

STATES OF JERSEY



IMMIGRATION (AMENDMENT) (JERSEY) ORDER 2017: EXTENSION TO JERSEY BY ORDER IN COUNCIL

Lodged au Greffe on 11th April 2017
by the Chief Minister

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, whether they agree that a request be made to the Privy Council for the making of an Order in Council that would amend –

- (i) the Immigration (Jersey) Order 1993;
- (ii) the Immigration and Asylum Act 1999 (Jersey) Order 2003;
- (iii) the Immigration (Jersey) Order 2012; and
- (iv) the Immigration (Jersey) Order 2015,

with the purpose of –

- (a) transferring functions and powers under the Immigration Act 1971, the Immigration Act 1988, the Immigration and Asylum Act 1999, the Immigration, Asylum and Nationality Act 2006 and the Immigration Act 2014 (as each of those Acts has effect as extended to Jersey) from the Lieutenant-Governor to the Minister for Home Affairs;
- (b) replacing remaining references in those Acts (as so extended) to Committees of the States with references to the Minister for Home Affairs; and
- (c) re-extending section 25(5) of the Immigration Act 1971 to Jersey so that the offence of assisting illegal entry (under subsection (1) of section 25) applies to things done whether inside or outside of Jersey irrespective of the nationality of the person who does them,

as summarised in the Report below.

CHIEF MINISTER

REPORT

1. Historical background

The Immigration Act 1971 (“the 1971 Act”) is the cornerstone of immigration legislation within the British Islands. Within the United Kingdom the 1971 Act assigns power to create and amend the Immigration Rules to the Secretary of State, *i.e.* the Home Secretary. Since the 1971 Act came into force, Parliament has enacted further immigration-related legislation. The various United Kingdom Immigration Acts do not apply to Jersey (or to any of the other Crown Dependencies) directly, but each Act empowers Her Majesty by Order in Council to extend the Act to the Island subject to any necessary modifications.

The principal Order in Council made under this power is the Immigration (Jersey) Order 1993, which extended the 1971 Act together with provisions of –

- the British Nationality Act 1981
- the Immigration (Carriers’ Liability) Act 1987
- the Immigration Act 1988.

Subsequent Orders in Council have extended provisions of –

- the Asylum and Immigration Act 1996
- the Immigration and Asylum Act 1999
- the Immigration, Asylum and Nationality Act 2006
- the Immigration Act 2014.

In extending the above Acts of Parliament to Jersey, certain of the powers vested in the Home Secretary in the United Kingdom were assigned to the Lieutenant-Governor, while other powers were assigned to the then Defence Committee (later the Home Affairs Committee; now the Minister for Home Affairs). The main power conferred on the Lieutenant-Governor was that of giving directions as to the practice to be followed in the administration of the 1971 Act for regulating the entry into and stay in the Bailiwick of persons not having the right of abode, including provision for admitting persons coming for the purpose of taking employment, or for the purposes of study, or as visitors, or as dependants of persons lawfully in or entering the Bailiwick. These directions are the equivalent of the Immigration Rules made by the Home Secretary in the United Kingdom, and are referred to as the Jersey Immigration Rules.

The Defence Committee was empowered to make rules as to the practice to be followed in the administration of the 1971 Act for regulating the taking of employment by persons not having right of abode. This power has vested in the Minister for Home Affairs since the advent of Ministerial government in Jersey¹.

The power to give or refuse leave to enter Jersey is exercised by immigration officers. The power to give leave to remain, and the power to vary any leave as regards duration, is exercised by the Lieutenant-Governor. The power to vary any leave otherwise than as regards duration is exercised by the Minister for Home Affairs.

¹ See States of Jersey (Amendments and Construction Provisions No. 7) (Jersey) Regulations 2005 (Regulation 41)
<https://www.jerseylaw.je/laws/enacted/Pages/RO-047-2005.aspx>

The power to order deportation resides with the Lieutenant-Governor in cases where he or she deems the person's deportation to be conducive to the public good.

The above is not an exhaustive statement of the respective powers and functions of the Lieutenant-Governor and the Minister under the Immigration Acts, but does summarize their main powers and functions.

2. The draft Order in Council

(a) Transfer of functions

In recent months, officers have worked on updates to Jersey's immigration legislation. While reviewing the legislation, it was thought appropriate also to consider the exercise of functions under the Immigration Acts, and whether it would be more fitting that these are exercised by the Minister for Home Affairs, and so be subject to democratic accountability and oversight by the States Assembly. Advice was provided by the Law Officers' Department which confirmed that the functions under the Immigration Acts could be exercised in Jersey by the Minister², whereas those under the British Nationality Acts needed to remain with the Lieutenant-Governor. The interval between the terms of the respective Lieutenant-Governors was considered an appropriate time in which to bring forward such a change. Contact with Her Majesty's Government was made and confirmation received from the Ministry of Justice that the *attached* draft Order in Council was considered appropriate to take forward.

The draft Order in Council would amend the existing Orders in Council extending the Immigrations Acts so that the functions under the Immigration Acts discharged in the United Kingdom by the Secretary of State (*i.e.* the Home Secretary) would be discharged in Jersey by the Minister for Home Affairs.

(b) Obsolete references to Committees of the States

The draft Order in Council would also bring up to date any pre-2005 references to 'the Committee', so that there are consistent references throughout the Island's immigration legislation to 'the Minister'³.

(c) The offence of assisting illegal entry

Lastly, the draft Order in Council would implement a change to the offence under section 25 of the 1971 Immigration Act of assisting illegal entry. Section 25, as it applies in the United Kingdom, was amended by section 30 of the UK Borders Act 2007 such that the equivalent provision applies to things done whether inside or outside the United Kingdom, irrespective of the nationality of the person who does them. That amendment has yet to be reflected in section 25 as extended to Jersey, with the result that the offence is of no application in relation to things done outside Jersey unless the person concerned is British. The draft Order in Council will remove this limitation on the scope of the offence under section 25 as it applies to Jersey.

² The advice referred to the Supreme Court case of *R (on the application of Munir and another) (Appellants) -v- Secretary of State for the Home Department (Respondent)* 18th July 2012, in which it was held that the functions of the Secretary of State under the Immigration Acts were purely statutory and were not discharged in exercise of the prerogative power.

³ Orders in Council do not form part of the Revised Edition of the Laws of Jersey.

3. *The text of the draft Order in Council*

The **Appendix** to this Proposition shows the text of the draft Order in Council.

4. *The text of the Immigration Acts as extended/amended*

In order that the text of the Acts as extended to Jersey can be viewed in full with the modifications deriving from the draft Order in Council, a separate Report has been presented to the States simultaneously with this Proposition (R.35/2017). The amendments made by the draft Order in Council are shown in tracked form.

Collective responsibility under Standing Order 21(3A)

Under Standing Order 68A, this Proposition will be proposed by the Minister for Home Affairs. Paragraph 5 of the Code of Conduct and Practice for Ministers and Assistant Ministers states that the principle of collective responsibility extends to the Assistant Ministers of the Minister proposing a matter to the States Assembly.

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Minister for Home Affairs, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers.

Financial and manpower implications

There are no financial or manpower implications for the States arising from this Proposition.

TEXT OF PROPOSED ORDER IN COUNCIL

STATUTORY INSTRUMENTS

2017 No.

IMMIGRATION

Immigration (Amendment) (Jersey) Order 2017

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

At the Court at Buckingham Palace, the *** day of ***
Present,
The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 36 of the Immigration Act 1971, section 12(5) of the Immigration Act 1988, section 170(7) of the Immigration and Asylum Act 1999, section 63(3) of the Immigration, Asylum and Nationality Act 2006 and section 76(6) of the Immigration Act 2014, is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation, commencement and interpretation

1. This Order may be cited as the Immigration (Amendment) (Jersey) Order 2017 and comes into force on the seventh day after the day on which it is registered by the Royal Court of Jersey.

Amendment of the Immigration (Jersey) Order 1993

2. The Immigration (Jersey) Order 1993 is amended in accordance with Part 1 of the Schedule to this Order.

Amendment of the Immigration and Asylum Act 1999 (Jersey) Order 2003

3. The Immigration and Asylum Act 1999 (Jersey) Order 2003 is amended in accordance with Part 2 of the Schedule to this Order.

Amendment of the Immigration (Jersey) Order 2012

4. The Immigration (Jersey) Order 2012 is amended in accordance with Part 3 of the Schedule to this Order.

Amendment of the Immigration (Jersey) Order 2015

5. The Immigration (Jersey) Order 2015 is amended in accordance with Part 4 of the Schedule to this Order.

Saving

6.–(1) Orders made and directions given by the Lieutenant-Governor under the Immigration Acts and having effect on the day on which this Order comes into force shall have effect as if they had been made or given by the Minister under the Immigration Acts as amended by this Order, and shall remain in force until revoked or replaced by Orders made or directions given, as the case may be, by the Minister under the said Acts as so amended.

(2) In this article –

“the Immigration Acts” means the Immigration Act 1971, the Immigration Act 1988, the Immigration and Asylum Act 1999, the Immigration, Asylum and Nationality Act 2006 and the Immigration Act 2014 as each of those Acts has effect in the Bailiwick of Jersey;

“the Minister” means the Minister for Home Affairs (of Jersey).

Date

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE

PART 1

Article 2

AMENDMENT OF THE IMMIGRATION (JERSEY) ORDER 1993

1. In Part I of Schedule 1 –

- (a) in paragraph 1(c), for “Committee” in the substituted subsection (4) and for “Lieutenant-Governor” in the substituted subsection (4A) substitute “Minister”;
- (b) in paragraph 3(d), for “Lieutenant-Governor” substitute “Minister”;
- (c) in paragraph 4(a), in the substituted wording –
 - (i) for “Lieutenant-Governor” substitute “Minister”, and
 - (ii) for “Committee” substitute “Minister”;
- (d) in paragraph 4(c)(i), for “Committee” substitute “Minister”;
- (e) in paragraph 4(d) for “the Committee may by order make such provision as appears to it” substitute “the Minister may by order make such provision as appears to him”;
- (f) in paragraph 5(b), for “Lieutenant-Governor” substitute “Minister”;
- (g) in paragraph 5(c), for “Committee” substitute “Minister”;
- (h) in paragraph 7(a)(ii), for “Lieutenant-Governor’s” substitute “Minister’s”;
- (i) in paragraph 8(b), for the substituted subsection (2) substitute –
 - “(2) The Minister may direct that any particular person or class of persons shall be exempt either unconditionally or subject to such conditions as the Minister may impose from all or any of the provisions of this Act relating to those who are not British citizens.
 - (2A) A direction under this subsection, if made with respect to a class of persons, shall be made by Order to which the Subordinate Legislation (Jersey) Law 1960 shall apply.”;
- (j) in paragraph 9(b)(iii), for the substituted words from “by order and may” to “other conditions, by the Committee” (inclusive) substitute “by an Order of the Minister and may be applicable to them”;
- (k) in paragraph 9(d)(ii) and paragraph 9(f), for “Lieutenant-Governor” substitute “Minister”;

- (l) for paragraph 12(d), substitute –
 - “(d) for subsection (5) substitute –
 - “(5) Subsection (1) above applies to things done whether inside or outside the Bailiwick of Jersey.””;
- (m) in paragraph 16 –
 - (i) in sub-paragraph (a) for “Committee” substitute “Minister”,
 - (ii) in sub-paragraph (c) for “Finance and Economics Committee of the States” substitute the “Minister for Treasury and Resources”;
- (n) in paragraph 17 –
 - (i) in sub-paragraph (a) for “Lieutenant-Governor or the Committee” substitute “Minister”,
 - (ii) omit sub-paragraph (b);
- (o) in paragraph 18 –
 - (i) in sub-paragraph (a)(i), omit the inserted definition of “Committee”,
 - (ii) after sub-paragraph (a)(v) insert –
 - “(va) “Minister” means the Minister for Home Affairs;”,
 - (iii) in sub-paragraph (a)(viii) in the inserted definition of “work permit” for “Committee” substitute “Minister”;
- (p) in paragraph 20 –
 - (i) in sub-paragraph (a)(i) for the substituted sub-paragraph (1) substitute –
 - “(1) Immigration officers for the purposes of this Act shall be appointed in accordance with the Employment of States of Jersey Employees (Jersey) Law 2005.”,
 - (ii) in sub-paragraph (a)(i) for the substituted sub-paragraph (3) substitute –
 - “(3) In the exercise of their functions under this Act, immigration officers and medical inspectors shall act in accordance with such directions as may be given them by the Minister.”,
 - (iii) in sub-paragraphs (f), (i), (k) and (s) for “Lieutenant-Governor” wherever occurring, substitute “Minister”;

- (iv) in sub-paragraphs (i), (k), (o) and (p) for “Committee” wherever occurring, substitute “Minister”;
 - (q) in paragraph 21 –
 - (i) for “Lieutenant-Governor” wherever it occurs substitute “Minister”,
 - (ii) in sub-paragraph (a)(iii) for “Committee, if it” substitute “Minister, if he”;
 - (r) in paragraph 22(2)(e) for “Lieutenant-Governor” substitute “Minister”.
2. Omit Part II of Schedule 1.
 3. In Part III of Schedule 1 –
 - (a) for “Lieutenant-Governor” and “Committee” wherever they occur (other than in paragraph 4), substitute “Minister”;
 - (b) omit paragraph 4.

PART 2

Article 3

AMENDMENT OF THE IMMIGRATION AND ASYLUM ACT 1999 (JERSEY) ORDER 2003

1. Omit article 3(b).
2. In the second column of the Schedule –
 - (a) for “Lieutenant Governor” wherever it occurs substitute “Minister”;
 - (b) for “Committee” wherever it occurs (except in item (g) opposite the entry relating to section 167) substitute “Minister”;
 - (c) in item (g) opposite the entry relating to section 167 –
 - (i) omit the definition of “Committee”,
 - (ii) insert “ “Minister” means the Minister for Home Affairs;”.

PART 3

Article 4

AMENDMENT OF THE IMMIGRATION (JERSEY) ORDER 2012

In the second column of Schedule 1 for “Lieutenant Governor” in both places substitute “Minister”.

AMENDMENT OF THE IMMIGRATION (JERSEY) ORDER 2015

1. In the second column of Schedule 2 opposite the entry relating to paragraph 5 (*Designations*) omit item (b).
2. In the second column of Schedule 2 opposite the entry relating to Schedule 9 (*Provision relating to removal*) for “Lieutenant-Governor” substitute “Minister”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Immigration (Jersey) Order 1993 and other Orders in Council which extended to Jersey various provisions of the Immigration Act 1971, the Immigration Act 1988, the Immigration and Asylum Act 1999, the Immigration, Asylum and Nationality Act 2006 and the Immigration Act 2014 (“the Immigration Acts”).

The purpose of the amendments is –

- (a) to transfer functions under the Immigration Acts (as so extended) from the Lieutenant-Governor to the Minister for Home Affairs (of Jersey);
- (b) to replace references in the Immigration Acts (as so extended) to Committees of the States (which no longer exist) with references to the Minister for Home Affairs (of Jersey);
- (c) to re-extend section 25(5) of the Immigration Act 1971 to Jersey so that the offence of assisting illegal entry (under subsection (1) of section 25) applies to things done whether inside or outside the Bailiwick of Jersey irrespective of the nationality of the person who does them.