by Order for the issue to a person of a certificate that the person has the right of abode in Jersey.

- *Detention pending decision on removal*

S.62 makes detailed provision about detaining persons under the authority of the Minister who are liable to removal from Jersey or where a decision on their removal by the Minister is pending. It was amended in the United Kingdom by the Immigration Acts of 2014 and 2016 and is extended in that amended form.

- *Removal of serious criminals*

S.72 relates to Article 33(2) of the Refugee Convention, which deals with refugees who, after being granted refugee status, prove to be serious criminals or threats to public security.

The Convention allows for refugees to be returned where there are reasonable grounds for regarding them as a danger to the security of the host country; or if, having been convicted by a final judgment of a particularly serious crime, they are considered to pose a danger to that community.

S.72 of the 2002 Act sets out when a person is presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community.

- *Revocation of leave to enter or remain*

S.76 sets out when the Minister may revoke a person's indefinite leave to enter or remain in Jersey.

- *No removal while claim for asylum pending*

S.77 prevents removal of a person from Jersey whilst any claim by that person for asylum is pending.

- *European Common List of Safe Countries of Origin*

S.94A in the United Kingdom requires the Home Secretary to prescribe a list of States to be known as the “European Common List of Safe Countries of Origin”. Under s.113 of the 2002 Act in its draft extended form, the Minister may refer to this list where a person who makes a protection claim⁴ or a human rights claim is –

⁴ “protection claim” means a claim made that a person’s removal from Jersey would breach Jersey’s obligations—

(a) under the Refugee Convention, or

(b) in relation to persons eligible for a grant of humanitarian protection.

- (a) a national of a listed State, or
- (b) a Stateless person who used to be habitually resident in a listed State.

The Minister must consider the claim to be unfounded unless satisfied that there are serious grounds for considering that the listed State is not safe for the person concerned.

- *Public interest considerations under Article 8: Human Rights Convention*

Part 5A (ss. 117A – 117C) was added in the United Kingdom by the Immigration Act 2014. In its draft extended form, Part 5A applies where a court or tribunal determines whether an immigration decision would be unlawful under [Article 7 of the Human Rights \(Jersey\) Law 2000](#) for breaching a person's right to respect for private and family life.

S.117A in its draft extended form provides that, in considering the public interest question, the court or tribunal must, in particular, have regard to the considerations listed in s.117B and, in cases concerning the deportation of foreign criminals, must also have regard to the considerations listed in s.117C. S.117B then lists the public interest considerations which are applicable in all cases; and s.117C lists the additional public interest considerations applicable in cases involving foreign criminals.

- *Provision of information by traveller (biometrics)*

Under s.126 the States may already make Regulations enabling an immigration officer and other authorised persons to require someone making an immigration application to provide biometric information.

Applications from outside Jersey for entry clearance to the Island are made to United Kingdom officers. S.126 in its draft re-extended form makes it clear that the Regulations may also provide for such a United Kingdom officer to require someone making an application to them to provide biometric information.

- *Information about employees*

Under s.134 the Minister may require an employer to supply information about an employee whom the Minister reasonably suspects of being an illegal immigrant and/or having committed immigration fraud. Such information can only be required concerning the employee's whereabouts, earnings or employment history.

- *Traffic in prostitution*

S.145 sets out several trafficking offences in relation to prostitution, such offences being punishable with 14 years' imprisonment and/or an unlimited fine.

- *Consequential etc. amendments*

S.157 enables the States to make consequential amendments and incidental provision by Regulations in connection with any provision of the 2002 Act.

Asylum and Immigration and Asylum (Treatment of Claimants, etc.) Act 2004

27. The text of this Act in its draft extended form is set out in Schedule 6A to the draft Order in Council.

28. Among the newly extended provisions are the following –

- *Entering Jersey without passport, &c.*

S.2 makes it an offence if a person is unable to produce an immigration document at a leave or asylum interview. A person does not commit the offence if the interview takes place after the person has entered Jersey and within the period of three days the person provides an immigration document. S.2 sets out other defences to such a charge.

- *Trafficking people for exploitation*

S.4 sets out several trafficking offences in relation to exploitation of persons, such offences being punishable with 14 years' imprisonment and/or an unlimited fine.

- *Treatment of claimants*

S.8 sets out behaviour which immigration officers and others must take account of (as being damaging to credibility) when deciding whether or not to believe a statement by a person making an asylum or human rights claim. Examples are behaviour designed or likely to conceal information, to mislead or to obstruct or delay a decision on the claim.

A person's failure to take a reasonable opportunity to make an asylum or human right claim whilst in a safe third country will also be treated as behaviour that damages his or her credibility.

- *Removing asylum seeker to safe country*

S.33 and Schedule 3 deal with situations where a person can be removed to a safe third country without substantive consideration of their asylum claim.

- *Deportation or removal: cooperation*

Under s.35 the Minister may require a person to take specified action to enable a travel document to be obtained on the person's behalf where this will facilitate the person's deportation or removal from Jersey. A person who fails, without reasonable excuse, to comply with the Minister's requirement commits an offence.

Immigration, Asylum and Nationality Act 2006

29. The text of this Act in its draft extended form is set out in [Schedule 7A](#) to the draft Order in Council. Most of this Act is re-extended to the same effect as it was by the [Immigration \(Jersey\) Order 2012](#) and the [Immigration \(Jersey\) Order 2015](#).

30. Among the newly extended provisions are the following –

- *Freight information: police powers*

S.33 provides freight information acquisition powers for the Police in respect of ships, aircraft and vehicles arriving (or expected to arrive) in or leaving (or expected to leave) Jersey. A police officer of the rank of Chief Inspector or above may request freight data from an owner or agent of a ship or aircraft, the owner or hirer of a vehicle, or any other person responsible for the import or export of goods.

Freight information means information, of a kind specified by the Minister by Order, which relates to freight carried.

- *Searches: contracting out*

S.40 permits persons authorised by the Minister to search ships, aircraft and vehicles for the purpose of identifying individuals whom an immigration officer may wish to examine. Persons may be authorised under this section who are not immigration officers, police officers or officers of the Impôt, but the Minister must be satisfied that the person is fit and proper for the purpose and properly trained.

- *Procedure*

S.50 enables the Minister to prescribe forms in the Immigration Rules to be used and procedures to be followed when making an immigration-related application. It also enables the Minister to prescribe by administrative means what information and documents are required to support an application. This section also enables the Minister to set out consequences in the Immigration Rules for failing to comply with any of the prescribed forms and procedures.

UK Borders Act 2007

31. The text of this Act in its draft extended form is set out in [Schedule 8A](#) to the draft Order in Council. Most of the Act is re-extended to the same effect as it was by the [Immigration \(Biometric Registration\) \(Jersey\) Order 2018](#) and the [Immigration \(Biometric Information\) \(Jersey\) Order 2018](#).

32. Among the draft newly extended provisions are the following –

- *Detention at ports: designated immigration officers*

Ss. 1 and 2 allow the Minister to designate individual immigration officers acting in a port in Jersey as having the power to detain a person where the immigration officer considers him someone whom a police officer could

arrest without a warrant. Such detention is pending the arrival of a police officer and is subject to a maximum detention period of three hours.

S.3 makes it an offence to abscond from detention, or to assault or obstruct an immigration officer in the course of exercising this power.

- *Assaulting an immigration officer: offence*

S.22 makes it an offence to assault an immigration officer, carrying a penalty of 12 months imprisonment and/or a fine of level 3 on the (Jersey) standard scale (£10,000).

S.23 creates a power of arrest for the offence of assaulting an immigration officer. It enables an immigration officer to arrest a person without warrant where he has reasonable grounds for suspecting that the person has assaulted or is about to assault an immigration officer. The section also applies existing immigration officer powers of entry, search and seizure in the 1971 Act to the offence of assaulting an immigration officer.

- *Disposal of property*

S.25 provides powers of disposal in respect of property in the possession of an immigration officer, or which has come into the possession of the Minister in the exercise of his or her immigration functions under the Immigration Acts. This includes property which has been forfeited or seized under the Immigration Acts. The Magistrate's Court may order the delivery of the property to the person who appears to the Court to be its owner or may make any other order about the property.

Several Order-making powers are conferred on the Minister regarding the disposal of property where the owner has not been ascertained and in other circumstances.

- *Requirement to state nationality*

S.43A requires an individual who is arrested for an offence to state his or her nationality if required to do so by an immigration officer or police officer. The officer must suspect that the individual may not be a British citizen.

Under s.43B an offence is committed if, without reasonable excuse, the person fails to comply with the requirement, either by providing false information, or not providing any information. The offence carries a penalty of 12 months imprisonment and/or an unlimited fine.

- *Search for/seizure of evidence of nationality*

Ss.44 – 46 make detailed provision as to entry and search powers for nationality documents and seizure and retention of nationality documents

- *Requirement to produce nationality document*

Ss. 46A – 46C make further provision about requirements to produce nationality documents, offences of failing to do so and the retention of such documents by an immigration officer or police officer.

Immigration Act 2016

33. The text of this Act in its draft extended form is set out in Schedule 12A to the draft Order in Council. The Act has not previously been extended to Jersey.

34. The provisions in their draft extended form are for the following purposes –

- *Seizure and retention in relation to offences*

S.48 provides immigration officers with powers to seize of anything acquired through committing a criminal offence, whether the offence is related to immigration or not.

S.49 makes provision about passing on items seized under s.48

- *Search for nationality documents by certain officers*

S.51 creates new search powers for detainee custody officers, prison officers and prisoner custody officers. The powers enable such officers, subject to certain requirements and limitations, to search a detained person who is liable to removal or deportation, or their property, when directed to do so by the Minister if there are reasonable grounds to suspect that relevant documents will be found.

- *Seizure of nationality documents by detainee custody officers etc.*

S.52 permits detainee custody officers, prison officers and prisoner custody officers to seize and retain nationality documents which they encounter during routine searches as part of the management of detention facilities and prisons.

Officers must obtain authorization from the Minister before exercising the power to retain the document. Where the Minister gives such authorization, the officers must pass the documents to the Minister, or, if authorization is refused, return the documents to the person or location from where they were seized.

- *Guidance on detention of vulnerable persons*

S.59 requires the Minister to issue guidance to be taken into account by those assessing whether an individual would be particularly vulnerable if detained.

- *Limitation on detention of pregnant women*

S.60 sets out limitations on the detention of any woman who the Minister is satisfied is pregnant.

- *Power to make passport fees Orders*

The Minister for Home Affairs is empowered by s.86 to provide by Order “for fees to be charged in respect of the exercise by the Minister of such functions in connection with applications for the issue of a passport or other travel document as may be specified.”

Under s.88 the Minister may charge a fee for passport validation services i.e. “services in connection with confirming the validity of United Kingdom passports or the accuracy of the information contained in them which are provided for the purpose of preventing or detecting crime.”

Conclusion

35. The draft Order in Council is the culmination of several years of work by the Jersey Customs and Immigration Department and the Law Officers’ Department (who in turn have liaised with legal advisers at the Home Office and the Ministry of Justice).
36. The consolidation of the Immigration Acts on the Jersey statute book has already been achieved in part by the recent Orders in Council (approved by the States Assembly under Article 31 of the States of Jersey Law 2005), most notably that relating to the transfer of powers from the Lieutenant-Governor to the Minister for Home Affairs [see the Report to [P.26 of 2017](#)].
37. The draft Order in Council to which this Proposition relates brings the consolidation process to completion. It also provides an up-to-date statutory framework within which the rules for Jersey’s immigration system can be brought forward.

Financial and manpower implications

There are no resource implications in deciding to consolidate the Immigration Acts in their extension to Jersey. Resource implications for the future will depend on how the various powers and functions under the Immigration Acts are exercised, and on the precise detail of Jersey’s immigration system in the wake of the ending of free movement of EEA citizens.

In so far as the States are empowered under the Acts as extended to make Regulations, resource implications will be stated in the draft Regulations when the same are lodged. In so far as the Minister is empowered to make Orders and Immigration Rules, the position as to resource implications will be made clear if need be in separate statements in relation to the relevant Orders and Rules.

CHIEF MINISTER