

# STATES OF JERSEY



## **DRAFT PASSPORTS (FALSE STATEMENTS AND FORGERY) (JERSEY) LAW 201-**

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**Lodged au Greffe on 6th February 2014  
by the Minister for Home Affairs**

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**STATES GREFFE**





Jersey

## **DRAFT PASSPORTS (FALSE STATEMENTS AND FORGERY) (JERSEY) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Home Affairs has made the following statement –

In the view of the Minister for Home Affairs, the provisions of the Draft Passports (False Statements and Forgery) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator B.I. Le Marquand**

*Minister for Home Affairs*

Dated: 5th February 2014

## REPORT

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There is currently no legislation in Jersey relating to offences surrounding the forgery of UK passports, nor to the making of a false statement or falsifying a document when applying to obtain or renew a UK passport.

Guernsey has had legislation in force for such offences since the 1970s, and the introduction of similar legislation in Jersey has the support of the judiciary and is clearly desirable to address this lacuna.

The passport office in Jersey can issue British passports for Jersey-resident British citizens and British subjects with the right of abode in the United Kingdom. Jersey-born British citizens who are resident in the United Kingdom can also apply for their passport to the Jersey passport office.

When a person first applies for a British passport there are, understandably, quite a few documents that a person is required to produce, in addition to the passport application form, to prove that they are a British citizen and entitled to a British passport. This may include such things as a full birth certificate and the applicant's mother's birth certificate or passport (if the applicant derives British citizenship through the mother) or the father's passport or birth certificate and the parents' marriage certificate (if the applicant derives British citizenship through the father). When a person applies to renew an existing British passport, and can produce that passport, there may be less documentation required, depending on the place of issue of the passport.

The Draft Passport (False Statements and Forgery) (Jersey) Law 201- (the "draft Law") makes it a statutory offence to make a false application for a passport, to forge a passport or to knowingly purchase, receive or possess a forged passport. The draft Law not only applies to British passports, but also any passport issued by the United Kingdom Government; the Lieutenant-Governor of Jersey, Guernsey or the Isle of Man; and the Government of any current British overseas territory.

Under Article 2 of the draft Law, it is an offence for a person to knowingly or recklessly make either a false or misleading statement, or false or misleading representation when making, or purporting to make an application to obtain or renew a United Kingdom passport. It should be noted that the passport that the individual is trying to obtain or renew does not need to be for their own use for the offence to have been committed (Article 2(3)).

Under the same Article of the draft Law, it is an offence for a person to sign a document (for example the passport application form), knowing it to contain a material omission or for a material particular contained therein to be false. It is also an offence to knowingly or recklessly alter or falsify any document. Further, when applying for a first or new passport, it is an offence to utter a forged passport, or hand over any document, or copy of a document, which the person knows to be false in any material particular or forged.

An explanation of the term 'forging a passport or document' is given in Article 1(2) of the Law as '*making a false passport or document with the intention that it shall be used as genuine*'. A definition of 'utter' is not contained within the Law but means, *inter alia*, to pass off forged documents as being genuine.

Further offences relating to the forgery of passports are contained within Article 3 of the draft Law. It is not only an offence to forge a passport, or utter a forged passport (Article 3(1)), but it is also an offence to knowingly or recklessly receive or purchase a forged passport from another person (Article 3(2)) or to knowingly or recklessly possess a forged passport (Article 3(3)).

The offences under Articles 2 and 3 of the draft Law attract a term of imprisonment of 2 years and an unlimited fine.

Under the remainder of the draft Law, an “officer” is given the powers of arrest and detention (Article 4) and the power to enter premises and search them before arrest (Article 5). “Officer” is defined in the Interpretation Article 1(1) as “an immigration officer or a police officer” unless otherwise specifically stated. “Immigration officer” is also defined in the same Article as “an officer appointed as such for the purposes of the Immigration Act in accordance with paragraph 1(1) of Schedule 2 to that Act”. On the basis that the Customs and Immigration Departments fully merged in January 2005 and that the frontier officers are multi-functional, fulfilling both the Customs and Immigration roles, reference to ‘immigration officer’ is to be taken to mean an officer of the Jersey Customs and Immigration Service.

Where a person has been arrested for an offence under Article 2 or 3 at a place other than a police station or a customs office, a senior officer may authorise in writing an immigration officer to enter and search the place where the person was arrested for relevant evidence. They would need to have reasonable grounds for believing that relevant evidence was in the premises before authorising the search.

#### **Financial and manpower implications**

There are no additional financial or manpower implications associated with the draft Law.

#### **Human Rights**

The notes on the human rights aspects of the draft Law in the Appendix have been prepared by the Law Officers’ Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

## APPENDIX TO REPORT

### Human Rights Notes on the Draft Passports (False Statements and Forgery) (Jersey) Law 201-

These Notes have been prepared in respect of the Draft Passports (False Statements and Forgery) (Jersey) Law 201- (“the draft Law”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

The draft Law engages two Articles of the ECHR: Article 5, the right to liberty and security; and Article 8, the right to respect for private and family life, the home and correspondence. Both of these are qualified rights, and therefore interferences with these rights are lawful if they are justified in accordance with the provisions set out in the ECHR.

Article 5 of the ECHR secures the right to liberty unless the interference is provided for in one of the specified cases listed in Article 5(1) ECHR. Further, any interference must be lawful under domestic law, comply with the general requirements of the ECHR to be sufficiently accessible and precise, and be proportionate having regard to the procedural rights provided in Articles 5(2) to (5) ECHR.

Article 4 of the draft Law provides a power to arrest without warrant and detain a person with a view to ascertaining if an offence has been committed. It is therefore providing the ability for police and immigration officers to interfere with a person’s liberty. However, this provision falls within the case specified in Article 5(1)(c) ECHR, as it is a lawful arrest and detention for the purposes of bringing a person before a competent legal authority. Further, the provisions of Article 4 are sufficiently accessible and precise to be in accordance with the ECHR, and the powers are limited by virtue of Article 4(1) of the draft Law so that there must be reasonable suspicion that an offence under the draft Law has been committed before any arrest or detention can take place.

In addition to the above, it is important to note that the police are subject to the Police Procedures and Criminal Evidence (Jersey) Law 2003 (“PPCE”). The procedural safeguards set out in Article 5(2)–(5) of the ECHR are provided for, in particular by Articles 26–29 of the PPCE. These safeguards are also applied in respect of arrests or detention by immigration officers by Article 4(5) of the draft Law. Any detention outside a police station or immigration office that may not be captured by the provisions of the PPCE is limited by virtue of Article 4(2) of the draft Law which provides a maximum period for which a person may be detained.

Therefore, whilst the exercise of the powers to arrest and detain persons may amount to an interference with Article 5 ECHR, that interference falls within one of the specified cases where it can be justified, it is provided for in domestic law in a way that is sufficiently accessible and precise, and is proportionate, in particular with reference to the safeguards set out in Article 5(2)–(5) of the ECHR, which are either reflected in the draft Law or in the applicable provisions of the PPCE. Therefore, Article 4 of the draft is compatible with Article 5 of the ECHR.

Interference with the right to respect for private and family life, home and correspondence in Article 8(1) ECHR can be justified if it is in pursuit of one of the legitimate aims specified in Article 8(2) ECHR, is in accordance with the law and is necessary in a democratic society.

The exercise of powers to enter premises, search premises and seize and retain material contained in Articles 5, 6 and 7 of the draft Law amount to an interference of private and home life, and potentially an interference in family life and correspondence depending on the circumstances of the case. However, these provisions are sufficiently precise and accessible for the powers to be exercised in accordance with the law. Further, the powers provided are justified in pursuit of the legitimate aim of protecting national security, as any falsification of passports or associated offences may lead to weaker border control. The powers may also be justified in pursuit of the legitimate aim of preventing crime.

In order for the powers to be ‘necessary in a democratic society’ they must be proportionate to the aim they are seeking to achieve. A range of safeguards is provided in the draft Law to ensure that these powers are limited and therefore proportionate. These safeguards include the requirement for specific grounds to be satisfied for an application for a warrant to be approved in Article 5 of the draft Law; the procedures that must be followed with respect in Articles 8 and 9 of the draft Law; the specific conditions that are applied with respect to entry and search without a warrant in Article 6 of the draft Law; and the presumption in favour of providing access to any seized material, apart from in specific limited circumstances contained in Article 7 of the draft Law.

Therefore, the provisions in relation to entry, search and seizure contained in Articles 5, 6 and 7 of the draft Law are justified as they are in pursuit of the legitimate aims of national security and the prevention of crime; are provided for in law and are sufficiently accessible and precise; and are necessary in a democratic society as they are proportionate to the aims they are seeking to achieve. Therefore, the draft Law is compatible with Article 8 of the ECHR.

## Explanatory Note

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*Article 1* gives definitions, including definitions of “forging” and “United Kingdom passport”, for the purposes of this draft Law.

*Article 2* of this draft Law would create new statutory offences of making false or misleading statements or representations, of signing false documents or using false or forged documents, and of forging or uttering a forged passport, for the purpose of obtaining or renewing a UK passport. In proving that any such offence has been committed it does not matter whether the application is for a UK passport for the use of the person committing the offence or for the use of some other person.

*Article 3* would create additional new statutory offences of forging a passport or uttering a forged passport, and purchasing, receiving or possessing a forged passport, for any purpose. The intention in introducing this provision is to put beyond doubt the existing position in Jersey customary law and to facilitate prosecution of such offences.

Articles 2 and 3 would further provide that a person guilty of any such offence shall be liable on conviction to imprisonment for a term of 2 years and a fine.

*Article 4* would confer general powers of arrest and detention for offences under this Law on police officers and immigration officers. This is without prejudice to any other customary or statutory powers of the police.

*Articles 5, 6, and 7* would provide for investigatory powers. Under *Article 5*, police officers and immigration officers may apply to the Bailiff for a warrant authorizing entry to and search of specified premises. Article 5(4) provides that in the case of immigration officers, additional safeguards are imposed by *Articles 8 and 9* (as to applications for, and execution of, warrants). These safeguards are analogous to certain provisions of the Immigration Act 1971 of the United Kingdom (as amended by the Immigration and Asylum Act 1999, and as applying in Jersey by virtue of the Immigration and Asylum Act 1999 (Jersey) Order 2003); they are not needed to apply to police officers, whose procedures in relation to warrants are governed by Part 3 of the Police Procedures and Criminal Evidence (Jersey) Law 2003.

*Article 6* would permit entry to and search of specified premises without a warrant, where a person is being held in connection with an offence under Article 2. Article 5(3) would provide the safeguard that these powers may be exercised by an immigration officer only with the written authorization of a senior officer.

Both Articles 5 and 6 would also confer power to seize material which is relevant evidence. *Article 7* accordingly would make provision permitting access to, and copying of, any material seized in the course of a search under Article 4 or 5.

*Article 10* provides for the citation and commencement of this Law.





Jersey

## **DRAFT PASSPORTS (FALSE STATEMENTS AND FORGERY) (JERSEY) LAW 201-**

### **Arrangement**

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#### **Article**

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Jersey

## **DRAFT PASSPORTS (FALSE STATEMENTS AND FORGERY) (JERSEY) LAW 201-**

**A LAW** to create offences relating to false applications for passports, and for connected purposes.

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### **1 Interpretation**

(1) In this Law –

“Immigration Act” means the Immigration Act 1971 of the United Kingdom Parliament, as it applies in Jersey by virtue of the Immigration (Jersey) Order 1993<sup>1</sup>;

“customs office” means a place for the time being occupied by officers of the Impôts;

“document” includes a stamp or label;

“immigration officer” means an officer appointed as such for the purposes of the Immigration Act in accordance with paragraph 1(1) of Schedule 2 to that Act;

“items subject to legal privilege” means communications between a professional legal adviser and client or client’s representative, made in connection with –

- (a) the giving of legal advice to the client; or
- (b) in connection with or in contemplation of legal proceedings, for the purposes of such proceedings,

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together with items enclosed with or referred to in such communications, except that items held with the intention of furthering a criminal purpose are not items subject to legal privilege;

“officer”, except where otherwise specifically stated, means an immigration officer or a police officer;

“police officer” means a member of the States of Jersey Police Force;

“United Kingdom passport” means a current passport issued by –

- (a) the Government of the United Kingdom;
  - (b) the Lieutenant-Governor of any of the Channel Islands or the Isle of Man; or
  - (c) the Government of any territory which is for the time being a British overseas territory within the meaning of the British Nationality Act 1981.
- (2) In this Law, reference to forging a passport or document means making a false passport or document with the intention that it shall be used as genuine.

## **2 Offence of false application for a passport**

- (1) This Article applies where a person makes or purports to make an application for the purpose of obtaining or renewing a United Kingdom passport.
- (2) Where this Article applies it is an offence if the person –
  - (a) knowingly or recklessly makes a false or misleading statement, or a false or misleading representation;
  - (b) signs any document which the person knows to be false in a material particular or to contain a material omission;
  - (c) knowingly or recklessly alters or falsifies any document;
  - (d) utters a forged passport or produces or furnishes any document, or a copy of any document, which the person knows to be false in any material particular or forged.
- (3) For the purpose of proving that an offence under this Article has been committed, it does not matter whether the application in question is for a United Kingdom passport for the use of the person charged with the offence or for the use of any other person.
- (4) A person guilty of an offence under this Article shall be liable to imprisonment for a term of 2 years and a fine.

## **3 Other offences of forgery relating to passports**

- (1) A person shall be guilty of an offence if, for any purpose, the person –
  - (a) forges a passport or utters a forged passport;
  - (b) knowingly or recklessly purchases or receives a forged passport from any other person;
  - (c) knowingly or recklessly possesses a forged passport.

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- (2) A person guilty of an offence under this Article shall be liable to imprisonment for a term of 2 years and a fine.

#### **4 Powers of arrest and detention: general**

- (1) If an officer has reasonable grounds to suspect that a person has committed or attempted to commit an offence under Article 2 or 3, the officer may –
- (a) detain the person for questioning with a view to ascertaining whether or not an offence has been committed;
  - (b) arrest the person without warrant.
- (2) A person detained under paragraph (1)(a) may not be detained at a place other than a police station or a customs office, for any continuous period lasting longer than 6 hours.
- (3) Powers conferred on an officer by this Law are additional to and shall not affect any powers which the officer has at customary law or by virtue of any other enactment.
- (4) Nothing in this Law shall be construed as conferring on an immigration officer any power –
- (a) to charge a person with any offence; nor
  - (b) to detain a person except in accordance with this Article.
- (5) The Police Procedures and Criminal Evidence (Application to Customs and Excise) (Jersey) Order 2004<sup>2</sup> shall apply in relation to detention or arrest of a person by an immigration officer under this Article as it does in relation to detention or arrest of a person by the Agent of the Impôts or an officer of the Impôts.

#### **5 Entry to premises and search of premises before arrest**

- (1) If the Bailiff is satisfied, on an application made by an officer, that there are reasonable grounds to believe that –
- (a) an offence under Article 2 or 3 has been committed;
  - (b) there is, on premises specified in the application, material which is likely to be of substantial value (whether by itself or together with other material) to the investigation of such an offence;
  - (c) the material is likely to be relevant evidence and does not consist of or include items subject to legal privilege; and
  - (d) any of the conditions in paragraph (2) is fulfilled,
- the Bailiff may issue a warrant authorizing an officer to enter and search the specified premises.
- (2) The conditions mentioned in paragraph (1)(d) are that –
- (a) it is not practicable to communicate with any person entitled to grant entry to the premises;

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- (b) it is practicable to communicate with a person entitled to grant entry to the premises, but not practicable to communicate with any person entitled to grant access to the material;
  - (c) entry to the premises will not be granted unless a warrant is produced;
  - (d) the purpose of a search would be frustrated or seriously prejudiced unless an officer arriving at the premises could secure immediate entry to them.
- (3) An officer may seize and retain any material for which a search is authorized under this Article.
  - (4) Entry to or search of any premises by an immigration officer under a warrant is not lawful unless it complies with Articles 8 and 9 of this Law.

## **6 Entry and search without warrant: powers of immigration officer**

- (1) This Article applies where a person (“D”) –
  - (a) is arrested for an offence under Article 2 or 3; or
  - (b) is detained for questioning in respect of such an offence, at a place other than a police station or a customs office.
- (2) Subject to paragraph (3), an officer may enter and search for relevant evidence any premises in which D was when arrested or was immediately before being arrested.
- (3) The power in paragraph (2) may be exercised by an immigration officer only if a senior officer has authorized its exercise in writing, having been satisfied that –
  - (a) there are reasonable grounds to believe that there is relevant evidence on the premises; and
  - (b) the search is reasonably required for the purpose of discovering such evidence.
- (4) An officer searching premises under this Article may seize and retain any material which the officer reasonably believes to be relevant evidence.
- (5) In this Article –
  - “relevant evidence” means evidence relating to the offence in respect of which D is arrested or detained, which does not consist of items subject to legal privilege; and
  - “senior officer” means an immigration officer not below the rank of chief immigration officer.

## **7 Seized material: access and copying**

- (1) This Article applies where an officer has seized and retained any material under Article 5(3) or Article 6(4).
- (2) A person who –
  - (a) is the occupier of the premises where the material was seized; or

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- (b) had control or custody of the material immediately before it was seized,
- may request a record, photograph or copy of the material, or to have access to the material for the purpose of photographing or copying it.
- (3) An officer who receives a request for a record of seized material must provide the record to the person making the request within a reasonable time.
- (4) An officer who receives a request for a photograph or copy of, or for access to, seized material must, within a reasonable time –
- (a) arrange for the person making the request to have access to the material for the purpose of photographing or copying the material under the supervision of an immigration officer or a police officer; or
- (b) arrange for the material to be photographed or copied, and provide the photograph or copy to the person making the request.
- (5) Nothing in this Article imposes any duty to arrange for access to, or the supply of a photograph or copy of, any material where there are reasonable grounds to suspect that doing so would prejudice –
- (a) the exercise of any functions in connection with which the material was seized; or
- (b) an investigation being conducted or criminal proceedings being brought under this Law.

## **8 Search warrants: safeguards**

- (1) An application for a warrant may be made by an officer *ex parte* and shall be supported by an information in writing, identifying –
- (a) the premises to be entered and searched; and
- (b) so far as practicable, the material to be sought.
- (2) The officer who makes the application shall answer on oath any question asked by the Bailiff when hearing the application.
- (3) A warrant shall authorize entry on one occasion only.
- (4) A warrant shall specify –
- (a) that it is issued under Article 5 of this Law;
- (b) the date on which it is issued;
- (c) the premises to be entered and searched;
- (d) so far as practicable, the material to be sought.
- (5) A warrant may authorize persons to accompany the officer executing it.
- (6) Two copies, which must be clearly identified as such, shall be made of a warrant issued under this Law.

## **9 Execution of warrant by immigration officer**

- (1) A warrant may be executed by any immigration officer.

- (2) Entry and search under a warrant must take place –
  - (a) within one month from the date of issue of the warrant;
  - (b) at a reasonable hour, unless it appears to the officer executing the warrant that compliance with this requirement would frustrate the purpose of a search authorized by the warrant; and
  - (c) only to the extent required for the purpose for which the warrant is issued.
- (3) If, at the time when the officer seeks to execute the warrant, any person is present on the premises to which the warrant applies, the officer must –
  - (a) produce identification showing that he or she is an immigration officer; and
  - (b) show the person the warrant and provide the person with a copy of it.
- (4) If there is no person present on the premises who appears to the officer to be in occupation or control of the premises, the officer shall leave a copy of the warrant displayed in a prominent place on the premises.
- (5) The officer executing the warrant must make an endorsement on the warrant stating –
  - (a) whether the material sought was found;
  - (b) if so, whether any material was seized; and
  - (c) if so, a description of the material.
- (6) A warrant which has been executed, or a warrant which has not been executed within the time authorized by paragraph (2)(a) for its execution, must be returned to the Bailiff's Secretary.
- (7) A warrant returned under paragraph (6) shall be retained by the Bailiff's Secretary for 12 months beginning with the date of its return; and during that period the occupier of premises to which the warrant applies shall, on so requesting, be permitted to inspect the warrant.

## **10 Citation and commencement**

This Law may be cited as the Passports (False Statements and Forgery) (Jersey) Law 201-, and shall come into force 7 days after being registered.



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- <sup>1</sup> *chapter 21.700*  
<sup>2</sup> *chapter 23.750.10*