

STATES OF JERSEY



IMMIGRATION ACTS: EXTENSION TO JERSEY BY ORDER IN COUNCIL

Lodged au Greffe on 22nd September 2020
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, that they agree that a request be made to Her Majesty in Council for the making of an Order in Council that would 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

Historical background

1. 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 the Common Travel Area (**CTA**) *i.e.* the long-standing arrangement between the United Kingdom, the Crown Dependencies and Ireland under which British and Irish citizens can move freely and reside in either jurisdiction.¹
2. The 1971 Act does not apply directly to Jersey, or to the other Crown Dependencies, 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
3. 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.
4. Orders in Council since 1993 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; and
 - the Counter-Terrorism and Security Act 2015,in suitably modified form.

Powers under the Immigration Acts in Jersey

5. Some of the powers exercisable in the United Kingdom by the Home Secretary used to be 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.

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 [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.

6. Another important power of the Lieutenant-Governor was to give 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. The [Immigration \(Jersey\) \(Amendment\) Order 2017](#) transferred the powers of the Lieutenant-Governor in all Jersey immigration matters to the Minister for Home Affairs.

Developments in the United Kingdom

7. The last 15 years have seen intense legislative activity by the United Kingdom Parliament in the field of migration (quite apart from the United Kingdom's withdrawal from the European Union). Various provisions have been enacted by the –

- Immigration, Asylum and Nationality Act 2006;
- UK Borders Act 2007;
- Borders, Citizenship and Immigration Act 2009;
- Immigration Act 2014;
- Counter-Terrorism and Security Act 2015;
- Immigration Act 2016;
- Policing and Crime Act 2017; and
- Sanctions and Anti-Money Laundering Act 2018,

only some of which have been extended to Jersey by Order in Council.

8. In relation to the United Kingdom's withdrawal from the European Union, the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 provides for the ending of free movement.
9. Furthermore there has been a rapid growth in the size and complexity of 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 Immigration Rules be overhauled and simplified. The Home Office has acted on this recommendation and is in the process of redrafting the Immigration Rules ahead of implementing its new points-based immigration system from January 2021.

The purpose of the draft Immigration (Jersey) Order 2020

10. The three-fold 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) to provide delegated powers for the Minister for Home Affairs (i) to bring forward new Immigration Rules for Jersey's immigration system as from 1st January 2021, and (ii) to make any necessary provision

resulting from the end of free movement following the United Kingdom's withdrawal from the European Union.

The draft Order – Immigration Act 1971

11. 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 form as extended by the draft Order is set out in **Appendix I** to this Proposition.

12. Among the many amended or newly extended provisions, the following in particular may be noted –

- *Interpretation*

The Order in Council provides that the [Interpretation \(Jersey\) Law 1954](#) applies to the Acts as extended. Thus terms such as “Jersey” and “police officer” automatically take the meanings they have under the Interpretation Law, without the need to be defined in the Act. 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 may make 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) so that –

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

Moreover, the Minister for Home Affairs will be required under the Act to consult the Chief Minister before making any Order under s.1(5).

- *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.

- *Continuation of leave pending variation decision*

S.3C provides for the extension of leave to enter or remain during any period when an application for variation is pending.

- *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 is expressed to include a person named under a provision of an Order under Article 3 of the [Sanctions and Asset-Freezing \(Jersey\) Law 2019](#) giving effect to a UK sanctions provision.

- *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 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.

- *Warrants able to be issued by the Magistrate*

S.28AA, s.28B, s.28C and s.28D provide a power for the Magistrate (instead of the Bailiff) to grant arrest and search warrants for specific purposes.

N.B. The Magistrate is similarly empowered to grant warrants for specific purposes under other provisions of the Acts as extended.

- *Search for personnel records: with warrant*

S.134 of the Nationality, Immigration and Asylum Act 2002 is extended so that the Minister may require an employer to supply information about an employee suspected of certain offences. S28FB (of the 1971 Act) enables the Magistrate, provided certain requirements are met, to issue a warrant authorising an immigration officer to enter and search premises where there are reasonable grounds for believing that an employer has provided inaccurate or incomplete information.

- *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.

- *Arrest/search warrants: the Magistrate*

Schedule 2, paragraph 17: warrants will be able to be issued by the Magistrate instead of the Bailiff.

- *Unaccompanied children: limitations on detention*

Schedule 2, paragraph 18B: this places additional restrictions on the detention of unaccompanied children.

- *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.

- *Breach of restrictions imposed by a court*

Schedule 3, paragraphs 7 and 8: at present a person who is suspected of having breached court restrictions may be arrested and brought before a Jurat. This changes so that the person would be brought before the Magistrate.

The draft Order – Immigration Act 1988 (Free Movement)

13. The full text of this Act in its form as extended is set out in **Appendix II** to this Proposition.
14. S.7 of this Act gave effect in its extended form to free movement of persons within the European Union. It is re-extended, but is effective only during the transition period ending on 31st December 2020, unless otherwise agreed between the United Kingdom Government and the European Union. S.7 as newly extended therefore goes on to provide that the section shall cease to have effect in Jersey on the date on which it ceases to have effect in the United Kingdom.
15. The Minister for Home Affairs is empowered under s.7, as extended, to make provision by Order in consequence of, or in connection with these provisions ceasing to have effect in Jersey. This includes power to modify other legislation, including Orders in Council.

The draft Order – Asylum and Immigration Appeals Act 1993 (Refugee Convention)

16. The text of this Act in its form as extended is set out in **Appendix III** to this Proposition.
17. This Act is extended for the purpose only of enacting 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).

The draft Order – Immigration and Asylum Act 1999

18. The text of this Act in its form as extended is set out in **Appendix IV** to this Proposition.
19. 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.

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

- *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.

- *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.

The draft Order – Nationality, Immigration and Asylum Act 2002

21. The text of this Act in its extended form is set out in **Appendix V** to this Proposition.

22. Among the newly extended provisions the following may be noted –

- *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 UK by the Immigration act 2014 and the Immigration Act 2016, and is extended in that amended form.

- *Removal of serious criminals*

S.72 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. This relates to Article 33(2) of the Refugee Convention. Article 33(2) deals with refugees who, after being granted refugee status, prove to be serious criminals or threats to public security. It provides for refugees to be returned to a country of persecution 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.

- *Revocation of leave to enter or remain*

S.76 sets out when the Minister is able to 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 as extended to Jersey, the Minister

is able to refer to this list where a person who makes a protection claim⁴ or a human rights claim is –

- (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 consideration under Article 8: Human Rights Convention*

Part 5A was added in the United Kingdom by the Immigration Act 2014. In its extension to Jersey, 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 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 as re-extended makes it clear that the Regulations may also enable such United Kingdom officers to require biometric information to be provided.

- *Information about employees*

Under s.134 the Minister can 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. Information can only be required to establish where the employee is, or where it relates to the employee’s earnings or to the history of his or her employment.

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.

- *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.

The draft Order – Asylum and Immigration and Asylum (Treatment of Claimants, etc.) Act 2004

23. The text of this Act in its extended form is set out in **Appendix VI** to this Proposition.

24. Among the newly extended provisions the following may be noted –

- *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 are various 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 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 his 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.

The draft Order – Immigration, Asylum and Nationality Act 2006

25. The text of this Act in its extended form is set out in **Appendix VII** to this Proposition.
26. Most of this Act is re-extended to the same effect as it was by [Immigration \(Jersey\) Order 2012](#) and the [Immigration \(Jersey\) Order 2015](#). Among the newly extended provisions the following may be noted –

- *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, in the Immigration Rules, forms 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. The section also allows the Minister to set out in the Immigration Rules consequences for failing to comply with any of the prescribed forms and procedures.

The draft Order – UK Borders Act 2007

27. The text of this Act in its extended form is set out in **Appendix VIII** to this Proposition.

28. Most of the Act is re-extended to the same effect as it was by [Immigration \(Biometric Registration\) \(Jersey\) Order 2018](#) and the [Immigration \(Biometric Information\) \(Jersey\) Order 2018](#). Among the newly extended provisions the following may be noted –

- *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 course of 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 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 (inserted in the United Kingdom by the Policing and Crime Act 2017) 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.

The draft Order – Borders, Citizenship and Immigration Act 2009

29. The text of this Act in its extended form is set out in **Appendix IX** to this Proposition.

30. This Act has not previously been extended to Jersey. It is now extended for the following purposes –

- *Independent Family Returns Panel*

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.

- *Duty regarding the welfare of children*

S.55 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.

The draft Order – Immigration Act 2014

31. The text of this Act in its extended form is set out in **Appendix X** to this Proposition.
32. The Act is re-extended to the same effect as it was by the [Immigration \(Jersey\) Order 2015](#) and the [Immigration \(Jersey\) Order 2016](#). The main purpose of extending this Act was to empower the Minister for Home Affairs to prescribe immigration fees by Order.

The draft Order – Counter-Terrorism and Security Act 2015

33. The text of this Act in its extended form is set out in **Appendix XI** to this Proposition.
34. The Act is re-extended to the same effect as it was by the [Counter-Terrorism and Security \(Jersey\) Order 2017](#). Among the main provisions of the Act extended are the provisions –
 - giving the police power to temporarily seize a passport at the border, so that they can investigate the individual, and
 - for Temporary Exclusion Orders to disrupt and control the return to Jersey of a British citizen reasonably suspected of involvement in terrorist activity abroad.

The draft Order – Immigration Act 2016

35. The text of this Act in its extended form is set out in **Appendix XII** to this Proposition.
36. This Act has not previously been extended to Jersey. It is now extended for the following purposes –
 - *Seizure and retention in relation to offences*

S.48 provides immigration officers with powers of seizure 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 these 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 authorisation from the Minister before exercising the power to retain the document. Where the Minister gives such authorisation, the officers must pass the documents to the Minister, or, if authorisation 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 women who the Minister is satisfied are pregnant.

- *Power to make passport fees Orders*

The Minister for Home Affairs will be 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

37. 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).
38. 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.⁵
39. 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 as from 2021

⁵ See the Report to [P.26 of 2017](#)

can be brought forward, and the necessary provision made resulting from the ending of free movement now that the United Kingdom has withdrawn from the European Union.

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 when free movement ends.

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 in separate statements in relation to the relevant Orders and Rules.

APPENDIX I

IMMIGRATION ACT 1971 AS EXTENDED BY THE DRAFT IMMIGRATION (JERSEY) ORDER 2020

PART 1

REGULATION AND ENTRY INTO AND STAY IN JERSEY

General Principles

1.—(1) All those who are in this Act expressed to have the right of abode in Jersey shall be free to live in, and to come and go into and from, Jersey without let or hindrance except such as may be required under and in accordance with this Act to enable their right to be established or as may be otherwise lawfully imposed on any person.

(2) Those not having that right may live, work and settle in Jersey by permission and subject to such regulation and control of their entry into, stay in and departure from Jersey as is imposed by this Act; and indefinite leave to enter or remain in Jersey shall, by virtue of this provision, be treated as having been given under this Act to those in Jersey at its coming into force, if they are then settled there (and not exempt under this Act from the provisions relating to leave to enter or remain).

(3) Arrival in and departure from Jersey on a local journey from or to the United Kingdom, Guernsey, the Isle of Man or the Republic of Ireland shall not be subject to control under this Act, nor shall a person require leave to enter Jersey on so arriving, except in so far as any of those places is for any purpose excluded from this subsection under the powers conferred by this Act; and in this Act Jersey and those places, or such of them as are not so excluded, are collectively referred to as “the common travel area”.

(4) The rules laid down by the Minister as to the practice to be followed in the administration of this Act for regulating the entry into and stay in Jersey of persons not having the right of abode shall include provision for admitting (in such cases and subject to such restrictions as may be provided by the rules, and subject or not to conditions as to length of stay or otherwise) persons coming for the purpose of taking employment, or for purposes of study, or as visitors, or as dependants of persons lawfully in or entering Jersey.

(5) The Minister may by Order regulate the taking of employment by persons not having the right of abode who are given leave to enter Jersey.

(6) Before making an Order under subsection (5) the Minister must consult the Chief Minister.

(7) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders made under subsection (5).

Statement of right of abode in Jersey.

2.—(1) A person is under this Act to have the right of abode in Jersey if—

- (a) he is a British citizen; or
- (b) he is a Commonwealth citizen who—
 - (i) immediately before the commencement of the British Nationality Act 1981 was a Commonwealth citizen having the right of abode in Jersey by virtue of section 2(1)(d) or section 2(2) of this Act as then in force; and
 - (ii) has not ceased to be a Commonwealth citizen in the meanwhile.

(2) In relation to Commonwealth citizens who have the right of abode in Jersey by virtue of subsection (1)(b) above, this Act, except this section and section 5(2), shall apply as if they were British citizens; and in this Act (except as aforesaid) “British citizen” shall be construed accordingly.

Deprivation of right of abode

2A.—(1) The Minister may by order remove from a specified person a right of abode in Jersey which he has under section 2(1)(b).

(2) The Minister may make an order under subsection (1) in respect of a person only if the Minister thinks that it would be conducive to the public good for the person to be excluded or removed from Jersey.

(3) An order under subsection (1) may be revoked by order of the Minister.

(4) While an order under subsection (1) has effect in relation to a person—

- (a) section 2(2) shall not apply to him, and
- (b) any certificate of entitlement granted to him shall have no effect.

General provisions for regulation and control.

3.—(1) Except as otherwise provided by or under this Act, where a person is not a British citizen –

- (a) he shall not enter Jersey unless given leave to do so in accordance with the provisions of, or made under, this Act;
- (b) he may be given leave to enter Jersey (or, when already there, leave to remain in Jersey) either for a limited or for an indefinite period;
- (c) if he is given limited leave to enter or remain in Jersey, it may be given subject to all or any of the following conditions, namely—
 - (i) a condition restricting his work or occupation in Jersey;
 - (ia) a condition restricting his studies in Jersey;
 - (ii) a condition requiring him to maintain and accommodate himself, and any dependants of his, without recourse to public funds;
 - (iii) a condition requiring him to register with the police;
 - (iv) a condition requiring him to report to an immigration officer or the Minister; and
 - (v) a condition about residence.

(2) The Minister shall from time to time (and as soon as may be) present to the States statements of the rules, or of any changes in the rules, laid down by him as to the practice to be followed in the administration of this Act for regulating the entry into and stay in Jersey of persons required by this Act to have leave to enter, including any rules as to the period for which leave is to be given and the conditions to be attached in different circumstances; and section 1(4) above shall not be taken to require uniform provision to be made by the rules as regards admission of persons for a purpose or in a capacity specified in section 1(4) (and in particular, for this as well as other purposes of this Act, account may be taken of citizenship or nationality).

If a statement presented to the States under this subsection is disapproved by resolution passed at the sitting at which it is so presented or at the next following sitting of the States then the Minister shall make changes or further changes in the rules as appear to him to be required in the circumstances and the statement of those changes shall be presented to the States as soon as practicable after the said resolution was passed.

(3) In the case of a limited leave to enter or remain in Jersey,—

- (a) a person's leave may be varied, whether by restricting, enlarging or removing the limit on its duration, or by adding, varying or revoking conditions, but if the limit on its duration is removed, any conditions attached to the leave shall cease to apply; and
- (b) the limitation on and any conditions attached to a person's leave (whether imposed originally or on a variation) shall, if not superseded, apply also to any subsequent leave he may obtain after an absence from Jersey within the period limited for the duration of the earlier leave.

(4) A person's leave to enter or remain in Jersey shall lapse on his going to a country or territory outside the common travel area (whether or not he lands there), unless within the period for which he had leave he returns to Jersey in circumstances in which he is not required to obtain leave to enter; but, if he does so return, his previous leave (and any limitation on it or conditions attached to it) shall continue to apply.

(5) A person who is not a British citizen is liable to deportation from Jersey if—

- (a) the Minister deems his deportation to be conducive to the public good; or
- (b) another person to whose family he belongs is or has been ordered to be deported.

(6) Without prejudice to the operation of subsection (5) above, a person who is not a British citizen shall also be liable to deportation from Jersey if, after he has attained the age of seventeen, he is convicted of an offence for which he is punishable with imprisonment and on his conviction is recommended for deportation by a court empowered by this Act to do so.

(7) Where it appears to Her Majesty proper so to do by reason of restrictions or conditions imposed on British citizens, British overseas territories citizens or British Overseas citizens when leaving or seeking to leave any country or the territory subject to the government of any country, Her Majesty may by Order in Council make provision for prohibiting persons who are nationals or citizens of that country and are not British citizens from embarking in Jersey, or from doing so elsewhere than at a port of exit, or for imposing restrictions or conditions on them when embarking or about to embark in Jersey; and Her Majesty may also make provision by Order in Council to enable those who are not British citizens to be, in such cases as may be prescribed by the Order, prohibited in the interests of safety from so embarking on a ship or aircraft specified or indicated in the prohibition.

(8) When any question arises under this Act whether or not a person is a British citizen, or is entitled to any exemption under this Act, it shall lie on the person asserting it to prove that he is.

(9) A person seeking to enter Jersey and claiming to have the right of abode there shall prove it by means of—

- (a) a United Kingdom passport describing him as a British citizen,
- (b) a United Kingdom passport describing him as a British subject with the right of abode in the United Kingdom, or
- (c) a certificate of entitlement.

Irish citizens.

3ZA.—(1) An Irish citizen does not require leave to enter or remain Jersey, unless subsection (2), (3) or (4) applies to that citizen.

(2) This subsection applies to an Irish citizen if the Irish citizen is subject to a deportation order made under section 5(1).

(3) This subsection applies to an Irish citizen if—

- (a) the Minister has issued directions for the Irish citizen not to be given entry to Jersey on the ground that the Irish citizen's exclusion is conducive to the public good,
- (b) Minister has given the Irish citizen notice of the directions, and
- (c) the directions have not been withdrawn.

(4) This subsection applies to an Irish citizen if the Irish citizen is an excluded person for the purposes of section 8B (persons excluded under international obligations etc).

(5) Where subsection (2), (3) or (4) applies to an Irish citizen, section 1(3) does not permit the Irish citizen to enter Jersey without leave on arriving Jersey on a local journey from any place in the common travel area.

Further provision as to leave to enter.

3A.—(1) The Minister may by Order make further provision with respect to the giving, refusing or varying of leave to enter Jersey.

(2) An Order under subsection (1) may, in particular, provide for—

- (a) leave to be given or refused before the person concerned arrives in Jersey;
- (b) the form or manner in which leave may be given, refused or varied;
- (c) the imposition of conditions;
- (d) a person's leave to enter not to lapse on his leaving the common travel area.

(3) The Minister may by Order provide that, in such circumstances as may be prescribed—

- (a) an entry visa, or
- (b) such other form of entry clearance as may be prescribed,

is to have effect as leave to enter Jersey.

(4) An Order under subsection (3) may, in particular—

- (a) provide for a clearance to have effect as leave to enter—
 - (i) on a prescribed number of occasions during the period for which the clearance has effect;
 - (ii) on an unlimited number of occasions during that period;
 - (iii) subject to prescribed conditions; and
- (b) provide for a clearance which has the effect referred to in paragraph (a)(i) or (ii) to be varied by the Minister or an immigration officer so that it ceases to have that effect.

(5) Only conditions of a kind that could be imposed on leave to enter given under section 3 may be prescribed.

(6) In subsections (3), (4) and (5) “prescribed” means prescribed in an Order made under subsection (3).

(7) The Minister may, in such circumstances as may be prescribed in an Order made by him, give or refuse leave to enter Jersey.

(8) An Order under subsection (7) may provide that, in such circumstances as may be prescribed by the Order, paragraphs 2, 4, 6, 7, 8, 9 and 21 of Part I of Schedule 2 to this Act are to be read, in relation to the exercise by the Minister of functions which he has as a result of the Order, as if references to an immigration officer included references to the Minister.

(9) Subsection (8) is not to be read as affecting any power conferred by subsection (10).

(10) An Order under this section may—

- (a) contain such incidental, supplemental, consequential and transitional provision as the Minister considers appropriate; and
- (b) make different provision for different cases.

(11) This Act and any provision made under it has effect subject to any Order made under this section.

(12) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under this section.

Further provision as to leave to remain.

3B.—(1) The Minister may by Order make further provision with respect to the giving, refusing or varying of leave to remain in Jersey.

(2) An Order under subsection (1) may, in particular, provide for—

- (a) the form or manner in which leave may be given, refused or varied;
- (b) the imposition of conditions;

- (c) a person's leave to remain in Jersey not to lapse on his leaving the common travel area.
- (3) An Order under this section may—
 - (a) contain such incidental, supplemental, consequential and transitional provision as the Minister considers appropriate; and
 - (b) make different provision for different cases.
- (4) This Act and any provision made under it has effect subject to any Order made under this section.
- (5) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under this section.

Continuation of leave pending variation decision.

- 3C.**—(1) This section applies if—
- (a) a person who has limited leave to enter or remain in Jersey applies to the Minister for variation of the leave,
 - (b) the application for variation is made before the leave expires, and
 - (c) the leave expires without the application for variation having been decided.
- (2) The leave is extended by virtue of this section during any period when—
- (a) the application for variation is neither decided nor withdrawn, or
 - (b) an administrative review of the decision on the application for variation—
 - (i) could be sought, or
 - (ii) is pending.
- (3) Leave extended by virtue of this section shall lapse if the applicant leaves Jersey.
- (3A) Leave extended by virtue of this section may be cancelled if the applicant—
- (a) has failed to comply with a condition attached to the leave, or
 - (b) has used or uses deception in seeking leave to remain (whether successfully or not).
- (4) A person may not make an application for variation of his leave to enter or remain in Jersey while that leave is extended by virtue of this section.
- (5) But subsection (4) does not prevent the variation of the application mentioned in subsection (1)(a).
- (6) The Minister may make Orders determining when an application is decided for the purposes of this section; and such an Order—
- (a) may make provision by reference to receipt of a notice,
 - (b) may provide for a notice to be treated as having been received in specified circumstances, and
 - (c) may make different provision for different purposes or circumstances.
- (6A) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under subsection (6).
- (7) In this section—

“administrative review” means a review conducted under the immigration rules;
the question of whether an administrative review is pending is to be determined in accordance with the immigration rules.

Administration of control.

4.—(1) The power under this Act to give or refuse leave to enter Jersey shall be exercised by immigration officers, and the power to give leave to remain in Jersey, or to vary any leave under section 3(3)(a) (whether as regards duration or conditions) or to cancel any leave under section 3C(3A), shall be exercised by the Minister; and, unless otherwise allowed by or under this Act,

those powers shall be exercised by notice in writing given to the person affected, except that the powers under section 3(3)(a) may be exercised generally in respect of any class of persons by Order.

- (2) The provisions of Schedule 2 to this Act shall have effect with respect to—
- (a) the appointment and powers of immigration officers and medical inspectors for purposes of this Act;
 - (b) the examination of persons arriving in or leaving Jersey by ship or aircraft, and the special powers exercisable in the case of those who arrive as, or with a view to becoming, members of the crews of ships and aircraft; and
 - (c) the exercise by immigration officers of their powers in relation to entry into Jersey, and the removal from Jersey of persons refused leave to enter or entering or remaining unlawfully; and
 - (d) the detention of persons pending examination or pending removal from Jersey;

and for other purposes supplementary to the foregoing provisions of this Act.

(3) The Minister may by Order make provision as to the effect of a condition under this Act requiring a person to register; and such Order may include provision—

- (a) as to the body or person by whom registers are to be maintained, and as to the form and content of the registers;
- (b) as to the body or person with whom and as to the place and manner in which anyone is to register and as to the documents and information to be furnished by him, whether on registration or on any change of circumstances;
- (c) as to the issue of certificates of registration and as to the payment of fees for certificates of registration;

and the Order may require anyone who is for the time being subject to such a condition to produce a certificate of registration to such persons and in such circumstances as may be prescribed by the Order.

(4) The Minister may by Order make such provision as appears to him to be expedient in connection with this Act for records to be made and kept of persons staying at hotels and other premises where lodging or sleeping accommodation is provided, and for persons (whether British citizens or not) who stay at any such premises to supply the necessary information.

(5) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders made under this section.

Procedure for, and further provisions as to, deportation.

5.—(1) Where a person is under section 3(5) or (6) above liable to deportation, then subject to the following provisions of this Act the Minister may make a deportation order against him, that is to say an order requiring him to leave and prohibiting him from entering Jersey; and a deportation order against a person shall invalidate any leave to enter or remain in Jersey given him before the order is made or while it is in force.

(2) A deportation order against a person may at any time be revoked by a further order of the Minister, and shall cease to have effect if he becomes a British citizen.

(3) A deportation order shall not be made against a person as belonging to the family of another person if more than eight weeks have elapsed since the other person left Jersey after the making of the deportation order against him; and a deportation order made against a person on that ground shall cease to have effect if he ceases to belong to the family of the other person, or if the deportation order made against the other person ceases to have effect.

(4) For the purposes of deportation the following shall be those who are regarded as belonging to another person's family—

- (a) where that other person is a man, his wife or civil partner, and his or her children under the age of eighteen; and

- (b) where that other person is a woman, her husband or civil partner, and her or his children under the age of eighteen,

and for purposes of this subsection an adopted child, whether legally adopted or not, may be treated as the child of the adopter and, if legally adopted, shall be regarded as the child only of the adopter; an illegitimate child (subject to the foregoing rule as to adoptions) shall be regarded as the child of the mother; and “wife” includes each of two or more wives.

(5) The provisions of Schedule 3 to this Act shall have effect with respect to the removal from Jersey of persons against whom deportation orders are in force and with respect to the detention or control of persons in connection with deportation.

(6) Where a person is liable to deportation under section 3(5) or (6) above but, without a deportation order being made against him, leaves Jersey to live permanently abroad, the Minister may make payments of such amounts as he may determine to meet that person’s expenses in so leaving Jersey, including travelling expenses for members of his family or household.

Recommendations by court for deportation.

6.—(1) Where under section 3(6) above a person convicted of an offence is liable to deportation on the recommendation of a court, he may be recommended for deportation by any court having power to sentence him for the offence unless the court commits him to be sentenced or further dealt with for that offence by another court.

(2) A court shall not recommend a person for deportation unless he has been given not less than seven days’ notice in writing stating that a person is not liable to deportation if he is a British citizen, describing the persons who are British citizens and stating (so far as material) the effect of section 3(8) above and section 7 below; but the powers of a court to adjourn shall include power to adjourn, after convicting an offender, for the purpose of enabling a notice to be given to him under this subsection or, if a notice was so given to him less than seven days previously, for the purpose of enabling the necessary seven days to elapse.

(3) For purposes of section 3(6) above—

- (a) a person shall be deemed to have attained the age of seventeen at the time of his conviction if, on consideration of any available evidence, he appears to have done so to the court making or considering a recommendation for deportation; and
- (b) the question whether an offence is one for which a person is punishable with imprisonment shall be determined without regard to any enactment restricting the imprisonment of young offenders or persons who have not previously been sentenced to imprisonment;

and for purposes of deportation a person who on being charged with an offence is found to have committed it shall, notwithstanding any enactment to the contrary and notwithstanding that the court does not proceed to conviction, be regarded as a person convicted of the offence, and references to conviction shall be construed accordingly.

(4) Notwithstanding any rule of practice restricting the matters which ought to be taken into account in dealing with an offender who is sentenced to imprisonment, a recommendation for deportation may be made in respect of an offender who is sentenced to imprisonment for life.

(5) Where a court recommends or purports to recommend a person for deportation, the validity of the recommendation shall not be called in question except on an appeal against the recommendation or against the conviction on which it is made; but the recommendation shall be treated as a sentence for the purpose of any enactment providing an appeal against sentence.

(6) A deportation order shall not be made on the recommendation of a court so long as an appeal or further appeal is pending against the recommendation or against the conviction on which it was made; and for this purpose an appeal or further appeal shall be treated as pending (where one is competent but has not been brought) until the expiration of the time for bringing that appeal.

Exemption from deportation for certain existing residents.

7.—(1) Notwithstanding anything in section 3(5) or (6) above but subject to the provisions of this section, a Commonwealth citizen or citizen of the Republic of Ireland who was such a citizen at the coming into force of this Act and was then ordinarily resident in Jersey—

- (a) shall not be liable to deportation under section 3(5) if at the time of the Minister's decision he had for the last five years been ordinarily resident in the United Kingdom and Islands;
- (b) shall not on conviction of an offence be recommended for deportation under section 3(6) if at the time of the conviction he had for the last five years been ordinarily resident in the United Kingdom and Islands.

(2) A person who has at any time become ordinarily resident in the United Kingdom or in any of the Islands shall not be treated for the purposes of this section as having ceased to be so by reason only of his having remained there in breach of the immigration laws.

(3) The "last five years" before the material time under subsection (1)(a) or (b) above is to be taken as a period amounting in total to five years exclusive of any time during which the person claiming exemption under this section was undergoing imprisonment or detention by virtue of a sentence passed for an offence on a conviction in the United Kingdom and Islands, and the period for which he was imprisoned or detained by virtue of the sentence amounted to six months or more.

(4) For purposes of subsection (3) above—

- (a) "sentence" includes any order made on conviction of an offence; and
- (b) two or more sentences for consecutive (or partly consecutive) terms shall be treated as a single sentence; and
- (c) a person shall be deemed to be detained by virtue of a sentence—
 - (i) at any time when he is liable to imprisonment or detention by virtue of the sentence, but is unlawfully at large; and
 - (ii) (unless the sentence is passed after the material time) during any period of custody by which under any relevant enactment the term to be served under the sentence is reduced.

In paragraph (c)(ii) above "relevant enactment" means the Criminal Proceedings (Computation of Sentences) Rules 1968 and any similar enactment which is for the time being or has (before or after the passing of this Act) been in force in any part of the United Kingdom and Islands.

(5) Nothing in this section shall be taken to exclude the operation of section 3(8) above in relation to an exemption under this section.

Exceptions for seamen, aircrews and other special cases.

8.—(1) Where a person arrives at a place in Jersey as a member of the crew of a ship or aircraft under an engagement requiring him to leave on that ship as a member of the crew, or to leave within seven days on that or another aircraft as a member of its crew, then unless either—

- (a) there is in force a deportation order made against him; or
- (b) he has at any time been refused leave to enter Jersey and has not since then been given leave to enter or remain in Jersey; or
- (c) an immigration officer requires him to submit to examination in accordance with Schedule 2 to this Act;

he may without leave enter Jersey at that place and remain until the departure of the ship or aircraft on which he is required by his engagement to leave.

(2) The Minister may order that any person or class of persons 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.

An exemption under this section with respect to a class of persons must be made by Order to which the Subordinate Legislation (Jersey) Law 1960 shall apply.

(3) Subject to subsection (3A) below, the provisions of this Act relating to those who are not British citizens shall not apply to any person so long as he is a member of a mission (within the meaning of the Privileges and Immunities (Diplomatic, Consular, etc.) (Jersey) Law 1998), a person who is a member of the family and forms part of the household of such a member, or a person otherwise entitled to the like immunity from jurisdiction as is conferred by that Law on a diplomatic agent.

(3A) For the purposes of subsection (3), a member of a mission other than a diplomatic agent (as defined by the 1998 Law) is not to count as a member of a mission unless—

- (a) he was resident outside Jersey, and was not in Jersey, when he was offered a post as such a member; and
- (b) he has not ceased to be such a member after having taken up the post.

(4) The provisions of this Act relating to those who are not British citizens, other than the provisions relating to deportation, shall also not apply to any person who falls within Article 3(3) of the Armed Forces (Offences and Jurisdiction) (Jersey) Law 2017.

(5) Where a person having a limited leave to enter or remain in Jersey becomes entitled to an exemption under this section, that leave shall continue to apply after he ceases to be entitled to the exemption, unless it has by then expired or otherwise ceased to be in force;

and a person is not to be regarded for purposes of this Act as having been settled in Jersey at any time when he was entitled under the former immigration laws to any exemption corresponding to any of those afforded by subsection (3) or (4)(b) or (c) above or ordered under subsection (2) above.

(5A) An exemption ordered under subsection (2) above may, as regards any person or class of persons to whom it applies, provide for that person or class to be in specified circumstances regarded (notwithstanding the order) as settled in Jersey for the purposes of section 1(1) of the British Nationality Act 1981.

Persons ceasing to be exempt.

8A.—(1) A person is exempt for the purposes of this section if he is exempt from provisions of this Act as a result of section 8(2) or (3).

(2) If a person who is exempt—

- (a) ceases to be exempt, and
- (b) requires leave to enter or remain in Jersey as a result,

he is to be treated as if he had been given leave to remain in Jersey for a period of 90 days beginning on the day on which he ceased to be exempt.

(3) If—

- (a) a person who is exempt ceases to be exempt, and
- (b) there is in force in respect of him leave for him to enter or remain in Jersey which expires before the end of the period mentioned in subsection (2),

his leave is to be treated as expiring at the end of that period.

(4) References in this section to a person who ceases to be exempt do not include a person who ceases to be exempt by virtue of section 8B(3).

Persons excluded from Jersey under certain instruments.

8B.—(1) An excluded person must be refused—

- (a) leave to enter Jersey;
- (b) leave to remain in Jersey,

(and any leave given to a person who is an excluded person is invalid).

(2) A person's leave to enter or remain in Jersey is cancelled on his becoming an excluded person.

(3) Any exemption of a person from the provisions of this Act under section 8(1), (2) or (3) does not apply while the person is an excluded person.

(4) “Excluded person” means—

- (a) a person named by or under, or of a description specified in, an instrument falling within subsection (5), or
- (b) a person who is an excluded person in accordance with a provision falling within subsection (A5).

(5) An instrument falls within this subsection if it is a resolution of the Security Council of the United Nations or an instrument made by the Council of the European Union and it—

- (a) requires that a person is not to be admitted to Jersey (however that requirement is expressed); or
- (b) recommends that a person should not be admitted to Jersey (however that recommendation is expressed).

(A5) A provision falls within this subsection if it is a provision of an Order under Article 3 of the Sanctions and Asset-Freezing (Jersey) Law 2019 giving effect to a UK sanctions provision (within the meaning of that Article) under which a person is an excluded person for the purposes of this section.

(5A) Subsection (1), (2) or (3) does not apply to a person if—

- (a) the application of that subsection to that person would be contrary to the obligations by which Jersey is bound under—
 - (i) the Human Rights Convention (within the meaning given by section 167(1) of the Immigration and Asylum Act 1999), or
 - (ii) the Refugee Convention (within the meaning given by that provision), or
- (b) the person is within subsection (4)(a) and not within subsection (4)(b) and has been exempted from the application of subsection (1), (2) or (3), as the case may be, under a process applying by virtue of the instrument falling within subsection (5).

(5B) In relation to any person within subsection (4)(b), subsections (1) to (3) are subject to any exception created under, or direction given by virtue of, a provision falling within subsection (A5).

Further provisions as to common travel area.

9.—(1) Schedule 4 to this Act shall have effect for the purpose of taking account in Jersey of the operation in the United Kingdom, Guernsey or the Isle of Man of the immigration laws there.

(2) Persons who lawfully enter Jersey on a local journey from a place in the common travel area after having either—

- (a) entered the United Kingdom, Guernsey or the Isle of Man or the Republic of Ireland on coming from a place outside the common travel area; or
- (b) left Jersey while having a limited leave to enter or remain which has since expired;

if they are not British citizens or Irish citizens (and are not to be regarded under Schedule 4 to this Act as having leave to enter Jersey), shall be subject in Jersey to such restrictions on the period for which they may remain, and such conditions restricting their employment or occupation or requiring them to register as provided under section 4(3) above or both, as may be imposed by an Order of the Minister and may be applicable to them.

(3) Any provision of this Act applying to a limited leave or to conditions attached to a limited leave shall, unless otherwise provided, have effect in relation to a person subject to any restriction or condition by virtue of an Order under subsection (2) above as if the provisions of the Order applicable to him were terms on which he had been given leave under this Act to enter Jersey.

(4) Section 1(3) above shall not be taken to affect the operation of a deportation order; and, subject to Schedule 4 to this Act, a person who is not a British citizen or an Irish citizen may not by virtue

of section 1(3) enter Jersey without leave on a local journey from a place in the common travel area if either—

- (a) he is on arrival in Jersey given written notice by an immigration officer stating that, the Minister having issued directions for him not to be given entry to Jersey on the ground that his exclusion is conducive to the public good as being in the interests of national security, he is accordingly refused leave to enter Jersey; or
- (b) he has at any time been refused leave to enter Jersey and has not since then been given leave to enter or remain in Jersey.

(5) The Minister may by Order exclude Guernsey or the Isle of Man from section 1(3) above for such purposes as may be specified in the Order 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.

(6) The Minister shall also have power by Order to exclude the Republic of Ireland from section 1(3) for such purposes as may be specified in the Order.

(7) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders of the Minister under this section.

Construction of references to entry, and other phrases relating to travel.

11.—(1) A person arriving in Jersey by ship or aircraft shall for purposes of this Act be deemed not to enter Jersey unless and until he disembarks, and on disembarkation at a port shall further be deemed not to enter Jersey so long as he remains in such area (if any) at the port as may be approved for this purpose by an immigration officer; and a person who has not otherwise entered Jersey shall be deemed not to do so as long as he is detained, or temporarily admitted or released while liable to detention, under the powers conferred by Schedule 2 to this Act or section 62 of the Nationality, Immigration and Asylum Act 2002.

(2) In this Act “disembark” means disembark from a ship or aircraft, and “embark” means embark in a ship or aircraft; and, except in subsection (1) above –

- (a) references to disembarking in Jersey do not apply to disembarking after a local journey from a place in Jersey or elsewhere in the common travel area; and
- (b) references to embarking in Jersey do not apply to embarking for a local journey to a place in Jersey or elsewhere in the common travel area.

(3) Except in so far as the context otherwise requires, references in this Act to arriving in Jersey by ship shall extend to arrival by any floating structure, and “disembark” shall be construed accordingly; but the provisions of this Act specially relating to members of the crew of a ship shall not by virtue of this provision apply in relation to any floating structure not being a ship.

(4) For purposes of this Act “common travel area” has the meaning given by section 1(3), and a journey is, in relation to the common travel area, a local journey if but only if it begins and ends in the common travel area and is not made by a ship or aircraft which—

- (a) in the case of a journey to a place in Jersey, began its voyage from, or has during its voyage called at, a place not in the common travel area; or
- (b) in the case of a journey from a place in Jersey, is due to end its voyage in, or call in the course of its voyage at, a place not in the common travel area.

(5) A person who enters Jersey lawfully by virtue of section 8(1) above, and seeks to remain beyond the time limited by section 8(1), shall be treated for purposes of this Act as seeking to enter Jersey.

PART III
CRIMINAL PROCEEDINGS
Illegal entry and similar offences.

24.—(1) A person who is not a British citizen shall be guilty of an offence punishable with a fine of not more than level 3 on the standard scale or with imprisonment for not more than six months, or with both, in any of the following cases—

- (a) if contrary to this Act he knowingly enters Jersey in breach of a deportation order or without leave;
- (b) if, having only a limited leave to enter or remain in Jersey, he knowingly either—
 - (i) remains beyond the time limited by the leave; or
 - (ii) fails to observe condition of the leave;
- (c) if, having lawfully entered Jersey without leave by virtue of section 8(1) above, he remains without leave beyond the time allowed by section 8(1);
- (d) if, without reasonable excuse, he fails to comply with any requirement imposed on him under Schedule 2 to this Act to report to a medical officer of health, or to attend, or submit to a test or examination, as required by such an officer;
- (e) if, without reasonable excuse, he fails to observe any restriction imposed on him under Schedule 2 or 3 to this Act as to residence, as to his employment or occupation or as to reporting to the police or to an immigration officer;
- (f) if he disembarks in Jersey from a ship or aircraft after being placed on board under Schedule 2 or 3 to this Act with a view to his removal from Jersey;
- (g) if he embarks in contravention of a restriction imposed by or under an Order in Council under section 3(7) of this Act.

(1A) A person commits an offence under subsection (1)(b)(i) above on the day when he first knows that the time limited by his leave has expired and continues to commit it throughout any period during which he is in Jersey thereafter; but a person shall not be prosecuted under that provision more than once in respect of the same limited leave.

(4) In proceedings for an offence against subsection (1)(a) above of entering Jersey without leave—

- (a) any stamp purporting to have been imprinted on a passport or other travel document by an immigration officer on a particular date for the purpose of giving leave shall be presumed to have been duly so imprinted, unless the contrary is proved;
- (b) proof that a person had leave to enter Jersey shall lie on the defence if, but only if, he is shown to have entered within six months before the date when the proceedings were commenced.

Deception.

24A.—(1) A person who is not a British citizen is guilty of an offence if, by means which include deception by him—

- (a) he obtains or seeks to obtain leave to enter or remain in Jersey; or
- (b) he secures or seeks to secure the avoidance, postponement or revocation of enforcement action against him.

(2) “Enforcement action”, in relation to a person, means—

- (a) the giving of directions for his removal from Jersey (“directions”) under Schedule 2 to this Act or section 10 of the Immigration and Asylum Act 1999;
- (b) the making of a deportation order against him under section 5 of this Act; or
- (c) his removal from Jersey in consequence of directions or a deportation order.

(3) A person guilty of an offence under this section is liable to imprisonment for a term not exceeding two years or to a fine, or to both.

Assisting unlawful immigration to member State.

25.—(1) A person commits an offence if he—

- (a) does an act which facilitates the commission of a breach or attempted breach of immigration law by an individual who is not a citizen of the European Union,
 - (b) knows or has reasonable cause for believing that the act facilitates the commission of a breach or attempted breach of immigration law by the individual, and
 - (c) knows or has reasonable cause for believing that the individual is not a citizen of the European Union.
- (2) In subsection (1) “immigration law” means a law which has effect in a member State and which controls, in respect of some or all persons who are not nationals of the State, entitlement to—
- (a) enter the State,
 - (b) transit across the State, or
 - (c) be in the State.
- (3) A document issued by the government of a member State certifying a matter of law in that State—
- (a) shall be admissible in proceedings for an offence under this section, and
 - (b) shall be conclusive as to the matter certified.
- (4) Subsection (1) applies to things done whether inside or outside Jersey.
- (6) A person guilty of an offence under this section shall be liable to imprisonment for a term not exceeding 14 years, to a fine or to both.
- (7) In this section—
- (a) a reference to a member State includes a reference to a State on the Section 25 List of Schengen Acquis States prescribed for the purposes of this section by order of the Secretary of State, and
 - (b) a reference to a citizen of the European Union includes a reference to a person who is a national of a State on that list.

Helping asylum-seeker to enter Jersey.

- 25A.**—(1) A person commits an offence if—
- (a) he knowingly and for gain facilitates the arrival or attempted arrival in, or the entry or attempted entry into, Jersey of an individual, and
 - (b) he knows or has reasonable cause to believe that the individual is an asylum-seeker.
- (2) In this section “asylum-seeker” means a person who intends to claim that to remove him from or require him to leave Jersey would be contrary to the United Kingdom’s obligations on behalf of Jersey under—
- (a) the Refugee Convention (within the meaning given by section 167(1) of the Immigration and Asylum Act 1999 (interpretation)), or
 - (b) the Human Rights Convention (within the meaning given by that section).
- (3) Subsection (1) does not apply to anything done by a person acting on behalf of an organisation which—
- (a) aims to assist asylum-seekers, and
 - (b) does not charge for its services.
- (4) Subsections (4) and (6) of section 25 apply for the purpose of the offence in subsection (1) of this section as they apply for the purpose of the offence in subsection (1) of that section.

Assisting entry to Jersey in breach of deportation or exclusion order.

- 25B.**—(1) A person commits an offence if he—
- (a) does an act which facilitates a breach or attempted breach of a deportation order in force against an individual who is a citizen of the European Union, and

- (b) knows or has reasonable cause for believing that the act facilitates a breach or attempted breach of the deportation order.

(2) Subsection (3) applies where the Minister has made an order excluding an individual from Jersey on the grounds of public policy, public security or public health, other than a temporary exclusion order.

(3) A person commits an offence if he—

- (a) does an act which assists the individual to arrive in, enter or remain, or attempt to arrive in, enter or remain, in Jersey,
- (b) knows or has reasonable cause for believing that the act assists the individual to arrive in, enter or remain, or attempt to arrive in, enter or remain, in Jersey, and
- (c) knows or has reasonable cause for believing that the Minister has made an order excluding the individual from Jersey on the grounds of public policy, public security or public health

(4) Subsections (4) and (6) of section 25 apply for the purpose of an offence under this section as they apply for the purpose of an offence under that section.

(5) In this section a “temporary exclusion order” means an order imposed by the Minister under section 2 of the Counter-Terrorism and Security Act 2015.

Forfeiture of vehicle, ship or aircraft.

25C.—(1) This section applies where a person is convicted of an offence under section 25, 25A or 25B.

(2) The court may order the forfeiture of a vehicle used or intended to be used in connection with the offence if the convicted person—

- (a) owned the vehicle at the time the offence was committed,
- (b) was at that time a director, secretary or manager of a company which owned the vehicle,
- (c) was at that time in possession of the vehicle under a hire-purchase agreement,
- (d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement, or
- (e) was driving the vehicle in the course of the commission of the offence.

(3) The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person—

- (a) owned the ship or aircraft at the time the offence was committed,
- (b) was at that time a director, secretary or manager of a company which owned the ship or aircraft,
- (c) was at that time in possession of the ship or aircraft under a hire-purchase agreement,
- (d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement,
- (e) was at that time a charterer of the ship or aircraft, or
- (f) committed the offence while acting as captain of the ship or aircraft.

(4) But in a case to which subsection (3)(a) or (b) does not apply, forfeiture may be ordered only—

- (a) in the case of a ship, if subsection (5) or (6) applies;
- (b) in the case of an aircraft, if subsection (5) or (7) applies.

(5) This subsection applies where—

- (a) in the course of the commission of the offence, the ship or aircraft carried more than 20 illegal entrants, and

- (b) a person who, at the time the offence was committed, owned the ship or aircraft or was a director, secretary or manager of a company which owned it, knew or ought to have known of the intention to use it in the course of the commission of an offence under section 25, 25A or 25B.

(6) This subsection applies where a ship's gross tonnage is less than 500 tons.

(7) This subsection applies where the maximum weight at which an aircraft (which is not a hovercraft) may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.

(8) Where a person who claims to have an interest in a vehicle, ship or aircraft applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the ship, aircraft or vehicle unless the person has been given an opportunity to make representations.

(9) In the case of an offence under section 25, the reference in subsection (5)(a) to an illegal entrant shall be taken to include a reference to—

- (a) an individual who seeks to enter a member State in breach of immigration law (for which purpose "member State" and "immigration law" have the meanings given by section 25(2) and (7)), and
- (b) an individual who is a passenger for the purpose of section 145 of the Nationality, Immigration and Asylum Act 2002 (traffic in prostitution).

(10) In the case of an offence under section 25A, the reference in subsection (5)(a) to an illegal entrant shall be taken to include a reference to—

- (a) an asylum-seeker (within the meaning of that section), and
- (b) an individual who is a passenger for the purpose of section 145(1) of the Nationality, Immigration and Asylum Act 2002.

(11) In the case of an offence under section 25B, the reference in subsection (5)(a) to an illegal entrant shall be taken to include a reference to an individual who is a passenger for the purpose of section 145(1) of the Nationality, Immigration and Asylum Act 2002.

Detention of ship, aircraft or vehicle.

25D.—(1) If a person has been arrested for an offence under section 25, 25A or 25B, a senior officer or a police officer may detain a relevant ship, aircraft or vehicle—

- (a) until a decision is taken as to whether or not to charge the arrested person with that offence; or
- (b) if the arrested person has been charged—
 - (i) until he is acquitted, the charge against him is dismissed or the proceedings are discontinued; or
 - (ii) if he has been convicted, until the court decides whether or not to order forfeiture of the ship, aircraft or vehicle.

(2) A ship, aircraft or vehicle is a relevant ship, aircraft or vehicle, in relation to an arrested person, if it is one which the officer or police officer concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which he was arrested, be the subject of an order for forfeiture made under section 25C.

(3) A person (other than the arrested person) may apply to the court for the release of a ship, aircraft or vehicle on the grounds that—

- (a) he owns the ship, aircraft or vehicle,
- (b) he was, immediately before the detention of the ship, aircraft or vehicle, in possession of it under a hire-purchase agreement, or
- (c) he is a charterer of the ship or aircraft.

(4) The court to which an application is made under subsection (3) may, on such security or surety being tendered as it considers satisfactory, release the ship, aircraft or vehicle on condition that it is made available to the court if—

- (a) the arrested person is convicted; and
- (b) an order for its forfeiture is made under section 25C.

(5) “Court” means —

- (a) if the arrested person has not been charged, or he has been charged but proceedings for the offence have not begun to be heard, the Magistrate’s Court;
- (b) if he has been charged and proceedings for the offence are being heard, the court hearing the proceedings.

(6) “Senior officer” means an immigration officer not below the rank of chief immigration officer.

General offences in connection with administration of Act.

26.—(1) A person shall be guilty of an offence punishable with a fine punishable with a fine of not more than level 3 on the standard scale or with imprisonment for not more than six months, or with both, in any of the following cases—

- (a) if, without reasonable excuse, he refuses or fails to submit to examination under Schedule 2 to this Act;
- (b) if, without reasonable excuse, he refuses to fails to furnish or produce any information in his possession, or any documents in his possession or control, which he is on an examination under that Schedule required to furnish or produce;
- (c) if on any such examination or otherwise he makes or causes to be made to an immigration officer or other person lawfully acting in the execution of a relevant enactment a return, statement or representation which he knows to be false or does not believe to be true;
- (d) if, without lawful authority, he alters any certificate of entitlement, entry clearance, work permit or other document issued or made under or for the purposes of this Act, or uses for the purposes of this Act, or has in his possession for such use, any passport, certificate of entitlement, entry clearance, work permit or other document which he knows or has reasonable cause to believe to be false;
- (e) if, without reasonable excuse, he fails to complete and produce a landing or embarkation card in accordance with any Order under Schedule 2 to this Act;
- (f) if, without reasonable excuse, he fails to comply with any requirement of an Order under section 4(3) or of an Order under section 4(4) above;
- (g) if, without reasonable excuse, he obstructs an immigration officer or other person lawfully acting in the execution of this Act.

(2) “Relevant enactment” means—

- (a) this Act;
- (b) the Immigration Act 1988;
- (c) the Immigration and Asylum Act 1999; or
- (d) the Nationality, Immigration and Asylum Act 2002.

Registration card.

26A.—(1) In this section “registration card” means a document which—

- (a) carries information about a person (whether or not wholly or partly electronically), and
- (b) is issued by the Minister to the person wholly or partly in connection with a claim for asylum (whether or not made by that person).

(2) In subsection (1) “claim for asylum” means a claim by a person that to remove him from or require him to leave Jersey would be contrary to the United Kingdom’s obligations in respect of Jersey under—

- (a) the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, or
- (b) Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4th November 1950.

(3) A person commits an offence if he—

- (a) makes a false registration card,
- (b) alters a registration card with intent to deceive or to enable another to deceive,
- (c) has a false or altered registration card in his possession without reasonable excuse,
- (d) uses or attempts to use a false registration card for a purpose for which a registration card is issued,
- (e) uses or attempts to use an altered registration card with intent to deceive,
- (f) makes an article designed to be used in making a false registration card,
- (g) makes an article designed to be used in altering a registration card with intent to deceive or to enable another to deceive, or
- (h) has an article within paragraph (f) or (g) in his possession without reasonable excuse.

(4) In subsection (3) “false registration card” means a document which is designed to appear to be a registration card.

(5) A person who is guilty of an offence under subsection (3)(a), (b), (d), (e), (f) or (g) shall be liable to imprisonment for a term not exceeding ten years, to a fine or to both.

(6) A person who is guilty of an offence under subsection (3)(c) or (h) shall be liable to imprisonment for a term not exceeding two years, to a fine or to both.

(7) The States may by Regulations—

- (a) amend the definition of “registration card” in subsection (1);
- (b) make consequential amendment of this section.

Possession of immigration stamp.

26B.—(1) A person commits an offence if he has an immigration stamp in his possession without reasonable excuse.

(2) A person commits an offence if he has a replica immigration stamp in his possession without reasonable excuse.

(3) In this section—

- (a) “immigration stamp” means a device which is designed for the purpose of stamping documents in the exercise of an immigration function,
- (b) “replica immigration stamp” means a device which is designed for the purpose of stamping a document so that it appears to have been stamped in the exercise of an immigration function, and
- (c) “immigration function” means a function of an immigration officer or the Secretary of State under the Immigration Acts.

(4) A person who is guilty of an offence under this section shall be liable to imprisonment for a term not exceeding two years, to a fine or to both.

Offences by persons connected with ships or aircraft or with ports.

27.—(1) A person shall be guilty of an offence punishable with a fine of not more than level 3 on the standard scale or with imprisonment for not more than six months, or with both, in any of the following cases—

- (a) if, being the captain of a ship or aircraft,—

- (i) he knowingly permits a person to disembark in Jersey when required under Schedule 2 or 3 to this Act to prevent it, or fails without reasonable excuse to take any steps he is required by or under Schedule 2 to take in connection with the disembarkation or examination of passengers or for furnishing a passenger list or particulars of members of the crew; or
 - (ii) he fails, without reasonable excuse, to comply with any directions given him under Schedule 2 or 3 or under the Immigration and Asylum Act 1999 with respect to the removal of a person from Jersey;
- (b) if, as owner or agent of a ship or aircraft,—
- (i) he arranges, or is knowingly concerned in any arrangements, for the ship or aircraft to call at a port other than a port of entry contrary to any provision of Schedule 2 to this Act; or
 - (ii) he fails, without reasonable excuse, to take any steps required by an order under Schedule 2 for the supply to passengers of landing or embarkation cards; or
 - (iii) he fails, without reasonable excuse, to make arrangements for or in connection with the removal of a person from Jersey when required to do so by directions given under Schedule 2 or 3 to this Act or under the Immigration and Asylum Act 1999; or
 - (iiia) he fails, without reasonable excuse, to comply with a direction under paragraph 5B of Schedule 2; or
 - (iv) he fails, without reasonable excuse, to comply with any other requirement imposed by or under Schedule 2;
- (c) if, as a person concerned in the management of a port, he fails, without reasonable excuse to take any steps required by Schedule 2 in relation to the embarkation or disembarkation of passengers where a control area is designated; or
- (ca) if as a person concerned in the management of a port he fails, without reasonable excuse, to comply with a direction under paragraph 5B of Schedule 2.

(2) Proceedings may not be instituted against a person under subsection (1)(a)(i) or (1)(b)(iv) for a failure to provide information or otherwise to comply with a requirement imposed under paragraph 27, 27B or 27BA of Schedule 2 where—

- (a) the person has paid a penalty in respect of the same failure, or a failure to provide the same information, by virtue of an Order made under—
 - (i) paragraph 27BB of Schedule 2,
 - (ii) section 32B of the Immigration, Asylum and Nationality Act 2006, or
 - (iii) section 24 of the Counter-Terrorism and Security Act 2015 (penalty for breach of authority-to-carry scheme); or
- (b) proceedings have been instituted against the person under section 34 of the Immigration, Asylum and Nationality Act 2006 in respect of a failure to provide the same information.

Proceedings.

28.—(1) Proceedings for an offence under section 24(1)(a) or (c) or an offence under section 26(1)(c) or (d) may be commenced within six months after the commission of the offence; or within three years after the commission of the offence and not more than two months after the date on which evidence sufficient in the opinion of the Attorney General to justify proceedings came to his knowledge.

(2) For purposes of subsection (1) above proceedings shall be deemed to be commenced on the date on which the accused is arrested; and a certificate of the Attorney General as to the date on which such evidence as is mentioned in subsection (1) came to his knowledge shall be conclusive evidence.

(3) For the purposes of the trial of a person for an offence under this Part of this Act, the offence shall be deemed to have been committed either at the place at which it actually was committed or at any place at which he may be.

(4) Any powers exercisable under this Act in the case of any person may be exercised notwithstanding that proceedings for an offence under this Part of this Act have been taken against him.

Arrest without warrant.

28A.—(1) An immigration officer may arrest without warrant a person—

- (a) who has committed or attempted to commit an offence under section 24 or 24A; or
- (b) whom he has reasonable grounds for suspecting has committed or attempted to commit such an offence.

(2) But subsection (1) does not apply in relation to an offence under section 24(1)(d).

(3) An immigration officer may arrest without warrant a person—

- (a) who has committed or attempted to commit an offence under section 25, 25A or 25B; or
- (b) whom he has reasonable grounds for suspecting has committed or attempted to commit that offence.

(5) An immigration officer may arrest without warrant a person (“the suspect”) who, or whom he has reasonable grounds for suspecting—

- (a) has committed or attempted to commit an offence under section 26(1)(g); or
- (b) is committing or attempting to commit that offence.

(6) The power conferred by subsection (5) is exercisable only if either the first or the second condition is satisfied.

(7) The first condition is that it appears to the officer that service of a summons is impracticable or inappropriate because—

- (a) he does not know, and cannot readily discover, the suspect’s name;
- (b) he has reasonable grounds for doubting whether a name given by the suspect as his name is his real name;
- (c) the suspect has failed to give him a satisfactory address for service; or
- (d) he has reasonable grounds for doubting whether an address given by the suspect is a satisfactory address for service.

(8) The second condition is that the officer has reasonable grounds for believing that arrest is necessary to prevent the suspect—

- (a) causing physical injury to himself or another person;
- (b) suffering physical injury; or
- (c) causing loss of or damage to property.

(9) For the purposes of subsection (7), an address is a satisfactory address for service if it appears to the officer—

- (a) that the suspect will be at that address for a sufficiently long period for it to be possible to serve him with a summons (or copy complaint); or
- (b) that some other person specified by the suspect will accept service of a summons (or copy complaint) for the suspect at that address.

(9A) An immigration officer may arrest without warrant a person—

- (a) who has committed an offence under section 26A or 26B; or
- (b) whom he has reasonable grounds for suspecting has committed an offence under section 26A or 26B.

(10) In relation to the exercise of the powers conferred by subsections (3)(b) and (5), it is immaterial that no offence has been committed.

Arrest with warrant.

28AA.—(1) This section applies if on an application by an immigration officer the Magistrate is satisfied that there are reasonable grounds for suspecting that a person has committed an offence under section 24(1)(d).

(2) The Magistrate may grant a warrant authorising any immigration officer to arrest the person.

Search and arrest by warrant.

28B.—(1) Subsection (2) applies if the Magistrate is, by evidence on oath, satisfied that there are reasonable grounds for suspecting that a person (“the suspect”) who is liable to be arrested for a relevant offence is to be found on any premises.

(2) The Magistrate may grant a warrant authorising any immigration officer or police officer to enter, if need be by force, the premises named in the warrant for the purpose of searching for and arresting the suspect.

(3) “Relevant offence” means an offence under section 24(1)(a), (b), (c), (d) or (f), 24A, 26A or 26B.

Search and arrest without warrant.

28C.—(1) An immigration officer may enter and search any premises for the purpose of arresting a person for an offence under section 25, 25A or 25B.

(2) The power may be exercised—

- (a) only to the extent that it is reasonably required for that purpose; and
- (b) only if the officer has reasonable grounds for believing that the person whom he is seeking is on the premises.

(3) In relation to premises consisting of two or more separate dwellings, the power is limited to entering and searching—

- (a) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any such other dwelling; and
- (b) any such dwelling in which the officer has reasonable grounds for believing that the person whom he is seeking may be.

(4) The power may be exercised only if the officer produces identification showing that he is an immigration officer (whether or not he is asked to do so).

Entry and search of premises.

28D.—(1) If, on an application made by an immigration officer, the Magistrate is satisfied that there are reasonable grounds for believing that—

- (a) a relevant offence has been committed,
- (b) there is material on premises mentioned in subsection (1A) which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence,
- (c) the material is likely to be relevant evidence,
- (d) the material does not consist of or include items subject to legal privilege, excluded material or special procedure material, and
- (e) any of the conditions specified in subsection (2) applies, in relation to each set of premises specified in the application,

he may issue a warrant authorising an immigration officer to enter and search the premises.

(1A) The premises referred to in subsection (1)(b) above are—

- (a) one or more sets of premises specified in the application, or

- (b) subject to subsection (2A), any premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified (in which case the application is for an “all premises warrant”).

(1B) If the application is for an all premises warrant, the Magistrate must also be satisfied—

- (a) that because of the particulars of the offence referred to in paragraph (a) of subsection (1), there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application in order to find the material referred to in paragraph (b) of that subsection, and
- (b) that it is not reasonably practicable to specify in the application all the premises which the person occupies or controls and which might need to be searched.

(1C) The warrant may authorise entry to and search of premises on more than one occasion if, on the application, the Magistrate is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which the justice issues the warrant.

(1D) If it authorises multiple entries, the number of entries authorised may be unlimited, or limited to a maximum.

(2) The conditions referred to in subsection (1)(e) are that—

- (a) it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;
- (c) entry to the premises will not be granted unless a warrant is produced;
- (d) the purpose of a search may be frustrated or seriously prejudiced unless an immigration officer arriving at the premises can secure immediate entry to them.

(3) An immigration officer may seize and retain anything for which a search has been authorised under subsection (1).

(4) “Relevant offence” means an offence under section 24(1)(a), (b), (c), (d), (f) or (h), 24A, 25, 25A, 25B, 26A or 26B.

(5) Expressions which are given a meaning by the Police Procedures and Criminal Evidence (Jersey) Law 2003 have the same meaning when used in this section.

Entry and search of premises following arrest.

28E.—(1) This section applies if a person is arrested for an offence under this Part at a place other than a police station.

(2) An immigration officer may enter and search any premises—

- (a) in which the person was when arrested, or
- (b) in which he was immediately before he was arrested,

for evidence relating to the offence for which the arrest was made (“relevant evidence”).

(3) The power may be exercised—

- (a) only if the officer has reasonable grounds for believing that there is relevant evidence on the premises; and
- (b) only to the extent that it is reasonably required for the purpose of discovering relevant evidence.

(4) In relation to premises consisting of two or more separate dwellings, the power is limited to entering and searching—

- (a) any dwelling in which the arrest took place or in which the arrested person was immediately before his arrest; and

- (b) any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwellings comprised in the premises.

(5) An officer searching premises under subsection (2) may seize and retain anything he finds which he has reasonable grounds for believing is relevant evidence.

(6) Subsection (5) does not apply to items which the officer has reasonable grounds for believing are items subject to legal privilege.

Entry and search of premises following arrest under section 25, 25A or 25B.

28F.—(1) An immigration officer may enter and search any premises occupied or controlled by a person arrested for an offence under section 25, 25A, 25B.

(2) The power may be exercised—

- (a) only if the officer has reasonable grounds for suspecting that there is relevant evidence on the premises;
- (b) only to the extent that it is reasonably required for the purpose of discovering relevant evidence; and
- (c) subject to subsection (3), only if a senior officer has authorised it in writing.

(3) The power may be exercised—

- (a) before taking the arrested person to a place where he is to be detained; and
- (b) without obtaining an authorisation under subsection (2)(c),

if the presence of that person at a place other than one where he is to be detained is necessary for the effective investigation of the offence.

(4) An officer who has relied on subsection (3) must inform a senior officer as soon as is practicable.

(5) The officer authorising a search, or who is informed of one under subsection (4), must make a record in writing of—

- (a) the grounds for the search; and
- (b) the nature of the evidence that was sought.

(6) An officer searching premises under this section may seize and retain anything he finds which he has reasonable grounds for suspecting is relevant evidence.

(7) “Relevant evidence” means evidence, other than items subject to legal privilege, that relates to the offence in question.

(8) “Senior officer” means immigration officer not below the rank of chief immigration officer.

Search for personnel records: with warrant.

28FB.—(1) This section applies where on an application made by an immigration officer in respect of business premises mentioned in subsection (1A) the Magistrate is satisfied that there are reasonable grounds for believing—

- (a) that an employer has provided inaccurate or incomplete information under section 134 of the Nationality, Immigration and Asylum Act 2002 (compulsory disclosure by employer),
- (b) that employee records, other than items subject to legal privilege, will be found on the premises and will enable deduction of some or all of the information which the employer was required to provide, and
- (c) that at least one of the conditions in subsection (2) is satisfied in relation to each set of premises specified in the application.

(1A) The premises referred to in subsection (1) above are—

- (a) one or more sets of premises specified in the application, or

- (b) any premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified (in which case the application is for an “all premises warrant”).

(1B) If the application is for an all premises warrant, the Magistrate must also be satisfied—

- (a) that there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application in order to find the records referred to in subsection (1)(b), and
- (b) that it is not reasonably practicable to specify in the application all the premises which the person occupies or controls and which might need to be searched.

(2) The conditions referred to in subsection (1)(c) are —

- (a) that it is not practicable to communicate with a person entitled to grant access to the premises,
- (b) that it is not practicable to communicate with a person entitled to grant access to the records,
- (c) that entry to the premises or access to the records will not be granted unless a warrant is produced, and
- (d) that the purpose of a search may be frustrated or seriously prejudiced unless an immigration officer arriving at the premises can secure immediate entry.

(3) The Magistrate may issue a warrant authorising an immigration officer to enter and search the premises.

(3A) Subject to subsection (3C), the warrant may authorise entry to and search of premises on more than one occasion if, on the application, the Magistrate is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which the justice issues the warrant.

(3B) If it authorises multiple entries, the number of entries authorised may be unlimited, or limited to a maximum.

(5) An immigration officer searching premises under a warrant issued under this section may seize and retain employee records, other than items subject to legal privilege, which he reasonably suspects will be of substantial value (whether on their own or together with other material) in the investigation of an offence under section 137 of the Nationality, Immigration and Asylum Act 2002 (disclosure of information: offences) in respect of a requirement under section 134 of that Act.

Searching arrested persons.

28G.—(1) This section applies if a person is arrested for an offence under this Part at a place other than a police station.

(2) An immigration officer may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others

(3) The officer may search the arrested person for—

- (a) anything which he might use to assist his escape from lawful custody; or
- (b) anything which might be evidence relating to the offence for which he has been arrested.

(4) The power conferred by subsection (3) may be exercised—

- (a) only if the officer has reasonable grounds for believing that the arrested person may have concealed on him anything of a kind mentioned in that subsection; and
- (b) only to the extent that it is reasonably required for the purpose of discovering any such thing.

(5) A power conferred by this section to search a person is not to be read as authorising an officer to require a person to remove any of his clothing in public other than an outer coat, jacket or glove; but it does authorise the search of a person’s mouth.

(6) An officer searching a person under subsection (2) may seize and retain anything he finds, if he has reasonable grounds for believing that that person might use it to cause physical injury to himself or to another person.

(7) An officer searching a person under subsection (3) may seize and retain anything he finds, if he has reasonable grounds for believing—

- (a) that that person might use it to assist his escape from lawful custody; or
- (b) that it is evidence which relates to the offence in question.

(8) Subsection (7)(b) does not apply to an item subject to legal privilege.

Searching persons in police custody.

28H.—(1) This section applies if a person—

- (a) has been arrested for an offence under this Part; and
- (b) is in custody at a police station or in police detention at a place other than a police station.

(2) An immigration officer may, at any time, search the arrested person in order to see whether he has with him anything—

- (a) which he might use to—
 - (i) cause physical injury to himself or others;
 - (ii) damage property;
 - (iii) interfere with evidence; or
 - (iv) assist his escape; or
- (b) which the officer has reasonable grounds for believing is evidence relating to the offence in question.

(3) The power may be exercised only to the extent that the custody officer concerned considers it to be necessary for the purpose of discovering anything of a kind mentioned in subsection (2).

(4) An officer searching a person under this section may seize anything he finds, if he has reasonable grounds for believing that—

- (a) that person might use it for one or more of the purposes mentioned in subsection (2)(a); or
- (b) it is evidence relating to the offence in question.

(5) Anything seized under subsection (4)(a) may be retained by the police.

(6) Anything seized under subsection (4)(b) may be retained by an immigration officer.

(7) The person from whom something is seized must be told the reason for the seizure unless he is—

- (a) violent or appears likely to become violent; or
- (b) incapable of understanding what is said to him.

(8) An intimate search may not be conducted under this section.

(9) The person carrying out a search under this section must be of the same sex as the person searched.

(10) “Custody officer” means the officer in charge of a police station.

(11) “Intimate search” has the meaning given by Article 1 of the Police Procedures and Criminal Evidence (Jersey) Law 2003.

(12) “Police detention” has the meaning given by Article 2 of the Police Procedures and Criminal Evidence (Jersey) Law 2003.

Retention of seized material.

28ZI.—(1) This section applies to anything seized by an immigration officer under this Part for the purposes of the investigation of an offence or on the basis that it may be evidence relating to an offence.

(2) Anything seized as mentioned in subsection (1) may be retained so long as is necessary in all the circumstances and in particular—

- (a) may be retained, except as provided for by subsection (3)—
 - (i) for use as evidence at a trial for an offence, or
 - (ii) for forensic examination or for investigation in connection with an offence, and
- (b) may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

(3) Nothing may be retained for a purpose mentioned in subsection (2)(a) if a photograph or copy would be sufficient for that purpose.

Seized material: access and copying.

28I.—(1) If a person showing himself—

- (a) to be the occupier of the premises on which seized material was seized, or
- (b) to have had custody or control of the material immediately before it was seized, asks the immigration officer who seized the material for a record of what he seized, the officer must provide the record to that person within a reasonable time.

(2) If a relevant person asks an immigration officer for permission to be granted access to seized material, the officer must arrange for him to have access to the material under the supervision—

- (a) in the case of seized material within subsection (8)(a), of an immigration officer;
- (b) in the case of seized material within subsection (8)(b), of a police officer.

(3) An immigration officer may photograph or copy, or have photographed or copied, seized material.

(4) If a relevant person asks an immigration officer for a photograph or copy of seized material, the officer must arrange for—

- (a) that person to have access to the material for the purpose of photographing or copying it under the supervision—
 - (i) in the case of seized material within subsection (8)(a), of an immigration officer;
 - (ii) in the case of seized material within subsection (8)(b), of a police officer; or
- (b) the material to be photographed or copied.

(5) A photograph or copy made under subsection (4)(b) must be supplied within a reasonable time.

(6) There is no duty under this section to arrange for access to, or the supply of a photograph or copy of, any material if there are reasonable grounds for believing that to do so would prejudice—

- (a) the exercise of any functions in connection with which the material was seized; or
- (b) an investigation which is being conducted under this Act, or any criminal proceedings which may be brought as a result.

(7) “Relevant person” means—

- (a) a person who had custody or control of seized material immediately before it was seized, or
- (b) someone acting on behalf of such a person.

(8) “Seized material” means anything—

- (a) seized and retained by an immigration officer, or
- (b) seized by an immigration officer and retained by the police,

under this Part.

Search warrants: safeguards.

28J.—(1) The entry or search of premises under a warrant is unlawful unless it complies with this section and section 28K.

(2) If an immigration officer applies for a warrant, he must—

- (a) state the ground on which he makes the application and the provision of this Act under which the warrant would be issued;
- (aa) if the application is for a warrant authorising entry and search on more than one occasion, state the ground on which the officer applies for such a warrant, and whether the officer seeks a warrant authorising an unlimited number of entries, or (if not) the maximum number of entries desired;
- (b) specify the matters set out in subsection (2A) below; and
- (c) identify, so far as is practicable, the persons or articles to be sought.

(2A) The matters which must be specified pursuant to subsection (2)(b) above are—

- (a) if the application relates to one or more sets of premises specified in the application, each set of premises which it is desired to enter and search;
- (b) if the application relates to any premises occupied or controlled by a person specified in the application—
 - (i) as many sets of premises which it is desired to enter and search as it is reasonably practicable to specify;
 - (ii) the person who is in occupation or control of those premises and any others which it is desired to enter and search;
 - (iii) why it is necessary to search more premises than those specified under sub-paragraph (i);
 - (iv) why it is not reasonably practicable to specify all the premises which it is desired to enter and search.

(4) An application for a warrant is to be made *ex parte* and supported by evidence on oath.

(5) The officer must answer on oath any question that the Magistrate when hearing the application asks him.

(6) A warrant shall authorise an entry on one occasion only unless it specifies that it authorises multiple entries.

(6A) If it specifies that it authorises multiple entries, it must also specify whether the number of entries authorised is unlimited, or limited to a specified maximum.

(7) A warrant must specify—

- (a) the name of the person applying for it;
- (b) the date on which it is issued;
- (c) each set of premises to be searched, or (in the case of an all premises warrant) the person who is in occupation or control of premises to be searched, together with any premises under the person's occupation or control which can be specified and which are to be searched; and
- (d) the provision of this Act under which it is issued.

(8) A warrant must identify, so far as is practicable, the persons or articles to be sought.

(9) Two copies must be made of a warrant which specifies only one set of premises and does not authorise multiple entries; and as many copies as are reasonably required may be made of any other kind of warrant.

(10) The copies must be clearly certified as copies.

(10A) “All premises warrant” means a warrant issued in response to an application of the kind mentioned in section 28D(1A)(b) or 28FB(1A)(b) or paragraph 25A(6AA)(b) of Schedule 2.

(10B) References in this section to a warrant authorising multiple entries is to a warrant of the kind mentioned in section 28D(1C) or 28FB(3A) or paragraph 25A(6AC) of Schedule 2.

(11) “Warrant” means a warrant to enter and search premises issued to an immigration officer under this Part or under paragraph 17(2) or 25A(6A) of Schedule 2.

Execution of warrants.

28K.—(1) A warrant may be executed by any immigration officer.

(2) A warrant may authorise persons to accompany the officer executing it.

(2A) A person so authorised has the same powers as the officer whom the person accompanies in respect of—

- (a) the execution of the warrant, and
- (b) the seizure or detention of anything to which the warrant relates.

(2B) But the person may exercise those powers only in the company, and under the supervision, of an immigration officer.

(3) Entry and search under a warrant must be—

- (a) within three months from the date of its issue; and
- (b) at a reasonable hour, unless it appears to the officer executing it that the purpose of a search might be frustrated.

(3A) If the warrant is an all premises warrant, no premises which are not specified in it may be entered or searched unless an immigration officer of at least the rank of chief immigration officer has in writing authorised them to be entered.

(3B) No premises may be entered or searched for the second or any subsequent time under a warrant which authorises multiple entries unless an immigration officer of at least the rank of chief immigration officer has in writing authorised that entry to those premises.

(4) If the occupier of premises which are to be entered and searched is present at the time when an immigration officer seeks to execute a warrant, the officer must—

- (a) identify himself to the occupier and, if not in uniform, produce identification showing that he is an immigration officer;
- (b) show the occupier the warrant; and
- (c) supply him with a copy of it.

(5) If—

- (a) the occupier is not present, but
- (b) some other person who appears to the officer to be in charge of the premises is present, subsection (4) has effect as if each reference to the occupier were a reference to that other person.

(6) If there is no person present who appears to the officer to be in charge of the premises, the officer must leave a copy of the warrant in a prominent place on the premises.

(7) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.

(8) An officer executing a warrant must make an endorsement on it stating—

- (a) whether the persons or articles sought were found; and

(b) whether any articles, other than articles which were sought, were seized.

(8A) Unless the warrant is a warrant specifying one set of premises only, the officer must comply with subsection (8) separately in respect of each set of premises entered and searched.

(8B) A warrant must be returned in accordance with subsection (9)—

- (a) when it has been executed, or
- (b) in the case of a specific premises warrant which has not been executed, an all premises warrant or any warrant authorising multiple entries, on the expiry of the period of three months referred to in subsection (3) or sooner.

(9) The warrant must be returned to the Magistrate's Court Greffier and retained for 12 months by the Magistrate's Court Greffier.

(13) If during that 12 month period the occupier of the premises to which it relates asks to inspect it, he must be allowed to do so.

(13A) In subsection (8B)—

“specific premises warrant” means a warrant which is not an all premises warrant;

“all premises warrant” means a warrant issued in response to an application of the kind mentioned in section 28D(1A)(b) or 28FB(1A)(b) or paragraph 25A(6AA)(b) of Schedule 2.

(13B) The reference in subsection (8B) to a warrant authorising multiple entries is to a warrant of the kind mentioned in section 28D(1C) or 28FB(3A) or paragraph 25A(6AC) of Schedule 2.

(14) “Warrant” means a warrant to enter and search premises issued to an immigration officer under this Part or under paragraph 17(2) or 25A(6A) of Schedule 2.

Interpretation of Part III.

28L.—(1) In this Part, “premises” and “items subject to legal privilege” have the same meaning as in the Police Procedures and Criminal Evidence (Jersey) Law 2003.

(2) In this Part “business premises” means premises (or any part of premises) not used as a dwelling.

(3) In this Part “employee records” means records which show an employee's—

- (a) name,
- (b) date of birth,
- (c) address,
- (d) length of service,
- (e) rate of pay, or
- (f) nationality or citizenship.

PART 3A

MARITIME ENFORCEMENT

Enforcement powers in relation to ships.

28M.—(1) An immigration officer, a police officer or an enforcement officer may exercise the powers set out in Part 1 of Schedule 4A (“Part 1 powers”) in relation to any of the following in Jersey waters—

- (a) a Jersey ship;
- (b) a ship without nationality;
- (c) a foreign ship;
- (d) a ship registered under the law of a relevant territory.

(2) But Part 1 powers may be exercised only—

- (a) for the purpose of preventing, detecting, investigating or prosecuting an offence under section 25, 25A or 25B, and
- (b) in accordance with the rest of this section.

(3) The authority of the Minister is required before an immigration officer, a police officer or an enforcement officer may exercise Part 1 powers in relation to a foreign ship, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to Jersey.

(4) Authority for the purposes of subsection (3) may be given in relation to a foreign ship only if the Convention permits the exercise of Part 1 powers in relation to the ship.

Interpretation of Part 3A.

28Q.—(1) In this Part—

“the Convention” means the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) and any modifications of that Convention agreed after the passing of this Act that have entered into force in relation to Jersey;

“enforcement officer” means—

- (a) a person who is a commissioned officer of any of Her Majesty’s ships, or
- (b) a person in command or charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force;

“foreign ship” means a ship which—

- (a) is registered in a State outside the United Kingdom and Islands, or
- (b) is not so registered but is entitled to fly the flag of a State outside the United Kingdom and Islands;

“Jersey ship” means a ship which—

- (a) is registered under Part 3 of the Shipping (Jersey) Law 2002,
- (b) is a Government ship within the meaning of that Law, or
- (c) is not registered in any State or relevant territory but is wholly owned by persons each of whom has a Jersey connection;

“Jersey waters” has the same meaning as in the Shipping (Jersey) Law 2002;

“Part 1 powers” means the powers set out in Part 1 of Schedule 4A;

“relevant territory” means—

- (a) any of the United Kingdom and Islands other than Jersey;
- (b) a British overseas territory;

“ship” includes every description of vessel (including a hovercraft) used in navigation;

“ship without nationality” means a ship which—

- (a) is not registered in, or otherwise entitled to fly the flag of, any State or relevant territory, or
- (b) sails under the flags of two or more States or relevant territories, or under the flags of a State and relevant territory, using them according to convenience.

(2) For the purposes of paragraph (c) of the definition of “Jersey ship” in subsection (1), a person has a “Jersey connection” if the person is—

- (a) a British citizen, a British overseas territories citizen or a British Overseas citizen,
- (b) an individual who is habitually resident in Jersey, or
- (c) a body corporate which is established under the law of Jersey and has its principal place of business in Jersey.

General provisions as to Orders in Council, etc.

32.—(1) Any power conferred by Part I of this Act to make an Order in Council, an enactment requiring to be laid before the States or order (other than a deportation order) or to give any directions includes power to revoke or vary the Order in Council, enactment, order or directions.

(2) Any document purporting to be an order, notice or direction made or given by the Minister for the purposes of the Immigration Acts and to be signed by him or on his behalf, and any document purporting to be a certificate of the Minister so given and to be signed by him or on his behalf, shall be received in evidence, and shall, until the contrary is proved, be deemed to be made or issued by him.

(3) Prima facie evidence of any such order, notice, direction or certificate as aforesaid may, in any legal proceedings or other proceedings under the Immigration Acts, be given by the production of a document bearing a certificate purporting to be signed by or on behalf of the Minister and stating that the document is a true copy of the order, notice, direction or certificate.

(4) Where an order under section 8(2) above applies to persons specified in a schedule to the order, or any directions of the Minister given for the purposes of the Immigration Acts apply to persons specified in a schedule to the directions, prima facie evidence of the provisions of the order or directions other than the schedule and of any entry contained in the schedule may, in any legal proceedings or other proceedings under the Immigration Acts, be given by the production of a document purporting to be signed by or on behalf of the Minister and stating that the document is a true copy of the said provisions and of the relevant entry.

Interpretation.

33.—(1) For purposes of this Act, except in so far as the context otherwise requires—

“aircraft” includes hovercraft and “port” includes airport;

“captain” means master (of a ship) or commander (of an aircraft);

“certificate of entitlement” means a certificate under section 10 of the Nationality, Immigration and Asylum Act 2002 that a person has the right of abode in Jersey;

“Convention adoption” has the same meaning as in the Adoption (Jersey) Law 1961;

“crew”, in relation to a ship or aircraft, means all persons actually employed in the working or service of the ship or aircraft, including the captain, and “member of the crew” shall be construed accordingly;

“entrant” means a person entering or seeking to enter Jersey and “illegal entrant” means a person—

(a) unlawfully entering or seeking to enter in breach of a deportation order or of the immigration laws, or

(b) entering or seeking to enter by means which include deception by another person, and includes also a person who has entered as mentioned in paragraph (a) or (b) above;

“entry clearance” means a visa, entry certificate or other document which, in accordance with the immigration rules, is to be taken as evidence or the requisite evidence of a person’s eligibility, though not a British citizen, for entry into Jersey (but does not include a work permit);

“Guernsey” means the Bailiwick of Guernsey;

“immigration laws” means this Act and any law for purposes similar to this Act which is for the time being or has (before or after the passing of this Act) been in force in any part of the United Kingdom and Islands;

“immigration rules” means the rules for the time being laid down as mentioned in section 3(2) above;

“the Islands” means the Channel Islands and the Isle of Man, and “the United Kingdom and Islands” means the United Kingdom and the Islands taken together;

“legally adopted” means adopted in pursuance of an order made by any court in the United Kingdom and Islands, under a Convention adoption or by any adoption declared by the Royal Court as an overseas adoption within the meaning of the Adoption (Jersey) Law 1961;

“limited leave” and “indefinite leave” means respectively leave under this Act to enter or remain in Jersey which is, and one which is not, limited as to duration;

“the Minister” means the Minister for Home Affairs;

“settled” shall be construed in accordance with subsection (2A) below;

“ship” includes every description of vessel used in navigation;

“United Kingdom passport” means a current passport issued by the Government of the United Kingdom, or by the Lieutenant-Governor of any of the Islands, or by the Government of any territory which is for the time being a British overseas territory;

“work permit” means a permit indicating, in accordance with the immigration rules, that a person named in it is eligible, though not a British citizen, for entry into Jersey for the purpose of taking employment.

(1A) A reference to being an owner of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it.

(2) It is hereby declared that, except as otherwise provided in this Act, a person is not to be treated for the purposes of any provision of this Act as ordinarily resident in Jersey or elsewhere in the United Kingdom and Islands at a time when he is there in breach of the immigration

(2A) Subject to section 8(5) above, references to a person being settled in Jersey are references to his being ordinarily resident there without being subject under the immigration laws to any restriction on the period for which he may remain.

(3) The ports of entry for purposes of this Act, and the ports of exit for purposes of any Order in Council under section 3(7) above, shall be such places as the States may by Act designate.

(5) This Act shall not be taken to supersede or impair any power exercisable by Her Majesty in relation to aliens by virtue of Her prerogative.

Short title.

24. This Act may be cited as the Immigration Act 1971.

SCHEDULE 2

ADMINISTRATIVE PROVISIONS AS TO CONTROL ON ENTRY ETC.

Section 4

PART I

GENERAL PROVISIONS.

Immigration officers and medical inspectors

1.—(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.

(2) The Medical Officer of Health (within the meaning of Article 10 of the Loi (1934) sur la Santé Publique) and his deputy shall be medical inspectors for the purposes of this Act.

(3) In the exercise of their functions under this Act immigration officers and medical inspectors shall act in accordance with such instructions (not inconsistent with the immigration rules) as may be given them by the Minister.

(4) An immigration officer or medical inspector may board any ship or aircraft for the purpose of exercising his functions under this Act.

(5) An immigration officer, for the purpose of satisfying himself whether there are persons he may wish to examine under paragraph 2 below, may search any ship or aircraft and anything on board it, or any vehicle taken off a ship or aircraft on which it has been brought to Jersey.

Examination by immigration officers, and medical examination

2.—(1) An immigration officer may examine any persons who have arrived in Jersey by ship or aircraft (including transit passengers, members of the crew and others not seeking to enter Jersey) for the purpose of determining—

- (a) whether any of them is or is not a British citizen; and
- (b) whether, if he is not, he may or may not enter Jersey without leave;
- (c) whether, if he may not
 - (i) he has been given leave which is still in force,
 - (ii) he should be given leave and for what period or on what conditions (if any), or
 - (iii) he should be refused leave; and
- (d) whether, if he has been given leave which is still in force, his leave should be curtailed.

(2) Any such person, if he is seeking to enter Jersey, may be examined also by a medical inspector or by any qualified person carrying out a test or examination required by a medical inspector.

(3) A person, on being examined under this paragraph by an immigration officer or medical inspector, may be required in writing by him to submit to further examination; but a requirement under this sub-paragraph shall not prevent a person who arrives as a transit passenger, or as a member of the crew of a ship or aircraft, or for the purpose of joining a ship or aircraft as a member of the crew, from leaving by his intended ship or aircraft.

Examination of persons who arrive with continuing leave

2A.—(1) This paragraph applies to a person who has arrived in Jersey with leave to enter which is in force but which was given to him before his arrival.

(2) He may be examined by an immigration officer for the purpose of establishing—

- (a) whether there has been such a change in the circumstances of his case, since that leave was given, that it should be cancelled;
- (b) whether that leave was obtained as a result of false information given by him or his failure to disclose material facts; or
- (c) whether there are medical grounds on which that leave should be cancelled.

(2A) Where the person's leave to enter derives, by virtue of section 3A(3), from an entry clearance, he may also be examined by an immigration officer for the purpose of establishing whether the leave should be cancelled on the grounds that the person's purpose in arriving in Jersey is different from the purpose specified in the entry clearance.

(3) He may also be examined by an immigration officer for the purpose of determining whether it would be conducive to the public good for that leave to be cancelled.

(4) He may also be examined by a medical inspector or by any qualified person carrying out a test or examination required by a medical inspector.

(5) A person examined under this paragraph may be required by the officer or inspector to submit to further examination.

(6) A requirement under sub-paragraph (5) does not prevent a person who arrives—

- (a) as a transit passenger,
- (b) as a member of the crew of a ship or aircraft, or
- (c) for the purpose of joining a ship or aircraft as a member of the crew,

from leaving by his intended ship or aircraft.

(7) An immigration officer examining a person under this paragraph may by notice suspend his leave to enter until the examination is completed.

(8) An immigration officer may, on the completion of any examination of a person under this paragraph, cancel his leave to enter.

(9) Cancellation of a person's leave under sub-paragraph (8) is to be treated for the purposes of this Act as if he had been refused leave to enter at a time when he had a current entry clearance.

(10) A requirement imposed under sub-paragraph (5) and a notice given under sub-paragraph (7) must be in writing.

3.—(1) An immigration officer or designated person may examine any person who is embarking or seeking to embark in Jersey for the purpose of determining whether he is a British citizen and, if he is not a British citizen, for the purpose of establishing—

- (a) his identity;
- (b) whether he entered Jersey lawfully;
- (c) whether he has complied with any conditions of leave to enter or remain in Jersey;
- (d) whether his return to Jersey is prohibited or restricted.

(1A) If a person is examined under sub-paragraph (1) (whether by an immigration officer or designated person), an immigration officer may require the person, by notice in writing, to submit to further examination by the immigration officer for a purpose specified in that sub-paragraph.

(2) So long as any Order in Council is in force under section 3(7) of this Act, an immigration officer may examine any person who is embarking or seeking to embark in Jersey for the purpose of determining—

- (a) whether any of the provisions of the Order apply to him; and
- (b) whether, if so, any power conferred by the Order should be exercised in relation to him and in what way.

Information and documents

4.—(1) It shall be the duty of any person examined under paragraph 2, 2A or 3 above to furnish to the person carrying out the examination all such information in his possession as that person may require for the purpose of that or any other person's functions under that paragraph.

(2) A person on his examination under paragraph 2, 2A or 3 above by an immigration officer, or on his examination under paragraph 3 above by a designated person, shall, if so required by an immigration officer or designated person—

- (a) produce either a valid passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship; and
- (b) declare whether or not he is carrying or conveying or has carried or conveyed, documents of any relevant description specified by the immigration officer or designated person, and produce any documents of that description which he is carrying or conveying.

In paragraph (b), "relevant description" means any description appearing to the immigration officer or designated person to be relevant for the purposes of the examination.

(3) Where under sub-paragraph (2)(b) above a person has been required to declare whether or not he is carrying or conveying, or has carried or conveyed, documents of any description—

- (a) he and any baggage or vehicle belonging to him or under his control; and
- (b) any ship, aircraft or vehicle in which he arrived in Jersey, may be searched with a view to ascertaining whether he is doing or, as the case may be, has done so by an immigration officer or a person acting under the directions of an immigration officer:

Provided that no woman or girl shall be searched except by a woman.

(4) Where a passport or other document is produced to or found by an immigration officer in accordance with this paragraph, the immigration officer may examine it and detain it—

- (a) for the purpose of examining it, for a period not exceeding 7 days;

- (b) for any purpose, until the person to whom the document relates is given leave to enter Jersey or is about to depart or be removed following refusal of leave or until it is decided that the person does not require leave to enter;
- (c) after a time described in paragraph (b), while the immigration officer thinks that the document may be required in connection with proceedings for judicial review of the exercise of a function the Immigration Acts or in respect of an offence.

(4A) Where a passport or other document is produced to a designated person in accordance with this paragraph, the designated person—

- (a) may examine it and detain it; and
- (b) must deliver any detained passport or document to an immigration officer as soon as reasonably practicable.

(4B) If a passport or document is delivered to an immigration officer in accordance with sub-paragraph (4A)(b), sub-paragraph (4) applies as if the immigration officer had detained the document (and, accordingly, the immigration officer may continue to detain it in accordance with sub-paragraph (4)(a), (b) or (c)).

(5) For the purpose of ascertaining that a passport or other document produced or found in accordance with this paragraph relates to a person examined under paragraph 2, 2A or 3 above, the person carrying out the examination, or any immigration officer or designated person, may require the person being examined to provide biometric information (whether or not by submitting to a process by means of which information is obtained or recorded).

(6) “Biometric information” has the meaning given by section 15 of the UK Borders Act 2007.

(7) A person (“P”) who is under 16 may not be required to provide biometric information under sub-paragraph (5) unless—

- (a) the decision to require P to provide the information has been confirmed by a chief immigration officer, and
- (b) the information is provided in the presence of a person of full age who is—
 - (i) P’s parent or guardian, or
 - (ii) a person who for the time being takes responsibility for P.

(8) The person mentioned in sub-paragraph (7)(b)(ii) may not be—

- (a) a person who is entitled to require the provision of information under sub-paragraph (5) (an “authorised person”), or
- (b) an officer of the Minister who is not such a person.

(9) Sub-paragraph (7) does not prevent an authorised person requiring the provision of biometric information by a person the authorised person reasonably believes to be 16 or over.

5.—(1) The Minister may by Order make provision for requiring—

- (a) passengers disembarking or embarking in Jersey, or any class of such passengers, to produce to an immigration officer, if so required, landing or embarkation cards, and
- (b) passengers embarking in Jersey, or any class of such passengers, to produce to a designated person, if so required, embarkation cards,

in such form as the Minister may direct, and for requiring the owners or agents of ships and aircraft to supply such cards to those passengers.

(2) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under this paragraph.

Designated persons

5A.—(1) In this Schedule “designated person” means a person designated by the Minister for the purposes of this Schedule.

(2) A designation under this paragraph is subject to such limitations as may be specified in the designation.

(3) A limitation under sub-paragraph (2) may, in particular, relate to the functions that are exercisable by virtue of the designation (and, accordingly, the exercise of functions under this Schedule by a designated person is subject to any such limitations specified in the person's designation).

(4) A designation under this paragraph—

- (a) may be permanent or for a specified period,
- (b) may (in either case) be withdrawn, and
- (c) may be varied.

(5) The power to designate, or to withdraw or vary a designation, is exercised by the Minister giving notice to the person in question.

(6) The Minister may designate a person under this paragraph only if the Secretary of State is satisfied that the person—

- (a) is capable of effectively carrying out the functions that are exercisable by virtue of the designation,
- (b) has received adequate training in respect of the exercise of those functions, and
- (c) is otherwise a suitable person to exercise those functions.

Directions to carriers and operators of ports etc

5B.—(1) The Minister may direct—

- (a) an owner or agent of a ship or aircraft, or
- (b) a person concerned in the management of a port,

to make arrangements for designated persons to exercise a specified function, or a function of a specified description, in relation to persons of a specified description.

(2) A direction under this paragraph must specify—

- (a) the port where, and
- (b) the date (or dates) and time (or times) when,

a function is to be exercised under the arrangements.

(3) A direction under this paragraph must be in writing.

(4) A direction under this paragraph may specify a description of persons by reference, in particular, to—

- (a) the destination to which persons are travelling;
- (b) the route by which persons are travelling;
- (c) the date and time when the persons are travelling.

(5) In this paragraph—

“function” means a function under this Schedule;

“specified” means specified in a direction under this paragraph.

Notice of leave to enter or of refusal of leave

6.—(1) Subject to sub-paragraph (3) below, where a person examined by an immigration officer under paragraph 2 above is to be given a limited leave to enter Jersey or is to be refused leave, the notice giving or refusing leave shall be given not later than twenty-four hours after the conclusion of his examination (including any further examination) in pursuance of that paragraph; and if notice giving or refusing leave is not given him before the end of those twenty-four hours, he shall (if not a British citizen) be deemed to have been given leave to enter Jersey for a period of six months

subject to a condition prohibiting his taking employment and the immigration officer shall as soon as may be give him written notice of that leave.

(2) Where on a person's examination under paragraph 2 above he is given notice of leave to enter Jersey, then at any time before the end of twenty-four hours from the conclusion of the examination he may be given a further notice in writing by an immigration officer cancelling the earlier notice and refusing him leave to enter.

(3) Where in accordance with this paragraph a person is given notice refusing him leave to enter Jersey, that notice may at any time be cancelled by notice in writing given him by an immigration officer; and where a person is given a notice of cancellation under this sub-paragraph, and the immigration officer does not at the same time give him indefinite or limited leave to enter or require him to submit to further examination, he shall be deemed to have been given leave to enter for a period of six months subject to a condition prohibiting his taking employment and the immigration officer shall as soon as may be given him written notice of that leave.

(4) Where an entrant is a member of a party in charge of a person appearing to the immigration officer to be a responsible person, any notice to be given in relation to that entrant in accordance with this paragraph shall be duly given if delivered to the person in charge of the party.

Power to require medical examination after entry

7.—(1) This paragraph applies if an immigration officer examining a person under paragraph 2 decides—

- (a) that he may be given leave to enter Jersey; but
- (b) that a further medical test or examination may be required in the interests of public health.

(2) This paragraph also applies if an immigration officer examining a person under paragraph 2A decides—

- (a) that his leave to enter Jersey should not be cancelled; but
- (b) that a further medical test or examination may be required in the interests of public health.

(3) The immigration officer may give the person concerned notice in writing requiring him—

- (a) to report his arrival to such medical officer of health as may be specified in the notice; and
- (b) to attend at such place and time and submit to such test or examination (if any), as that medical officer of health may require.

(4) In reaching a decision under paragraph (b) of sub-paragraph (1) or (2), the immigration officer must act on the advice of—

- (a) a medical inspector; or
- (b) if no medical inspector is available, a fully qualified medical practitioner.

Removal of persons refused leave to enter and illegal entrants

8.—(1) Where a person arriving in Jersey is refused leave to enter, an immigration officer may, subject to sub-paragraph (2) below—

- (a) give the captain of the ship or aircraft in which he arrives directions requiring the captain to remove him from Jersey in that ship or aircraft; or
- (b) give the owners or agents of that ship or aircraft directions requiring them to remove him from Jersey in any ship or aircraft specified or indicated in the directions, being a ship or aircraft of which they are the owners or agents; or
- (c) give those owners or agents directions requiring them to make arrangements for his removal from Jersey in any ship or aircraft specified or indicated in the directions to a country or territory so specified, being either—
 - (i) a country of which he is a national or citizen; or
 - (ii) a country or territory in which he has obtained a passport or other document of identity; or

- (iii) a country or territory in which he embarked for Jersey; or
- (iv) a country or territory to which there is reason to believe that he will be admitted.

(2) No directions shall be given under this paragraph in respect of anyone after the expiration of two months beginning with the date on which he was refused leave to enter Jersey except that directions may be given under sub-paragraph (1)(b) or (c) after the end of that period if the immigration officer has within that period given written notice to the owners or agents in question of his intention to give directions to them in respect of that person.

9.—(1) Where an illegal entrant is not given leave to enter or remain in Jersey, an immigration officer may give any such directions in respect of him as in a case within paragraph 8 above are authorised by paragraph 8(1).

(2) Any leave to enter Jersey which is obtained by deception shall be disregarded for the purposes of this paragraph.

10.—(1) Where it appears to the Minister either—

- (a) that directions might be given in respect of a person under paragraph 8 or 9 above, but that it is not practicable for them to be given or that, if given, they would be ineffective; or
- (b) that directions might have been given in respect of a person under paragraph 8 above

but that the requirements of paragraph 8(2) have not been complied with; then the Minister may give to the owners or agents of any ship or aircraft any such directions in respect of that person as are authorised by paragraph 8(1)(c).

(2) Where the Minister may give directions for a person's removal in accordance with sub-paragraph (1) above, he may instead give directions for his removal in accordance with arrangements to be made by the Minister to any country or territory to which he could be removed under sub-paragraph (1).

(3) The costs of complying with any directions given under this paragraph shall be defrayed by the Minister.

10A. Where directions are given in respect of a person under any of paragraphs 8 to 10 above, directions to the same effect may be given under that paragraph in respect of a member of the person's family.

11. A person in respect of whom directions are given under any of paragraphs 8 to 10 above may be placed, under the authority of an immigration officer or the Minister, on board any ship or aircraft in which he is to be removed in accordance with the directions.

Seamen and aircrews

12.—(1) If, on a person's examination by an immigration officer under paragraph 2 above, the immigration officer is satisfied that he had come to Jersey for the purpose of joining a ship or aircraft as a member of the crew, then the immigration officer may limit the duration of any leave he gives that person to enter Jersey by requiring him to leave Jersey in a ship or aircraft specified or indicated by the notice giving leave.

(2) Where a person (not being a British citizen) arrives in Jersey for the purposes of joining a ship or aircraft as a member of the crew and, having been given leave to enter as mentioned in sub-paragraph (1) above, remains beyond the time limited by that leave, or is reasonably suspected by an immigration officer of intending to do so, an immigration officer may—

- (a) give the captain of that ship or aircraft directions requiring the captain to remove him from Jersey in that ship or aircraft; or
- (b) give the owners or agents of that ship or aircraft directions requiring them to remove him from Jersey in any ship or aircraft specified or indicated in the directions, being a ship or aircraft of which they are the owners or agents; or

- (c) give those owners or agents directions requiring them to make arrangements for his removal from Jersey in any ship or aircraft specified or indicated in the directions to a country or territory so specified, being either—
 - (i) a country of which he is a national or citizen; or
 - (ii) a country or territory in which he has obtained a passport or other document of identity; or
 - (iii) a country or territory in which he embarked for Jersey; or
 - (iv) a country or territory where he was engaged as a member of the crew of the ship or aircraft which he arrived in Jersey to join; or
 - (v) a country or territory to which there is reason to believe that he will be admitted.

13.—(1) Where a person being a member of the crew of a ship or aircraft is examined by an immigration officer under paragraph 2 above, the immigration officer may limit the duration of any leave he gives that person to enter Jersey—

- (a) in the manner authorised by paragraph 12(1) above; or
- (b) if that person is to be allowed to enter Jersey in order to receive hospital treatment, by requiring him, on completion of that treatment, to leave Jersey in accordance with arrangements to be made for his repatriation; or
- (c) by requiring him to leave Jersey within a specified period in accordance with arrangements to be made for his repatriation.

(2) Where a person (not being a British citizen) arrives in Jersey as a member of the crew of a ship or aircraft, and either—

(A) having lawfully entered Jersey without leave by virtue of section 8(1) of this Act, he remains without leave beyond the time allowed by section 8(1), or is reasonably suspected by an immigration officer of intending to do so; or

(B) having been given leave limited as mentioned in sub-paragraph (1) above, he remains beyond the time limited by that leave, or is reasonably suspected by an immigration officer of intending to do so;

an immigration officer may—

- (a) give the captain of the ship or aircraft in which he arrived directions requiring the captain to remove him from Jersey in that ship or aircraft; or
- (b) give the owners or agents of that ship or aircraft directions requiring them to remove him from Jersey in any ship or aircraft specified or indicated in the directions, being a ship or aircraft of which they are the owners or agents; or
- (c) give those owners or agents directions requiring them to make arrangements for his removal from Jersey in any ship or aircraft specified or indicated in the directions to a country or territory so specified, being either—
 - (i) a country of which he is a national or citizen; or
 - (ii) a country or territory in which he has obtained a passport or other document of identity; or
 - (iii) a country in which he embarked for Jersey; or
 - (iv) a country or territory in which he was engaged as a member of the crew of the ship or aircraft in which he arrived in Jersey; or
 - (v) a country or territory to which there is reason to believe that he will be admitted.

14.—(1) Where it appears to the Minister that directions might be given in respect of a person under paragraph 12 or 13 above, but that it is not practicable for them to be given or that, if given, they would be ineffective, then the Minister may give to the owners or agents of any ship or aircraft any such directions in respect of that person as are authorised by paragraph 12(2)(c) or 13(2)(c).

(2) Where the Minister may give directions for a person's removal in accordance with sub-paragraph (1) above, he may instead give directions for his removal in accordance with arrangements to be made by the Minister to any country or territory to which he could be removed under sub-paragraph (1).

(3) The costs of complying with any directions given under this paragraph shall be defrayed by the Minister.

15. A person in respect of whom directions are given under any of paragraphs 12 to 14 above may be placed, under the authority of an immigration officer, on board any ship or aircraft in which he is to be removed in accordance with the directions.

Search of premises in connection with removal

15A.—(1) This paragraph applies if—

- (a) an immigration officer is lawfully on any premises, and
- (b) a person who is liable to be detained under paragraph 16(2) is on the premises.

(2) The immigration officer may search the premises for documents which—

- (a) relate to the person, and
- (b) may be evidence for a ground on which the person's leave to enter or remain in Jersey may be curtailed.

(3) The power may be exercised—

- (a) only if the immigration officer has reasonable grounds for believing there are documents within sub-paragraph (2) on the premises, and
- (b) only to the extent that it is reasonably required for the purpose of discovering such documents.

(4) An immigration officer searching premises under this paragraph may seize any document the officer finds which the officer has reasonable grounds for believing is a document within subparagraph (2).

(5) Sub-paragraph (6) applies where—

- (a) an immigration officer is searching premises under this paragraph, and
- (b) any document the officer has reasonable grounds for believing is a document within sub-paragraph (2) is stored in any electronic form and is accessible from the premises.

(6) The immigration officer may require the document to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(7) If a requirement under sub-paragraph (6) is not complied with or a document to which that sub-paragraph applies cannot be produced in a form of the kind mentioned in that sub-paragraph, the immigration officer may seize the device or medium on which it is stored.

(8) But sub-paragraphs (4) to (7) do not apply to a document which the immigration officer has reasonable grounds for believing is an item subject to legal privilege.

(9) An immigration officer may retain a document seized under this paragraph while—

- (a) the person to whom the document relates is liable to be detained under paragraph 16(2), and
- (b) the document falls within sub-paragraph (2)(b).

(10) But a document may not be retained for the purpose mentioned in sub-paragraph (9) if a photograph or copy would be sufficient for that purpose.

Detention of persons liable to examination or removal

16.—(1) A person who may be required to submit to examination under paragraph 2 above may be detained under the authority of an immigration officer pending his examination and pending a decision to give or refuse him leave to enter.

(1A) A person whose leave to enter has been suspended under paragraph 2A may be detained under the authority of an immigration officer pending—

- (a) completion of his examination under that paragraph; and
- (b) a decision on whether to cancel his leave to enter.

(1B) A person who has been required to submit to further examination under paragraph 3(1A) may be detained under the authority of an immigration officer, for a period not exceeding 12 hours, pending the completion of the examination.

(2) If there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given under any of paragraphs 8 to 10A or 12 to 14, that person may be detained under the authority of an immigration officer pending—

- (a) a decision whether or not to give such directions;
- (b) his removal in pursuance of such directions.

(2A) But the detention of an unaccompanied child under sub-paragraph (2) is subject to paragraph 18B.

(2B) The detention under sub-paragraph (2) of a person to whom section 60 (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.

(3) A person on board a ship or aircraft may, under the authority of an immigration officer, be removed from the ship or aircraft for detention under this paragraph; but if an immigration officer so requires the captain of a ship or aircraft shall prevent from disembarking in Jersey any person who has arrived in Jersey in the ship or aircraft and been refused leave to enter, and the captain may for that purpose detain him in custody on board the ship or aircraft.

(4) The captain of a ship or aircraft, if so required by an immigration officer, shall prevent from disembarking in Jersey or before the directions for his removal have been fulfilled any person placed on board the ship or aircraft under paragraph 11 or 15 above, and the captain may for that purpose detain him in custody on board the ship or aircraft.

17.—(1) A person liable to be detained under paragraph 16 above may be arrested without warrant by a police officer or by an immigration officer.

(2) If the Magistrate is by evidence on oath satisfied that there is reasonable ground for suspecting that a person liable to be arrested under this paragraph is to be found on any premises, he may grant a warrant authorising any immigration officer or police officer to enter, if need be by reasonable force, the premises named in the warrant for the purpose of searching for and arresting that person.

18.—(1) Persons may be detained under paragraph 16 above in such places as the Minister may direct (when not detained in accordance with paragraph 16 on board a ship or aircraft).

(1A) But the detention of an unaccompanied child under paragraph 16(2) is subject to paragraph 18B.

(2) Where a person is detained or liable to be detained under paragraph 16, any immigration officer, police officer or prison officer, or any other person authorised by the Minister, may take all such steps as may be reasonably necessary for photographing, measuring or otherwise identifying him.

(2A) The power conferred by sub-paragraph (2) includes power to take biometric information (within the meaning given by section 15 of the UK Borders Act 2007).

(2B) Paragraph 4(7) to (9) applies to sub-paragraph (2) as it applies to paragraph 4(5).

(3) Any person detained under paragraph 16 may be taken in the custody of a police officer, an immigration officer, or any person acting under the authority of an immigration officer, to and from

any place where his attendance is required for the purpose of ascertaining his citizenship or nationality or of making arrangements for his admission to a country or territory other than the Jersey, or where he is required to be for any other purpose connected with the operation of this Act.

(4) A person shall be deemed to be in legal custody at any time when he is detained under paragraph 16 or is being removed in pursuance of sub-paragraph (3) above.

18A.—(1) An immigration officer or police officer may search a person (“P”) who is detained under paragraph 16 for anything which P might use—

- (a) to cause physical injury to P or others, or
- (b) to assist P’s escape from legal custody.

(2) The power to search P—

- (a) unless sub-paragraph (3) applies, does not include power to require P to remove any clothing other than an outer coat, jacket or glove, but
- (b) includes power to require P to open P’s mouth.

(3) This sub-paragraph applies if an immigration officer or police officer has reasonable grounds to believe that there is concealed on P anything which P might use as mentioned in sub-paragraph (1).

(4) The power to search P may be exercised only to the extent reasonably required for the purpose of discovering anything which P might use as mentioned in sub-paragraph (1).

(5) An intimate search (as defined in section 28H(11)) may not be conducted under this paragraph.

(6) An immigration officer or police officer may seize and retain anything found on a search of P if the officer or police officer has reasonable grounds to believe P might use it as mentioned in sub-paragraph (1).

(7) Nothing seized under sub-paragraph (6) may be retained when P is released from detention under paragraph 16.

18B.—(1) Where a person detained under paragraph 16(2) is an unaccompanied child, the only place where the child may be detained is a short-term holding facility, except where—

- (a) the child is being transferred to or from a short-term holding facility, or
- (b) sub-paragraph (3) of paragraph 18 applies.

(2) An unaccompanied child may be detained under paragraph 16(2) in a short-term holding facility for a maximum period of 24 hours, and only for so long as the following two conditions are met.

(3) The first condition is that—

- (a) directions are in force that require the child to be removed from the short-term holding facility within the relevant 24 hour period, or
- (b) a decision on whether or not to give directions is likely to result in such directions.

(4) The second condition is that the immigration officer under whose authority the child is being detained reasonably believes that the child will be removed from the short-term holding facility within the relevant 24 hour period in accordance with those directions.

(5) An unaccompanied child detained under paragraph 16(2) who has been removed from a short-term holding facility and detained elsewhere may be detained again in a short-term holding facility but only if, and for as long as, the relevant 24 hour period has not ended.

(6) An unaccompanied child who has been released following detention under paragraph 16(2) may be detained again in a short-term holding facility in accordance with this paragraph.

(7) In this paragraph—

“relevant 24 hour period”, in relation to the detention of a child in a short-term holding facility, means the period of 24 hours starting when the child was detained (or, in a case falling within sub-paragraph (5), first detained) in a short-term holding facility;

“short-term holding facility” means a place used solely for the detention of detained persons for a period of not more than seven days or for such other period as may be prescribed by Regulations made by the States;

“unaccompanied child” means a person—

- (a) who is under the age of 18, and
- (b) who is not accompanied (whilst in detention) by his or her parent or another individual who has care of him or her.

19.—(1) Where a person is refused leave to enter Jersey and directions are given in respect of him under paragraph 8 or 10 above, then subject to the provisions of this paragraph the owners or agents of the ship or aircraft in which he arrived shall be liable to pay the Minister on demand any expenses incurred by the latter in respect of the custody, accommodation or maintenance of that person for any period (not exceeding 14 days) after his arrival while he was detained or liable to be detained under paragraph 16 above.

(2) Sub-paragraph (1) above shall not apply to expenses in respect of a person who, when he arrived in Jersey, held a certificate of entitlement or a current entry clearance or was the person named in a current work permit; and for this purpose a document purporting to be a certificate of entitlement, entry clearance or work permit is to be regarded as being one unless its falsity is reasonably apparent.

(3) If, before the directions for a person’s removal under paragraph 8 or 10 above have been carried out, he is given leave to enter Jersey, or if he is afterwards given that leave in consequence of a judicial review of a refusal of leave to enter by virtue of which the directions were given, no sum shall be demanded under sub-paragraph (1) above for expenses incurred in respect of that person and any sum already demanded and paid shall be refunded.

(4) Sub-paragraph (1) above shall not have effect in relation to directions which, in consequence of proceedings for judicial review, have ceased to have effect or are for the time being of no effect; and the expenses to which that sub-paragraph applies include expenses in conveying the person in question to and from the place where he is detained or accommodated unless the journey is made for the purpose of attending such proceedings.

20.—(1) Subject to the provisions of this paragraph, in either of the following cases, that is to say,—

- (a) where directions are given in respect of an illegal entrant under paragraph 9 or 10 above; and
- (b) where a person has lawfully entered Jersey without leave by virtue of section 8(1) of this Act, but directions are given in respect of him under paragraph 13(2)(A) above or, in a case within paragraph 13(2)(A), under paragraph 14;

the owners or agents of the ship or aircraft in which he arrived in Jersey shall be liable to pay the Minister on demand any expenses incurred by the latter in respect of the custody, accommodation or maintenance of that person for any period (not exceeding 14 days) after his arrival while he was detained or liable to be detained under paragraph 16 above.

(1A) Sub-paragraph (1) above shall not apply to expenses in respect of an illegal entrant if he obtained leave to enter by deception and the leave has not been cancelled under paragraph 6(2) above.

(2) If, before the directions for a person’s removal from Jersey have been carried out, he is given leave to remain in Jersey, no sum shall be demanded under sub-paragraph (1) above for expenses incurred in respect of that person and any sum already demanded and paid shall be refunded.

(3) Sub-paragraph (1) above shall not have effect in relation to directions which, in consequence of proceedings for judicial review, are for the time being of no effect; and the expenses to which that

sub-paragraph applies include expenses in conveying the person in question to and from the place where he is detained or accommodated unless the journey is made for the purpose of attending such proceedings.

Temporary admission or release of persons liable to detention

21.—(1) A person liable to detention or detained under paragraph 16(1), (1A) or (2) above may, under the written authority of an immigration officer, be temporarily admitted to Jersey without being detained or be released from detention; but this shall not prejudice a later exercise of the power to detain him.

(2) So long as a person is at large in Jersey by virtue of this paragraph, he shall be subject to such restrictions as to residence, as to his employment or occupation and as to reporting to the police or an immigration officer as may from time to time be notified to him in writing by an immigration officer.

(2A) The provisions that may be included in restrictions as to residence imposed under sub-paragraph (2) include provisions of such a description as may be prescribed by Order made by the Minister.

(2B) Such an Order may, among other things, provide for the inclusion of provisions—

- (a) prohibiting residence in one or more particular areas;
- (b) requiring the person concerned to reside in specified accommodation and prohibiting him from being absent from that accommodation except in accordance with the restrictions imposed on him.

(2C) Such an Order may provide that a particular description of provision may be imposed only for prescribed purposes.

(2D) The power to make Orders conferred by this paragraph includes a power to make different provision for different cases.

(2E) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under sub-paragraph (2A).

(3) Sub-paragraph (4) below applies where a person who is at large in Jersey by virtue of this paragraph is subject to a restriction as to reporting to an immigration officer with a view to the conclusion of his examination under paragraph 2 or 2A above.

(4) If the person fails at any time to comply with that restriction—

- (a) an immigration officer may direct that the person's examination shall be treated as concluded at that time, but
- (b) nothing in paragraph 6 above shall require the notice giving or refusing him leave to enter Jersey to be given within twenty-four hours after that time.

Entry and search of premises

25A.—(1) This paragraph applies if—

- (a) a person is arrested under this Schedule; or
- (b) a person who was arrested other than under this Schedule is detained by an immigration officer under this Schedule.

(2) An immigration officer may enter and search any premises—

- (a) occupied or controlled by the arrested person, or
- (b) in which that person was when he was arrested, or immediately before he was arrested,

for relevant documents.

(3) The power may be exercised—

- (a) only if the officer has reasonable grounds for believing that there are relevant documents on the premises;

- (b) only to the extent that it is reasonably required for the purpose of discovering relevant documents; and
- (c) subject to sub-paragraph (4), only if a senior officer has authorised its exercise in writing.

(4) An immigration officer may conduct a search under sub-paragraph (2)—

- (a) before taking the arrested person to a place where he is to be detained; and
- (b) without obtaining an authorisation under sub-paragraph (3)(c),

if the presence of that person at a place other than one where he is to be detained is necessary to make an effective search for any relevant documents.

(5) An officer who has conducted a search under sub-paragraph (4) must inform a senior officer as soon as is practicable.

(6) The officer authorising a search, or who is informed of one under sub-paragraph (5), must make a record in writing of—

- (a) the grounds for the search; and
- (b) the nature of the documents that were sought.

(6A) If, on an application made by an immigration officer, the Magistrate is satisfied that—

- (a) there are reasonable grounds for believing that relevant documents may be found on premises not within sub-paragraph (2) which are mentioned in sub-paragraph (6AA), and
- (b) any of the conditions in sub-paragraph (6B) is met, in relation to each set of premises specified in the application,

the Magistrate may issue a warrant authorising an immigration officer to enter and search the premises.

(6AA) The premises referred to in sub-paragraph (6A) above are—

- (a) one or more sets of premises specified in the application, or
- (b) subject to sub-paragraph (6BA), any premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified (in which case the application is for an “all premises warrant”).

(6AB) If the application is for an all premises warrant, the Magistrate must also be satisfied—

- (a) that there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application in order to find the relevant documents, and
- (b) that it is not reasonably practicable to specify in the application all the premises which the person occupies or controls and which might need to be searched.

(6AC) Subject to sub-paragraph (6BA), the warrant may authorise entry to and search of premises on more than one occasion if, on the application, the Magistrate is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which the justice issues the warrant.

(6AD) If it authorises multiple entries, the number of entries authorised may be unlimited, or limited to a maximum.

(6B) The conditions mentioned in sub-paragraph (6A)(b) are that—

- (a) it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the relevant documents;
- (c) entry to the premises will not be granted unless a warrant is produced;
- (d) the purpose of a search may be frustrated or seriously prejudiced unless an immigration officer arriving at the premises can secure immediate entry.

(7) An officer searching premises under this paragraph may seize any documents he finds which he has reasonable grounds for believing are relevant documents.

(7A) Sub-paragraph (7B) applies where—

- (a) an officer is searching premises under this paragraph, and
- (b) any document the officer has reasonable grounds for believing is a relevant document is stored in any electronic form and is accessible from the premises.

(7B) The officer may require the document to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(7C) If a requirement under sub-paragraph (7B) is not complied with or a document to which that sub-paragraph applies cannot be produced in a form of the kind mentioned in that sub-paragraph, the officer may seize the device or medium on which it is stored.

(8) But subparagraphs (7) to (7C) do not apply to documents which the officer has reasonable grounds for believing are items subject to legal privilege.

(8A) An immigration officer may retain a document seized under this paragraph while the officer has reasonable grounds for believing that –

- (a) the arrested person may be liable to removal from Jersey in accordance with a provision of the Immigration Acts, and
- (b) retention of the document may facilitate the person's removal.

(9) "Relevant documents" means any documents which might—

- (a) establish the arrested person's identity, nationality or citizenship; or
- (b) indicate the place from which he has travelled to Jersey or to which he is proposing to go.

(10) "Senior officer" means an immigration officer not below the rank of chief immigration officer.

Searching persons arrested by immigration officers

25B.—(1) This paragraph applies if a person is arrested under this Schedule.

(2) An immigration officer may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.

(3) The officer may search the arrested person for—

- (a) anything which he might use to assist his escape from lawful custody; or
- (b) any document which might—
 - (i) establish his identity, nationality or citizenship; or
 - (ii) indicate the place from which he has travelled to Jersey or to which he is proposing to go.

(4) The power conferred by sub-paragraph (3) may be exercised—

- (a) only if the officer has reasonable grounds for believing that the arrested person may have concealed on him anything of a kind mentioned in that sub-paragraph; and
- (b) only to the extent that it is reasonably required for the purpose of discovering any such thing.

(5) A power conferred by this paragraph to search a person is not to be read as authorising an officer to require a person to remove any of his clothing in public other than an outer coat, jacket or glove; but it does authorise the search of a person's mouth.

(6) An officer searching a person under sub-paragraph (2) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to another person.

(7) An officer searching a person under sub-paragraph (3)(a) may seize and retain anything he finds, if he has reasonable grounds for believing that he might use it to assist his escape from lawful custody.

(8) An officer searching a person under sub-paragraph (3)(b) may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing that it might be a document falling within that sub-paragraph.

(8A) Sub-paragraph (8B) applies where—

- (a) an officer is searching a person under this paragraph, and
- (b) any document the officer has reasonable grounds for believing is a document within sub-paragraph (3)(b) is stored in any electronic form on a device or medium found on the person.

(8B) The officer may require the document to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(8C) If a requirement under sub-paragraph (8B) is not complied with or a document to which that sub-paragraph applies cannot be produced in a form of the kind mentioned in that sub-paragraph, the officer may seize the device or medium on which it is stored.

(8D) Sub-paragraphs (8B) and (8C) do not apply to a document which the officer has reasonable grounds for believing is an item subject to legal privilege.

(9) Nothing seized under sub-paragraph (6) or (7) may be retained when the person from whom it was seized—

- (a) is no longer in custody, or
- (b) is in the custody of a court but has been released on bail.

Searching persons in police custody

25C.—(1) This paragraph applies if a person—

- (a) has been arrested under this Schedule; and
- (b) is in custody at a police station.

(2) An immigration officer may, at any time, search the arrested person in order to ascertain whether he has with him—

- (a) anything which he might use to—
 - (i) cause physical injury to himself or others;
 - (ii) damage property;
 - (iii) interfere with evidence; or
 - (iv) assist his escape; or
- (b) any document which might—
 - (i) establish his identity, nationality or citizenship; or
 - (ii) indicate the place from which he has travelled to Jersey or to which he is proposing to go.

(3) The power may be exercised only to the extent that the officer considers it to be necessary for the purpose of discovering anything of a kind mentioned in sub-paragraph (2).

(4) An officer searching a person under this paragraph may seize and retain anything he finds, if he has reasonable grounds for believing that—

- (a) that person might use it for one or more of the purposes mentioned in sub-paragraph (2)(a); or
- (b) it might be a document falling within sub-paragraph (2)(b).

- (5) But the officer may not retain anything seized under sub-paragraph (2)(a)—
- (a) for longer than is necessary in view of the purpose for which the search was carried out; or
 - (b) when the person from whom it was seized is no longer in custody or is in the custody of a court but has been released on bail.
- (6) The person from whom something is seized must be told the reason for the seizure unless he is—
- (a) violent or appears likely to become violent; or
 - (b) incapable of understanding what is said to him.
- (7) An intimate search may not be conducted under this paragraph.
- (8) The person carrying out a search under this paragraph must be of the same sex as the person searched.
- (9) “Intimate search”, has the same meaning as in section 28H(11).

Access and copying

25D.—(1) If a person showing himself—

- (a) to be the occupier of the premises on which seized material was seized, or
- (b) to have had custody or control of the material immediately before it was seized,

asks the immigration officer who seized the material for a record of what he seized, the officer must provide the record to that person within a reasonable time.

(2) If a relevant person asks an immigration officer for permission to be granted access to seized material, the officer must arrange for that person to have access to the material under the supervision of an immigration officer.

(3) An immigration officer may photograph or copy, or have photographed or copied, seized material.

(4) If a relevant person asks an immigration officer for a photograph or copy of seized material, the officer must arrange for—

- (a) that person to have access to the material under the supervision of an immigration officer for the purpose of photographing or copying it; or
- (b) the material to be photographed or copied.

(5) A photograph or copy made under sub-paragraph (4)(b) must be supplied within a reasonable time.

(6) There is no duty under this paragraph to arrange for access to, or the supply of a photograph or copy of, any material if there are reasonable grounds for believing that to do so would prejudice—

- (a) the exercise of any functions in connection with which the material was seized; or
- (b) an investigation which is being conducted under this Act, or any criminal proceedings which may be brought as a result.

(7) “Relevant person” means—

- (a) a person who had custody or control of seized material immediately before it was seized, or
- (b) someone acting on behalf of such a person.

(8) “Seized material” means anything which has been seized and retained under this Schedule.

25E. Section 28L applies for the purposes of this Schedule as it applies for the purposes of Part III.

Supplementary duties of those connected with ships or aircraft or with ports

26.—(1) The owners or agents of a ship or aircraft employed to carry passengers for reward shall not, without the approval of the Minister, arrange for the ship or aircraft to call at a port in Jersey other than a port of entry for the purpose of disembarking passengers, if any of the passengers on board may not enter Jersey without leave, or for the purpose of embarking passengers unless the owners or agents have reasonable cause to believe all of them to be British citizens.

(1A) Sub-paragraph (1) does not apply in such circumstances, if any, as the Minister may by Order prescribe.

(2) The Minister may from time to time give written notice to the owners or agents of any ships or aircraft designating control areas for the embarkation or disembarkation of passengers in any port in Jersey, and specifying the conditions and restrictions (if any) to be observed in any control area; and where by notice given to any owners or agents a control area is for the time being designated for the embarkation or disembarkation of passengers at any port, the owners or agents shall take all reasonable steps to secure that, in the case of their ships or aircraft, passengers do not embark or disembark, as the case may be, at the port outside the control area and that any conditions or restrictions notified to them are observed.

(3) The Minister may also from time to time give to any persons concerned with the management of a port in Jersey written notice designating control areas in the port and specifying conditions or restrictions to be observed in any control area; and any such person shall take all reasonable steps to secure that any conditions or restrictions as notified to him are observed.

(3A) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under sub-paragraph (1A).

27.—(1) The captain of a ship or aircraft arriving in Jersey—

- (a) shall take such steps as may be necessary to secure that persons on board do not disembark there unless either they have been examined by an immigration officer, or they disembark in accordance with arrangements approved by an immigration officer, or they are members of the crew who may lawfully enter Jersey without leave by virtue of section 8(1) of this Act; and
- (b) where the examination of persons on board is to be carried out on the ship or aircraft, shall take such steps as may be necessary to secure that those to be examined are presented for the purpose in an orderly manner.

(2) The Minister may by Order require, or enable an immigration officer to require, a responsible person in respect of a ship or aircraft to supply—

- (a) a passenger list showing the names and nationality or citizenship of passengers arriving or leaving on board the ship or aircraft;
- (b) particulars of members of the crew of the ship or aircraft.

(3) An Order under sub-paragraph (2) may relate—

- (a) to all ships or aircraft arriving or expected to arrive in Jersey;
- (b) to all ships or aircraft leaving or expected to leave Jersey;
- (c) to ships or aircraft arriving or expected to arrive in Jersey from or by way of a specified country;
- (d) to ships or aircraft leaving or expected to leave Jersey to travel to or by way of a specified country;
- (e) to specified ships or specified aircraft.

(4) For the purposes of sub-paragraph (2) the following are responsible persons in respect of a ship or aircraft—

- (a) the owner or agent, and
- (b) the captain.

- (5) An Order under sub-paragraph (2)—
- (a) may specify the time at which or period during which information is to be provided,
 - (b) may specify the form and manner in which information is to be provided,
 - (ba) may require a responsible person to be able to receive, in a specified form and manner, communications sent by the Minister or an immigration officer relating to the information; and
 - (c) may require information to be provided to the immigration officer or as the immigration officer directs.
- (6) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under sub-paragraph (2).
Passenger information or service information

27B.—(1) This paragraph applies to ships or aircraft—

- (a) which have arrived, or are expected to arrive, in Jersey; or
 - (b) which have left, or are expected to leave, Jersey.
- (2) If an immigration officer asks the owner or agent (“the carrier”) of a ship or aircraft for passenger information or service information, the carrier must provide that information to the officer or as the officer directs.
- (3) The officer may ask for passenger information or service information relating to—
- (a) a particular ship or particular aircraft of the carrier;
 - (b) particular ships or aircraft (however described) of the carrier; or
 - (c) all of the carrier’s ships or aircraft.
- (4) The officer may ask for—
- (a) all passenger information or service information in relation to the ship or aircraft concerned; or
 - (b) particular passenger information or service information in relation to that ship or aircraft.
- (5) A request under sub-paragraph (2)—
- (a) must be in writing;
 - (b) must state the date on which it ceases to have effect; and
 - (c) continues in force until that date, unless withdrawn earlier by written notice by an immigration officer.
- (6) The date may not be later than six months after the request is made.
- (7) The fact that a request under sub-paragraph (2) has ceased to have effect as a result of sub-paragraph (5) does not prevent the request from being renewed.
- (8) The information must be provided—
- (a) in such form and manner as the Minister may direct; and
 - (b) at such time as may be stated in the request.
- (8A) The officer may require a carrier to be able to receive communications from the officer in such form and manner as the Minister may direct.
- (9) “Passenger information” means such information relating to the passengers carried, or expected to be carried, by the ship or aircraft as may be specified.
- (9A) “Service information” means such information relating to the voyage or flight undertaken by the ship or aircraft as may be specified.
- (10) “Specified” means specified in an Order made by the Minister.

(11) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under sub-paragraph (10).

27BA.—(1) The Minister may make provision by Order requiring responsible persons in respect of ships or aircraft—

- (a) which have arrived, or are expected to arrive, in Jersey, or
- (b) which have left, or are expected to leave, Jersey,

to supply information to the Minister or an immigration officer.

(2) The following information may be required under sub-paragraph (1)—

- (a) information about the persons on board;
- (b) information about the voyage or flight.

(3) An Order under this paragraph must—

- (a) specify or describe the classes of ships or aircraft to which they apply;
- (b) specify the information required to be supplied;
- (c) specify the time by which the information must be supplied;
- (d) specify the form and manner in which the information must be supplied.

(4) An Order under this paragraph may require responsible persons to be able to receive, in a specified form and manner, communications sent by the Minister or an immigration officer relating to the information.

(5) For the purposes of this paragraph, the following are responsible persons in respect of a ship or aircraft—

- (a) the owner or agent, and
- (b) the captain.

(6) An Order under this paragraph may make different provision for different purposes, and in particular may make different provision for different types of carrier, journey or person on board.

(7) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under this paragraph.

27BB.—(1) The Minister may make provision by Order imposing penalties for failure to comply with—

- (a) an Order under paragraph 27(2) (Order requiring passenger list or particulars of member of crew),
- (b) any request or requirement under paragraph 27B (passenger and service information), or
- (c) an Order under paragraph 27BA (passenger, crew and service information).

(2) An Order under sub-paragraph (1) may in particular make provision—

- (a) about how a penalty is to be calculated;
- (b) about the procedure for imposing a penalty;
- (c) about the enforcement of penalties;
- (d) allowing for an appeal against a decision to impose a penalty;

and the Order may make different provision for different purposes.

(3) Provision in the Order about the procedure for imposing a penalty must provide for a person to be given an opportunity to object to a proposed penalty in the circumstances set out in the Order.

(4) The Order must provide that no penalty may be imposed on a person for failure to comply with an Order under paragraph 27(2), a request or requirement under paragraph 27B or an Order under paragraph 27BA where—

- (a) proceedings have been instituted against the person under section 27 in respect of the same failure; or
 - (b) the failure consists of a failure to provide information that the person has also been required to provide under section 32 or 32A of the Immigration, Asylum and Nationality Act 2006 and—
 - (i) a penalty has been imposed on the person in respect of a failure to provide that information by virtue of regulations made under section 32B of that Act, or
 - (ii) proceedings have been instituted against the person under section 34 of that Act in respect of a failure to provide that information; or
 - (c) the failure consists of a failure to provide information that the person has also been required to provide under an authority-to-carry scheme made under section 22 of the Counter-Terrorism and Security Act 2015 and a penalty has been imposed on the person in respect of a failure to provide that information by virtue of an Order made under section 24 of that Act.
- (5) Any penalty paid by virtue of this paragraph must be paid to the Treasurer of the States and credited to the Annual Income of the States.
- (6) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under this paragraph.

SCHEDULE 3
SUPPLEMENTARY PROVISIONS AS TO DEPORTATION

Section 5

Removal of persons liable to deportation

- 1.—(1) Where a deportation order is in force against any person, the Minister may give directions for his removal to a country or territory specified in the directions being either—
- (a) a country of which he is a national or citizen; or
 - (b) a country or territory to which there is reason to believe that he will be admitted.
- (2) The directions under sub-paragraph (1) above may be either—
- (a) directions given to the captain of a ship or aircraft about to leave Jersey requiring him to remove the person in question in that ship or aircraft; or
 - (b) directions given to the owners or agents of any ship or aircraft requiring them to make arrangements for his removal in a ship or aircraft specified or indicated in the directions; or
 - (c) directions for his removal in accordance with arrangements to be made by the Minister.
- (3) In relation to directions given under this paragraph, paragraphs 11 and 16(4) of Schedule 2 to this Act shall apply, with the substitution of references to the Minister for references to an immigration officer, as they apply in relation to directions for removal given under paragraph 8 of that Schedule.
- (4) The Minister, if he thinks fit, may apply in or towards payment of the expenses of or incidental to the voyage from Jersey of a person against whom a deportation order is in force, or the maintenance until departure of such a person and his dependants, if any, any money belonging to that person; and except so far as they are paid as aforesaid, those expenses shall be defrayed by the Minister.

Detention or control pending deportation

- 2.—(1) Where a recommendation for deportation made by a court is in force in respect of any person, and that person is neither detained in pursuance of the sentence or order of any court nor for the time being released on bail by any court having power so to release him, he shall, unless the court by which the recommendation is made otherwise directs, or a direction is given under sub-paragraph (1A) below, be detained pending the making of a deportation order in pursuance of the

recommendation, unless the Minister directs him to be released pending further consideration of his case.

(1A) Where—

- (a) a recommendation for deportation made by a court on conviction of a person is in force in respect of him; and
- (b) he appeals against his conviction or against that recommendation,

the powers that the court determining the appeal may exercise include power to direct him to be released without setting aside the recommendation.

(3) Where a deportation order is in force against any person, he may be detained under the authority of the Minister pending his removal or departure from Jersey (and if already detained by virtue of sub-paragraph (1) above when the order is made, shall continue to be detained unless the Minister directs otherwise).

(4) In relation to detention under sub-paragraph (3) above, paragraphs 17 to 18A and 25A to 25E of Schedule 2 to this Act shall apply as they apply in relation to detention under paragraph 16 of that Schedule; and for that purpose the reference in paragraph 17(1) to a person liable to detention includes a reference to a person who would be liable to detention upon receipt of a notice which is ready to be given to him.

(4ZA) The detention under sub-paragraph (1) or (3) of a person to whom section 60 (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.

(5) A person to whom this sub-paragraph applies shall be subject to such restrictions as to residence, as to his employment or occupation and as to reporting to the police as may from time to time be notified to him in writing by the Minister.

(6) The persons to whom sub-paragraph (5) above applies are—

- (a) a person liable to be detained under sub-paragraph (1) above, while by virtue of a direction of the Minister he is not so detained; and
- (b) a person liable to be detained under sub-paragraph (3) above, while he is not so detained.

Powers of courts pending deportation

4. Where the release of a person recommended for deportation is directed by a court, he shall be subject to such restrictions as to residence, as to his employment or occupation and as to reporting to the police as the court may direct.

5.—(1) On an application made—

- (a) by or on behalf of a person recommended for deportation whose release was so directed; or
- (b) by a police officer; or
- (c) by an immigration officer,

the appropriate court shall have the powers specified in sub-paragraph (2) below.

(2) The powers mentioned in sub-paragraph (1) above are—

- (a) if the person to whom the application relates is not subject to any such restrictions imposed by a court as are mentioned in paragraph 4 above, to order that he shall be subject to any such restrictions as the court may direct; and
- (b) if he is subject to such restrictions imposed by a court by virtue of that paragraph or this paragraph—
 - (i) to direct that any of them shall be varied or shall cease to have effect; or
 - (ii) to give further directions as to his residence and reporting.

6.—(1) In this Schedule “the appropriate court” means, except in a case where the court which directed release was the Court of Appeal, the court which directed release.

(2) Where the Court of Appeal gave the direction, the appropriate court is the Royal Court.

7. A police officer or immigration officer may arrest without warrant any person who is subject to restrictions imposed by a court under this Schedule and who at the time of arrest is in Jersey—

- (a) if he has reasonable grounds to suspect that that person is contravening or has contravened any of those restrictions; or
- (b) if he has reasonable grounds for believing that that person is likely to contravene any of them.

8.—(1) A person arrested in pursuance of paragraph 7 above shall be brought as soon as practicable and in any event within 24 hours after his arrest before the Magistrate.

(2) In reckoning for the purposes of this paragraph any period of 24 hours, no account shall be taken of Christmas Day, Good Friday or any Sunday.

10. Where a person is brought before the Magistrate by virtue of paragraph 8 above, the Magistrate—

- (a) if of the opinion that that person is contravening, has contravened or is likely to contravene any restriction imposed on him by a court under this Schedule, may direct—
 - (i) that he be detained; or
 - (ii) that he be released subject to such restrictions as to his residence and reporting to the police as the Magistrate may direct; and
- (b) if not of that opinion, shall release him without altering the restrictions as to his residence and his reporting to the police.

SCHEDULE 4

INTEGRATION WITH JERSEY LAW OF IMMIGRATION LAWS OF THE UNITED KINGDOM, GUERNSEY AND THE ISLE OF MAN

Section 9

Leave to enter

1.—(1) Where under the immigration laws of any of the United Kingdom, Guernsey or the Isle of Man a person is or has been given leave to enter or remain in the island or, as the case may be, the United Kingdom, or is or has been refused leave, this Act shall have effect in relation to him, if he is not a British citizen or an Irish citizen, as if the leave were leave (of like duration) given under this Act to enter or remain in Jersey, or, as the case may be, as if he had under this Act been refused leave to enter Jersey.

(2) Where under the immigration laws of the United Kingdom, Guernsey or the Isle of Man a person has a limited leave to enter or remain in the island or, as the case may be, the United Kingdom subject to any such conditions as are authorised in Jersey by section 3(1) of this Act (being conditions imposed by notice given to him, whether the notice of leave or a subsequent notice), then on his coming to Jersey this Act shall apply, if he is not a British citizen or an Irish citizen, as if those conditions related to his stay in Jersey and had been imposed by notice under this Act; and for the purposes of this sub-paragraph a condition requiring a person to register with the police or any other body or person shall be treated as a condition requiring him to register under section 4(3) of this Act.

(3) Without prejudice to the generality of sub-paragraphs (1) and (2) above, anything having effect in Jersey by virtue of either of those sub-paragraphs may in relation to Jersey be varied or revoked under this Act in like manner, and subject to the like appeal (if any) or right of review, as if it had originated under this Act as mentioned in that sub-paragraph.

(4) Where anything having effect in Jersey by virtue of sub-paragraph (1) or (2) above ceases to have effect or is altered in effect as mentioned in sub-paragraph (3) or otherwise by anything done under this Act, sub-paragraph (1) or (2) shall not thereafter apply to it or, as the case may be, shall apply to it as so altered in effect.

(5) Nothing in this paragraph shall be taken as conferring on a person a right of appeal against or of review of any decision or action taken in the United Kingdom, Guernsey or the Isle of Man.

2. Notwithstanding section 3(4) of this Act, leave given to a person under this Act to enter or remain in Jersey shall not continue to apply on his return to Jersey after an absence if he has during that absence entered the United Kingdom, Guernsey or the Isle of Man in circumstances in which he is required under the immigration laws of the United Kingdom or, as the case may be, of Guernsey or the Isle of Man, to obtain leave to enter.

Deportation

3.—(1) Subject to sub-paragraph (2) below, where under the immigration laws of the United Kingdom, Guernsey or the Isle of Man, a person is or has been ordered to leave the United Kingdom or, as the case may be, Guernsey or the Isle of Man, and forbidden to return, then, if he is not a British Citizen, this Act shall have effect in relation to him as if the order were a deportation order made against him under this Act.

(2) The Minister shall not by virtue of sub-paragraph (1) above have power to revoke a deportation order made in the United Kingdom, Guernsey or the Isle of Man, but may in any particular case direct that sub-paragraph (1) shall not apply in relation to an order so made; and nothing in this paragraph shall render it unlawful for a person in respect of whom such an order is in force in the United Kingdom, Guernsey or the Isle of Man to enter Jersey on his way from the United Kingdom or, as the case may be, Guernsey or the Isle of Man, to a place outside Jersey.

Illegal entrants

4. Notwithstanding anything in section 1(3) of this Act, it shall not be lawful for a person who is not a British citizen or an Irish citizen to enter Jersey from any of the United Kingdom, Guernsey or the Isle of Man where his presence was unlawful under the immigration laws of the United Kingdom or, as the case may be, of Guernsey or the Isle of Man, unless he is given leave to enter.

SCHEDULE 4A ENFORCEMENT POWERS IN RELATION TO SHIPS

Section 28M

PART 1

Introductory

1.—(1) This Part of this Schedule sets out the powers exercisable by immigration officers, police officers and enforcement officers (referred to in this Part of this Schedule as “relevant officers”) under section 28M.

(2) In this Part of this Schedule—

“items subject to legal privilege” has the same meaning as in the Police Procedures and Criminal Evidence (Jersey) Law 2003 (see Article 5 of that Law);

“the ship” means the ship in relation to which the powers set out in this Part of this Schedule are exercised.

Power to stop, board, divert and detain

2.—(1) This paragraph applies if a relevant officer has reasonable grounds to suspect that—

- (a) an offence under section 25, 25A or 25B is being, or has been, committed on the ship, or
- (b) the ship is otherwise being used in connection with the commission of an offence under any of those sections.

(2) The relevant officer may—

- (a) stop the ship;
- (b) board the ship;
- (c) require the ship to be taken to a port in Jersey and detained there.

(3) The relevant officer may require the master of the ship, or any member of its crew, to take such action as is necessary for the purposes of sub-paragraph (2)(c).

(4) A relevant officer must give notice in writing to the master of any ship detained under this paragraph.

(5) The notice must state that the ship is to be detained until the notice is withdrawn by the giving of a further notice in writing signed by a relevant officer.

Power to search and obtain information

3.—(1) This paragraph applies if a relevant officer has reasonable grounds to suspect that there is evidence on the ship (other than items subject to legal privilege) relating—

- (a) to an offence under section 25, 25A and 25B, or
- (b) to an offence that is connected with an offence under any of those sections.

(2) The relevant officer may search—

- (a) the ship;
- (b) anyone on the ship;
- (c) anything on the ship (including cargo).

(3) The relevant officer may require a person on the ship to give information about himself or herself or about anything on the ship.

(4) The power to search conferred by sub-paragraph (2)—

- (a) is only a power to search to the extent that it is reasonably required for the purpose of discovering evidence of the kind mentioned in sub-paragraph (1), and
- (b) in the case of a search of a person, does not authorise a relevant officer to require the person to remove any clothing in public other than an outer coat, jacket or gloves.

(5) In exercising a power conferred by sub-paragraph (2) or (3) a relevant officer may—

- (a) open any containers;
- (b) require the production of documents, books or records relating to the ship or anything on it (but not including anything the relevant officer has reasonable grounds to believe to be an item subject to legal privilege);
- (c) make photographs or copies of anything the production of which the relevant officer has power to require.

(6) The power in sub-paragraph (5)(b) to require the production of documents, books or records includes, in relation to documents, books or records kept in electronic form, power to require the provision of the documents, books or records in a form in which they are legible and can be taken away.

(7) Sub-paragraph (5) is without prejudice to the generality of the powers conferred by sub-paragraphs (2) and (3).

(8) A power conferred by this paragraph may be exercised on the ship or elsewhere.

Power of arrest and seizure

4.—(1) This paragraph applies if a relevant officer has reasonable grounds to suspect that an offence under section 25, 25A or 25B has been, or is being, committed on the ship.

(2) The relevant officer may arrest without warrant anyone whom the police officer or immigration officer has reasonable grounds for suspecting to be guilty of the offence.

(3) The relevant officer may seize and retain anything found on the ship which appears to the officer to be evidence of the offence (but not including anything that the police officer or immigration officer has reasonable grounds to believe to be an item subject to legal privilege).

(4) A power conferred by this paragraph may be exercised on the ship or elsewhere.

Protective searches of persons

5.—(1) A relevant officer may search a person found on the ship for anything which the officer has reasonable grounds to believe the person might use to—

- (a) cause physical injury,
- (b) cause damage to property, or
- (c) endanger the safety of any ship.

(2) The power conferred by sub-paragraph (1) may be exercised—

- (a) only if the officer has reasonable grounds to believe that anything of a kind mentioned in that sub-paragraph is concealed on the person; and
- (b) only to the extent that it is reasonably required for the purpose of discovering any such thing.

(3) The relevant officer may seize and retain anything which the officer has reasonable grounds to believe might—

- (a) cause physical injury,
- (b) cause damage to property, or
- (c) endanger the safety of any ship.

(4) If the person is detained, nothing seized under sub-paragraph (3) may be retained when the person is released from detention.

(5) A power conferred by this paragraph to search a person does not authorise a relevant officer to require the person to remove any clothing in public other than an outer coat, jacket or gloves, but it does authorise the search of a person's mouth.

(6) A power conferred by this paragraph may be exercised on the ship or elsewhere.

Search for nationality documents

6.—(1) A relevant officer may require a person found on the ship to produce a nationality document.

(2) The relevant officer may search a person found on the ship where the officer has reasonable grounds to believe that a nationality document is concealed on the person.

(3) The power conferred by sub-paragraph (2) may be exercised—

- (a) only if the officer has reasonable grounds to believe that a nationality document is concealed on the person; and
- (b) only to the extent that it is reasonably required for the purpose of discovering any such document.

(4) Subject as follows, the officer may seize and retain a nationality document for as long as the officer believes the person to whom it relates will arrive in Jersey by virtue of the exercise of the power in paragraph 2.

(5) The power to retain a nationality document in sub-paragraph (4) does not affect any other power of an immigration officer to retain a document.

(6) Where the nationality document has been seized and retained by a relevant officer who is not an immigration officer, the document must be passed to an immigration officer as soon as is practicable after the ship has arrived in Jersey.

(7) The power conferred by this paragraph to search a person does not authorise a relevant officer to—

- (a) require the person to remove any clothing in public other than an outer coat, jacket or gloves, or
- (b) seize and retain any document the officer has reasonable grounds to believe to be an item subject to legal privilege.

(8) In this paragraph a “nationality document”, in relation to a person, means any document which might—

- (a) establish the person’s identity, nationality or citizenship, or
- (b) indicate the place from which the person has travelled to Jersey or to which the person is proposing to go.

(9) A power conferred by this paragraph may be exercised on the ship or elsewhere.

Assistants

7.—(1) A relevant officer may—

- (a) be accompanied by other persons, and
- (b) take equipment or materials,

to assist the officer in the exercise of powers under this Part of this Schedule.

(2) A person accompanying a relevant officer under sub-paragraph (1) may perform any of the officer’s functions under this Part of this Schedule, but only under the officer’s supervision.

Reasonable force

8. A relevant officer may use reasonable force, if necessary, in the performance of functions under this Part of this Schedule.

Evidence of authority

9. A relevant officer must produce evidence of the officer’s authority if asked to do so.

Protection of relevant officers

10. A relevant officer is not liable in any criminal or civil proceedings for anything done in the purported performance of functions under this Part of this Schedule if the court is satisfied that—

- (a) the act was done in good faith, and
- (b) there were reasonable grounds for doing it.

Offences

11.—(1) A person commits an offence if the person—

- (a) intentionally obstructs a relevant officer in the performance of functions under this Part of this Schedule, or
- (b) fails without reasonable excuse to comply with a requirement made by a relevant officer in the performance of those functions.

(2) A person who provides information in response to a requirement made by a relevant officer in the performance of functions under this Part of this Schedule commits an offence if—

- (a) the information is false in a material particular, and the person either knows it is or is reckless as to whether it is, or
- (b) the person intentionally fails to disclose any material particular.

(3) A relevant officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of an offence under this paragraph.

(4) A person guilty of an offence under this paragraph is liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 3 on the standard scale or to both.

APPENDIX II

IMMIGRATION ACT 1988 AS EXTENDED BY THE DRAFT IMMIGRATION (JERSEY) ORDER 2020

Restriction on exercise of right of abode in cases of polygamy.

- 2.—(1) This section applies to any woman who—
- (a) has the right of abode in Jersey under section 2(1)(b) of the principal Act as, or as having been, the wife of a man (“the husband”)—
 - (i) to whom she is or was polygamously married; and
 - (ii) who is or was such a citizen of the United Kingdom and Colonies, Commonwealth citizen or British subject as is mentioned in section 2(2)(a) or (b) of that Act as in force immediately before the commencement of the British Nationality Act 1981; and
 - (b) has not before the coming into force of this section and since her marriage to the husband been in Jersey.
- (2) A woman to whom this section applies shall not be entitled to enter Jersey in the exercise of the right of abode mentioned in subsection (1)(a) above or to be granted a certificate of entitlement in respect of that right if there is another woman living (whether or not one to whom this section applies) who is the wife or widow of the husband and who—
- (a) is, or at any time since her marriage to the husband has been, in Jersey; or
 - (b) has been granted a certificate of entitlement in respect of the right of abode mentioned in subsection (1)(a) above or an entry clearance to enter Jersey as the wife of the husband.
- (3) So long as a woman is precluded by subsection (2) above from entering Jersey in the exercise of her right of abode or being granted a certificate of entitlement in respect of that right the principal Act shall apply to her as it applies to a person not having a right of abode.
- (4) Subsection (2) above shall not preclude a woman from re-entering Jersey if since her marriage to the husband she has at any time previously been in Jersey and there was at that time no such other woman living as is mentioned in that subsection.
- (5) Where a woman claims that this section does not apply to her because she had been in Jersey before the coming into force of this section and since her marriage to the husband it shall be for her to prove that fact.
- (6) For the purposes of this section a marriage may be polygamous although at its inception neither party has any spouse additional to the other.
- (7) For the purposes of subsections (1)(b), (2)(a), (4) and (5) above there shall be disregarded presence in Jersey as a visitor or an illegal entrant and presence in circumstances in which a person is deemed by section 11(1) of the principal Act not to have entered Jersey.
- (8) In subsection (2)(b) above the reference to a certificate of entitlement includes a reference to a certificate treated as such a certificate by virtue of section 39(8) of the British Nationality Act 1981.
- (9) No application by a woman for a certificate of entitlement in respect of such a right of abode as is mentioned in subsection (1)(a) above or for an entry clearance shall be granted if another application for such a certificate or clearance is pending and that application is made by a woman as the wife or widow of the same husband.

(10) For the purposes of subsection (9) above an application shall be regarded as pending so long as it and any appeal proceedings relating to it have not been finally determined.

(11) This section does not apply to a woman who applied for a certificate of entitlement in respect of the right of abode mentioned in subsection (1)(a) before 1st August 1993.

Persons exercising Community rights and nationals of member States.

7.—(1) A person shall not under the principal Act require leave to enter or remain in Jersey in circumstances in which he would be entitled to enter or remain in the United Kingdom by virtue of an enforceable Community right or of any provision made under section 2(2) of the European Communities Act 1972.

(2) The Minister may by Order give leave to enter Jersey for a limited period to any class of persons who are nationals of member States but who would not be entitled to enter Jersey as mentioned in subsection (1); and any such Order may give leave subject to such conditions as may be imposed by the Order.

(3) References in the principal Act to limited leave shall include references to leave given by an Order under subsection (2) above and a person having leave by virtue of such an Order shall be treated as having been given that leave by a notice given to him by an immigration officer within the period specified in paragraph 6(1) of Schedule 2 to that Act.

(4) Subsections (1) and (2) cease to have effect in Jersey on the date on which subsection (1) as it applies in the United Kingdom ceases to have effect there (“the cessation date”).

(5) The Minister may by Order make such provision as the Minister considers appropriate in consequence of, or in connection with, subsections (1) and (2) ceasing to have effect in Jersey.

(6) The power to make an Order under subsection (5) may (among other things) be exercised to modify any provision extended by, or made by or under, an Order in Council on or before the cessation date extending legislation of the United Kingdom to Jersey.

(7) The power to make an Order under subsection (5) includes power—

- (a) to make supplementary, incidental, transitional, transitory or saving provision;
- (b) to make different provision for different purposes.

(8) An Order under subsection (5) may (among other things) make provision applying to persons who, immediately before the cessation date, were not entitled by virtue of subsection (1) to enter or remain in Jersey without leave.

(9) An Order under subsection (5) may (among other things) modify provision relating to the imposition of fees or charges which is made by or under the Immigration Acts having effect on or before the cessation date.

(10) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders made by the Minister under this section.

(11) In this section “modify” includes amend, repeal or revoke.

Short title and interpretation.

12.—(1) This Act may be cited as the Immigration Act 1988.

(2) In this Act “the principal Act” means the Immigration Act 1971 and any expression which is also used in that Act has the same meaning as in that Act.

APPENDIX III

ASYLUM AND IMMIGRATION APPEALS ACT 1993 AS EXTENDED BY THE DRAFT IMMIGRATION (JERSEY) ORDER 2020

Interpretation.

1. In this Act—

“the 1971 Act” means the Immigration Act 1971;

“the Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and the Protocol to that Convention.

Primacy of Convention.

2. Nothing in the immigration rules (within the meaning of the 1971 Act) shall lay down any practice which would be contrary to the Convention.

APPENDIX IV

IMMIGRATION AND ASYLUM ACT 1999 AS EXTENDED BY THE DRAFT IMMIGRATION (JERSEY) ORDER 2020

PART I

IMMIGRATION: GENERAL

Leave to enter, or remain in, Jersey

Removal of persons unlawfully in Jersey

10.—(1) A person may be removed from Jersey under the authority of the Minister or an immigration officer if the person requires leave to enter or remain in Jersey but does not have it.

(2) Where a person (“P”) is liable to be or has been removed from Jersey under subsection (1), a member of P’s family who meets the following three conditions may also be removed from Jersey under the authority of the Minister or an immigration officer, provided that the Minister or immigration officer has given the family member written notice of the intention to remove him or her.

(3) The first condition is that the family member is—

- (a) P’s partner,
- (b) P’s child, or a child living in the same household as P in circumstances where P has care of the child,
- (c) in a case where P is a child, P’s parent, or
- (d) an adult dependent relative of P.

(4) The second condition is that—

- (a) in a case where the family member has leave to enter or remain in Jersey, that leave was granted on the basis of his or her family life with P;
- (b) in a case where the family member does not have leave to enter or remain in Jersey, in the opinion of the Minister or immigration officer the family member—
 - (i) would not, on making an application for such leave, be granted leave in his or her own right, but
 - (ii) would be granted leave on the basis of his or her family life with P, if P had leave to enter or remain.

(5) The third condition is that the family member is neither a British citizen, nor is he or she entitled to enter or remain in Jersey by virtue of section 7(1) of the Immigration Act 1988.

(6) A notice given to a family member under subsection (2) invalidates any leave to enter or remain in Jersey previously given to the family member.

(7) For the purposes of removing a person from Jersey under subsection (1) or (2), the Minister or an immigration officer may give any such direction for the removal of the person as may be given under paragraphs 8 to 10 of Schedule 2 to the 1971 Act.

(8) But subsection (7) does not apply where a deportation order is in force against a person (and any directions for such a person’s removal must be given under Schedule 3 to the 1971 Act).

(9) The following paragraphs of Schedule 2 to the 1971 Act apply in relation to directions under subsection (7) (and the persons subject to those directions) as they apply in relation to directions under paragraphs 8 to 10 of Schedule 2 (and the persons subject to those directions)—

- (a) paragraph 11 (placing of person on board ship or aircraft);

- (b) paragraph 16(2) to (4) (detention of person where reasonable grounds for suspecting removal directions may be given or pending removal in pursuance of directions);
 - (c) paragraph 17 (arrest of person liable to be detained and search of premises for person liable to arrest);
 - (d) paragraph 18 (supplementary provisions on detention);
 - (e) paragraph 18A (search of detained person);
 - (f) paragraph 18B (detention of unaccompanied children);
 - (g) paragraphs 19 and 20 (payment of expenses of custody etc);
 - (h) paragraph 21 (temporary admission to Jersey of person liable to detention);
 - (i) paragraphs 25A to 25E (searches etc).
- (10) The Minister may by Order make further provision about—
- (a) the time period during which a family member may be removed under subsection (2);
 - (b) the service of a notice under subsection (2).
- (11) In this section “child” means a person who is under the age of 18.

Proof of identity of persons to be removed or deported

- 13.**—(1) This section applies if a person—
- (a) is to be removed from Jersey to a country of which he is a national or citizen; but
 - (b) does not have a valid passport or other document establishing his identity and nationality or citizenship and permitting him to travel.
- (2) If the country to which the person is to be removed indicates that he will not be admitted to it unless identification data relating to him are provided by the Minister, he may provide them with such data.
- (3) In providing identification data, the Minister must not disclose whether the person concerned has made a claim for asylum.
- (4) For the purposes of Article 49(1)(d) of the GDPR, the provision under this section of identification data is a transfer of personal data which is necessary for important reasons of public interest.
- (4A) “The GDPR” has the same meaning as in the Data Protection (Jersey) Law 2018 (see Article 1(1) of that Law).
- (5) “Identification data” means —
- (a) fingerprints taken under section 141; or
 - (b) data collected in accordance with Regulations made under section 144.
- (6) “Removed” means removed as a result of directions given under section 10 or under Schedule 2 or 3 to the 1971 Act.

Escorts for persons removed from Jersey under directions.

- 14.**—(1) Directions for, or requiring arrangements to be made for, the removal of a person from Jersey may include or be amended to include provision for the person who is to be removed to be accompanied by an escort consisting of one or more persons specified in the directions.
- (2) The Minister may by Order make further provision supplementing subsection (1).
- (3) Such Order may, in particular, include provision—
- (a) requiring the person to whom the directions are given to provide for the return of the escort to Jersey;
 - (b) requiring him to bear such costs in connection with the escort (including, in particular, remuneration) as may be prescribed;

- (c) as to the cases in which the Minister is to bear those costs;
- (d) prescribing the kinds of expenditure which are to count in calculating the costs incurred in connection with escorts.

Reporting suspicious marriages

Duty to report suspicious marriages.

24.—(1) Subsection (3) applies if—

- (a) the Superintendent Registrar is given a notice of intended marriage under Article 8 of the Marriage and Civil Status (Jersey) Law 2001, or
- (b) a registrar, or deputy registrar, within the meaning of Article 42 of the Marriage and Civil Status (Jersey) Law 2001 receives information in advance of a person giving such a notice,

and has reasonable grounds for suspecting that the intended marriage will be a sham marriage.

(3) The person concerned must report his suspicion to the Minister without delay and in writing.

(5) A marriage (whether or not it is void) is a “sham marriage” if—

- (a) either, or both, of the parties to the marriage is not a relevant national,
- (b) there is no genuine relationship between the parties to the marriage, and
- (c) either, or both, of the parties to the marriage enter into the marriage for one or more of these purposes—
 - (i) avoiding the effect of one or more provisions of immigration law or the immigration rules in Jersey or elsewhere in the British Islands;
 - (ii) enabling a party to the marriage to obtain a right conferred by that law or those rules to reside in Jersey or elsewhere in the British Islands.

(6) In subsection (5)—

“relevant national” means—

- (a) a British citizen,
- (b) a national of an EEA State other than the United Kingdom, or
- (c) a national of Switzerland;

“immigration law” includes any subordinate legislation concerning the right of relevant nationals to move between and reside in member States of the European Union.

Duty to report suspicious civil partnerships.

24A.—(1) Subsection (3) applies if—

- (a) the Superintendent Registrar is given a notice of civil partnership under Article 7 of the Civil Partnership (Jersey) Law 2012, or
- (b) a registrar, or a civil partnership registrar, within the meaning of Article 1 of the 2012 Law receives information in advance of a person giving such a notice,

and has reasonable grounds for suspecting that the civil partnership will be a sham civil partnership.

(2) Subsection (3) also applies if—

- (a) two people register as civil partners of each other under Article 3 of the 2012 Law in the presence of a civil partnership registrar, and
- (b) before, during or immediately after they do so, the registrar has reasonable grounds for suspecting that the civil partnership will be, or is, a sham civil partnership.

(3) The person concerned must report his suspicion to the Minister without delay and in writing.

(4) A civil partnership (whether or not it is void) is a “sham civil partnership” if—

- (a) either, or both, of the parties to the civil partnership is not a relevant national,

- (b) there is no genuine relationship between the parties to the civil partnership, and
- (c) either, or both, of the parties to the civil partnership enter into the civil partnership for one or more of these purposes—
 - (i) avoiding the effect of one or more provisions of immigration law or the immigration rules in Jersey or elsewhere in the British Islands;
 - (ii) enabling a party to the marriage to obtain a right conferred by that law or those rules to reside in Jersey or elsewhere in the British Islands.

(5) In subsection (4)—

“relevant national” means—

- (a) a British citizen,
- (b) a national of an EEA State other than the United Kingdom, or
- (c) a national of Switzerland;

“immigration law” includes any subordinate legislation concerning the right of relevant nationals to move between and reside in member States of the European Union.

Immigration control: facilities and charges

Provision of facilities for immigration control at ports.

25.—(1) The person responsible for the management of a control port (“the manager”) must provide the Minister free of charge with such facilities at the port as the Minister may direct as being reasonably necessary for, or in connection with, the operation of immigration control there.

(2) Before giving such a direction, the Minister must consult such persons likely to be affected by it as he considers appropriate.

(5) A direction under this section is enforceable, on the application of the Minister by injunction granted by the Royal Court.

(6) “Control port” means a port in which a control area is designated under paragraph 26(3) of Schedule 2 to the 1971 Act.

(7) “Facilities” means accommodation, facilities, equipment and services of a class or description specified in an Order made by the Minister.

Charges: immigration control.

26.—(1) The Minister may, at the request of any person and in consideration of such charges as he may determine, make arrangements—

- (a) for the provision at any control port of immigration officers or facilities in addition to those (if any) needed to provide a basic service at the port;
- (b) for the provision of immigration officers or facilities for dealing with passengers of a particular description or in particular circumstances.

(2) “Control port” has the same meaning as in section 25.

(3) “Facilities” includes equipment.

(4) “Basic service” has such meaning as may be prescribed.

Defences based on Article 31(1) of the Refugee Convention.

31.—(1) It is a defence for a refugee charged with an offence to which this section applies to show that, having come to Jersey directly from a country where his life or freedom was threatened (within the meaning of the Refugee Convention), he—

- (a) presented himself to the authorities in Jersey without delay;
- (b) showed good cause for his illegal entry or presence; and
- (c) made a claim for asylum as soon as was reasonably practicable after his arrival in Jersey.

(2) If, in coming from the country where his life or freedom was threatened, the refugee stopped in another country outside Jersey, subsection (1) applies only if he shows that he could not reasonably have expected to be given protection under the Refugee Convention in that other country.

(3) The offences to which this section applies are those—

- (a) of fraud,
- (b) of uttering a forged document,
- (c) under section 24A of the 1971 Act (deception), or
- (d) under section 26(1)(d) of the 1971 Act (falsification of documents),

and any attempt to commit any of those offences.

(5) A refugee who has made a claim for asylum is not entitled to the defence provided by subsection (1) in relation to any offence committed by him after making that claim.

(6) “Refugee” has the same meaning as it has for the purposes of the Refugee Convention.

(7) If the Minister has refused to grant a claim for asylum made by a person who claims that he has a defence under subsection (1), that person is to be taken not to be a refugee unless he shows that he is.

(10) The States may by Regulations amend subsection (3) by adding offences to those for the time being listed there.

PART II
CARRIERS’ LIABILITY
Clandestine entrants

Penalty for carrying clandestine entrants.

32.—(1) A person is a clandestine entrant if—

- (a) he arrives in Jersey concealed in a vehicle, ship or aircraft,
- (b) he passes, or attempts to pass, through immigration control concealed in a vehicle, or
- (c) he arrives in Jersey on a ship or aircraft, having embarked—
 - (i) concealed in a vehicle; and
 - (ii) at a time when the ship or aircraft was outside Jersey,and claims, or indicates that he intends to seek, asylum in Jersey or evades, or attempts to evade, immigration control.

(2) The Minister may require a person who is responsible for a clandestine entrant to pay—

- (a) a penalty in respect of the clandestine entrant;
- (b) a penalty in respect of any person who was concealed with the clandestine entrant in the same transporter.

(2A) In imposing a penalty under subsection (2) the Minister—

- (a) must specify an amount which does not exceed the maximum prescribed for the purpose of this paragraph,
- (b) may, in respect of a clandestine entrant or a concealed person, impose separate penalties on more than one of the persons responsible for the clandestine entrant, and
- (c) may not impose penalties in respect of a clandestine entrant or a concealed person which amount in aggregate to more than the maximum prescribed for the purpose of this paragraph.

(3) A penalty imposed under this section must be paid to the Minister before the end of the prescribed period.

(4) Where a penalty is imposed under subsection (2) on the driver of a vehicle who is an employee of the vehicle's owner or hirer—

- (a) the employee and the employer shall be jointly and severally liable for the penalty imposed on the driver (irrespective of whether a penalty is also imposed on the employer), and
- (b) a provision of this Part about notification, objection or appeal shall have effect as if the penalty imposed on the driver were also imposed on the employer (irrespective of whether a penalty is also imposed on the employer in his capacity as the owner or hirer of the vehicle).

(4A) In the case of a detached trailer, subsection (4) shall have effect as if a reference to the driver were a reference to the operator.

(5) In the case of a clandestine entrant to whom subsection (1)(a) applies, each of the following is a responsible person—

- (a) if the transporter is a ship or aircraft, the owner and captain;
- (b) if it is a vehicle (but not a detached trailer), the owner, hirer and driver of the vehicle;
- (c) if it is a detached trailer, the owner, hirer and operator of the trailer.

(6) In the case of a clandestine entrant to whom subsection (1)(b) or (c) applies, each of the following is a responsible person—

- (a) if the transporter is a detached trailer, the owner, hirer and operator of the trailer;
- (b) if it is not, the owner, hirer and driver of the vehicle.

(6A) Where a person falls within the definition of responsible person in more than one capacity, a separate penalty may be imposed on him under subsection (2) in respect of each capacity.

(7) Subject to any defence provided by section 34, it is immaterial whether a responsible person knew or suspected—

- (a) that the clandestine entrant was concealed in the transporter; or
- (b) that there were one or more other persons concealed with the clandestine entrant in the same transporter.

(8) Subsection (9) applies if a transporter (“the carried transporter”) is itself being carried in or on another transporter.

(9) If a person is concealed in the carried transporter, the question whether any other person is concealed with that person in the same transporter is to be determined by reference to the carried transporter and not by reference to the transporter in or on which it is carried.

(10) “Immigration control” means Jersey immigration control and includes any Jersey immigration control operated in a prescribed control zone outside Jersey.

Level of penalty: code of practice.

32A.—(1) The Minister shall issue a code of practice specifying matters to be considered in determining the amount of a penalty under section 32.

(2) The Minister shall have regard to the code (in addition to any other matters he thinks relevant)—

- (a) when imposing a penalty under section 32, and
- (b) when considering a notice of objection under section 35(4).

(5) The Minister may from time to time revise the whole or any part of the code and issue the code as revised.

Prevention of clandestine entrants: code of practice.

33.—(1) The Minister must issue a code of practice to be followed by any person operating a system for preventing the carriage of clandestine entrants.

(2) Before issuing the code, the Minister must consult such persons as he considers appropriate.

(5) The Minister may from time to time revise the whole or any part of the code and issue the code as revised.

(6) Subsection (2) also applies to any revision, or proposed revision, of the code.

Defences to claim that penalty is due under section 32.

34.—(1) A person (“the carrier”) shall not be liable to the imposition of a penalty under section 32(2) if he has a defence under this section.

(2) It is a defence for the carrier to show that he, or an employee of his who was directly responsible for allowing the clandestine entrant to be concealed, was acting under duress.

(3) It is also a defence for the carrier to show that—

- (a) he did not know, and had no reasonable grounds for suspecting, that a clandestine entrant was, or might be, concealed in the transporter;
- (b) an effective system for preventing the carriage of clandestine entrants was in operation in relation to the transporter; and
- (c) on the occasion in question the person or persons responsible for operating that system did so properly.

(4) In determining, for the purposes of this section, whether a particular system is effective, regard is to be had to the code of practice issued by the Minister under section 33.

(6) Where a person has a defence under subsection (2) in respect of a clandestine entrant, every other responsible person in respect of the clandestine entrant is also entitled to the benefit of the defence.

Procedure.

35.—(1) If the Minister decides that a person (“P”) is liable to one or more penalties under section 32, he must notify P of his decision.

(2) A notice under subsection (1) (a “penalty notice”) must—

- (a) state the Minister’s reasons for deciding that P is liable to the penalty (or penalties);
- (b) state the amount of the penalty (or penalties) to which P is liable;
- (c) specify the date before which, and the manner in which, the penalty (or penalties) must be paid; and
- (d) include an explanation of the steps—
 - (i) that P may take if he objects to the penalty;
 - (ii) that the Minister may take under this Part to recover any unpaid penalty.

(3) Subsection (4) applies where a person to whom a penalty notice is issued objects on the ground that—

- (a) he is not liable to the imposition of a penalty, or
- (b) the amount of the penalty is too high.

(4) The person may give a notice of objection to the Minister.

(5) A notice of objection must—

- (a) be in writing,
- (b) give the objector’s reasons, and
- (c) be given before the end of such period as may be prescribed.

(6) Where the Minister receives a notice of objection to a penalty in accordance with this section he shall consider it and—

- (a) cancel the penalty,
- (b) reduce the penalty,
- (c) increase the penalty, or
- (d) determine to take no action under paragraphs (a) to (c).

(7) Where the Minister considers a notice of objection under subsection (6) he shall—

- (a) inform the objector of his decision before the end of such period as may be prescribed or such longer period as he may agree with the objector,
- (b) if he increases the penalty, issue a new penalty notice under subsection (1), and
- (c) if he reduces the penalty, notify the objector of the reduced amount.

(9) The Minister may by Order provide, in relation to detached trailers, for a penalty notice which is issued in such manner as may be prescribed to have effect as a penalty notice properly issued to the responsible person or persons concerned under this section.

(10) Any sum payable to the Minister as a penalty under section 32 may be recovered by the Minister as a debt due to him.

(11) In proceedings for enforcement of a penalty under subsection (10) no question may be raised as to—

- (a) liability to the imposition of the penalty, or
- (b) its amount.

(12) A document which is to be issued to or served on a person outside Jersey for the purpose of subsection (1) or (7) or in the course of proceedings under subsection (10) may be issued or served—

- (a) in person,
- (b) by post,
- (c) by facsimile transmission, or
- (d) in another prescribed manner.

(13) The Minister may by Order provide that a document issued or served in a manner listed in subsection (12) in accordance with the Order is to be taken to have been received at a time specified by or determined in accordance with the Order.

Appeal.

35A.—(1) A person may appeal to the court against a penalty imposed on him under section 32 on the ground that—

- (a) he is not liable to the imposition of a penalty, or
- (b) the amount of the penalty is too high.

(2) On an appeal under this section the court may—

- (a) allow the appeal and cancel the penalty,
- (b) allow the appeal and reduce the penalty, or
- (c) dismiss the appeal.

(3) An appeal under this section shall be a re-hearing of the Minister's decision to impose a penalty and shall be determined having regard to—

- (a) any code of practice under section 32A which has effect at the time of the appeal,
- (b) the code of practice under section 33 which had effect at the time of the events to which the penalty relates, and

(c) any other matters which the court thinks relevant (which may include matters of which the Minister was unaware).

(4) Subsection (3) has effect despite any provision of Rules of Court.

(5) An appeal may be brought by a person under this section against a penalty whether or not—

(a) he has given notice of objection under section 35(4);

(b) the penalty has been increased or reduced under section 35(6).

Power to detain vehicles etc. in connection with penalties under section 32.

36.—(1) If a penalty notice has been issued under section 35, a senior officer may detain any relevant—

(a) vehicle,

(b) small ship, or

(c) small aircraft,

until all penalties to which the notice relates, and any expenses reasonably incurred by the Minister in connection with the detention, have been paid.

(2) That power—

(a) may be exercised only if, in the opinion of the senior officer concerned, there is a significant risk that the penalty (or one or more of the penalties) will not be paid before the end of the prescribed period if the transporter is not detained; and

(b) may not be exercised if alternative security which the Minister considers is satisfactory, has been given.

(2A) A vehicle may be detained under subsection (1) only if—

(a) the driver of the vehicle is an employee of its owner or hirer,

(b) the driver of the vehicle is its owner or hirer, or

(c) a penalty notice is issued to the owner or hirer of the vehicle.

(2B) A senior officer may detain a relevant vehicle, small ship or small aircraft pending—

(a) a decision whether to issue a penalty notice,

(b) the issue of a penalty notice, or

(c) a decision whether to detain under subsection (1).

(2C) That power may not be exercised in any case—

(a) for longer than is necessary in the circumstances of the case, or

(b) after the expiry of the period of 24 hours beginning with the conclusion of the first search of the vehicle, ship or aircraft by an immigration officer after it arrived in Jersey.

(3) If a transporter is detained under this section, the owner, consignor or any other person who has an interest in any freight or other thing carried in or on the transporter may remove it, or arrange for it to be removed, at such time and in such way as is reasonable.

(4) The detention of a transporter under this section is lawful even though it is subsequently established that the penalty notice on which the detention was based was ill-founded in respect of all or any of the penalties to which it related.

(5) But subsection (4) does not apply if the Minister was acting unreasonably in issuing the penalty notice.

Detention in default of payment.

36A.—(1) This section applies where a person to whom a penalty notice has been issued under section 35 fails to pay the penalty before the date specified in accordance with section 35(2)(c).

(2) The Minister may make arrangements for the detention of any vehicle, small ship or small aircraft which the person to whom the penalty notice was issued uses in the course of a business.

(3) A vehicle, ship or aircraft may be detained under subsection (2) whether or not the person to whom the penalty notice was issued owns it.

(4) But a vehicle may be detained under subsection (2) only if the person to whom the penalty notice was issued—

- (a) is the owner or hirer of the vehicle, or
- (b) was an employee of the owner or hirer of the vehicle when the penalty notice was issued.

(5) The power under subsection (2) may not be exercised while an appeal against the penalty under section 35A is pending or could be brought (ignoring the possibility of an appeal out of time with permission).

(6) The Minister shall arrange for the release of a vehicle, ship or aircraft detained under this section if the person to whom the penalty notice was issued pays—

- (a) the penalty, and
- (b) expenses reasonably incurred in connection with the detention.

Effect of detention.

37.—(1) This section applies if a transporter is detained under section 36.

(2) The person to whom the penalty notice was addressed, or the owner or any other person claiming an interest in the transporter, may apply to the court for the transporter to be released.

(3) The court may release the transporter if it considers that—

- (a) satisfactory security has been tendered in place of the transporter for the payment of the penalty alleged to be due and connected expenses;
- (b) there is no significant risk that the penalty (or one or more of the penalties) and any connected expenses will not be paid; or
- (c) there is a significant doubt as to whether the penalty is payable and the applicant has a compelling need to have the transporter released.

(3A) The court may also release the transporter on the application of the owner of the transporter under subsection (2) if—

- (a) a penalty notice was not issued to the owner or an employee of his, and
- (b) the court considers it right to release the transporter.

(3B) In determining whether to release a transporter under subsection (3A) the court shall consider—

- (a) the extent of any hardship caused by detention,
- (b) the extent (if any) to which the owner is responsible for the matters in respect of which the penalty notice was issued, and
- (c) any other matter which appears to the court to be relevant (whether specific to the circumstances of the case or of a general nature).

(4) If the court has not ordered the release of the transporter, the Minister may sell it if the penalty in question and connected expenses are not paid before the end of the period of 84 days beginning with the date on which the detention began.

(5) “Connected expenses” means expenses reasonably incurred by the Minister in connection with the detention.

(5A) The power of sale under subsection (4) may be exercised only when no appeal against the imposition of the penalty is pending or can be brought (ignoring the possibility of an appeal out of time with permission).

(5B) The power of sale under subsection (4) shall lapse if not exercised within a prescribed period.

(6) Schedule 1 applies to the sale of transporters under this section.

(7) This section applies to a transporter detained under section 36A as it applies to a transporter detained under section 36(1); but for that purpose—

- (a) the court may release the transporter only if the court considers that the detention was unlawful or under subsection (3A) (and subsection (3) shall not apply), and
- (b) the reference in subsection (4) to the period of 84 days shall be taken as a reference to a period prescribed for the purpose of this paragraph.

Passengers without proper documents

Charge in respect of passenger without proper documents.

40.—(1) This section applies if an individual requiring leave to enter Jersey arrives in Jersey by ship or aircraft and, on being required to do so by an immigration officer, fails to produce—

- (a) an immigration document which is in force and which satisfactorily establishes his identity and his nationality or citizenship, and
- (b) if the individual requires a visa, a visa of the required kind.

(2) The Minister may charge the owner of the ship or aircraft, in respect of the individual, the sum of £2,000.

(3) The charge shall be payable to the Minister on demand.

(4) No charge shall be payable in respect of any individual who is shown by the owner to have produced the required document or documents to the owner or his employee or agent when embarking on the ship or aircraft for the voyage or flight to Jersey.

(5) For the purpose of subsection (4) an owner shall be entitled to regard a document as—

- (a) being what it purports to be unless its falsity is reasonably apparent, and
- (b) relating to the individual producing it unless it is reasonably apparent that it does not relate to him.

(6) For the purposes of this section an individual requires a visa if—

- (a) under the immigration rules he requires a visa for entry into Jersey, or
- (b) as a result of section 41 he requires a visa for passing through Jersey.

(9) In this section “immigration document” means—

- (a) a passport, and
- (b) a document which relates to a national of a country other than the United Kingdom and Islands and which is designed to serve the same purpose as a passport.

(10) The Minister may by Order substitute a sum for the sum in subsection (2).

Notification and objection.

40A.—(1) If the Minister decides to charge a person under section 40, the Minister must notify the person of his decision.

(2) A notice under subsection (1) (a “charge notice”) must—

- (a) state the Minister’s reasons for deciding to charge the person,
- (b) state the amount of the charge,
- (c) specify the date before which, and the manner in which, the charge must be paid,
- (d) include an explanation of the steps that the person may take if he objects to the charge, and

- (e) include an explanation of the steps that the Minister may take under this Part to recover any unpaid charge.
- (3) Where a person on whom a charge notice is served objects to the imposition of the charge on him, he may give a notice of objection to the Minister.
- (4) A notice of objection must—
 - (a) be in writing,
 - (b) give the objector's reasons, and
 - (c) be given before the end of such period as may be prescribed.
- (5) Where the Minister receives a notice of objection to a charge in accordance with this section, he shall—
 - (a) consider it, and
 - (b) determine whether or not to cancel the charge.
- (6) Where the Minister considers a notice of objection, he shall inform the objector of his decision before the end of—
 - (a) such period as may be prescribed, or
 - (b) such longer period as he may agree with the objector.
- (7) Any sum payable to the Minister as a charge under section 40 may be recovered by the Minister as a debt due to him.
- (8) In proceedings for enforcement of a charge under subsection (7) no question may be raised as to the validity of the charge.
- (9) Subsections (12) and (13) of section 35 shall have effect for the purpose of this section as they have effect for the purpose of section 35(1), (7) and (10).

Appeal.

- 40B.**—(1) A person may appeal to the court against a decision to charge him under section 40.
- (2) On an appeal under this section the court may—
 - (a) allow the appeal and cancel the charge, or
 - (b) dismiss the appeal.
 - (3) An appeal under this section—
 - (a) shall be a re-hearing of the Minister's decision to impose a charge, and
 - (b) may be determined having regard to matters of which the Minister was unaware.
 - (4) Subsection (3)(a) has effect despite any provision of Rules of Court.
 - (5) An appeal may be brought by a person under this section against a decision to charge him whether or not he has given notice of objection under section 40A(3).

Visas for transit passengers.

- 41.**—(1) The Minister may by Order require transit passengers to hold a transit visa.
- (2) "Transit passengers" means persons of any description specified in the Order who on arrival in Jersey from a country outside the British Islands pass through to another country outside the British Islands without entering Jersey; and
"transit visa" means a visa for that purpose.
 - (3) The Order—
 - (a) may specify a description of persons by reference to nationality, citizenship, origin or other connection with any particular country but not by reference to race, colour or religion;

- (b) may not provide for the requirement imposed by the Order to apply to any person who under the 1971 Act has the right of abode in Jersey;
- (c) may provide for any category of persons of a description specified in the Order to be exempt from the requirement imposed by the Order;
- (d) may make provision about the method of application for visas required by the Order.

Interpretation

Interpretation of Part II.

43.—(1) In this Part—

“aircraft” includes hovercraft;

“captain” means the master of a ship or commander of an aircraft;

“concealed” includes being concealed in any freight, stores or other thing carried in or on the vehicle, ship or aircraft concerned;

“detached trailer” means a trailer, semi-trailer, caravan or any other thing which is designed or adapted for towing by a vehicle but which has been detached for transport—

- (a) in or on the vehicle concerned; or
- (b) in the ship or aircraft concerned (whether separately or in or on a vehicle);

“equipment”, in relation to an aircraft, includes—

- (a) any certificate of registration, maintenance or airworthiness of the aircraft;
- (b) any log book relating to the use of the aircraft; and
- (c) any similar document;

“hirer”, in relation to a vehicle, means any person who has hired the vehicle from another person;

“operating weight”, in relation to an aircraft, means the maximum total weight of the aircraft and its contents at which the aircraft may take off anywhere in the world, in the most favourable circumstances, in accordance with the certificate of airworthiness in force in respect of the aircraft;

“owner” includes—

- (a) in relation to a ship or aircraft, the agent or operator of the ship or aircraft;
- (b) in relation to a transporter which is the subject of a hire-purchase agreement, the person in possession of it under that agreement;

“penalty notice” has the meaning given in section 35(2);

“senior officer” means an immigration officer not below the rank of chief immigration officer;

“ship” includes every description of vessel used in navigation;

“small aircraft” means an aircraft which has an operating weight of less than 5,700 kilogrammes;

“small ship” means a ship which has a gross tonnage of less than 500 tonnes;

“transporter” means a vehicle, ship or aircraft together with—

- (a) its equipment; and
- (b) any stores for use in connection with its operation;

“vehicle” includes a trailer, semi-trailer, caravan or other thing which is designed or adapted to be towed by another vehicle.

(2) A reference in this Part to “the court” is a reference to the Petty Debts Court.

(3) But the Petty Debts Court may transfer proceedings under this Part to the Royal Court.

**PART VII
POWER TO ARREST, SEARCH AND FINGERPRINT**

Fingerprinting
Fingerprinting.

- 141.**—(1) Fingerprints may be taken by an authorised person from a person to whom this section applies.
- (2) Fingerprints may be taken under this section only during the relevant period.
- (3) Fingerprints may not be taken under this section from a person under the age of sixteen (“the child”) except in the presence of a person of full age who is—
- (a) the child’s parent or guardian; or
 - (b) a person who for the time being takes responsibility for the child.
- (4) The person mentioned in subsection (3)(b) may not be—
- (a) an officer of the Minister who is not an authorised person;
 - (b) an authorised person.
- (5) “Authorised person” means—
- (a) a police officer;
 - (b) an immigration officer;
 - (c) a prison officer; or
 - (d) an officer of the Minister authorised for the purpose.
- (7) This section applies to—
- (a) any person (“A”) who, on being required to do so by an immigration officer on his arrival in Jersey, fails to produce a valid passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship;
 - (b) any person (“B”) who has been refused leave to enter Jersey but has been temporarily admitted under paragraph 21 of Schedule 2 to the 1971 Act if an immigration officer reasonably suspects that B might break any condition imposed on him relating to residence or as to reporting to the police or an immigration officer;
 - (c) any person (“C”) in respect of whom the Minister has decided to make a deportation order;
 - (d) (ca) any person (“CA”) who requires leave to enter or remain in Jersey but does not have it;
 - (e) any person (“D”) who has been detained under paragraph 16 of Schedule 2 to the 1971 Act or arrested under paragraph 17 of that Schedule;
 - (f) any person (“E”) who has made a claim for asylum;
 - (g) any person (“F”) who is—
 - (i) a member of the family of a person within any of paragraphs (a), (b) or (ca) to (e),
or
 - (ii) a dependant of a person within paragraph (c)(i).
- (8) “The relevant period” begins—
- (a) for A, on his failure to produce the passport or other document;
 - (b) for B, on the decision to admit him temporarily;
 - (c) for C, when he is notified of the decision mentioned in subsection (7)(c);
 - (d) (ca) for CA, when he becomes a person to whom this section applies;
 - (e) for D, on his detention or arrest;
 - (f) for E, on the making of his claim for asylum; and
 - (g) for F, at the same time as for the person of whose family he is a member or whose dependant he is.

- (9) “The relevant period” ends on the earliest of the following—
- (a) the grant of leave to enter or remain in Jersey;
 - (b) for A, B, C, CA or D, his removal or deportation from Jersey;
 - (c) for C the revocation of the deportation order made against him, or its otherwise ceasing to have effect;
 - (d) (ca) for CA, when he no longer requires leave to enter or remain in Jersey;
 - (e) for D, his release if he is no longer liable to the detained under paragraph 16 of Schedule 2 to the 1971 Act;
 - (f) for E, the final determination or abandonment of his claim for asylum; and
 - (g) for F, at the same time as for the person of whose family he is a member or whose dependant he is.
- (10) No fingerprints may be taken from A if the immigration officer considers that A has a reasonable excuse for the failure concerned.
- (11) No fingerprints may be taken from B unless the decision to take them has been confirmed by a chief immigration officer.
- (12) An authorised person may not take fingerprints from a person under the age of sixteen unless his decision to take them has been confirmed—
- (a) if he is a police officer, by a person designated for the purpose by the Chief Officer of the States of Jersey Police Force;
 - (b) if he is a person mentioned in subsection (5)(b) or (e), by the Chief Immigration Officer;
 - (c) if he is a prison officer, by a person designated for the purpose by the governor of the prison;
 - (d) if he is an officer of the Minister, by a person designated for the purpose by the Minister.
- (13) Neither subsection (3) nor subsection (12) prevents an authorised person from taking fingerprints if he reasonably believes that the person from whom they are to be taken is aged sixteen or over.
- (13A) For the purposes of subsection (7)(f)(i), a person is a member of the family of another person (“P”) if—
- (a) the person is—
 - (i) P’s partner,
 - (ii) P’s child, or a child living in the same household as P in circumstances where P has care of the child,
 - (iii) in a case where P is a child, P’s parent, or
 - (iv) an adult dependant relative of P, and
 - (b) the person does not have a right of abode in Jersey or indefinite leave to enter or remain in Jersey.
- (13B) In subsection (13A) “child” means a person who is under the age of 18.
- (14) For the purposes of subsection (7)(f)(ii), a person is a dependant of another person if—
- (a) he is that person’s spouse or child under the age of eighteen; and
 - (b) he does not have a right of abode in Jersey or indefinite leave to enter or remain in Jersey.
- (15) “Claim for asylum” means a claim that it would be contrary to the United Kingdom’s obligations in respect of Jersey under the Refugee Convention or under Article 3 of the Human Rights Convention for the claimant to be removed from, or required to leave, Jersey.

Attendance for fingerprinting.

142.—(1) The Minister may, by notice in writing, require a person to whom section 141 applies to attend at a specified place for fingerprinting.

(2) In the case of a notice given to a person of a kind specified in section 141(7)(a) to (d) or (f) (in so far as it applies to a member of the family of, or a dependant of, a person of a kind specified in section 141(7)(a) to (d)), the notice—

- (a) must require him to attend during a specified period of at least seven days beginning with a day not less than seven days after the date given in the notice as its date of issue, and
- (b) may require him to attend at a specified time of day or during specified hours.

(2A) In the case of a notice given to a person of a kind specified in section 141(7)(e) or (f) (in so far as it applies to a member of the family of a person of a kind specified in section 141(7)(e)), the notice—

- (a) may require him to attend during a specified period beginning with a day not less than three days after the date given in the notice as its date of issue,
- (b) may require him to attend on a specified day not less than three days after the date given in the notice as its date of issue, and
- (c) may require him to attend at a specified time of day or during specified hours.

(3) A police officer or immigration officer may arrest without warrant a person who has failed to comply with a requirement imposed on him under this section (unless the requirement has ceased to have effect).

(4) Before a person arrested under subsection (3) is released—

- (a) he may be removed to a place where his fingerprints may conveniently be taken; and
- (b) his fingerprints may be taken (whether or not he is so removed).

(5) A requirement imposed under subsection (1) ceases to have effect at the end of the relevant period (as defined by section 141).

Destruction of fingerprints.

143.—(1) If they have not already been destroyed, fingerprints must be destroyed before the end of the specified period beginning with the day on which they were taken.

(2) If a person from whom fingerprints were taken proves that he is—

- (a) a British citizen, or
- (b) a Commonwealth citizen who has a right of abode in Jersey as a result of section 2(1)(b) of the 1971 Act,

the fingerprints must be destroyed as soon as reasonably practicable.

(9) Fingerprints taken from F (within the meaning of section 141(7)) must be destroyed when fingerprints taken from the person of whose family he is a member or whose dependant he is have to be destroyed.

(10) The obligation to destroy fingerprints under this section applies also to copies of fingerprints.

(11) The Minister must take all reasonably practicable steps to secure—

- (a) that data which are held in electronic form and which relate to fingerprints which have to be destroyed as a result of this section are destroyed or erased; or
- (b) that access to such data is blocked.

(12) The person to whom the data relate is entitled, on request, to a certificate issued by the Minister to the effect that he has taken the steps required by subsection (11).

(13) A certificate under subsection (12) must be issued within three months of the date of the request for it.

(15) “Specified period” means—

- (a) such period as the Minister may specify by Order;
- (b) if no period is so specified, ten years.

Other methods of collecting data about physical characteristics.

144.—(1) The States may make Regulations containing provisions equivalent to sections 141, 142 and 143 in relation to such other methods of collecting biometric information as may be specified in the Regulations.

(2) “Biometric information” has the meaning given by section 15 of the UK Borders Act 2007.

Use and retention of fingerprints etc.

144A.—(1) Section 8 of the UK Borders Act 2007 (power to make Regulations about use and retention of biometric information) applies to—

- (a) fingerprints taken by virtue of section 141, and
- (b) biometric information taken by virtue of Regulations under section 144,

as it applies to biometric information provided in accordance with Regulations under section 5(1) of that Act.

(2) Regulations made by virtue of subsection (1)(a) must require fingerprints taken from a person (“F”) by virtue of section 141(7)(f) to be destroyed when fingerprints taken from the person of whose family F is a member or whose dependant F is are destroyed.

(3) Regulations made by virtue of subsection (1)(b) must make equivalent provision in relation to biometric information taken by virtue of any provision of Regulations under section 144 which is equivalent to section 141(7)(f).

Codes of practice

Codes of practice.

145.—(1) An immigration officer exercising any specified power to—

- (a) arrest, question, search or take fingerprints from a person,
- (b) enter and search premises, or
- (c) seize property found on persons or premises,

must have regard to such provisions of a code as may be specified.

(2) Subsection (1) also applies to an authorised person exercising the power to take fingerprints conferred by section 141.

(2A) A person exercising a power under Regulations made by virtue of section 144 must have regard to such provisions of a code as may be specified.

(3) Any specified provision of a code may have effect for the purposes of this section subject to such modifications as may be specified.

(4) “Specified” means specified in a direction given by the Minister.

(5) “Authorised person” has the same meaning as in section 141.

(6) “Code” means any code of practice for the time being in force under the Police Procedures and Criminal Evidence (Jersey) Law 2003.

Use of force.

146.—(1) An immigration officer exercising any power conferred on him by the Immigration Acts may, if necessary, use reasonable force.

(2) A person exercising a power under any of the following may if necessary use reasonable force—

- (a) section 28FB of the 1971 Act (search for personnel records: with warrant),
- (b) section 141 or 142 of this Act, and
- (c) Regulations under section 144 of this Act.

PART X MISCELLANEOUS AND SUPPLEMENTAL Regulations and Orders.

166.—(1) Any Regulations or Order made under this Act may—

- (a) contain such incidental, supplemental, consequential and transitional provision as the States or, as the case may be, the Minister considers appropriate;
- (b) make different provision for different cases or descriptions of case; and
- (c) make different provision for different areas.

(2) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders made by the Minister under this Act.

Interpretation.

167.—(1) In this Act—

“the 1971 Act” means the Immigration Act 1971;

“claim for asylum” (except in section 141) means a claim that it would be contrary to the United Kingdom’s obligations in respect of Jersey under the Refugee Convention for the claimant to be removed from, or required to leave, Jersey;

“country” includes any territory;

“EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as it has effect for the time being;

“the Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to Jersey;

“the Minister” means the Minister for Home Affairs;

“prescribed” means prescribed by Order made by the Minister;

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention.

(2) The following expressions have the same meaning as in the 1971 Act—

“certificate of entitlement”; “entry clearance”; “illegal entrant”; “immigration officer”; “immigration rules” “port”; “United Kingdom passport”; “work permit”.

Transitional provisions.

169. Schedule 15 contains transitional provisions.

Short title.

170. This Act may be cited as the Immigration and Asylum Act 1999.

SCHEDULE 1
SALE OF TRANSPORTERS

Section 37(6)

Leave of court required

1.—(1) The sale of a transporter requires the leave of the court.

(2) The court is not to give its leave except on proof—

- (a) that the penalty or charge is or was due;
- (b) that the person liable to pay it or any connected expenses has failed to do so; and
- (c) that the transporter which the Minister seeks leave to sell is liable to sale.

Notice of proposed sale

2. Before applying for leave to sell a transporter, the Minister must take such steps as may be prescribed—

- (a) for bringing the proposed sale to the notice of persons whose interests may be affected by a decision of the court to grant leave; and
- (b) for affording to any such person an opportunity of becoming a party to the proceedings if the Minister applies for leave.

2A. Where the owner of a transporter is a party to an application for leave to sell it, in determining whether to give leave the court shall consider—

- (a) the extent of any hardship likely to be caused by sale,
- (b) the extent (if any) to which the owner is responsible for the matters in respect of which the penalty notice was issued, and
- (c) any other matter which appears to the court to be relevant (whether specific to the circumstances of the case or of a general nature).

Duty to obtain best price

3. If leave for sale is given, the Minister must secure that the transporter is sold for the best price that can reasonably be obtained.

Effect of failure to comply with paragraph 2 or 3

4. Failure to comply with any requirement of paragraph 2 or 3 in respect of any sale—

- (a) is actionable against the Minister at the suit of any person suffering loss in consequence of the sale; but
- (b) after the sale has taken place, does not affect its validity.

Application of proceeds of sale

5.—(1) Any proceeds of sale arising from a sale under section 37 must be applied—

- (a) in making prescribed payments; and
- (b) in accordance with such provision as to priority of payments as may be prescribed.

(2) The Order may, in particular, provide for proceeds of sale to be applied in payment—

- (a) of customs or excise duty,
- (b) of goods and services tax,
- (c) of expenses incurred by the Minister,
- (d) of any penalty which the court has found to be due,
- (f) of any surplus to or among the person or persons whose interests in the transporter have been divested as a result of the sale,

but not necessarily in that order of priority.

SCHEDULE 15
TRANSITIONAL PROVISIONS AND SAVINGS

Section 169(2)

Leave to enter or remain

1.—(1) An Order made under section 3A of the 1971 Act may make provision with respect to leave given before the commencement of section 1.

(2) An Order made under section 3B of the 1971 Act may make provision with respect to leave given before the commencement of section 2.

(3) In this paragraph “commencement” means commencement in accordance with the Immigration (Jersey) Order 2020.

APPENDIX V

NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002 AS EXTENDED BY THE DRAFT IMMIGRATION (JERSEY) ORDER 2020

PART 1

NATIONALITY

Right of abode: certificate of entitlement.

- 10.**—(1) The Minister may by Order make provision for the issue to a person of a certificate that he has the right of abode in Jersey.
- (2) An Order may, in particular—
- (a) specify to whom an application must be made;
 - (b) specify the place (which may be outside Jersey) to which an application must be sent;
 - (c) provide that an application must be accompanied by specified information;
 - (d) provide that an application must be accompanied by specified documents;
 - (f) specify the consequences of failure to comply with a requirement under any of paragraphs (a) to (d) above;
 - (g) provide for a certificate to cease to have effect after a period of time specified in or determined in accordance with the Order;
 - (h) make provision about the revocation of a certificate.
- (3) An Order may—
- (a) make provision which applies generally or only in specified cases or circumstances;
 - (b) make different provision for different purposes;
 - (c) include consequential, incidental or transitional provision.
- (4) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under this section.
- (5) An Order under this section may, in particular, include provision saving, with or without modification, the effect of a certificate which is issued before the Order come into force.

PART 4

DETENTION AND REMOVAL

Detention

Detention by Minister.

- 62.**—(1) A person may be detained under the authority of the Minister pending—
- (a) a decision by the Minister whether to give directions in respect of the person under section 10 of the Immigration and Asylum Act 1999 (removal of persons unlawfully in Jersey) or paragraph 10, 10A or 14 of Schedule 2 to the Immigration Act 1971 (control of entry: removal), or
 - (b) removal of the person from Jersey in pursuance of directions given by the Minister under any of those provisions.
- (2) Where the Minister is empowered under section 3A of the Immigration Act 1971 (powers of Minister) to examine a person or to give or refuse a person leave to enter Jersey, the person may be detained under the authority of the Minister pending—
- (a) the person's examination by the Minister,
 - (b) the Minister's decision to give or refuse the person leave to enter,

- (c) a decision by the Minister whether to give directions in respect of the person under paragraph 8 or 9 of Schedule 2 to that Act (removal), or
- (d) removal of the person in pursuance of directions given by the Minister under either of those paragraphs.

(3) A provision of Schedule 2 to that Act about a person who is detained or liable to detention under that Schedule shall apply to a person who is detained or liable to detention under this section: and for that purpose—

- (a) a reference to paragraph 16 of that Schedule shall be taken to include a reference to this section,
- (aa) a reference in paragraph 18B of that Schedule to an immigration officer shall be read as a reference to the Minister,
- (b) a reference in paragraph 21 of that Schedule to an immigration officer shall be taken to include a reference to the Minister, and
- (c) a reference to detention under that Schedule or under a provision or Part of that Schedule shall be taken to include a reference to detention under this section.

(4) In the case of a restriction imposed under paragraph 21 of that Schedule by virtue of this section—

- (a) a restriction imposed by an immigration officer may be varied by the Minister, and
- (b) a restriction imposed by the Minister may be varied by an immigration officer.

(7) A power under this section which is exercisable pending a decision of a particular kind by the Minister is exercisable where the Minister has reasonable grounds to suspect that he may make a decision of that kind.

(7A) The detention under this section of a person to whom section 60 (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.

Construction of reference to person liable to detention.

67.—(1) This section applies to the construction of a provision which—

- (a) does not confer power to detain a person, but
- (b) refers (in any terms) to a person who is liable to detention under a provision of the Immigration Acts.

(2) The reference shall be taken to include a person if the only reason why he cannot be detained under the provision is that—

- (a) he cannot presently be removed from Jersey, because of a legal impediment connected with obligations by which Jersey is bound under an international agreement,
- (b) practical difficulties are impeding or delaying the making of arrangements for his removal from Jersey, or
- (c) practical difficulties, or demands on administrative resources, are impeding or delaying the taking of a decision in respect of him.

(3) This section shall be treated as always having had effect.

Removal

Serious criminal.

72.—(1) This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from protection).

(2) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of Jersey if he is—

- (a) convicted in Jersey of an offence, and
- (b) sentenced to a period of imprisonment of at least two years.

(3) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of Jersey if—

- (a) he is convicted outside Jersey of an offence,
- (b) he is sentenced to a period of imprisonment of at least two years, and
- (c) he could have been sentenced to a period of imprisonment of at least two years had his conviction been a conviction in Jersey of a similar offence.

(4) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of Jersey if—

- (a) he is convicted of an offence specified by Order of the Minister, or
- (b) he is convicted outside Jersey of an offence and the Minister certifies that in his opinion the offence is similar to an offence specified by order under paragraph (a).

(5) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under subsection (4).

(6) A presumption under subsection (2), (3) or (4) that a person constitutes a danger to the community is rebuttable by that person.

(7) A presumption under subsection (2), (3) or (4) does not apply while an appeal against conviction or sentence—

- (a) is pending, or
- (b) could be brought (disregarding the possibility of appeal out of time with leave).(11)

(8) For the purposes of this section—

- (a) “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, and
- (b) a reference to a person who is sentenced to a period of imprisonment of at least two years—
 - (i) does not include a reference to a person who receives a suspended sentence (unless a court subsequently orders that the sentence or any part of it is to take effect),
 - (ia) does not include a reference to a person who is sentenced to a period of imprisonment of at least two years only by virtue of being sentenced to consecutive sentences which amount in aggregate to more than two years,
 - (ii) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders), and
 - (iii) includes a reference to a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period (provided that it may last for two years).

Revocation of leave to enter or remain.

76.—(1) The Minister may revoke a person’s indefinite leave to enter or remain in Jersey if the person—

- (a) is liable to deportation, but
- (b) cannot be deported for legal reasons.

(2) The Minister may revoke a person’s indefinite leave to enter or remain in Jersey if the leave was obtained by deception.

(3) The Minister may revoke a person’s indefinite leave to enter or remain in Jersey if the person, or someone of whom he is a dependant, ceases to be a refugee as a result of—

- (a) voluntarily availing himself of the protection of his country of nationality,
- (b) voluntarily re-acquiring a lost nationality,

- (c) acquiring the nationality of a country other than the United Kingdom and availing himself of its protection, or
 - (d) voluntarily establishing himself in a country in respect of which he was a refugee.
- (4) In this section—
- “indefinite leave” has the meaning given by section 33(1) of the Immigration Act 1971 (interpretation),
 - “liable to deportation” has the meaning given by section 3(5) and (6) of that Act (deportation), and
 - “refugee” has the meaning given by the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.
- (5) A power under subsection (1) or (2) to revoke leave may be exercised—
- (a) in respect of leave granted before this section comes into force;
 - (b) in reliance on anything done before this section comes into force.
- (6) A power under subsection (3) to revoke leave may be exercised—
- (a) in respect of leave granted before this section comes into force, but
 - (b) only in reliance on action taken after this section comes into force.

No removal while claim for asylum pending.

- 77.**—(1) While a person’s claim for asylum is pending he may not be—
- (a) removed from Jersey in accordance with a provision of the Immigration Acts, or
 - (b) required to leave Jersey in accordance with a provision of the Immigration Acts.
- (2) In this section—
- (a) “claim for asylum” means a claim by a person that it would be contrary to the obligations by which Jersey is bound under the Refugee Convention to remove him from or require him to leave Jersey, and
 - (b) a person’s claim is pending until he is given notice of the Minister’s decision on it.
- (3) In subsection (2) “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.
- (4) Nothing in this section shall prevent any of the following while a claim for asylum is pending—
- (a) the giving of a direction for the claimant’s removal from Jersey,
 - (b) the making of a deportation order in respect of the claimant, or
 - (c) the taking of any other interim or preparatory action.

PART 5
IMMIGRATION AND ASYLUM: LISTED STATES
European Common List of Safe Countries of Origin.

- 113.**—(1) In this section “listed State” means a State for the time being on the list of States prescribed by the Secretary of State by order under section 94A of this Act in the United Kingdom.
- (2) Subsection (3) applies where a person makes a protection claim or a human rights claim (or both) and that person is—
- (a) a national of a listed State, or
 - (b) a Stateless person who was formerly habitually resident in a listed State.

(3) The Minister shall consider the claim or claims mentioned in subsection (2) to be unfounded unless satisfied that there are serious grounds for considering that the State in question is not safe in the particular circumstances of the person mentioned in that subsection.

(4) In this section—

“human rights claim” means a claim made by a person to the Minister that to remove the person from or require him to leave Jersey or to refuse him entry into Jersey would be unlawful under Article 7 of the Human Rights (Jersey) Law 2000 (public authority not to act contrary to Convention);

“the Human Rights Convention” has the same meaning as “the Convention” in the Human Rights (Jersey) Law 2000 and “Convention rights” shall be construed in accordance with section 1 of that Law;

“immigration rules” means rules under section 1(4) of the Immigration Act 1971 (general immigration rules);

“protection claim” means a claim made by a person (“P”) that removal of P from Jersey—

- (a) would breach obligations by which Jersey is bound under the Refugee Convention, or
- (b) would breach obligations by which Jersey is bound in relation to persons eligible for a grant of humanitarian protection;

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.

PART 5A

ARTICLE 8 OF THE ECHR: PUBLIC INTEREST CONSIDERATIONS

Application of this Part.

117A.—(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—

- (a) breaches a person’s right to respect for private and family life under Article 8, and
- (b) as a result would be unlawful under Article 7 of the Human Rights (Jersey) Law 2000.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard—

- (a) in all cases, to the considerations listed in section 117B, and
- (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), “the public interest question” means the question of whether an interference with a person’s right to respect for private and family life is justified under Article 8(2).

Article 8: public interest considerations applicable in all cases.

117B.—(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of Jersey, that persons who seek to enter or remain in Jersey are able to speak English or French, because persons who can speak English or French—

- (a) are less of a burden on taxpayers, and
- (b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of Jersey, that persons who seek to enter or remain in Jersey are financially independent, because such persons—

- (a) are not a burden on taxpayers, and
- (b) are better able to integrate into society.

(4) Little weight should be given to—

- (a) a private life, or
- (b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in Jersey unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
- (b) it would not be reasonable to expect the child to leave Jersey.

Article 8: additional considerations in cases involving foreign criminals.

117C.—(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where—

- (a) C has been lawfully resident in Jersey for most of C's life,
- (b) C is socially and culturally integrated in Jersey, and
- (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

Interpretation of this Part.

117D.—(1) In this Part—

"Article 8" means Article 8 of the European Convention on Human Rights;

"qualifying child" means a person who is under the age of 18 and who-

- (a) is a British citizen, or
- (b) has lived in Jersey for a continuous period of seven years or more;

"qualifying partner" means a partner who—

- (a) is a British citizen, or
- (b) who is settled in Jersey (within the meaning of the Immigration Act 1971 - see section 33(2A) of that Act).

(2) In this Part, "foreign criminal" means a person—

- (a) who is not a British citizen,
- (b) who has been convicted in Jersey of an offence, and

- (c) who—
 - (i) has been sentenced to a period of imprisonment of at least 12 months,
 - (ii) has been convicted of an offence that has caused serious harm, or
 - (iii) is a persistent offender.
- (4) In this Part, references to a person who has been sentenced to a period of imprisonment of a certain length of time—
- (a) do not include a person who has received a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect);
 - (b) do not include a person who has been sentenced to a period of imprisonment of that length of time only by virtue of being sentenced to consecutive sentences amounting in aggregate to that length of time;
 - (c) include a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders) for that length of time; and
 - (d) include a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period, provided that it may last for at least that length of time.
- (5) If any question arises for the purposes of this Part as to whether a person is a British citizen, it is for the person asserting that fact to prove it.

PART 6
IMMIGRATION PROCEDURE
Provision of information by traveller
Physical data: compulsory provision.

- 126.**—(1) The States may by Regulations—
- (a) require an immigration application to be accompanied by specified biometric information;
 - (b) enable an authorised person to require an individual who makes an immigration application to provide biometric information;
 - (c) enable an authorised person to require an entrant to provide biometric information.
- (2) In subsection (1) “immigration application” means an application for—
- (a) entry clearance,
 - (b) leave to enter or remain in Jersey,
 - (c) variation of leave to enter or remain in Jersey, or
 - (e) a document issued as evidence that a person who is not a national of an EEA state or Switzerland is entitled to enter or remain in Jersey by virtue of section 7(1) of the Immigration Act 1988 or of any provision made under Article 2 of the European Legislation (Implementation) (Jersey) Law 2014.
- (3) Regulations under subsection (1) may not—
- (a) impose a requirement in respect of a person to whom section 141 of the Immigration and Asylum Act 1999 (fingerprinting) applies, during the relevant period within the meaning of that section, or
 - (b) enable a requirement to be imposed in respect of a person to whom that section applies, during the relevant period within the meaning of that section.
- (4) Regulations under subsection (1) may, in particular—

- (a) require, or enable an authorised person to require, the provision of biometric information in a specified form;
- (b) require an individual to submit, or enable an authorised person to require an individual to submit, to a specified process by means of which biometric information is obtained or recorded;
- (c) make provision about the effect of failure to provide biometric information or to submit to a process (which may, in particular, include provision for an application to be disregarded or dismissed if a requirement is not satisfied);
- (d) confer a function (which may include the exercise of a discretion) on an authorised person;
- (e) require an authorised person to have regard to a code (with or without modification);
- (f) require an authorised person to have regard to such provisions of a code (with or without modification) as may be specified by direction of the Minister;
- (fa) provide for biometric information to be recorded on any document issued as a result of the application in relation to which the information was provided;
- (h) make provision which applies generally or only in specified cases or circumstances;
- (i) make different provision for different cases or circumstances.

(6) In so far as Regulations under subsection (1) require an individual under the age of 16 to submit to a process, the Regulations must make provision similar to section 141(3) to (5) and (13) of the Immigration and Asylum Act 1999 (fingerprints: children).

(7) In so far as Regulations under subsection (1) enable an authorised person to require an individual under the age of 16 to submit to a process, the Regulations must make provision similar to section 141(3) to (5), (12) and (13) of that Act (fingerprints: children).

(8A) Section 8 of the UK Borders Act 2007 (power to make Regulations about use and retention of biometric information) applies to biometric information provided in accordance with Regulations under subsection (1) as it applies to biometric information provided in accordance with regulations under section 5(1) of that Act.

(9) In this section—

“authorised person” –

- (a) has the meaning given by section 141(5) of the Immigration and Asylum Act 1999 (authority to take fingerprints), and
- (b) in relation to an immigration application made outside Jersey, includes an authorised person within the meaning of the said section 141(5) as it has effect in the United Kingdom,

“biometric information” has the meaning given by section 15 of the UK Borders Act 2007,

“code” has the meaning given by section 145(6) of that Act (code of practice),

“document” includes a card or sticker and any other method of recording information (whether in writing or by the use of electronic or other technology or by a combination of methods),

“entrant” has the meaning given by section 33(1) of the Immigration Act 1971 (interpretation),

“entry clearance” has the meaning given by section 33(1) of that Act, and

“the Minister” means the Minister for Home Affairs.

Physical data: voluntary provision.

127.—(1) The Minister may operate a scheme under which an individual may supply, or submit to the obtaining or recording of, biometric information to be used (wholly or partly) in connection with entry to Jersey.

- (2) In particular, the Minister may—
- (a) require an authorised person to use biometric information supplied under a scheme;
 - (b) make provision about the collection, use and retention of biometric information supplied under a scheme (which may include provision requiring an authorised person to have regard to a code);
 - (c) charge for participation in a scheme.
- (3) In this section the following expressions have the same meaning as in section 126—
- (a) “authorised person”,
 - (aa) “biometric information”,
 - (b) “code”, and
 - (c) “the Minister”.

Disclosure of information

Medical inspectors.

133.—(1) This section applies to a person if an immigration officer acting under Schedule 2 to the Immigration Act 1971 (control on entry, &c.) has brought the person to the attention of—

- (a) a medical inspector appointed under paragraph 1(2) of that Schedule, or
- (b) a person working under the direction of a medical inspector appointed under that paragraph.

(2) A medical inspector may disclose to a health service body—

- (a) the name of a person to whom this section applies,
- (b) his place of residence in Jersey,
- (c) his age,
- (d) the language which he speaks,
- (e) the nature of any disease with which the inspector thinks the person may be infected,
- (f) relevant details of the person’s medical history,
- (g) the grounds for an opinion mentioned in paragraph (e) (including the result of any test or examination which has been carried out), and
- (h) the inspector’s opinion about action which the health service body should take.

(3) A disclosure may be made under subsection (2) only if the medical inspector thinks it necessary for the purpose of—

- (a) preventative medicine,
- (b) medical diagnosis,
- (c) the provision of care or treatment, or
- (d) the management of health care services.

(4) For the purposes of this section “health service body” in relation to a person means the Health and Social Services Department.

Employer.

134.—(1) The Minister may require an employer to supply information about an employee whom the Minister reasonably suspects of having committed an offence under section 24(1)(a), (b), (c), (e) or (f), 24A(1) or 26(1)(c) or (d) of the Immigration Act 1971 (illegal entry, deception, &c.).

(2) The power under subsection (1) may be exercised to require information about an employee only if the information—

- (a) is required for the purpose of establishing where the employee is, or
- (b) relates to the employee’s earnings or to the history of his employment.

(3) In this section—

- (a) a reference to an employer or employee includes a reference to a former employer or employee, and
- (b) “employment” means employment under a contract of service or apprenticeship, whether or not express, and (if express) whether or not in writing; and “employer” and “employee” shall be construed accordingly.

(4) Where—

- (a) a business (the “employment agency”) arranges for one person (the “worker”) to provide services to another (the “client”), and
- (b) the worker is not employed by the employment agency or the client, this section shall apply as if the employment agency were the worker’s employer while he provides services to the client.

Notice.

136.—(1) A requirement to provide information under section 134 must be imposed by notice in writing specifying—

- (a) the information,
- (b) the manner in which it is to be provided, and
- (c) the period of time within which it is to be provided.

(2) A period of time specified in a notice under subsection (1)(c)—

- (a) must begin with the date of receipt of the notice, and
- (b) must not be less than ten working days.

(3) A person on whom a notice is served under subsection (1) must provide the Minister with the information specified in the notice.

(4) Information provided under subsection (3) must be provided—

- (a) in the manner specified under subsection (1)(b), and
- (b) within the time specified under subsection (1)(c).

(5) In this section “working day” means a day which is not—

- (a) Saturday,
- (b) Sunday,
- (c) Christmas Day,
- (d) Good Friday, or
- (e) a day which is a bank holiday under the Public Holidays and Bank Holidays (Jersey) Law 1951.

Disclosure of information: offences.

137.—(1) A person commits an offence if without reasonable excuse he fails to comply with section 136(3).

(2) A person who is guilty of an offence under subsection (1) shall be liable to—

- (a) imprisonment for a term not exceeding three months,
- (b) a fine not exceeding level 3 on the standard scale, or
- (c) both.

Offence by body.

138.—(1) Subsection (2) applies where an offence under section 137 is committed by a body corporate and it is proved that the offence—

- (a) was committed with the consent or connivance of an officer of the body, or

- (b) was attributable to neglect on the part of an officer of the body.
- (2) The officer, as well as the body, shall be guilty of the offence.
- (3) In this section a reference to an officer of a body corporate includes a reference to—
 - (a) a director, manager or secretary,
 - (b) a person purporting to act as a director, manager or secretary, and
 - (c) if the affairs of the body are managed by its members, a member.
- (4) Where an offence under section 137 is committed by a partnership (other than a limited partnership), each partner shall be guilty of the offence.
- (5) Subsection (1) shall have effect in relation to a limited partnership as if—
 - (a) a reference to a body corporate were a reference to a limited partnership, and
 - (b) a reference to an officer of the body were a reference to a partner.

Privilege against self-incrimination.

139.—(1) Information provided by a person pursuant to a requirement under section 134 shall not be admissible in evidence in criminal proceedings against that person.

(2) This section shall not apply to proceedings for an offence under section 137.

**PART 7
OFFENCES**

Traffic in prostitution.

145.—(1) A person commits an offence if he arranges or facilitates the arrival in Jersey of an individual (the “passenger”) and—

- (a) he intends to exercise control over prostitution by the passenger in Jersey or elsewhere, or
- (b) he believes that another person is likely to exercise control over prostitution by the passenger in Jersey or elsewhere.

(2) A person commits an offence if he arranges or facilitates travel within Jersey by an individual (the “passenger”) in respect of whom he believes that an offence under subsection (1) may have been committed and—

- (a) he intends to exercise control over prostitution by the passenger in Jersey or elsewhere, or
- (b) he believes that another person is likely to exercise control over prostitution by the passenger in Jersey or elsewhere.

(3) A person commits an offence if he arranges or facilitates the departure from Jersey of an individual (the “passenger”) and—

- (a) he intends to exercise control over prostitution by the passenger outside Jersey, or
- (b) he believes that another person is likely to exercise control over prostitution by the passenger outside Jersey.

(4) For the purposes of subsections (1) to (3) a person exercises control over prostitution by another if for purposes of gain he exercises control, direction or influence over the prostitute’s movements in a way which shows that he is aiding, abetting or compelling the prostitution.

(5) A person guilty of an offence under this section shall be liable on conviction to imprisonment for a term not exceeding 14 years, to a fine or to both

**PART 8
GENERAL**

Consequential and incidental provision.

157.—(1) The States may by Regulations make consequential or incidental provision in connection with a provision of this Act.

(2) Regulations under this section may, in particular—

- (a) amend an enactment;
- (b) modify the effect of an enactment.

Applied provision.

159.—(1) Subsection (2) applies where this Act amends or refers to a provision which is applied by, under or for purposes of—

- (a) another provision of the Act which contains the provision, or
- (b) another Act.

(2) The amendment or reference shall have effect in relation to the provision as applied.

(3) Where this Act applies a provision of another Act, a reference to that provision in any enactment includes a reference to the provision as applied by this Act.

Short title.

164. This Act may be cited as the Nationality, Immigration and Asylum Act 2002.

APPENDIX VI

ASYLUM AND IMMIGRATION (TREATMENT OF CLAIMANTS etc.) ACT 2004 AS EXTENDED BY THE DRAFT IMMIGRATION (JERSEY) ORDER 2020

Offences

Entering Jersey without passport, &c.

2.—(1) A person commits an offence if at a leave or asylum interview he does not have with him an immigration document which—

- (a) is in force, and
- (b) satisfactorily establishes his identity and nationality or citizenship.

(2) A person commits an offence if at a leave or asylum interview he does not have with him, in respect of any dependent child with whom he claims to be travelling or living, an immigration document which—

- (a) is in force, and
- (b) satisfactorily establishes the Child's identity and nationality or citizenship.

(3) But a person does not commit an offence under subsection (1) or (2) if—

- (a) the interview referred to in that subsection takes place after the person has entered Jersey, and
- (b) within the period of three days beginning with the date of the interview the person provides to an immigration officer or to the Minister a document of the kind referred to in that subsection.

(4) It is a defence for a person charged with an offence under subsection (1)—

- (a) to prove that he is an EEA national,
- (b) to prove that he is a member of the family of an EEA national and that he is exercising a right that he would be able to exercise under the EU Treaties in respect of entry to or residence in the United Kingdom,
- (c) to prove that he has a reasonable excuse for not being in possession of a document of the kind specified in subsection (1),
- (d) to produce a false immigration document and to prove that he used that document as an immigration document for all purposes in connection with his journey to Jersey, or
- (e) to prove that he travelled to Jersey without, at any stage since he set out on the journey, having possession of an immigration document.

(5) It is a defence for a person charged with an offence under subsection (2) in respect of a child—

- (a) to prove that the child is an EEA national,
- (b) to prove that the child is a member of the family of an EEA national and that the child is exercising a right that he would be able to exercise under the EU Treaties in respect of entry to or residence in the United Kingdom,
- (c) to prove that the person has a reasonable excuse for not being in possession of a document of the kind specified in subsection (2),
- (d) to produce a false immigration document and to prove that it was used as an immigration document for all purposes in connection with the child's journey to Jersey, or
- (e) to prove that he travelled to Jersey with the child without, at any stage since he set out on the journey, having possession of an immigration document in respect of the child.

(6) Where the charge for an offence under subsection (1) or (2) relates to an interview which takes place after the defendant has entered Jersey—

- (a) subsections (4)(c) and (5)(c) shall not apply, but
- (b) it is a defence for the defendant to prove that he has a reasonable excuse for not providing a document in accordance with subsection (3).

(7) For the purposes of subsections (4) to (6)—

- (a) the fact that a document was deliberately destroyed or disposed of is not a reasonable excuse for not being in possession of it or for not providing it in accordance with subsection (3), unless it is shown that the destruction or disposal was—
 - (i) for a reasonable cause, or
 - (ii) beyond the control of the person charged with the offence, and
- (b) in paragraph (a)(i) “reasonable cause” does not include the purpose of—
 - (i) delaying the handling or resolution of a claim or application or the taking of a decision,
 - (ii) increasing the chances of success of a claim or application, or
 - (iii) complying with instructions or advice given by a person who offers advice about, or facilitates, immigration into Jersey, unless in the circumstances of the case it is unreasonable to expect non-compliance with the instructions or advice.

(8) A person shall be presumed for the purposes of this section not to have a document with him if he fails to produce it to an immigration officer or official of the Minister on request.

(9) A person guilty of an offence under this section shall be liable on conviction to imprisonment for a term not exceeding two years, to a fine or to both.

(10) If a police officer or immigration officer reasonably suspects that a person has committed an offence under this section he may arrest the person without warrant.

(11) An offence under this section shall be treated as—

- (a) a relevant offence for the purposes of sections 28B and 28D of the Immigration Act 1971 (search, entry and arrest), and
- (b) an offence under Part III of that Act (criminal proceedings) for the purposes of sections 28(4), 28E, 28G and 28H (search after arrest, &c.) of that Act.

(12) In this section—

“EEA national” means a national of a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time),

“immigration document” means—

- (a) a passport, and
- (b) a document which relates to a national of a State other than the United Kingdom and which is designed to serve the same purpose as a passport, and

“leave or asylum interview” means an interview with an immigration officer or an official of the Minister at which a person—

- (a) seeks leave to enter or remain in Jersey, or
- (b) claims that to remove him from or require him to leave Jersey would breach Jersey’s obligations under the Refugee Convention or would be unlawful under Article 7 of the Human Rights (Jersey) Law 2000 as being incompatible with his Convention rights.

(13) For the purposes of this section—

- (a) a document which purports to be, or is designed to look like, an immigration document, is a false immigration document, and

- (b) an immigration document is a false immigration document if and in so far as it is used—
 - (i) outside the period for which it is expressed to be valid,
 - (ii) contrary to provision for its use made by the person issuing it, or
 - (iii) by or in respect of a person other than the person to or for whom it was issued.

(14) Section 11 of the Immigration Act 1971 shall have effect for the purpose of the construction of a reference in this section to entering Jersey.

Trafficking people for exploitation.

4.—(1) A person commits an offence if he arranges or facilitates the arrival in Jersey of an individual (the “passenger”) and—

- (a) he intends to exploit the passenger in Jersey or elsewhere, or
- (b) he believes that another person is likely to exploit the passenger in Jersey or elsewhere.

(2) A person commits an offence if he arranges or facilitates travel within Jersey by an individual (the “passenger”) in respect of whom he believes that an offence under subsection (1) may have been committed and—

- (a) he intends to exploit the passenger in Jersey or elsewhere, or
- (b) he believes that another person is likely to exploit the passenger in Jersey or elsewhere.

(3) A person commits an offence if he arranges or facilitates the departure from Jersey of an individual (the “passenger”) and—

- (a) he intends to exploit the passenger outside Jersey, or
- (b) he believes that another person is likely to exploit the passenger outside Jersey.

(4) For the purposes of this section a person is exploited if (and only if)—

- (a) he is the victim of behaviour that contravenes Article 4 of the Human Rights Convention (slavery and forced labour),
- (c) he is subjected to force, threats or deception designed to induce him—
 - (i) to provide services of any kind,
 - (ii) to provide another person with benefits of any kind, or
 - (iii) to enable another person to acquire benefits of any kind, or
- (d) he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that—
 - (i) he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and
 - (ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.

(5) A person guilty of an offence under this section shall be liable on conviction to imprisonment for a term not exceeding 14 years, to a fine or to both.

Treatment of claimants

Claimant’s credibility.

8.—(1) In determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or a human rights claim, a deciding authority shall take account, as damaging the claimant’s credibility, of any behaviour to which this section applies.

(2) This section applies to any behaviour by the claimant that the deciding authority thinks—

- (a) is designed or likely to conceal information,
- (b) is designed or likely to mislead, or
- (c) is designed or likely to obstruct or delay the handling or resolution of the claim or the taking of a decision in relation to the claimant.

(3) Without prejudice to the generality of subsection (2) the following kinds of behaviour shall be treated as designed or likely to conceal information or to mislead—

- (a) failure without reasonable explanation to produce a passport on request to an immigration officer or to the Minister,
- (b) the production of a document which is not a valid passport as if it were,
- (c) the destruction, alteration or disposal, in each case without reasonable explanation, of a passport,
- (d) the destruction, alteration or disposal, in each case without reasonable explanation, of a ticket or other document connected with travel, and
- (e) failure without reasonable explanation to answer a question asked by a deciding authority.

(4) This section also applies to failure by the claimant to take advantage of a reasonable opportunity to make an asylum claim or human rights claim while in a safe country.

(5) This section also applies to failure by the claimant to make an asylum claim or human rights claim before being notified of an immigration decision, unless the claim relies wholly on matters arising after the notification.

(6) This section also applies to failure by the claimant to make an asylum claim or human rights claim before being arrested under an immigration provision, unless—

- (a) he had no reasonable opportunity to make the claim before the arrest, or
- (b) the claim relies wholly on matters arising after the arrest.

(7) In this section—

“asylum claim” has the meaning given by section 113(1) of the Nationality, Immigration and Asylum Act 2002 (subject to subsection (9) below),

“deciding authority” means—

- (a) an immigration officer,
- (b) the Minister, or
- (c) the Royal Court,

“human rights claim” has the meaning given by section 113(1) of the Nationality, Immigration and Asylum Act 2002 (subject to subsection (9) below),

“immigration decision” means—

- (a) refusal of leave to enter Jersey,
- (b) refusal to vary a person’s leave to enter or remain in Jersey,
- (c) grant of leave to enter or remain in Jersey,
- (d) a decision that a person is to be removed from Jersey by way of directions under section 10 of the Immigration and Asylum Act 1999 (removal of persons unlawfully in Jersey),
- (e) a decision that a person is to be removed from Jersey by way of directions under paragraphs 8 to 12 of Schedule 2 to the Immigration Act 1971 (control of entry: removal),
- (f) a decision to make a deportation order under section 5(1) of that Act, and
- (g) a decision to take action in relation to a person in connection with extradition from Jersey,

“immigration provision” means—

- (a) sections 28A, 28AA, 28B and 28C of the Immigration Act 1971 (immigration offences: enforcement),
- (b) paragraph 17 of Schedule 2 to that Act (control of entry),
- (c) section 14 of this Act, and

(d) a provision of the Extradition (Jersey) Law 2004,
“notified” means notified in such manner as may be specified by Order made by the Minister,
“passport” includes a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport, and
“safe country” means a country to which Part 2 of Schedule 3 to this Act applies for the time being in the United Kingdom.

(8) A passport produced by or on behalf of a person is valid for the purposes of subsection (3)(b) if it—

- (a) relates to the person by whom or on whose behalf it is produced,
- (b) has not been altered otherwise than by or with the permission of the authority who issued it, and
- (c) was not obtained by deception.

(9) In subsection (4) a reference to an asylum claim or human rights claim shall be treated as including a reference to a claim of entitlement to remain in a country or territory other than Jersey made by reference to the rights that a person invokes in making an asylum claim or a human rights claim in Jersey.

(11) An Order under subsection (7) specifying a manner of notification may make incidental, consequential or transitional provision.

(11A) The Subordinate Legislation (Jersey) Law 1960 shall apply to an Order under subsection (7).

(12) This section shall not prevent a deciding authority from determining not to believe a statement on the grounds of behaviour to which this section does not apply.

Enforcement powers

Immigration officer: power of arrest.

14.—(1) Where an immigration officer in the course of exercising a function under the Immigration Acts forms a reasonable suspicion that a person has committed or attempted to commit an offence listed in subsection (2), he may arrest the person without warrant.

(2) Those offences are—

- (a) the offence of conspiracy at customary law (in relation to conspiracy to defraud),
- (b) at customary law, any of the following offences—
 - (i) fraud,
 - (ii) conspiracy to defraud,
 - (iii) uttering and fraud,
 - (iv) bigamy,
 - (v) larceny, and
- (c) an offence under section 4 of this Act.

(3) The following provisions of the Immigration Act 1971 shall have effect for the purpose of making, or in connection with, an arrest under this section as they have effect for the purpose of making, or in connection with, arrests for offences under that Act—

- (a) section 28C (entry and search before arrest),
- (b) sections 28E and 28F (entry and search after arrest),
- (c) sections 28G and 28H (search of arrested person), and
- (d) section 28I (seized material).

(4) The States may by Regulations amend subsection (2) and subsection (3).

Retention of documents.

17. Where a document comes into the possession of the Minister or an immigration officer in the course of the exercise of an immigration function, the Minister or an immigration officer may retain the document while he suspects that—

- (a) a person to whom the document relates may be liable to removal from Jersey in accordance with a provision of the Immigration Acts, and
- (b) retention of the document may facilitate the removal.

Removal and detention

Removing asylum seeker to safe country.

33. Schedule 3 (which concerns the removal of persons claiming asylum to countries known to protect refugees and to respect human rights) shall have effect.

Deportation or removal: cooperation.

35.—(1) The Minister may require a person to take specified action if the Minister thinks that—

- (a) the action will or may enable a travel document to be obtained by or for the person, and
- (b) possession of the travel document will facilitate the person's deportation or removal from Jersey.

(2) In particular, the Minister may require a person to—

- (a) provide information or documents to the Minister or to any other person;
- (b) obtain information or documents;
- (c) provide biometric information (within the meaning of section 15 of the UK Borders Act 2007), or submit to a process by means of which such information is obtained or recorded;
- (d) make, or consent to or cooperate with the making of, an application to a person acting for the government of a country or territory outside Jersey;
- (e) cooperate with a process designed to enable determination of an application;
- (f) complete a form accurately and completely;
- (g) attend an interview and answer questions accurately and completely;
- (h) make an appointment.

(3) A person commits an offence if he fails without reasonable excuse to comply with a requirement of the Minister under subsection (1).

(4) A person guilty of an offence under subsection (3) shall be liable on conviction to imprisonment for a term not exceeding two years, to a fine or to both.

(5) If an immigration officer reasonably suspects that a person has committed an offence under subsection (3) he may arrest the person without warrant.

(6) An offence under subsection (3) shall be treated as—

- (a) a relevant offence for the purposes of sections 28B and 28D of the Immigration Act 1971 (search, entry and arrest), and
- (b) an offence under Part III of that Act (criminal proceedings) for the purposes of sections 28(4), 28E, 28G and 28H (search after arrest, &c.) of that Act.

(7) In subsection (1)—

“travel document” means a passport or other document which is issued by or for Her Majesty's Government or the government of another State and which enables or facilitates travel from Jersey to another country or territory, and

“removal from Jersey” means removal under—

- (a) Schedule 2 to the Immigration Act 1971 (control on entry) (including a provision of that Schedule as applied by another provision of the Immigration Acts),

- (b) section 10 of the Immigration and Asylum Act 1999 (removal of person unlawfully in United Kingdom), or
- (c) Schedule 3 to this Act.

General
Interpretation.

45. In this Act –

“immigration officer” means a person appointed in accordance with the Employment of States of Jersey Employees (Jersey) Law 2005 as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;

“the Minister” means the Minister for Home Affairs.

Short title.

50. This Act may be cited as the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

SCHEDULE 3
REMOVAL OF ASYLUM SEEKER TO SAFE COUNTRY

Section 33

1.—(1) In this Schedule–

“asylum claim” means a claim by a person that to remove him from or require him to leave Jersey would breach obligations by which Jersey is bound under the Refugee Convention,

“Convention rights” means the rights identified as Convention rights by Article 2 of the Human Rights (Jersey) Law 2000 (whether or not in relation to a State that is a party to the Convention),

“human rights claim” means a claim by a person that to remove him from or require him to leave Jersey would be unlawful under Article 7 of the Human Rights (Jersey) Law 2000 (public authority not to act contrary to Convention) as being incompatible with his Convention rights,

“Part 2 of this Schedule in the UK” means Part 2 of this Schedule as it applies for the time being in the United Kingdom;

“Part 3 of this Schedule in the UK” means Part 3 of this Schedule as it applies for the time being in the United Kingdom;

“Part 4 of this Schedule in the UK” means Part 4 of this Schedule as it applies for the time being in the United Kingdom;

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.

(2) In this Schedule a reference to anything being done in accordance with the Refugee Convention is a reference to the thing being done in accordance with the principles of the Convention, whether or not by a signatory to it.

3.—(1) This paragraph applies for the purposes of the determination by any person, tribunal or court whether a person who has made an asylum claim or a human rights claim may be removed–

- (a) from Jersey, and
- (b) to a State of which he is not a national or citizen.

(2) A State to which Part 2 of this Schedule in the UK applies shall be treated, in so far as relevant to the question mentioned in sub-paragraph (1), as a place–

- (a) where a person’s life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion,
- (b) from which a person will not be sent to another State in contravention of his Convention rights, and

- (c) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

4. Section 77 of the Nationality, Immigration and Asylum Act 2002 (no removal while claim for asylum pending) shall not prevent a person who has made a claim for asylum from being removed—

- (a) from Jersey, and
- (b) to a State to which Part 2 of this Schedule in the UK applies;

provided that the Minister certifies that in his opinion the person is not a national or citizen of the State.

7. Paragraphs 8 and 9 apply to such States as the Secretary of State has by order specified under Part 3 of this Schedule in the UK.

8.—(1) This paragraph applies for the purposes of the determination by any person, tribunal or court whether a person who has made an asylum claim may be removed—

- (a) from Jersey, and
- (b) to a State of which he is not a national or citizen.

(2) A State specified by the Secretary of State by order under Part 3 of this Schedule in the UK shall be treated, in so far as relevant to the question mentioned in sub-paragraph (1), as a place—

- (a) where a person's life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, and
- (b) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

9. Section 77 of the Nationality, Immigration and Asylum Act 2002 (no removal while claim for asylum pending) shall not prevent a person who has made a claim for asylum from being removed—

- (a) from Jersey, and
- (b) to a State specified by the Secretary of State by order under Part 3 of this Schedule in the UK;

provided that the Minister certifies that in his opinion the person is not a national or citizen of the State.

12. Paragraphs 13 and 14 apply to such States as the Secretary of State has by order specified under Part 4 of this Schedule in the UK.

13.—(1) This paragraph applies for the purposes of the determination by any person, tribunal or court whether a person who has made an asylum claim may be removed—

- (a) from Jersey, and
- (b) to a State of which he is not a national or citizen.

(2) A State specified by the Secretary of State by order under Part 4 of this Schedule in the UK shall be treated, in so far as relevant to the question mentioned in sub-paragraph (1), as a place—

- (a) where a person's life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, and
- (b) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

14. Section 77 of the Nationality, Immigration and Asylum Act 2002 (no removal while claim for asylum pending) shall not prevent a person who has made a claim for asylum from being removed—

- (a) from Jersey, and

- (b) to a State specified by the Secretary of State by order under Part 4 of this Schedule in the UK;

provided that the Minister certifies that in his opinion the person is not a national or citizen of the State.

17. Paragraph 18 applies to a person who has made an asylum claim if the Minister certifies that—

- (a) it is proposed to remove the person to a specified State,
- (b) in the Minister's opinion the person is not a national or citizen of the specified State, and
- (c) in the Minister's opinion the specified State is a place—
 - (i) where the person's life and liberty will not be threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, and
 - (ii) from which the person will not be sent to another State otherwise than in accordance with the Refugee Convention.

18. Where this paragraph applies to a person section 77 of the Nationality, Immigration and Asylum Act 2002 (no removal while claim for asylum pending) shall not prevent his removal to the State specified under paragraph 17.

APPENDIX VII

IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 AS EXTENDED BY THE DRAFT IMMIGRATION (JERSEY) ORDER 2020

Information

Passenger and crew information: police powers.

- 32.—(1) This section applies to ships and aircraft which are—
- (a) arriving, or expected to arrive, in Jersey, or
 - (b) leaving, or expected to leave, Jersey.
- (2) The owner or agent of a ship or aircraft shall comply with any requirement imposed by a police officer of the rank of Chief Inspector or above to provide passenger or service information.
- (3) A passenger or member of crew shall provide to the owner or agent of a ship or aircraft any information that he requires for the purpose of complying with a requirement imposed by virtue of subsection (2).
- (4) A police officer may impose a requirement under subsection (2) only if he thinks it necessary for police purposes.
- (5) In this section—
- (a) “passenger or service information” means information which is of a kind specified by Order of the Minister and which relates to—
 - (i) passengers,
 - (ii) members of crew, or
 - (iii) a voyage or flight,
 - (b) “police purposes” means any of the following –
 - (i) the prevention, detection, investigation or prosecution of criminal offences,
 - (ii) safeguarding national security,
 - (iii) such other purposes as may be specified by Order of the Minister, and
 - (c) “ship” includes –
 - (i) every description of vessel used in navigation, and
 - (ii) hovercraft.
- (6) A requirement imposed under subsection (2)—
- (a) must be in writing,
 - (b) may apply generally or only to one or more specified ships or aircraft,
 - (c) must specify a period, not exceeding six months and beginning with the date on which it is imposed, during which it has effect,
 - (d) must state—
 - (i) the information required, and
 - (ii) the date or time by which it is to be provided,
 - (e) may include a requirement for the owner or agent of a ship or aircraft to be able to receive, in a specified form and manner, communications relating to the information.
- (7) The Minister may make an Order specifying a kind of information under subsection (5)(a) only if satisfied that the nature of the information is such that there are likely to be circumstances

in which it can be required under subsection (2) without breaching Convention rights (within the meaning of the Human Rights (Jersey) Law 2000).

(8) An Order under subsection (5)(a)–

- (a) may apply generally or only to specified cases or circumstances,
- (b) may make different provision for different cases or circumstances, and
- (c) may specify the form and manner in which information is to be provided.

(9) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under subsection (5).

Orders requiring information to be provided to police.

32A.—(1) The Minister may make provision by Order requiring responsible persons in relation to ships or aircraft—

- (a) which have arrived, or are expected to arrive, in Jersey, or
- (b) which have left, or are expected to leave, Jersey,

to provide information to the police.

(2) The following information may be required under subsection (1)—

- (a) information about the persons on board;
- (b) information about the voyage or flight.

(3) An Order under this section may impose a requirement to provide the information only if the Minister thinks it necessary for police purposes.

In this subsection “police purposes” has the same meaning as in section 32.

(4) An Order under this section must—

- (a) specify or describe the classes of ships or aircraft to which the Order applies;
- (b) specify the information required to be provided;
- (c) specify the time by which the information must be provided;
- (d) specify the form and manner in which the information must be provided.

(5) An Order under this section may require responsible persons to be able to receive, in a specified form and manner, communications sent by the police, the Minister or an immigration officer relating to the information.

(6) An Order under this section—

- (a) may apply generally or only to specified cases or circumstances,
- (b) may make different provision for different cases or circumstances.

(6A) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under this section.

(7) For the purposes of this section, the following are responsible persons in respect of a ship or aircraft—

- (a) the owner or agent, and
- (b) the captain.

Penalty for breach of section 32 or 32A.

32B.—(1) The Minister may make provision by Order imposing penalties for failure to comply with a requirement imposed—

- (a) under section 32(2) (provision of passenger, crew or service information), or
- (b) by an Order made under section 32A (Orders requiring information to be provided to police).

(2) An Order under subsection (1) may in particular make provision—

- (a) about how a penalty is to be calculated;
- (b) about the procedure for imposing a penalty;
- (c) about the enforcement of penalties;
- (d) allowing for an appeal against a decision to impose a penalty;

and the Order may make different provision for different purposes.

(3) Provision in the Order about the procedure for imposing a penalty must provide for a person to be given an opportunity to object to a proposed penalty in the circumstances set out in the Order.

(4) The Order must provide that no penalty may be imposed on a person for failure to comply with a requirement imposed under section 32(2) or by an Order made under section 32A where—

- (a) proceedings have been instituted against the person under section 34 in respect of the same failure, or
- (b) the failure consists of a failure to provide information that the person has also been required to provide under paragraph 27, 27B or 27BA of Schedule 2 to the Immigration Act 1971 and—
 - (i) a penalty has been imposed on the person in respect of a failure to provide that information by virtue of regulations made under paragraph 27BB of that Schedule, or
 - (ii) proceedings have been instituted against the person under section 27 of that Act in respect of a failure to provide that information, or
- (c) the failure consists of a failure to provide information that the person has also been required to provide under an authority-to-carry scheme made by the Minister by Order under section 22 of the Counter-Terrorism and Security Act 2015 and a penalty has been imposed on the person in respect of a failure to provide that information by virtue of an Order made by the Minister under section 24 of that Act.

(5) Any penalty paid by virtue of this section must be paid to the Treasurer of the States and credited to the Annual Income of the States.

(6) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under this section.

Freight information: police powers.

33.—(1) This section applies to ships, aircraft and vehicles which are—

- (a) arriving, or expected to arrive, in Jersey, or
- (b) leaving, or expected to leave, Jersey.

(2) If a police officer of the rank of Chief Inspector or above requires a person specified in subsection (3) to provide freight information he shall comply with the requirement.

(3) The persons referred to in subsection (2) are—

- (a) in the case of a ship or aircraft, the owner or agent,
- (b) in the case of a vehicle, the owner or hirer, and
- (c) in any case, persons responsible for the import or export of the freight into or from Jersey.

(4) A police officer may impose a requirement under subsection (2) only if he thinks it necessary for police purposes.

(5) In this section—

- (a) “freight information” means information which is of a kind specified by Order of the Minister and which relates to freight carried, and
- (b) “police purposes” means any of the following—
 - (i) the prevention, detection, investigation or prosecution of criminal offences;

- (ii) safeguarding national security;
- (iii) such other purposes as may be specified by Order of the Minister.

(6) A requirement imposed under subsection (2)–

- (a) must be in writing,
- (b) may apply generally or only to one or more specified ships, aircraft or vehicles,
- (c) must specify a period, not exceeding six months and beginning with the date on which it is imposed, during which it has effect, and
- (d) must state–
 - (i) the information required, and
 - (ii) the date or time by which it is to be provided.

(7) The Minister may make an Order specifying a kind of information under subsection (5) only if satisfied that the nature of the information is such that there are likely to be circumstances in which it can be required under subsection (2) without breaching Convention rights (within the meaning of the Human Rights (Jersey) Law 2000).

(8) An Order under subsection (5)–

- (a) may apply generally or only to specified cases or circumstances,
- (b) may make different provision for different cases or circumstances,
- (c) may specify the form and manner in which the information is to be provided.

(9) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under this section.

Offence.

34.—(1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed—

- (a) under section 32(2) or (3) , or 33(2)
- (b) by an Order made under section 32A.

(1A) Proceedings may not be instituted against a person under subsection (1) for a failure to comply with a requirement imposed under section 32(2) or by an Order made under section 32A where—

- (a) the person has paid a penalty in respect of the same failure, or a failure to provide the same information, by virtue of an Order made under—
 - (i) section 32B,
 - (ii) paragraph 27BB of Schedule 2 to the Immigration Act 1971, or
 - (iii) section 24 of the Counter-Terrorism and Security Act 2015 (penalty for breach of authority-to-carry scheme); or
- (b) proceedings have been instituted against the person under section 27 of the Immigration Act 1971 in respect of a failure to provide the same information.

(3) A person who is guilty of an offence under subsection (1) shall be liable on conviction to–

- (a) imprisonment for a term not exceeding 6 months,
- (b) a fine not exceeding level 3 on the standard scale, or
- (c) both.

Disclosure to law enforcement agencies.

39.—(1) The Chief Officer of the States of Jersey Police Force may disclose information obtained in accordance with section 32 or 33 to–

- (a) a police force of the United Kingdom;
- (b) the salaried police force of the Island of Guernsey;

- (c) the Isle of Man constabulary;
 - (d) any other foreign law enforcement agency.
- (2) In subsection (1) “foreign law enforcement agency” means a person outside Jersey with functions similar to functions of—
- (a) a police force in the United Kingdom and Islands, or
 - (b) the National Crime Agency.

Searches: contracting out.

40.—(1) An authorised person may, in accordance with arrangements made under this section, search a searchable ship, aircraft, vehicle or other thing for the purpose of satisfying himself whether there are individuals whom an immigration officer might wish to examine under paragraph 2 of Schedule 2 to the Immigration Act 1971 (control of entry: administrative provisions).

- (2) For the purposes of subsection (1)—
- (a) “authorised” means authorised for the purpose of this section by the Minister, and
 - (b) a ship, aircraft, vehicle or other thing is “searchable” if an immigration officer could search it under paragraph 1(5) of that Schedule.
- (3) The Minister may authorise a specified class of police officer for the purpose of this section.
- (4) The Minister may, with the consent of the Agent of the Impôts, authorise a specified class of officer of the Impôts for the purpose of this section.
- (5) The Minister may authorise a person other than a police officer or officer of the Impôts for the purpose of this section only if—
- (a) the person applies to be authorised, and
 - (b) the Minister thinks that the person is—
 - (i) fit and proper for the purpose, and
 - (ii) suitably trained.
- (6) The Minister—
- (a) may make arrangements for the exercise by authorised police officers of the powers under subsection (1),
 - (b) may make arrangements with the Agent of the Impôts for the exercise by authorised officers of the Impôts of the powers under subsection (1), and
 - (c) may make arrangements with one or more persons for the exercise by authorised persons other than police officers and officers of the Impôts of the power under subsection (1).
- (7) Where in the course of a search under this section an authorised person discovers an individual whom he thinks an immigration officer might wish to examine under paragraph 2 of that Schedule, the authorised person may—
- (a) search the individual for the purpose of discovering whether he has with him anything of a kind that might be used—
 - (i) by him to cause physical harm to himself or another,
 - (ii) by him to assist his escape from detention, or
 - (iii) to establish information about his identity, nationality or citizenship or about his journey;
 - (b) retain, and as soon as is reasonably practicable deliver to an immigration officer, anything of a kind described in paragraph (a) found on a search under that paragraph;
 - (c) detain the individual, for a period which is as short as is reasonably necessary and which does not exceed three hours, pending the arrival of an immigration officer to whom the individual is to be delivered;

- (d) take the individual, as speedily as is reasonably practicable, to a place for the purpose of delivering him to an immigration officer there;
 - (e) use reasonable force for the purpose of doing anything under paragraphs (a) to (d).
- (8) Despite the generality of subsection (7)–
- (a) an individual searched under that subsection may not be required to remove clothing other than an outer coat, a jacket or a glove (but he may be required to open his mouth), and
 - (b) an item may not be retained under subsection (7)(b) if it is subject to legal privilege within the meaning the Police Procedures and Criminal Evidence (Jersey) Law 2003.

Section 40: supplemental.

41.—(1) Arrangements under section 40(6)(c) must include provision for the appointment of a States' employee (within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005) to–

- (a) monitor the exercise of powers under that section by authorised persons (other than police officers or officers of the Impôts),
 - (b) inspect from time to time the way in which the powers are being exercised by authorised persons (other than police officers or officers of the Impôts), and
 - (c) investigate and report to the Minister about any allegation made against an authorised person (other than a police officer or officer of the Impôts) in respect of anything done or not done in the purported exercise of a power under that section.
- (2) The authorisation for the purpose of section 40 of a police officer or officer of the Impôts or of a class of police officer or officer of the Impôts–
- (a) may be revoked, and
 - (b) shall have effect, unless revoked, for such period as shall be specified (whether by reference to dates or otherwise) in the authorisation.
- (3) The authorisation of a person other than a police officer or officer of the Impôts for the purpose of section 40–
- (a) may be subject to conditions,
 - (b) may be suspended or revoked by the Minister by notice in writing to the authorised person, and
 - (c) shall have effect, unless suspended or revoked, for such period as shall be specified (whether by reference to dates or otherwise) in the authorisation.
- (4) A class may be specified for the purposes of section 40(3) or (4) by reference to–
- (a) named individuals,
 - (b) the functions being exercised by a person,
 - (c) the location or circumstances in which a person is exercising functions, or
 - (d) any other matter.
- (5) An individual or article delivered to an immigration officer under section 40 shall be treated as if discovered by the immigration officer on a search under Schedule 2 to the Immigration Act 1971.
- (6) A person commits an offence if he–
- (a) absconds from detention under section 40(7)(c),
 - (b) absconds while being taken to a place under section 40(7)(d) or having been taken to a place in accordance with that paragraph but before being delivered to an immigration officer,
 - (c) obstructs an authorised person in the exercise of a power under section 40, or

- (d) assaults an authorised person who is exercising a power under section 40.
- (7) But a person does not commit an offence under subsection (6) by doing or failing to do anything in respect of an authorised person who is not readily identifiable—
 - (a) as a police officer or officer of the Impôts, or
 - (b) as an authorised person (whether by means of a uniform or badge or otherwise).
- (8) A person guilty of an offence under subsection (6) shall be liable on conviction to—
 - (a) imprisonment for a term not exceeding six months,
 - (b) a fine not exceeding level 3 on the standard scale, or
 - (c) both.

Claimants and applicants

Procedure.

- 50.**—(1) Rules under section 3 of the Immigration Act 1971—
- (a) may require a specified procedure to be followed in making or pursuing an application or claim (whether or not under those rules or any other enactment),
 - (b) may, in particular, require the use of a specified form and the submission of specified information or documents,
 - (c) may make provision about the manner in which a fee is to be paid, and
 - (d) may make provision for the consequences of failure to comply with a requirement under paragraph (a), (b) or (c).
- (2) In respect of any application or claim in connection with immigration (whether or not under the rules referred to in subsection (1) or any other enactment) the Minister—
- (a) may require the use of a specified form,
 - (b) may require the submission of specified information or documents, and
 - (c) may direct the manner in which a fee is to be paid;

and the rules referred to in subsection (1) may provide for the consequences of failure to comply with a requirement under paragraph (a), (b) or (c).

Miscellaneous

Refugee Convention: construction.

- 54.**—(1) In the construction and application of Article 1(F)(c) of the Refugee Convention the reference to acts contrary to the purposes and principles of the United Nations shall be taken as including, in particular—
- (a) acts of committing, preparing or instigating terrorism (whether or not the acts amount to an actual or inchoate offence), and
 - (b) acts of encouraging or inducing others to commit, prepare or instigate terrorism (whether or not the acts amount to an actual or inchoate offence).

- (2) In this section—

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951, and

“terrorism” has the meaning given by Article 2 of the Terrorism (Jersey) Law 2002.

General

Interpretation.

- 60.** In this Act “the Minister” means the Minister for Home Affairs.

Citation.

- 64.** This Act may be cited as the Immigration, Asylum and Nationality Act 2006.
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APPENDIX VIII

UK BORDERS ACT 2007 AS EXTENDED BY THE DRAFT IMMIGRATION (JERSEY) ORDER 2020

Detention at ports

Designated immigration officers.

- 1.—(1) The Minister may designate immigration officers for the purposes of section 2.
- (2) The Minister may designate only officers who the Minister thinks are—
 - (a) fit and proper for the purpose, and
 - (b) suitably trained.
- (3) A designation—
 - (a) may be permanent or for a specified period, and
 - (b) may (in either case) be revoked.

Detention.

- 2.—(1) A designated immigration officer at a port in Jersey may detain an individual if the immigration officer thinks that the individual—
 - (a) may be liable to arrest by a police officer under Article 3(1) of the Honorary Police (Jersey) Law 1974 or Article 16(2) of the States of Jersey Police Force Law 2012, or
 - (b) is subject to a warrant for arrest.
- (2) A designated immigration officer who detains an individual—
 - (a) must arrange for a police officer to attend as soon as is reasonably practicable,
 - (b) may search the individual for, and retain, anything that might be used to assist escape or to cause physical injury to the individual or another person,
 - (c) must retain anything found on a search which the immigration officer thinks may be evidence of the commission of an offence, and
 - (d) must, when the police officer arrives, deliver to the police officer the individual and anything retained on a search.
- (3) An individual may not be detained under this section for longer than three hours.
- (4) A designated immigration officer may use reasonable force for the purpose of exercising a power under this section.
- (5) Where an individual whom a designated immigration officer has detained or attempted to detain under this section leaves the port, a designated immigration officer may—
 - (a) pursue the individual, and
 - (b) return the individual to the port.

Enforcement.

- 3.—(1) An offence is committed by a person who—
 - (a) absconds from detention under section 2,
 - (b) assaults an immigration officer exercising a power under section 2, or
 - (c) obstructs an immigration officer in the exercise of a power under section 2.
- (2) A person guilty of an offence under subsection (1) shall be liable to—
 - (a) imprisonment for a term not exceeding 12 months,

- (b) a fine not exceeding level 3 on the standard scale, or
- (c) both.

Interpretation: “port”.

4.—(1) In section 2 “port” includes an airport.

(2) A place shall be treated for the purposes of that section as a port in relation to an individual if a designated immigration officer believes that the individual—

- (a) has gone there for the purpose of embarking on a ship or aircraft, or
- (b) has arrived there on disembarking from a ship or aircraft.

Biometric registration

Registration Regulations.

5.—(1) The States may make Regulations—

- (a) requiring a person subject to immigration control to apply for the issue of a document recording biometric information (a “biometric immigration document”);
- (b) requiring a biometric immigration document to be used—
 - (i) for specified immigration purposes,
 - (ii) in connection with specified immigration procedures, or
 - (iii) in specified circumstances, where a question arises about a person’s status in relation to nationality or immigration;
- (c) requiring a person who produces a biometric immigration document by virtue of paragraph (b) to provide information for comparison with information provided in connection with the application for the document.

(2) Regulations under subsection (1)(a) may, in particular—

- (a) apply generally or only to a specified class of persons subject to immigration control (for example, persons making or seeking to make a specified kind of application for immigration purposes);
- (b) specify the period within which an application for a biometric immigration document must be made;
- (c) make provision about the issue of biometric immigration documents;
- (d) make provision about the content of biometric immigration documents (which may include non-biometric information);
- (e) make provision permitting a biometric immigration document to be combined with another document;
- (f) make provision for biometric immigration documents to begin to have effect, and cease to have effect, in accordance with the Regulations;
- (g) require a person who acquires a biometric immigration document, without the consent of the person to whom it relates or of the Minister, to surrender it to the Minister as soon as is reasonably practicable;
- (h) permit the Minister to require the surrender of a biometric immigration document in other specified circumstances;
- (i) permit the Minister on issuing a biometric immigration document to require the surrender of other documents connected with immigration or nationality.

(3) Regulations under subsection (1)(a) may permit the Minister to cancel a biometric immigration document—

- (a) if the Minister thinks that information provided in connection with the document was or has become false, misleading or incomplete,
- (b) if the Minister thinks that the document has been lost or stolen,

- (c) if the Minister thinks that the document (including any information recorded in it) has been altered, damaged or destroyed (whether deliberately or not),
- (d) if the Minister thinks that an attempt has been made (whether successfully or not) to copy the document or to do anything to enable it to be copied,
- (e) if the Minister thinks that a person has failed to surrender the document in accordance with subsection (2)(g) or (h),
- (f) if the Minister thinks that the document should be re-issued (whether because the information recorded in it requires alteration or for any other reason),
- (g) if the Minister thinks that the holder is to be given leave to enter or remain in Jersey,
- (h) if the Minister thinks that the holder's leave to enter or remain in Jersey is to be varied, cancelled or invalidated or to lapse,
- (i) if the Minister thinks that the holder has died,
- (j) if the Minister thinks that the holder has been removed from Jersey (whether by deportation or otherwise),
- (k) if the Minister thinks that the holder has left Jersey without retaining leave to enter or remain, and
- (l) in such other circumstances as the Regulations may specify.

(4) Regulations under subsection (1)(a) may require notification to be given to the Minister by the holder of a biometric immigration document—

- (a) who knows or suspects that the document has been lost or stolen,
- (b) who knows or suspects that the document has been altered or damaged (whether deliberately or not),
- (c) who knows or suspects that information provided in connection with the document was or has become false, misleading or incomplete,
- (d) who was given leave to enter or remain in Jersey in accordance with a provision of rules under section 3 of the Immigration Act 1971 (immigration rules) and knows or suspects that owing to a change of the holder's circumstances the holder would no longer qualify for leave under that provision, or
- (e) in such other circumstances as the Regulations may specify.

(5) Regulations under subsection (1)(a) may require a person applying for the issue of a biometric immigration document to provide information (which may include biographical or other non-biometric information) to be recorded in it or retained by the Minister; and, in particular, the Regulations may—

- (a) require, or permit an authorised person to require, the provision of information in a specified form;
- (b) require an individual to submit, or permit an authorised person to require an individual to submit, to a specified process by means of which biometric information is obtained or recorded;
- (c) confer a function (which may include the exercise of a discretion) on an authorised person;
- (d) permit the Minister, instead of requiring the provision of information, to use or retain information which is (for whatever reason) already in the Minister's possession.

(6) Regulations under subsection (1)(b) may, in particular, require the production or other use of a biometric immigration document that is combined with another document.

(7) Regulations under subsection (1)(b) may not make provision the effect of which would be to require a person to carry a biometric immigration document at all times.

(8) Regulations under subsection (1)(c) may, in particular, make provision of a kind specified in subsection (5)(a) or (b).

(9) Rules under section 3 of the Immigration Act 1971 may require a person applying for the issue of a biometric immigration document to provide non-biometric information to be recorded in it or retained by the Minister.

(10) Subsections (5) to (9) are without prejudice to the generality of section 50 of the Immigration, Asylum and Nationality Act 2006 (procedure).

Regulations: supplemental.

6.—(1) This section applies to Regulations under section 5(1).

(2) Regulations amending or replacing earlier Regulations may require a person who holds a biometric immigration document issued under the earlier Regulations to apply under the new Regulations.

(3) In so far as Regulations require an individual under the age of 16 to submit to a process for the recording of biometric information, or permit an authorised person to require an individual under the age of 16 to submit to a process of that kind, the Regulations must make provision similar to section 141(3) to (5) and (13) of the Immigration and Asylum Act 1999 (fingerprints: children).

(4) Rules under section 3 of the Immigration Act 1971 (immigration rules) may make provision by reference to compliance or non-compliance with Regulations.

(5) Information in the Minister's possession which is used or retained in accordance with Regulations under section 5(5)(d) shall be treated, for the purpose of requirements about treatment and destruction, as having been provided in accordance with the Regulations at the time at which it is used or retained in accordance with them.

(6) Regulations—

- (a) may make provision having effect generally or only in specified cases or circumstances,
- (b) may make different provision for different cases or circumstances, and
- (c) may include incidental, consequential or transitional provision.

Effect of non-compliance.

7.—(1) Regulations under section 5(1) must include provision about the effect of failure to comply with a requirement of the Regulations.

(2) In particular, the Regulations may—

- (a) require or permit an application for a biometric immigration document to be refused;
- (b) require or permit an application or claim in connection with immigration to be disregarded or refused;
- (c) require or permit the cancellation or variation of leave to enter or remain in Jersey;
- (d) require the Minister to consider giving a notice under section 9;
- (e) provide for the consequence of a failure to be at the discretion of the Minister.

(2A) If the Regulations require a biometric immigration document to be used in connection with an application or claim, they may require or permit the application or claim to be disregarded or refused if that requirement is not complied with.

(3) The Regulations may also permit the Minister to designate an adult as the person responsible for ensuring that a child complies with requirements of the Regulations; and for that purpose—

- (a) “adult” means an individual who has attained the age of 18,
- (b) “child” means an individual who has not attained the age of 18, and

- (c) sections 9 to 13 shall apply (with any necessary modifications) to a designated adult's failure to ensure compliance by a child with a requirement of Regulations as they apply to a person's own failure to comply with a requirement.

Use and retention of biometric information.

8.—(1) The States must by Regulations make provision about the use and retention by the Minister of biometric information provided in accordance with Regulations under section 5(1).

(2) The Regulations must provide that biometric information may be retained only if the Minister thinks that it is necessary to retain it for use in connection with—

- (a) the exercise of a function by virtue of the Immigration Acts, or
- (b) the exercise of a function in relation to nationality.

(3) The Regulations may include provision permitting biometric information retained by virtue of subsection (2) also to be used—

- (a) in connection with the prevention, investigation or prosecution of an offence,
- (b) for a purpose which appears to the Minister to be required in order to protect national security,
- (c) in connection with identifying persons who have died, or are suffering from illness or injury,
- (d) for the purpose of ascertaining whether a person has acted unlawfully, or has obtained or sought anything to which the person is not legally entitled, and
- (e) for such other purposes (whether in accordance with functions under an enactment or otherwise) as the Regulations may specify.

(4) The Regulations must include provision about the destruction of biometric information.

(5) In particular the Regulations must require the Minister to take all reasonable steps to ensure that biometric information is destroyed if the Minister—

- (a) no longer thinks that it is necessary to retain the information for use as mentioned in subsection (2), or
- (b) is satisfied that the person to whom the information relates is a British citizen, or a Commonwealth citizen who has a right of abode in Jersey as a result of section 2(1)(b) of the Immigration Act 1971.

(6) The Regulations must also—

- (a) require that any requirement to destroy biometric information by virtue of the Regulations also applies to copies of the information, and
- (b) require the Minister to take all reasonable steps to ensure—
 - (i) that data held in electronic form which relates to biometric information which has to be destroyed by virtue of the regulations is destroyed or erased, or
 - (ii) that access to such data is blocked.

(7) But a requirement to destroy biometric information or data is not to apply if and in so far as the information or data is retained in accordance with and for the purposes of another power.

(8) The Regulations must include provision—

- (a) entitling a person whose biometric information has to be destroyed by virtue of the Regulations, on request, to a certificate issued by the Minister to the effect that the Minister has taken the steps required by virtue of subsection (6)(b), and
- (b) requiring such a certificate to be issued within the period of 3 months beginning with the date on which the request for it is received by the Minister.

(9) Section 6(6) applies to Regulations under this section as it applies to Regulations under section 5(1).

Penalty.

9.—(1) The Minister may by notice require a person to pay a penalty for failing to comply with a requirement of Regulations under section 5(1).

(2) The notice must—

- (a) specify the amount of the penalty,
- (b) specify a date before which the penalty must be paid to the Minister,
- (c) specify methods by which the penalty may be paid,
- (d) explain the grounds on which the Minister thinks the person has failed to comply with a requirement of the Regulations, and
- (e) explain the effect of sections 10 to 12.

(3) The amount specified under subsection (2)(a) may not exceed £1,000.

(4) The date specified under subsection (2)(b) must be not less than 14 days after the date on which the notice is given.

(5) A person who has been given a notice under subsection (1) for failing to comply with Regulations may be given further notices in the case of continued failure; but a person may not be given a new notice—

- (a) during the time available for objection or appeal against an earlier notice, or
- (b) while an objection or appeal against an earlier notice has been instituted and is neither withdrawn nor determined.

(6) The Minister may by Order amend subsection (3) to reflect a change in the value of money since 25 November 2008.

Penalty: objection.

10.—(1) A person (P) who is given a penalty notice under section 9(1) may by notice to the Minister object on the grounds—

- (a) that P has not failed to comply with a requirement of Regulations under section 5(1),
- (b) that it is unreasonable to require P to pay a penalty, or
- (c) that the amount of the penalty is excessive.

(2) A notice of objection must—

- (a) specify the grounds of objection and P's reasons,
- (b) comply with any prescribed requirements as to form and content, and
- (c) be given within the prescribed period.

(3) The Minister shall consider a notice of objection and—

- (a) cancel the penalty notice,
- (b) reduce the penalty by varying the penalty notice,
- (c) increase the penalty by issuing a new penalty notice, or
- (d) confirm the penalty notice.

(4) The Minister shall act under subsection (3) and notify P—

- (a) in accordance with any prescribed requirements, and
- (b) within the prescribed period or such longer period as the Minister and P may agree.

Penalty: appeal.

11.—(1) A person (P) who is given a penalty notice under section 9(1) may appeal to the Petty Debts Court.

(2) An appeal may be brought on the grounds—

- (a) that P has not failed to comply with a requirement of Regulations under section 5(1),
 - (b) that it is unreasonable to require P to pay a penalty, or
 - (c) that the amount of the penalty is excessive.
- (3) The Petty Debts Court may—
- (a) cancel the penalty notice,
 - (b) reduce the penalty by varying the penalty notice,
 - (c) increase the penalty by varying the penalty notice (whether because the Court thinks the original amount insufficient or because the Court thinks that the appeal should not have been brought), or
 - (d) confirm the penalty notice.
- (4) An appeal may be brought—
- (a) whether or not P has given a notice of objection, and
 - (b) irrespective of the Minister’s decision on any notice of objection.
- (5) The Petty Debts Court may consider matters of which the Minister was not and could not have been aware before giving the penalty notice.
- (6) Rules of court may make provision about the timing of an appeal under this section.

Penalty: enforcement.

- 12.**—(1) Where a penalty has not been paid before the date specified in the penalty notice in accordance with section 9(2)(b), it may be recovered as a debt due to the Minister.
- (2) Where a notice of objection is given in respect of a penalty notice, the Minister may not take steps to enforce the penalty notice before—
- (a) deciding what to do in response to the notice of objection, and
 - (b) informing the objector.
- (3) The Minister may not take steps to enforce a penalty notice while an appeal under section 11—
- (a) could be brought (disregarding any possibility of an appeal out of time with permission), or
 - (b) has been brought and has not been determined or abandoned.
- (4) In proceedings for the recovery of a penalty no question may be raised as to the matters specified in sections 10 and 11 as grounds for objection or appeal.
- (5) Money received by the Minister in respect of a penalty shall form part of the annual income of the States.

Penalty: code of practice.

- 13.**—(1) The Minister shall issue a code of practice setting out the matters to be considered in determining—
- (a) whether to give a penalty notice under section 9(1), and
 - (b) the amount of a penalty.
- (2) The code may, in particular, require the Minister to consider any decision taken by virtue of section 7.
- (3) The Petty Debts Court shall, when considering an appeal under section 11, have regard to the code.
- (4) The Minister may revise and re-issue the code.
- (5) Before issuing or re-issuing the code the Minister must—

- (a) publish proposals, and
 - (b) consult members of the public.
- (6) The code (or re-issued code) shall come into force at the prescribed time.

Penalty: prescribed matters.

14.—(1) In sections 10 to 13 “prescribed” means prescribed by the Minister by Order.

(2) An Order under subsection (1) or under section 9(6)—

- (a) may make provision generally or only for specified purposes, and
- (b) may make different provision for different purposes.

(3) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders made under subsection (1) and under section 9(6).

Interpretation.

15.—(1) For the purposes of section 5—

- (a) “person subject to immigration control” means a person who under the Immigration Act 1971 requires leave to enter or remain in Jersey (whether or not such leave has been given),
- (b) “the Minister” means the Minister for Home Affairs,
- (d) “document” includes a card or sticker and any other method of recording information (whether in writing or by the use of electronic or other technology or by a combination of methods),
- (e) “authorised person” has the meaning given by section 141(5) of the Immigration and Asylum Act 1999 (authority to take fingerprints),
- (f) “immigration” includes asylum, and
- (g) Regulations or an Order permitting something to be done by the Minister may (but need not) permit it to be done only where the Minister is of a specified opinion.

(1A) For the purposes of section 5 “biometric information” means—

- (a) information about a person’s external physical characteristics (including in particular fingerprints and features of the iris), and
- (b) any other information about a person’s physical characteristics specified in an Regulations made by the States.

(1B) Regulations under subsection (1A)(b)—

- (a) may specify only information that can be obtained or recorded by an external examination of a person;
- (b) must not specify information about a person’s DNA.

(1C) Section 6(6) applies to Regulations under subsection (1A)(b) as it applies to Regulations under section 5(1).

(2) An application for a biometric immigration document is an application in connection with immigration for the purposes of—

- (a) section 50(1) and (2) of the Immigration, Asylum and Nationality Act 2006 (procedure), and
- (b) sections 67A and 68 of the Immigration Act 2014 (fees);

and in the application of either of those sections to an application for a biometric immigration document, the prescribed consequences of noncompliance may include any of the consequences specified in section 7(2) above.

Enforcement

Assaulting an immigration officer: offence.

22.—(1) A person who assaults an immigration officer commits an offence.

(2) A person guilty of an offence under this section shall be liable to—

- (a) imprisonment for a period not exceeding 12 months,
- (b) a fine not exceeding level 3 on the standard scale, or
- (c) both.

Assaulting an immigration officer: powers of arrest, &c.

23.—(1) An immigration officer may arrest a person without warrant if the officer reasonably suspects that the person has committed or is about to commit an offence under section 22.

(2) An offence under section 22 shall be treated as—

- (a) a relevant offence for the purposes of sections 28B and 28D of the Immigration Act 1971 (search, entry and arrest), and
- (b) an offence under Part 3 of that Act (criminal proceedings) for the purposes of sections 28(4), 28E, 28G and 28H (search after arrest, &c.) of that Act.

(3) The following provisions of the Immigration Act 1971 shall have effect in connection with an offence under section 22 of this Act as they have effect in connection with an offence under that Act—

- (a) section 28I (seized material: access and copying),
- (b) section 28J (search warrants: safeguards),
- (c) section 28K (execution of warrants), and
- (d) section 28L(1) (interpretation).

Disposal of property.

26.—(1) In this section “property” means property which—

- (a) has come into the possession of an immigration officer, or
- (b) has come into the possession of the Minister in the course of, or in connection with, a function under the Immigration Acts.

(2) The Magistrate’s Court may, on the application of the Minister or a claimant of property—

- (a) order the delivery of property to the person appearing to the Court to be its owner, or
- (b) if its owner cannot be ascertained, make any other order about property.

(3) An order shall not affect the right of any person to take legal proceedings for the recovery of the property, provided that the proceedings are instituted within the period of six months beginning with the date of the order.

(4) An order may be made in respect of property forfeited under section 25, or under section 25C of the Immigration Act 1971 (vehicles, &c.), only if—

- (a) the application under subsection (2) above is made within the period of six months beginning with the date of the forfeiture order, and
- (b) the applicant (if not the Minister) satisfies the Court—
 - (i) that the applicant did not consent to the offender’s possession of the property, or
 - (ii) that the applicant did not know and had no reason to suspect that the property was likely to be used, or was intended to be used, in connection with an offence.

(5) The Minister may make provision by Order for the disposal of property—

- (a) where the owner has not been ascertained,
- (b) where an order under subsection (2) cannot be made because of subsection (4)(a), or
- (c) where the Court has declined to make an order under subsection (2) on the grounds that the Court is not satisfied of the matters specified in subsection (4)(b).

(6) An Order under subsection (5) may make provision that is the same as or similar to provision that may be made by Order under Article 28 of the States of Jersey Police Force Law 2012; and the Order—

- (a) may apply, with or without modifications, an Order under that Law,
- (b) may, in particular, provide for property to vest in the Minister,
- (c) may make provision about the timing of disposal (which, in particular, may differ from provision made by or under the States of Jersey Police Force Law 2012), and
- (d) shall have effect only in so far as not inconsistent with an order of a court (whether or not under subsection (2) above).

(6A) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders made under subsection (5).

(7) For the purposes of subsection (1) it is immaterial whether property is acquired as a result of forfeiture or seizure or in any other way.

Requirement to state nationality.

43A.—(1) An individual who is arrested for an offence must state his or her nationality if required to do so by an immigration officer or a police officer in accordance with this section.

(2) A requirement may be imposed on an individual under subsection (1) only if the immigration officer or a police officer suspects that the individual may not be a British citizen.

(3) When imposing a requirement under subsection (1) the immigration officer or police officer must inform the individual that an offence may be committed if the individual fails to comply with a requirement imposed under this section.

(4) The immigration officer or police officer must make a written record of the imposition of a requirement under subsection (1) as soon as practicable.

(5) The written record is to be made in the presence of the individual where this is practicable.

Offence of not giving nationality.

43B.—(1) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed in accordance with section 43A, whether by providing false or incomplete information or by providing no information.

(2) Information provided by a person in response to a requirement imposed in accordance with section 43A is not admissible in evidence in criminal proceedings against that person other than proceedings for an offence under this section.

(3) A person who is guilty of an offence under subsection (1) is liable to either or both of the following—

- (a) imprisonment for a term not exceeding 12 months;
- (b) a fine.

Search for evidence of nationality.

44.—(1) This section applies where an individual has been arrested on suspicion of the commission of an offence and an immigration officer or a police officer suspects—

- (a) that the individual may not be a British citizen, and
- (b) that nationality documents relating to the individual may be found on—
 - (i) premises occupied or controlled by the individual,
 - (ii) premises on which the individual was arrested, or
 - (iii) premises on which the individual was, immediately before being arrested.

(2) The immigration officer or police officer may enter and search the premises for the purpose of finding those documents.

(3) The power of search may be exercised only with the written authority of a senior officer; and for that purpose—

- (a) “senior officer” means—
 - (i) in relation to an immigration officer, an immigration officer of at least the rank of chief immigration officer, and
 - (ii) in relation to a police officer, a police officer of at least the rank of inspector, and
- (b) a senior officer who gives authority must arrange for a written record to be made of—
 - (i) the grounds for the suspicions in reliance on which the power of search is to be exercised, and
 - (ii) the nature of the documents sought.

(4) The power of search may not be exercised where the individual has been released without being charged with an offence.

(5) In relation to an individual “nationality document” means a document showing—

- (a) the individual’s identity, nationality or citizenship,
- (b) the place from which the individual travelled to Jersey, or
- (c) a place to which the individual is proposing to go from Jersey.

Search for evidence of nationality: other premises.

45.—(1) This section applies where an individual—

- (a) has been arrested on suspicion of the commission of an offence, and
- (b) has not been released without being charged with an offence.

(2) If, on an application made by an immigration officer or a police officer, the Magistrate is satisfied that there are reasonable grounds for believing that—

- (a) the individual may not be a British citizen,
- (b) nationality documents relating to the individual may be found on premises mentioned in subsection (2A) ,
- (c) the documents would not be exempt from seizure under section 46(2), and
- (d) any of the conditions in subsection (3) below applies, in relation to each set of premises specified in the application,

the Magistrate may issue a warrant authorising an immigration officer or police officer to enter and search the premises.

(2A) The premises referred to in subsection (2)(b) above are—

- (a) one or more sets of premises specified in the application, or
- (b) subject to subsection (3A), any premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified (in which case the application is for an “all premises warrant”).

(2B) If the application is for an all premises warrant, the Magistrate must also be satisfied—

- (a) that there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application in order to find the nationality documents, and
- (b) that it is not reasonably practicable to specify in the application all the premises which the person occupies or controls and which might need to be searched.

(2C) Subject to subsection (3A), the warrant may authorise entry to and search of premises on more than one occasion if, on the application, the justice of the peace is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which the Magistrate issues the warrant.

(2D) If it authorises multiple entries, the number of entries authorised may be unlimited, or limited to a maximum.

(3) The conditions mentioned in subsection (2)(d) are that—

- (a) it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the nationality documents;
- (c) entry to the premises will not be granted unless a warrant is produced;
- (d) the purpose of a search may be frustrated or seriously prejudiced unless an immigration officer or police officer arriving at the premises can secure immediate entry.

(4) Sections 28J and 28K of the Immigration Act 1971 (warrants: application and execution) apply, with any necessary modifications, to warrants under this section.

Seizure of nationality documents.

46.—(1) An immigration officer or police officer searching premises under section 44 or 45 may seize a document which the officer or police officer thinks is a nationality document in relation to the arrested individual.

(2) Subsection (1) does not apply to a document which is subject to legal professional privilege.

(3) An immigration officer or police officer may retain a document seized under subsection (1) while the officer or police officer suspects that—

- (a) the individual to whom the document relates may be liable to removal from Jersey in accordance with a provision of the Immigration Acts, and
- (b) retention of the document may facilitate the individual's removal.

(4) Section 28I of the Immigration Act 1971 (seized material: access and copying) shall have effect in relation to a document seized and retained by an immigration officer.

(5) Article 23 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 (seized material: access and copying) shall have effect in relation to a document seized and retained by a police officer.

Requirement to produce nationality document.

46A.—(1) This section applies where—

- (a) an individual has been arrested on suspicion of the commission of an offence, and
- (b) the individual is to be released after arrest (whether or not on bail)—
 - (i) before a decision is taken on whether the individual should be charged with an offence, or
 - (ii) after being charged with an offence.

(2) Before the individual is released an immigration officer or a police officer may give the individual a notice requiring the production of a nationality document not later than 72 hours after the individual is released.

(3) A notice may be given under subsection (2) only if the immigration officer or police officer giving it suspects that the individual may not be a British citizen.

(4) A notice under subsection (2) must be given in writing.

(5) The notice must include statements that—

- (a) the individual to whom it is given must produce the nationality document not later than 72 hours after the individual is released, and

- (b) an offence may be committed if an individual fails to comply with a notice given under this section.
- (6) The notice must also set out—
- (a) the person to whom the document must be produced, and
 - (b) the means by which the document must be produced.
- (7) In this section, and in sections 46B and 46C—
- “nationality document” means a passport relating to the individual or, if there is no passport relating to the individual, one or more documents that enable the individual’s nationality or citizenship to be established;
- “passport” means—
- (a) a United Kingdom passport (within the meaning of the Immigration Act 1971),
 - (b) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom and Islands, or by or on behalf of an international organisation, or
 - (c) a document that can be used (in some or all circumstances) instead of a passport.

Retention of nationality document etc.

46B.—(1) An immigration officer or police officer may retain a nationality document produced in response to a notice under section 46A(2) while the immigration officer or police officer suspects that—

- (a) the individual to whom the document relates may be liable to removal from Jersey in accordance with a provision of the Immigration Acts, and
- (b) retention of the document may facilitate the individual’s removal.

(2) Section 28I of the Immigration Act 1971 (seized material: access and copying) has effect in relation to a nationality document produced by an individual in response to a notice under section 46A(2) and retained by an immigration officer as if the nationality document had been seized when the individual had custody or control of it.

(3) Article 23 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 (seized material: access and copying) has effect in relation to a nationality document produced by an individual in response to a notice under section 46A(2) and retained by a police officer as if the nationality document had been seized when the individual had custody or control of it.

Offence of failing to produce nationality document.

46C.—(1) A person commits an offence if, without reasonable excuse, the person fails to comply with a notice given in accordance with section 46A.

(2) The fact that a person deliberately destroyed or disposed of a nationality document is not a reasonable excuse for the purposes of subsection (1) unless the destruction or disposal was—

- (a) for a reasonable cause, or
- (b) beyond the control of the person charged with the offence.

(3) In subsection (2)(a) “reasonable cause” does not include the purpose of—

- (a) delaying the handling or resolution of a claim or application or the taking of a decision,
- (b) increasing the chances of success of a claim or application, or
- (c) complying with instructions given by a person who offers advice about, or facilitates, immigration into Jersey, unless in the circumstances of the case it is unreasonable to expect non-compliance with the instructions or advice.

(4) A person who is guilty of an offence under subsection (1) is liable on conviction, to either or both of the following—

- (a) imprisonment for a term not exceeding 12 months;

(b) a fine.

Citation.

61.—(1) This Act may be cited as the UK Borders Act 2007.

APPENDIX IX

BORDERS CITIZENSHIP AND IMMIGRATION ACT 2009 AS EXTENDED BY THE DRAFT IMMIGRATION (JERSEY) ORDER 2020

Children

Independent Family Returns Panel.

54A.—(1) The States may by Regulations establish a panel to be known as the Independent Family Returns Panel.

(2) Where Regulations have been made under subsection (1), the Minister must consult the Independent Family Returns Panel in each family returns case, on how best to safeguard and promote the welfare of the children of the family.

(3) 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—
 - (i) is a parent of the child or has care of the child, and
 - (ii) is living in a household in Jersey with the child,is also to be removed from or required to leave Jersey.

(4) Where Regulations have been made under subsection (1), the Minister may by Order make provision about—

- (a) additional functions of the Independent Family Returns Panel,
- (b) its status and constitution,
- (c) the appointment of its members,
- (d) the payment of remuneration and allowances to its members, and
- (e) any other matters in connection with its establishment and operation.

(5) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders made under subsection (4).

(6) In this section—

“child” means a person who is under the age of 18;

“the Minister” means the Minister for Home Affairs;

references to a person being removed from or required to leave Jersey are to the person being removed or required to leave in accordance with a provision of the Immigration Acts.

Duty regarding the welfare of children.

55.—(1) The Minister must make arrangements for ensuring that—

- (a) the functions mentioned in subsection (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in Jersey, and
- (b) any services provided by another person pursuant to arrangements which are made by the Minister and relate to the discharge of a function mentioned in subsection (2) are provided having regard to that need.

(2) The functions referred to in subsection (1) are—

- (a) any function of the Minister in relation to immigration, asylum or nationality;
- (b) any function conferred by or by virtue of the Immigration Acts on an immigration officer.

(3) A person exercising any of those functions must, in exercising the function, have regard to any guidance given to the person by the Minister for the purpose of subsection (1).

(6) In this section—

“children” means persons who are under the age of 18;

“the Minister” means the Minister for Home Affairs.

(7) A reference in an enactment (other than this Act) to the Immigration Acts includes a reference to this section.

General

Short title.

59. This Act may be cited as the Borders, Citizenship and Immigration Act 2009.

APPENDIX X

IMMIGRATION ACT 2014 AS EXTENDED BY THE DRAFT IMMIGRATION (JERSEY) ORDER 2020

Fees

Fees (the Minister).

67A.—(1) The Minister may by Order provide for fees to be charged in respect of the exercise of any function in connection with immigration or nationality exercised by –

- (a) the Lieutenant-Governor;
- (b) a Minister (within the meaning of Article 1(1) of the States of Jersey Law 2005),
- (c) an immigration officer or any other States' employee within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005,

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 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) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders made under this section.

(7) In this section and sections 67B and 67C –

“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;

“the Minister” means the Minister for Home Affairs.

(8) Any reference in this section and in 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.

Fees orders (the Minister): supplemental.

- 67B.**—(1) A fee under section 67A may relate to something done outside Jersey.
- (2) Fees payable by virtue of section 67A may be recovered as a debt due to the Minister.
- (3) Fees charged under an Order made under section 67A shall form part of the annual income of the States.

Power to charge fees for attendance services in particular cases.

67C.—(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 Jersey, 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 form part of the annual income of the States.
- (7) This section is without prejudice to section 67A or any other power to charge a fee.

Fees (the Secretary of State).

68.—(1) The Secretary of State may provide, in accordance with this section, for fees to be charged in respect of the exercise of functions in connection with immigration or nationality, other than functions for which a fee may be charged by virtue of an Order made by the Minister under section 67A or by virtue of section 67C.

(2) The functions in respect of which fees are to be charged are to be specified by the Secretary of State by order (“a fees order”).

- (3) A fees order—
- (a) must specify how the fee in respect of the exercise of each specified function is to be calculated, and
- (b) 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.

(4) For any specified fee, a fees order must provide for it to comprise one or more amounts each of which is—

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

(5) Where a fees order provides for a fee (or part of a fee) to be a fixed amount, it—

- (a) must specify a maximum amount for the fee (or part), and

- (b) may specify a minimum amount.
- (6) Where a fees order provides for a fee (or part of a fee) to be calculated as mentioned in subsection (4)(b), it—
- (a) must specify—
 - (i) how the fee (or part) is to be calculated, and
 - (ii) a maximum rate or other factor, and
 - (b) may specify a minimum rate or other factor.
- (7) For any specified fee, the following are to be set by the Secretary of State by regulations (“fees regulations”)—
- (a) if the fee (or any part of it) is to be a fixed amount, that amount;
 - (b) if the fee (or any part of it) is to be calculated as mentioned in subsection (4)(b), the hourly rate or other factor by reference to which it (or that part) is to be calculated.
- (8) An amount, or rate or other factor, set by fees regulations for a fee in respect of the exercise of a specified function—
- (a) must not—
 - (i) exceed the maximum specified for that amount, or rate or other factor;
 - (ii) be less than the minimum, if any, so specified;
 - (b) subject to that, may be intended to exceed, or result in a fee which exceeds, the costs of exercising the function.
- (9) In setting the amount of any fee, or rate or other factor, in fees regulations, the Secretary of State may have regard only to—
- (a) the costs of exercising the function;
 - (b) benefits that the Secretary of State thinks are likely to accrue to any person in connection with the exercise of the function;
 - (c) the costs of exercising any other function in connection with immigration or nationality;
 - (d) the promotion of economic growth;
 - (e) fees charged by or on behalf of governments of other countries in respect of comparable functions;
 - (f) any international agreement.

This is subject to section 69(5).

- (10) In respect of any fee provided for under this section, fees regulations 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.
- (11) Any provision that may be made by fees regulations by virtue of subsection (10) may be included instead in a fees order (and any provision so included may be amended or revoked by fees regulations).
- (12) In this section and sections 69 and 70—
- “costs” includes—
- (a) the costs of the Secretary of State, and

- (b) the costs of any other person (whether or not funded from public money);
- “fees order” has the meaning given by subsection (2);
- “fees regulations” has the meaning given by subsection (7);
- “function” includes a power or a duty;
- “function in connection with immigration or nationality” includes a function in connection with an enactment (including an enactment of a jurisdiction outside Jersey) that relates wholly or partly to immigration or nationality;
- “the Minister” means the Minister for Home Affairs;
- “specified” means specified in a fees order.

(13) Any reference in this section or section 70 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.

Fees orders and fees regulations: supplemental.

- 69.**—(1) A fees order or fees regulations may be made only with the consent of the Treasury.
- (2) A fee under section 68 may relate to something done outside Jersey.
- (3) Fees payable by virtue of section 68 may be recovered as a debt due to the Secretary of State.
- (4) Fees paid to the Secretary of State by virtue of section 68 must—
- (a) be paid into the Consolidated Fund, or
 - (b) be applied in such other way as the relevant order may specify.
- (4A) Notwithstanding subsections (3) and (4), in relation to a function exercised by or on behalf of the Lieutenant-Governor under arrangements made with the Secretary of State under section 43 of the British Nationality Act 1981 –
- (a) fees payable by virtue of section 68 may be recovered as a debt due to the Minister; and
 - (b) fees paid by virtue of section 68 shall form part of the annual income of the States.
- (5) Section 68 is without prejudice to—
- (a) section 1 of the Consular Fees Act 1980 (fees for consular acts etc);
 - (b) section 102 of the Finance (No. 2) Act 1987 (government fees and charges), or
 - (c) any other power to charge a fee.

Power to charge fees for attendance services in particular cases.

- 70.**—(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 a fees order (a “chargeable function”) in a particular case and—
- (a) in doing so attends at a place outside Jersey, 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 a fees order—

- (a) any exception provided for by a fees order or fees regulations;
- (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 paid to the Secretary of State by virtue of this section must be paid into the Consolidated Fund.

(6) A fee payable by virtue of this section may be recovered as a debt due to the Secretary of State.

(6A) Notwithstanding subsections (5) and (6), in relation to a function exercised by or on behalf of the Lieutenant-Governor under arrangements made with the Secretary of State under section 43 of the British Nationality Act 1981 –

- (a) fees paid by virtue of this section shall form part of the annual income of the States; and
- (b) a fee payable by virtue of this section may be recovered as a debt due to the Minister.

(7) This section is without prejudice to—

- (a) section 68;
- (b) section 1 of the Consular Fees Act 1980 (fees for consular acts etc);
- (c) section 102 of the Finance (No. 2) Act 1987 (government fees and charges), or
- (d) any other power to charge a fee.

Welfare of children

Duty regarding the welfare of children.

71. For the avoidance of doubt, this Act does not limit any duty imposed on the Minister or any other person by section 55 of the Borders, Citizenship and Immigration Act 2009 (duty regarding the welfare of children).

Short title.

77. This Act may be cited as the Immigration Act 2014.

APPENDIX XI

COUNTER-TERRORISM AND SECURITY ACT 2015 AS EXTENDED BY THE DRAFT IMMIGRATION (JERSEY) ORDER 2020

PART 1

TEMPORARY RESTRICTIONS ON TRAVEL

CHAPTER 1

POWERS TO SEIZE TRAVEL DOCUMENTS

Seizure of passports etc from persons suspected of involvement in terrorism.

1. Schedule 1 makes provision for the seizure and temporary retention of travel documents where a person is suspected of intending to leave Jersey in connection with terrorism-related activity.

CHAPTER 2

TEMPORARY EXCLUSION FROM JERSEY

Imposition of temporary exclusion orders

Temporary exclusion orders.

2.—(1) A “temporary exclusion order” is an order which requires an individual not to return to Jersey unless –

- (a) the return is in accordance with a permit to return issued by the Minister before the individual began the return, or
- (b) the return is the result of the individual’s deportation to Jersey.

(2) The Minister may impose a temporary exclusion order on an individual if conditions A to E are met.

(3) Condition A is that the Minister reasonably suspects that the individual is, or has been involved in terrorism-related activity outside the British Islands.

(4) Condition B is that the Minister reasonably considers that it is necessary, for purposes connected with protecting members of the public in Jersey from a risk of terrorism, for a temporary exclusion order to be imposed on the individual.

(5) Condition C is that the Minister reasonably considers that the individual is outside the British Islands.

(6) Condition D is that the individual has the right of abode in Jersey.

(7) Condition E is that –

- (a) the Royal Court gives the Minister permission under section 3, or
- (b) the Minister reasonably considers that the urgency of the case requires a temporary exclusion order to be imposed without obtaining such permission.

(8) During the period that a temporary exclusion order is in force, the Minister must keep under review whether condition B is met.

Temporary exclusion orders: prior permission of the Royal Court.

3.—(1) This section applies if the Minister –

- (a) makes the relevant decisions in relation to an individual, and
- (b) makes an application to the Royal Court for permission to impose a temporary exclusion order on the individual.

(2) The function of the Royal Court on the application is to determine whether the relevant decisions of the Minister are obviously flawed.

- (3) The Royal Court may consider the application –
- (a) in the absence of the individual,
 - (b) without the individual having been notified of the application, and
 - (c) without the individual having been given an opportunity (if the individual was aware of the application) of making any representations to the Royal Court.
- (4) But that does not limit the matters about which rules of court may be made.
- (5) In determining the application, the Royal Court must apply the principles applicable on an application for judicial review.
- (6) In a case where the Royal Court determines that any of the relevant decisions of the Minister is obviously flawed, the Royal Court may not give permission under this section.
- (7) In any other case, the Royal Court must give permission under this section.
- (8) Schedule 2 makes provision for references to the Royal Court etc where temporary exclusion orders are imposed in cases of urgency.
- (9) Only the Minister may appeal against a determination of the Royal Court under –
- (a) this section, or
 - (b) Schedule 2;
- and such an appeal may only be made on a question of law.
- (10) In this section “the relevant decisions” means the decisions that the following conditions are met –
- (a) condition A;
 - (b) condition B;
 - (c) condition C;
 - (d) condition D.

Temporary exclusion orders: supplementary provision.

- 4.—**(1) The Minister must give notice of the imposition of a temporary exclusion order to the individual on whom it is imposed (the “excluded individual”).
- (2) Notice of the imposition of a temporary exclusion order must include an explanation of the procedure for making an application under section 6 for a permit to return.
- (3) A temporary exclusion order –
- (a) comes into force when notice of its imposition is given; and
 - (b) is in force for the period of two years (unless revoked or otherwise brought to an end earlier).
- (4) The Minister may revoke a temporary exclusion order at any time.
- (5) The Minister must give notice of the revocation of a temporary exclusion order to the excluded individual.
- (6) If a temporary exclusion order is revoked, it ceases to be in force when notice of its revocation is given.
- (7) The validity of a temporary exclusion order is not affected by the excluded individual –
- (a) returning to Jersey, or
 - (b) departing from Jersey.

(8) The imposition of a temporary exclusion order does not prevent a further temporary exclusion order from being imposed on the excluded individual (including in a case where an order ceases to be in force at the expiry of its two year duration).

(9) At the time when a temporary exclusion order comes into force, any British passport held by the excluded individual is invalidated.

(10) During the period when a temporary exclusion order is in force, the issue of a British passport to the excluded individual while he or she is outside the British Islands is not valid.

(11) In this section “British passport” means a passport, or other document which enables or facilitates travel from one state to another (except a permit to return), that has been –

- (a) issued by or for Her Majesty’s Government in the United Kingdom, and
- (b) issued in respect of a person’s status as a British citizen.

Permit to return

Permit to return.

5.—(1) A “permit to return” is a document giving an individual (who is subject to a temporary exclusion order) permission to return to Jersey.

(2) The permission may be made subject to a requirement that the individual comply with conditions specified in the permit to return.

(3) The individual’s failure to comply with a specified condition has the effect of invalidating the permit to return.

(4) A permit to return must state –

- (a) the time at which, or period of time during which, the individual is permitted to arrive on return to Jersey;
- (b) the manner in which the individual is permitted to return to Jersey; and
- (c) the place where the individual is permitted to arrive on return to Jersey.

(5) Provision made under subsection (4)(a) or (c) may, in particular, be framed by reference to the arrival in Jersey of a specific flight, sailing or other transport service.

(6) Provision made under subsection (4)(b) may, in particular, state –

- (a) a route,
- (b) a method of transport,
- (c) an airline, shipping line or other passenger carrier, or
- (d) a flight, sailing or other transport service,

which the individual is permitted to use to return to Jersey.

(7) The Minister may not issue a permit to return except in accordance with section 6 or 7.

(8) It is for the Minister to decide the terms of a permit to return (but this is subject to section 6(3)).

Issue of permit to return: application by individual.

6.—(1) If an individual applies to the Minister for a permit to return, the Minister must issue a permit within a reasonable period after the application is made.

(2) But the Minister may refuse to issue the permit if –

- (a) the Minister requires the individual to attend an interview with a police officer or immigration officer at a time and a place specified by the Minister, and
- (b) the individual fails to attend the interview.

(3) Where a permit to return is issued under this section, the relevant return time must fall within a reasonable period after the application is made.

(4) An application is not valid unless it is made in accordance with the procedure for applications specified by the Minister.

(5) In this section –

“application” means an application made by an individual to the Minister for a permit to return to be issued;

“relevant return time” means –

- (a) the time at which the individual is permitted to arrive on return to Jersey (in a case where the permit to return states such a time), or
- (b) the start of the period of time during which the individual is permitted to arrive on return to Jersey (in a case where the permit to return states such a period).

Issue of permit to return: deportation or urgent situation.

7.—(1) The Minister must issue a permit to return to an individual if the Minister considers that the individual is to be deported to Jersey.

(2) The Minister may issue a permit to return to an individual if –

- (a) the Minister considers that, because of the urgency of the situation, it is expedient to issue a permit to return even though no application has been made under section 6, and
- (b) there is no duty to issue a permit to return under subsection (1).

(3) Subsection (1) or (2) applies whether or not any request has been made to issue the permit to return under that provision.

Permit to return: supplementary provision.

8.—(1) The Minister may vary a permit to return.

(2) The Minister may revoke a permit to return issued to an individual only if –

- (a) the permit to return has been issued under section 6 and the individual asks the Minister to revoke it;
- (b) the permit to return has been issued under section 7(1) and the Minister no longer considers that the individual is to be deported to Jersey;
- (c) the permit to return has been issued under section 7(2) and the Minister no longer considers that, because of the urgency of the situation, the issue of the permit to return is expedient;
- (d) the Minister issues a subsequent permit to return to the individual; or
- (e) the Minister considers that the permit to return has been obtained by misrepresentation.

(3) The making of an application for a permit to return to be issued under section 6 (whether or not resulting in a permit to return being issued) does not prevent a subsequent application from being made.

(4) The issuing of a permit to return (whether or not resulting in the individual’s return to Jersey) does not prevent a subsequent permit to return from being issued (whether or not the earlier permit is still in force).

Obligations after return to Jersey

Obligations after return to Jersey.

9.—(1) The Minister may, by notice, impose any or all of the permitted obligations on an individual who –

- (a) is subject to a temporary exclusion order, and
- (b) has returned to Jersey.

(2) The “permitted obligations” are –

- (a) an obligation –

- (i) to report to a police station at such times and in such manner as the Minister may by notice require, and to comply with any directions given by a police officer in relation to such reporting;
- (ii) to attend appointments with specified persons or persons of specified descriptions at specified times and places, and to comply with any reasonable directions given by the Minister that relate to matters about which the individual is required to attend an appointment;
- (b) an obligation to notify the police, in such manner as a notice under this section may require, of –
 - (i) the individual’s place (or places) of residence, and
 - (ii) any change in the individual’s place (or places) of residence.

(2A) A notice under this section may provide that a requirement to report to a police station is not to apply if conditions specified in the notice are met.

- (3) A notice under this section –
- (a) comes into force when given to the individual; and
 - (b) is in force until the temporary exclusion order ends (unless the notice is revoked or otherwise brought to an end earlier).

(4) The Minister may, by notice, vary or revoke any notice given under this section.

(5) The variation or revocation of a notice under this section takes effect when the notice of variation or revocation is given to the individual.

- (6) The validity of a notice under this section is not affected by the individual –
- (a) departing from Jersey, or
 - (b) returning to Jersey.

(7) The giving of any notice to an individual under this section does not prevent any further notice under this section from being given to that individual.

Offences and proceedings etc

Offences.

10.—(1) An individual subject to a temporary exclusion order is guilty of an offence if, without reasonable excuse, the individual returns to Jersey in contravention of the restriction on return specified in the order.

(2) It is irrelevant for the purposes of subsection (1) whether or not the individual has a passport or other similar identity document.

(3) An individual subject to an obligation imposed under section 9 is guilty of an offence if, without reasonable excuse, the individual does not comply with the obligation.

(4) In a case where a relevant notice has not actually been given to an individual, the fact that the relevant notice is deemed to have been given to the individual under an Order under section 13 does not (of itself) prevent the individual from showing that lack of knowledge of the temporary exclusion order, or of the obligation imposed under section 9, was a reasonable excuse for the purposes of this section.

(5) An individual guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding 5 years or to a fine, or to both.

(6) Where an individual is convicted by or before a court of an offence under this section, it is not open to that court to make in respect of the offence an order for a conditional discharge.

- (7) In this section –
- “relevant notice” means –

- (a) notice of the imposition of a temporary exclusion order, or
- (b) notice under section 9 imposing an obligation;

“restriction on return” means the requirement specified in a temporary exclusion order in accordance with section 2(1).

Review of decisions relating to temporary exclusion orders.

11.—(1) This section applies where an individual who is subject to a temporary exclusion order is in Jersey.

(2) The individual may apply to the Royal Court to review any of the following decisions of the Minister –

- (a) a decision that any of the following conditions was met in relation to the imposition of the temporary exclusion order –
 - (i) condition A;
 - (ii) condition B;
 - (iii) condition C;
 - (iv) condition D;
- (b) a decision to impose the temporary exclusion order;
- (c) a decision that condition B continues to be met;
- (d) a decision to impose any of the permitted obligations on the individual by a notice under section 9.

(3) On a review under this section, the Royal Court must apply the principles applicable on an application for judicial review.

(4) On a review of a decision within subsection (2)(a) to (c), the Royal Court has the following powers (and only those powers) –

- (a) power to quash the temporary exclusion order;
- (b) power to give directions to the Minister for, or in relation to, the revocation of the temporary exclusion order.

(5) If the Royal Court does not exercise either of its powers under subsection (4), the Royal Court must decide that the temporary exclusion order is to continue in force.

(6) On a review of a decision within subsection (2)(d), the Royal Court has the following powers (and only those powers) –

- (a) power to quash the permitted obligation in question;
- (b) if that is the only permitted obligation imposed by the notice under section 9, power to quash the notice;
- (c) power to give directions to the Minister for, or in relation to –
 - (i) the variation of the notice so far as it relates to that permitted obligation, or
 - (ii) if that is the only permitted obligation imposed by the notice, the revocation of the notice.

(7) If the Royal Court does not exercise any of its powers under subsection (6), the Royal Court must decide that the notice under section 9 is to continue in force.

(8) If the Royal Court exercises a power under subsection (6)(a) or (c)(i), the Royal Court must decide that the notice under section 9 is to continue in force subject to that exercise of that power.

(9) The power under this section to quash a temporary exclusion order, permitted obligation or notice under section 9 includes power to stay the quashing for a specified time, or pending an appeal or further appeal against the decision to quash.

(10) An appeal against a determination of the Royal Court on a review under this section may only be made on a question of law.

(11) For the purposes of this section, a failure by the Minister to make a decision whether condition B continues to be met is to be treated as a decision that it continues to be met.

Temporary exclusion orders: proceedings and appeals against convictions.

12.—(1) Schedule 3 makes provision about proceedings relating to temporary exclusion orders.

(2) Schedule 4 makes provision about appeals against convictions in cases where a temporary exclusion order, a notice under section 9 or a permitted obligation is quashed.

Supplementary

Orders: giving of notices, legislation relating to passports.

13.—(1) The Minister may by Order make provision about the giving of –

- (a) notice under section 4, and
- (b) notice under section 9.

(2) The Order may, in particular, make provision about cases in which notice is to be deemed to have been given.

(3) The Minister may make Orders providing for legislation relating to passports or other identity documents (whenever passed or made) to apply (with or without modifications) to permits to return.

(4) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under this section.

Chapter 2: interpretation.

14.—(1) This section applies for the purposes of this Chapter.

(2) These expressions have the meanings given –

“act” and “conduct” include omissions and statements;

“act of terrorism” includes anything constituting an action taken for the purposes of terrorism, within the meaning of the Terrorism (Jersey) Law 2002 (see Article 1 of that Law);

“condition A”, “condition B”, “condition C”, “condition D” or “condition E” means that condition as set out in section 2;

“the Minister” means the Minister for Home Affairs;

“permit to return” has the meaning given in section 5;

“temporary exclusion order” has the meaning given in section 2;

“terrorism” has the same meaning as in the Terrorism (Jersey) Law 2002 (see Article 1 of that Law).

(3) An individual is –

- (a) subject to a temporary exclusion order if a temporary exclusion order is in force in relation to the individual; and
- (b) subject to an obligation imposed under section 9 if an obligation is imposed on the individual by a notice in force under that section.

(4) Involvement in terrorism-related activity is any one or more of the following –

- (a) the commission, preparation or instigation of acts of terrorism;
- (b) conduct that facilitates the commission, preparation or instigation of such acts, or is intended to do so;
- (c) conduct that gives encouragement to the commission, preparation or instigation of such acts, or is intended to do so;

- (d) conduct that gives support or assistance to individuals who are known or believed by the individual concerned to be involved in conduct falling within paragraph (a).

It is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism in general.

(5) It is immaterial whether an individual's involvement in terrorism-related activity occurs before or after the coming into force of section 2.

(6) References to an individual's return to Jersey include, in the case of an individual who has never been in Jersey, a reference to the individual's coming to Jersey for the first time.

(7) References to deportation include references to any other kind of expulsion.

PART 4
AVIATION AND SHIPPING
Authority-to-carry schemes.

22.—(1) The Minister may by Order make one or more schemes requiring a person (a “carrier”) to seek authority from the Minister to carry persons on aircraft or ships which are –

- (a) arriving, or expected to arrive, in Jersey, or
- (b) leaving, or expected to leave, Jersey.

A scheme made under this section is called an “authority-to-carry scheme”.

(2) An authority-to-carry scheme must specify or describe –

- (a) the classes of carrier to which it applies (which may be all carriers or may be defined by reference to the method of transport or otherwise),
- (b) the classes of passengers or crew in respect of whom authority to carry must be sought (which may be all of them or may be defined by reference to nationality, the possession of specified documents or otherwise), and
- (c) the classes of passengers or crew in respect of whom authority to carry may be refused.

(3) An authority-to-carry scheme may specify or describe a class of person under subsection (2)(c) only if it is necessary in the public interest.

(4) An Order under subsection (1) may make different authority-to-carry schemes for different purposes and in particular may make different schemes for different types of carrier, journey or person.

(5) An authority-to-carry scheme must set out the process for carriers to request, and for the Minister to grant or refuse, authority to carry, which may include –

- (a) a requirement for carriers to provide specified information on passengers or crew by a specified time before travel;
- (b) a requirement for carriers to provide the information in a specified manner and form;
- (c) a requirement for carriers to be able to receive, in a specified manner and form, communications from the Minister relating to the information provided or granting or refusing authority to carry.

(6) Information specified under subsection (5)(a) may be information that can be required to be supplied under paragraph 27, 27B or 27BA of Schedule 2 to the Immigration Act 1971, section 32 or 32A of the Immigration, Asylum and Nationality Act 2006 or otherwise.

(7) The grant or refusal of authority under an authority-to-carry scheme does not determine whether a person is entitled or permitted to enter Jersey.

(8) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under this section.

Penalty for breach of authority-to-carry scheme.

24.—(1) The Minister may make provision by Order imposing penalties for breaching the requirements of an authority-to-carry scheme.

(2) An Order under subsection (1) must identify the authority-to-carry scheme to which they refer.

(3) An Order under subsection (1) may in particular make provision –

- (a) about how a penalty is to be calculated;
- (b) about the procedure for imposing a penalty;
- (c) about the enforcement of penalties;
- (d) allowing for an appeal against a decision to impose a penalty;

and the Order may make different provision for different purposes.

(4) Provision in the Order about the procedure for imposing a penalty must provide for a carrier to be given an opportunity to object to a proposed penalty in the circumstances set out in the Order.

(5) The Order must provide that no penalty may be imposed on a carrier for breaching the requirements of an authority-to-carry scheme where –

- (a) the breach consists of a failure to provide information that the carrier has also been required to provide under paragraph 27, 27B or 27BA of Schedule 2 to the Immigration Act 1971 and –
 - (i) a penalty has been imposed on the person in respect of a failure to provide that information by virtue of an Order made under paragraph 27BB of Schedule 2 to that Act, or
 - (ii) proceedings have been instituted against the carrier under section 27 of that Act in respect of a failure to provide that information, or
- (b) the breach consists of a failure to provide information that the carrier has also been required to provide under section 32 or 32A of the Immigration, Asylum and Nationality Act 2006 and –
 - (i) a penalty has been imposed on the person in respect of a failure to provide that information by virtue of an Order made under section 32B of that Act, or
 - (ii) proceedings have been instituted against the carrier under section 34 of that Act in respect of a failure to provide that information.

(6) Any penalty paid by virtue of this section must be paid to the Treasurer of the States and credited to the Annual Income of the States.

(7) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders under this section.

Aviation and maritime security.

25.—(1) Schedule 5 makes amendments to do with aviation and maritime security.

(2) Part 1 of that Schedule makes amendments about passenger, crew and service information in relation to aircraft and ships.

(3) Part 2 of that Schedule makes amendments of the provisions relating to directions etc in –

- (a) the Aviation Security Act 1982,
- (b) the Aviation and Maritime Security Act 1990.

Short title.

53. This Act may be cited as the Counter-Terrorism and Security Act 2015.

SCHEDULE 1

SEIZURE OF PASSPORTS ETC FROM PERSONS SUSPECTED OF INVOLVEMENT IN TERRORISM

Section 1

Interpretation

1.—(1) The following definitions have effect for the purposes of this Schedule.

(1A) “Minister” means Minister for Home Affairs.

(2) “Immigration officer” means a person who is appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971.

(3) “Customs official” means a person who is designated as an officer of the Impôts within the meaning of Article 4 of the Customs and Excise (Jersey) Law 1999.

(4) “Qualified officer” means an immigration officer or customs official who is designated by the Minister for the purposes of this Schedule.

(5) “Senior police officer” means a police officer of at least the rank of chief inspector.

(6) “Travel document” means anything that is or appears to be –

(a) a passport, or

(b) a ticket or other document that permits a person to make a journey by any means from Jersey to a place outside Great Britain or Guernsey or the Isle of Man.

(7) “Passport” means –

(a) a United Kingdom passport (within the meaning of the Immigration Act 1971,

(b) a passport issued by or on behalf of the authorities of a country or territory outside the British Islands, or by or on behalf of an international organisation, or

(c) a document that can be used (in some or all circumstances) instead of a passport.

(8) “Port” means –

(a) an airport,

(b) a sea port,

(f) any other place at which a person is able, or attempting, to get on or off any craft, vessel or vehicle in connection with entering or leaving Jersey.

(10) “Involvement in terrorism-related activity” is any one or more of the following –

(a) the commission, preparation or instigation of acts of terrorism;

(b) conduct that facilitates the commission, preparation or instigation of such acts, or is intended to do so;

(c) conduct that gives encouragement to the commission, preparation or instigation of such acts, or is intended to do so;

(d) conduct that gives support or assistance to individuals who are known or believed by the person concerned to be involved in conduct falling within paragraph (a).

It is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism in general.

(11) “Terrorism” and “terrorist” have the same meaning as in the Terrorism (Jersey) Law 2002 (see Articles 2 and 36 of that Law).

(12) “Judicial authority” means the Juge d’Instruction appointed in pursuance of the Loi (1864) concernant la charge de Juge d’Instruction and includes any person exercising the functions of the Juge d’Instruction.

(15) “The 14-day period” and “the 30-day period” have the meanings given by paragraphs 5(2) and 8(7) respectively.

Powers of search and seizure etc

2.—(1) This paragraph applies in the case of a person at a port in Jersey if a police officer has reasonable grounds to suspect that the person –

- (a) is there with the intention of leaving Jersey for the purpose of involvement in terrorism-related activity outside the British Islands, or
 - (b) has arrived in Jersey with the intention of leaving it soon for that purpose.
- (3) The police officer may –
- (a) exercise any of the powers in sub-paragraph (5) in the case of the person, or
 - (b) direct a qualified officer to do so.
- (4) A qualified officer must (if able to do so) comply with any direction given by a police officer under sub-paragraph (3)(b).
- (5) The powers are –
- (a) to require the person to hand over all travel documents in his or her possession to the police officer or (as the case may be) the qualified officer;
 - (b) to search for travel documents relating to the person and to take possession of any that the police officer or the qualified officer finds;
 - (c) to inspect any travel document relating to the person;
 - (d) to retain any travel document relating to the person that is lawfully in the possession of the police officer or the qualified officer.
- (6) The power in sub-paragraph (5)(b) is a power to search –
- (a) the person;
 - (b) anything that the person has with him or her;
 - (c) any vehicle in which the officer believes the person to have been travelling or to be about to travel.
- (7) A police officer or qualified officer –
- (a) may stop a person or vehicle for the purpose of exercising a power in sub-paragraph (5)(a) or (b);
 - (b) may if necessary use reasonable force for the purpose of exercising a power in sub-paragraph (5)(a) or (b);
 - (c) may authorise a person to carry out on the police officer's or qualified officer's behalf a search under sub-paragraph (5)(b).
- (8) A police officer or qualified officer exercising a power in sub-paragraph (5)(a) or (b) must tell the person that –
- (a) the person is suspected of intending to leave Jersey for the purpose of involvement in terrorism-related activity outside the British Islands, and
 - (b) the police officer or the qualified officer is therefore entitled under this Schedule to exercise the power.
- (9) Where a travel document relating to the person is in the possession of an immigration officer or customs official (whether a qualified officer or not), the police officer may direct the officer or official –
- (a) to pass the document to a police officer as soon as practicable, and
 - (b) in the meantime to retain it.

The immigration officer or customs official must comply with any such direction.

Travel documents in possession of immigration officers or customs

3.—(1) Where –

- (a) a travel document lawfully comes into the possession of an immigration officer or customs official (whether a qualified officer or not) without a power under paragraph 2 being exercised, and

- (b) as soon as possible after taking possession of the document, the officer or official asks a police officer whether the police officer wishes to give a direction under paragraph 2(9) in relation to the document,

the officer or official may retain the document until the police officer tells him or her whether or not the police officer wishes to give such a direction.

- (2) A request under sub-paragraph (1) must be considered as soon as possible.

Authorisation by senior police officer for retention of travel

4.—(1) Where a travel document is in the possession of a police officer or qualified officer as a result of the exercise of a power under paragraph 2, the relevant police officer must as soon as possible either –

- (a) seek authorisation from a senior police officer for the document to be retained, or
- (b) ensure that the document is returned to the person to whom it relates.

“The relevant police officer” means the police officer by whom, or on whose direction, the power was exercised.

- (2) The document may be retained while an application for authorisation is considered.

Any such application must be considered as soon as possible.

(3) A police officer or qualified officer retaining a travel document under sub-paragraph (2) must tell the person to whom the document relates that –

- (a) the person is suspected of intending to leave Jersey for the purpose of involvement in terrorism-related activity outside the British Islands, and
- (b) the police officer or qualified officer is therefore entitled under this Schedule to retain the document while the matter is considered by a senior police officer.

This does not apply if the police officer or qualified officer expects the application for authorisation to be dealt with immediately, or if sub-paragraph (4) has been complied with.

(4) An immigration officer or customs official to whom a direction is given under paragraph 2(9) must tell the person to whom the travel document in question relates that –

- (a) the person is suspected of intending to leave Jersey for the purpose of involvement in terrorism-related activity outside the British Islands, and
- (b) a police officer is therefore entitled under this Schedule to retain the document while the matter is considered by a senior police officer.

This does not apply if the immigration officer or customs official expects the application for authorisation to be dealt with immediately.

(5) If an application for authorisation is granted –

- (a) the travel document must be passed to a police officer if it is not already in the possession of a police officer, and
- (b) paragraph 5 applies.

(6) If an application for authorisation is refused, the travel document must be returned to the person as soon as possible.

(7) A senior police officer may grant an application for authorisation only if satisfied that there are reasonable grounds for the suspicion referred to in paragraph 2(1) or (2).

(8) An authorisation need not be in writing.

(9) Sub-paragraphs (1)(b) and (6) are subject to paragraph 7 and to any power or provision not in this Schedule under which the document may be lawfully retained or otherwise dealt with.

Retention or return of documents seized

5.—(1) Where authorisation is given under paragraph 4 for a travel document relating to a person to be retained, it may continue to be retained—

- (a) while consideration is given to whether to cancel the person’s passport,
- (b) while consideration is given to charging the person with an offence,
- (c) while consideration is given to making the person subject to any order or measure to be made or imposed by a court, or by the Minister, for purposes connected with protecting members of the public from a risk of terrorism, or
- (d) while steps are taken to carry out any of the actions mentioned in paragraphs (a) to (c).

(2) But a travel document may not be retained under this Schedule after the end of the period of 14 days beginning with the day after the document was taken (“the 14-day period”), unless that period is extended under paragraph 8 or 11(3).

(3) The travel document must be returned to the person as soon as possible –

- (a) once the 14-day period (or the 14-day period as extended under paragraph 8 or 11(3)) expires;
- (b) once the power in sub-paragraph (1) ceases to apply, if that happens earlier.

This is subject to paragraph 7 and to any power or provision not in this Schedule under which the document may be lawfully retained or otherwise dealt with.

(4) The police officer to whom a travel document is passed under paragraph 2(9) or 4(5)(a), or who is in possession of it when authorisation is given under paragraph 4, must explain to the person the effect of sub-paragraphs (1) to (3).

(5) The police officer must also tell the person, if he or she has not been told already under paragraph 2(8) or 4(3) or (4), that the person is suspected of intending to leave Jersey for the purpose of involvement in terrorism-related activity outside the British Islands.

Review of retention of travel documents

6.—(1) This paragraph applies where –

- (a) authorisation is given under paragraph 4 for a travel document relating to a person to be retained, and
- (b) the document is still being retained by a police officer at the end of the period of 72 hours beginning when the document was taken from the person (“the 72-hour period”).

(2) A police officer who is –

- (a) of at least the rank of superintendent, and
- (b) of at least as high a rank as the senior police officer who gave the authorisation,

must carry out a review of whether the decision to give authorisation was flawed.

(3) The reviewing officer must –

- (a) begin carrying out the review within the 72-hour period,
- (b) complete the review as soon as possible, and
- (c) communicate the findings of the review in writing to the Chief Officer.

(4) The Chief Officer must consider those findings and take whatever action seems appropriate.

(5) If a power under paragraph 2 was exercised in relation to the travel document by an immigration officer or customs official designated under paragraph 17, the reviewing officer must also communicate the findings of the review in writing to the Minister.

(6) In this paragraph –

“reviewing officer” means the officer carrying out a review under this paragraph;

“Chief Officer” means the Chief Officer of the States of Jersey Police Force.

Detention of document for criminal proceedings etc.

7.—(1) A requirement under paragraph 4 or 5 to return a travel document in the possession of a police officer or qualified officer does not apply while either officer has power to detain it under sub-paragraph (2).

(2) Either officer may detain the document –

- (a) while he or she believes that it may be needed for use as evidence in criminal proceedings, or
- (b) while he or she believes that it may be needed in connection with a decision by the Minister whether to make a deportation order under the Immigration Act 1971.

Extension of 14-day period by judicial authority

8.—(1) A senior police officer may apply to a judicial authority for an extension of the 14-day period.

(2) An application must be made before the end of the 14-day period.

(3) An application may be heard only if reasonable efforts have been made to give to the person to whom the application relates a notice stating –

- (a) the time when the application was made;
- (b) the time and place at which it is to be heard.

(4) On an application –

- (a) the judicial authority must grant an extension if satisfied that the relevant persons have been acting diligently and expeditiously in relation to the matters and steps referred to in sub-paragraph (5);
- (b) otherwise, the judicial authority must refuse to grant an extension.

(5) In sub-paragraph (4) “the relevant persons” means –

- (a) the persons responsible for considering whichever of the matters referred to in paragraph 5(1)(a) to (c) are under consideration, and
- (b) the persons responsible for taking whichever of the steps referred to in paragraph 5(1)(d) are being taken or are intended to be taken.

(6) An extension must be for a further period ending no later than the end of the 30-day period.

(7) “The 30-day period” means the period of 30 days beginning with the day after the document in question was taken.

9.—(1) The person to whom an application under paragraph 8 relates –

- (a) must be given an opportunity to make oral or written representations to the judicial authority about the application;
- (b) subject to sub-paragraph (3), is entitled to be legally represented at the hearing.

(2) A judicial authority must adjourn the hearing of an application to enable the person to whom the application relates to obtain legal representation where the person –

- (a) is not legally represented,
- (b) is entitled to be legally represented, and
- (c) wishes to be legally represented.

(3) A judicial authority may exclude any of the following persons from any part of the hearing –

- (a) the person to whom the application relates;
- (b) anyone representing that person.

10.—(1) A person who has made an application under paragraph 8 may apply to the judicial authority for an order that specified information upon which he or she intends to rely be withheld from –

- (a) (the person to whom the application relates, and
- (b) anyone representing that person.

(2) A judicial authority may make an order under sub-paragraph (1) in relation to specified information only if satisfied that there are reasonable grounds for believing that if the information was disclosed –

- (a) evidence of an offence under any of the provisions mentioned in Article 36(a) of the Terrorism (Jersey) Law 2002 would be interfered with or harmed,
- (b) the recovery of property obtained as a result of an offence under any of those provisions would be hindered,
- (c) the recovery of property in respect of which a forfeiture order could be made under Article 27 of (and Schedule 3 to) that Law would be hindered,
- (d) the apprehension, prosecution or conviction of a person who is suspected of being a terrorist would be made more difficult as a result of the person being alerted,
- (e) the prevention of an act of terrorism would be made more difficult as a result of a person being alerted,
- (f) the gathering of information about the commission, preparation or instigation of an act of terrorism would be interfered with,
- (g) a person would be interfered with or physically injured, or
- (h) national security would be put at risk.

(3) The judicial authority must direct that the following be excluded from the hearing of an application under this paragraph –

- (a) the person to whom the application under paragraph 8 relates;
- (b) anyone representing that person.

11.—(1) A judicial authority may adjourn the hearing of an application under paragraph 8 only if the hearing is adjourned to a date before the expiry of the 14-day period.

(2) Sub-paragraph (1) does not apply to an adjournment under paragraph 9(2).

(3) If an application is adjourned under paragraph 9(2) to a date after the expiry of the 14-day period, the judicial authority must extend the period until that date.

12.—(1) If an extension is granted under paragraph 8 for a period ending before the end of the 30-day period, one further application may be made under that paragraph.

(2) Paragraphs 8 to 11 apply to a further application as if references to the 14-day period were references to that period as previously extended.

Restriction on repeated use of powers

13.—(1) Where –

- (a) a power under paragraph 4 or 5 to retain a document relating to a person is exercised, and
- (b) powers under this Schedule have been exercised in the same person's case on two or more occasions in the previous 6 months,

this Schedule has effect with the following modifications.

(2) References to 14 days (in paragraph 5(2) and elsewhere) are to be read as references to 5 days.

(3) Paragraph 8 has effect as if the following were substituted for sub-paragraph (4) –

“(4) On an application, the judicial authority must grant an extension if satisfied that –

- (a) the relevant persons have been acting diligently and expeditiously in relation to the matters and steps referred to in sub-paragraph (5), and
- (b) there are exceptional circumstances justifying the further use of powers under this Schedule in relation to the same person.

Otherwise, the judicial authority must refuse to grant an extension.”

Persons unable to leave Jersey

14.—(1) This paragraph applies where a person’s travel documents are retained under this Schedule with the result that, for the period during which they are so retained (“the relevant period”), the person is unable to leave Jersey.

(2) The Minister may make whatever arrangements he or she thinks appropriate in relation to the person –

- (a) during the relevant period;
- (b) on the relevant period coming to an end.

(3) If at any time during the relevant period the person does not have leave to enter or remain in Jersey, the person’s presence in Jersey at that time is nevertheless not unlawful for the purposes of the Immigration Act 1971.

Offences

15.—(1) A person who is required under paragraph 2(5)(a) to hand over all travel documents in the person’s possession commits an offence if he or she fails without reasonable excuse to do so.

(2) A person who intentionally obstructs, or seeks to frustrate, a search under paragraph 2 commits an offence.

(3) A person guilty of an offence under this paragraph is liable to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 3 on the standard scale, or to both.

16. A qualified officer exercising a power under paragraph 2 has the same powers of arrest without warrant as a police officer in relation to an offence under paragraph 15.

Accredited immigration officers and customs officials

17.—(1) For the purposes of this paragraph, a qualified officer is an “accredited” immigration officer or customs official if designated as such by the Minister.

(2) Sub-paragraphs (1), (2) and (3)(a) of paragraph 2 apply to an accredited immigration officer or customs official as they apply to a police officer.

(3) In paragraph 2(3)(b) and (4) “qualified officer” does not include an accredited immigration officer or customs official.

(4) In paragraphs 2(9) and 3 “immigration officer or customs official” does not include an accredited immigration officer or customs official.

(5) Paragraph 4(1) has effect, in relation to a travel document that is in the possession of an accredited immigration officer or customs official as a result of the exercise of a power under paragraph 2 by that officer or official, as if the reference to the relevant police officer were a reference to that officer or official.

Code of practice

18.—(1) The Minister must issue a code of practice with regard to the exercise of functions under this Schedule.

(2) The code of practice must in particular deal with the following matters –

- (a) the procedure for making designations under paragraphs 1(4) and 17;
- (b) training to be undertaken by persons who are to exercise powers under this Schedule;

- (c) the exercise by police officers, immigration officers and customs officials of functions conferred on them by virtue of this Schedule;
- (d) information to be given to a person in whose case a power under this Schedule is exercised;
- (e) how and when that information is to be given;
- (f) reviews under paragraph 6.

(3) A police officer, immigration officer or customs official must perform functions conferred on him or her by virtue of this Schedule in accordance with any relevant provision included in the code by virtue of sub-paragraph (2)(c) to (e).

(4) The failure by a police officer, immigration officer or customs official to observe any such provision does not of itself make him or her liable to criminal or civil proceedings.

(5) The code of practice –

- (a) is admissible in evidence in criminal and civil proceedings;
- (b) is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

20. The Minister may revise the code of practice and issue the revised code.

SCHEDULE 2

URGENT TEMPORARY EXCLUSION ORDERS: REFERENCE TO THE COURT ETC

Section 3

Application

1. This Schedule applies if the Minister –

- (a) makes the urgent case decisions in relation to an individual, and
- (b) imposes a temporary exclusion order on the individual.

Statement of urgency

2. The temporary exclusion order must include a statement that the Minister reasonably considers that the urgency of the case requires the order to be imposed without obtaining the permission of the Royal Court under section 3.

Reference to Royal Court

3.—(1) Immediately after giving notice of the imposition of the temporary exclusion order, the Minister must refer to the Royal Court the imposition of the order on the individual.

(2) The function of the Royal Court on the reference is to consider whether the urgent case decisions were obviously flawed.

(3) The Royal Court's consideration of the reference must begin within the period of 7 days beginning with the day on which notice of the imposition of the temporary exclusion order is given to the individual.

(4) The Royal Court may consider the reference –

- (a) in the absence of the individual,
- (b) without the individual having been notified of the reference, and
- (c) without the individual having been given an opportunity (if the individual was aware of the reference) of making any representations to the Royal Court.

(5) But that does not limit the matters about which rules of court may be made.

Decision by Royal Court

4.—(1) In a case where the Royal Court determines that any of the relevant decisions of the Minister is obviously flawed, the Royal Court must quash the temporary exclusion order.

(2) If sub-paragraph (1) does not apply, the Royal Court must confirm the temporary exclusion order.

(3) If the Royal Court determines that the decision of the Minister that the urgency condition is met is obviously flawed, the Royal Court must make a declaration of that determination (whether it quashes or confirms the temporary exclusion order under the preceding provisions of this paragraph).

Procedures on reference

5.—(1) In determining a reference under paragraph 3, the Royal Court must apply the principles applicable on an application for judicial review.

(2) The Royal Court must ensure that the individual is notified of its decision on a reference under paragraph 3.

Interpretation

6.—(1) References in this Schedule to the urgency condition being met are references to condition E being met by virtue of section 2(7)(b) (urgency of the case requires a temporary exclusion order to be imposed without obtaining the permission of the Royal Court).

(2) In this Schedule “the urgent case decisions” means the relevant decisions and the decision that the urgency condition is met.

(3) In this Schedule “the relevant decisions” means the decisions that the following conditions are met –

- (a) condition A;
- (b) condition B;
- (c) condition C;
- (d) condition D.

SCHEDULE 3
TEMPORARY EXCLUSION ORDERS: PROCEEDINGS

Section 12

Introductory

1. In this Schedule –

“appeal proceedings” means proceedings in the Court of Appeal on an appeal relating to TEO proceedings;

“the relevant court” means –

- (a) in relation to TEO proceedings, the Royal Court;
- (b) in relation to appeal proceedings, the Court of Appeal;

“rules of court” means rules for regulating the practice and procedure to be followed in the Royal Court or the Court of Appeal;

“TEO proceedings” means proceedings on –

- (a) an application under section 3,
- (b) a reference under Schedule 2,
- (c) a review under section 11, or
- (d) an application made by virtue of paragraph 6 of this Schedule (application for order requiring anonymity).

Rules of court: general provision

2.—(1) Regard must be had, in making rules of court relating to TEO proceedings or appeal proceedings, to the need to secure the following –

- (a) that the decisions that are the subject of the proceedings are properly reviewed, and

- (b) that disclosures of information are not made where they would be contrary to the public interest.
- (2) Rules of court relating to TEO proceedings or appeal proceedings may make provision –
- (a) about the mode of proof and about evidence in the proceedings;
 - (b) enabling or requiring the proceedings to be determined without a hearing;
 - (c) about legal representation in the proceedings;
 - (d) enabling the proceedings to take place without full particulars of the reasons for the decisions to which the proceedings relate being given to a party to the proceedings (or to any legal representative of that party);
 - (e) enabling the relevant court to conduct proceedings in the absence of any person, including a party to the proceedings (or any legal representative of that party);
 - (f) about the functions of a person appointed as special counsel (see paragraph 10);
 - (g) enabling the relevant court to give a party to the proceedings a summary of evidence taken in the party's absence.
- (3) In this paragraph –
- (a) references to a party to the proceedings do not include the Minister;
 - (b) references to a party's legal representative do not include a person appointed as special counsel.

Rules of court: disclosure

3.—(1) Rules of court relating to TEO proceedings or appeal proceedings must secure that the Minister is required to disclose –

- (a) material on which the Minister relies,
- (b) material which adversely affects the Minister's case, and
- (c) material which supports the case of another party to the proceedings.

(2) This paragraph is subject to paragraph 4.

4.—(1) Rules of court relating to TEO proceedings or appeal proceedings must secure –

- (a) that the Minister has the opportunity to make an application to the relevant court for permission not to disclose material otherwise than to the relevant court and any person appointed as special counsel;
- (b) that such an application is always considered in the absence of every party to the proceedings (and every party's legal representative);
- (c) that the relevant court is required to give permission for material not to be disclosed if it considers that the disclosure of the material would be contrary to the public interest;
- (d) that, if permission is given by the relevant court not to disclose material, it must consider requiring the Minister to provide a summary of the material to every party to the proceedings (and every party's legal representative);
- (e) that the relevant court is required to ensure that such a summary does not contain material the disclosure of which would be contrary to the public interest.

(2) Rules of court relating to TEO proceedings or appeal proceedings must secure that provision to the effect mentioned in sub-paragraph (3) applies in cases where the Minister –

- (a) does not receive the permission of the relevant court to withhold material, but elects not to disclose it, or
- (b) is required to provide a party to the proceedings with a summary of material that is withheld, but elects not to provide the summary.

(3) The relevant court must be authorised –

- (a) if it considers that the material or anything that is required to be summarised might adversely affect the Minister's case or support the case of a party to the proceedings, to direct that the Minister –
 - (i) is not to rely on such points in the Minister's case, or
 - (ii) is to make such concessions or take such other steps as the court may specify, or
 - (b) in any other case, to ensure that the Minister does not rely on the material or (as the case may be) on that which is required to be summarised.
- (4) In this paragraph –
- (a) references to a party to the proceedings do not include the Minister;
 - (b) references to a party's legal representative do not include a person appointed as special counsel.

Article 6 rights

5.—(1) Nothing in paragraphs 2 to 4, or in rules of court made under any of those paragraphs, is to be read as requiring the relevant court to act in a manner inconsistent with Article 6 of the Human Rights Convention.

(2) The “Human Rights Convention” means the Convention within the meaning of the Human Rights (Jersey) Law 2000 (see Article 1(1) of that Law).

Rules of court: anonymity

- 6.—**(1) Rules of court relating to TEO proceedings may make provision for –
- (a) the making by the Minister or the relevant individual of an application to the court for an order requiring anonymity for that individual, and
 - (b) the making by the Royal Court, on such an application, of an order requiring such anonymity;

and the provision made by the rules may allow the application and the order to be made irrespective of whether any other TEO proceedings have been begun in the Royal Court.

(2) Rules of court may provide for the Court of Appeal to make an order in connection with any appeal proceedings requiring anonymity for the relevant individual.

(3) In sub-paragraphs (1) and (2) the references, in relation to a court, to an order requiring anonymity for the relevant individual are references to an order by that court which imposes such prohibition or restriction as it thinks fit on the disclosure –

- (a) by such persons as the court specifies or describes, or
- (b) by persons generally,

of the identity of the relevant individual or of any information that would tend to identify the relevant individual.

(4) In this paragraph “relevant individual” means an individual on whom the Minister is proposing to impose, or has imposed, a temporary exclusion order.

Use of advisers

- 8.—**(1) In any TEO proceedings or appeal proceedings the relevant court may if it thinks fit –
- (a) call in aid one or more advisers able to be called in aid by the equivalent court in England and Wales, and
 - (b) hear and dispose of the proceedings with the assistance of the adviser or advisers.

(3) Rules of court may regulate the use of, and payment of remuneration, expenses and allowances to, advisers in proceedings who are called in aid under sub-paragraph (1).

Appointment of special counsel

10.—(1) The Attorney General may appoint a person to represent the interests of a party in any TEO proceedings or appeal proceedings from which the party (and any legal representative of the party) is excluded.

(2) A person appointed under sub-paragraph (1) is referred to in this Schedule as appointed as “special counsel”.

(4) A person appointed as special counsel is not responsible to the party to the proceedings whose interests the person is appointed to represent.

(5) A person may be appointed as special counsel only if –

- (a) the person is a member of the panel referred to in sub-paragraph (6); or
- (b) the person is eligible to be appointed as a special advocate in equivalent TEO proceedings or appeal proceedings in any part of the United Kingdom.

(6) The Attorney General shall appoint a panel of persons, such panel consisting of not less than 10 advocates of the Royal Court, for the purposes of this paragraph.

(7) A person appointed under sub-paragraph (6) may be removed from the panel at any time by the Attorney General whether or not at the person’s request.

Relationship with other powers to make rules of court and other proceedings

11. Nothing in this Schedule is to be read as restricting the power to make rules of court or the matters to be taken into account when doing so.

SCHEDULE 4

TEMPORARY EXCLUSION ORDERS: APPEALS AGAINST CONVICTIONS

Section 12

Right of appeal

1.—(1) An individual who has been convicted of an offence under section 10(1) or (3) may appeal against the conviction if –

- (a) a temporary exclusion order is quashed, and
- (b) the individual could not have been convicted had the quashing occurred before the proceedings for the offence were brought.

(2) An individual who has been convicted of an offence under section 10(3) may appeal against the conviction if –

- (a) a notice under section 9, or a permitted obligation imposed by such a notice, is quashed, and
- (b) the individual could not have been convicted had the quashing occurred before the proceedings for the offence were brought.

Court in which appeal to be made

2. An appeal under this Schedule is to be made –

- (a) in the case of a conviction before the Royal Court, to the Court of Appeal;
- (b) in the case of a conviction before the Magistrate’s Court, to the Royal Court.

When the right of appeal arises

3.—(1) The right of appeal under this Schedule does not arise until there is no further possibility of an appeal against –

- (a) the decision to quash the temporary exclusion order, notice or permitted obligation (as the case may be), or
- (b) any decision on an appeal made against that decision.

(2) In determining whether there is no further possibility of an appeal against a decision of the kind mentioned in sub-paragraph (1), any power to extend the time for giving notice of application for leave to appeal, or for applying for leave to appeal, must be ignored.

The appeal

4.—(1) On an appeal under this Schedule to any court, that court must allow the appeal and quash the conviction.

(2) An appeal under this Schedule to the Court of Appeal against a conviction before the Royal Court –

- (a) may be brought irrespective of whether the appellant has previously appealed against the conviction;
- (b) may not be brought after the end of the period of 28 days beginning with the day on which the right of appeal arises by virtue of paragraph 3; and
- (c) is to be treated as an appeal under Article 24 of the Court of Appeal (Jersey) Law 1961, but does not require leave.

(5) An appeal under this Schedule to the Royal Court against a conviction before the Magistrate's Court –

- (a) may be brought irrespective of whether the appellant pleaded guilty;
 - (b) may be brought irrespective of whether the appellant has previously appealed against the conviction or made an application in respect of the conviction under Article 21 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 (case stated);
 - (c) may not be brought after the end of the period of 21 days beginning with the day on which the right of appeal arises by virtue of paragraph 3; and
 - (d) is to be treated as an appeal under Article 17(1)(b) of that Law.
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APPENDIX XII

IMMIGRATION ACT 2016 AS EXTENDED BY THE DRAFT IMMIGRATION (JERSEY) ORDER 2020

PART 3 ENFORCEMENT

Powers of immigration officers etc.

Seizure and retention in relation to offences.

- 48.**—(1) This section applies if an immigration officer is lawfully on any premises.
- (2) The immigration officer may seize anything which the officer finds in the course of exercising a function under the Immigration Acts if the officer has reasonable grounds for believing—
- (a) that it has been obtained in consequence of the commission of an offence, and
 - (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.
- (3) The immigration officer may seize anything which the officer finds in the course of exercising a function under the Immigration Acts if the officer has reasonable grounds for believing—
- (a) that it is evidence in relation to an offence, and
 - (b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.
- (4) The immigration officer may require any information which is stored in any electronic form and is accessible from the premises to be produced if the officer has reasonable grounds for believing—
- (a) that—
 - (i) it is evidence in relation to an offence, or
 - (ii) it has been obtained in consequence of the commission of an offence, and
 - (b) that it is necessary to seize it in order to prevent it being concealed, lost, tampered with or destroyed.
- (5) The reference in subsection (4) to information which is stored in any electronic form being produced is to such information being produced in a form—
- (a) in which it can be taken away, and
 - (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form.
- (6) This section does not authorise an immigration officer to seize an item which the officer has reasonable grounds for believing is an item subject to legal privilege.
- (7) Anything seized by an immigration officer under this section which relates to an immigration offence may be retained so long as is necessary in all the circumstances and in particular—
- (a) may be retained, except as provided for by subsection (8)—
 - (i) for use as evidence at a trial for an offence, or
 - (ii) for forensic examination or for investigation in connection with an offence, and
 - (b) may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.
- (8) Nothing may be retained for a purpose mentioned in subsection (7)(a) if a photograph or copy would be sufficient for that purpose.

(9) Section 28I of the Immigration Act 1971 (seized material: access and copying) applies to anything seized and retained under this section which relates to an immigration offence as it applies to anything seized and retained by an immigration officer under Part 3 of that Act.

(11) In this section and section 49 “immigration offence” means an offence which relates to an immigration or nationality matter.

Duty to pass on items seized under section 48.

49.—(1) This section applies if an immigration officer exercises—

- (a) the power under section 48 to seize or take away an item on the basis that the item or information contained in it has been obtained in consequence of the commission of, or is evidence in relation to, an offence other than an immigration offence (a “relevant offence”), or
- (b) a power to that effect in Part 3 of the Immigration Act 1971 as applied by section 14(3) of the Asylum and Immigration (Treatment of Claimants etc) Act 2004.

(2) Subject to subsection (3), the immigration officer must, as soon as is reasonably practicable after the power is exercised, notify a person who the immigration officer thinks has functions in relation to the investigation of the relevant offence.

(3) If the immigration officer has reasonable grounds for believing that the item referred to in subsection (1) has also been obtained in consequence of the commission of, or is evidence in relation to, an immigration offence, the immigration officer may notify a person who the immigration officer thinks has functions in relation to the investigation of the relevant offence.

(4) A person notified under this section of the exercise of a power mentioned in subsection (1) in relation to an item must, as soon as is reasonably practicable after being so notified, inform the immigration officer whether the person will accept the item.

(5) The person may inform the immigration officer that the person will not accept the item only if—

- (a) the person does not think the item or information contained in it has been obtained in consequence of the commission of, or is evidence in relation to, an offence,
- (b) the person does not have functions in relation to the investigation of the relevant offence, or
- (c) the person thinks that it would be more appropriate for the relevant offence to be investigated by another person with such functions.

(6) If the person informs the immigration officer that the person will accept the item, the immigration officer must give it to the person as soon as is reasonably practicable.

(7) Once the item has been given as mentioned in subsection (6), any provision of an enactment which applies to items seized or taken away by the person applies to the item as if it had been seized or taken away by the person for the purposes of the investigation of the relevant offence.

(8) If the person informs the immigration officer that the person will not accept the item because subsection (5)(a) applies, the immigration officer must, as soon as is reasonably practicable, return the item in accordance with subsection (10).

(9) If the person informs the immigration officer that the person will not accept the item because subsection (5)(b) or (c) applies, the immigration officer must, as soon as is reasonably practicable—

- (a) notify the exercise of a power mentioned in subsection (1) in relation to the item to another person (if any) who the immigration officer thinks has functions in relation to the investigation of the relevant offence, or
- (b) if there is no such person, return the item in accordance with subsection (10).

(10) An item which must be returned in accordance with this subsection must be returned—

- (a) to the person from whom it was seized, or
- (b) if there is no such person, to the place from which it was seized or taken away.

(11) Where an item to which this section applies or information contained in such an item has been obtained in consequence of the commission of, or is evidence in relation to, more than one offence, references in this section to the relevant offence are to any of those offences.

(12) A function conferred or imposed by this section on an immigration officer may be exercised by any other immigration officer.

Search for nationality documents by certain officers.

51.—(1) The Minister may direct a prison officer or prisoner custody officer to exercise any of the powers in subsection (6) in relation to a detained person who is detained in a prison or young offender institution.

(2) The Minister may direct a prison officer or prisoner custody officer to exercise any of the powers in subsection (6) in relation to a person detained in a prison or young offender institution—

- (a) who has been recommended for deportation by a court under section 3(6) of the Immigration Act 1971, or
- (b) in respect of whom the Minister has made a deportation order under section 5(1) of that Act.

(3) In this section and section 52 “relevant officer” means a prison officer or prisoner custody officer.

(4) The Minister may give a direction in relation to a person detained as mentioned in subsection (1) or (2) only if the Minister has reasonable grounds to believe a relevant nationality document will be found if a power in subsection (6) is exercised in relation to the person.

(5) A relevant officer to whom a direction is given under subsection (1) or (2) must (if able to do so) comply with it.

(6) The powers referred to in subsections (1), (2) and (4) are—

- (a) to require the person to hand over to the relevant officer all relevant nationality documents in his or her possession,
- (b) to search for such documents and to take possession of any that the relevant officer finds,
- (c) to inspect any relevant nationality documents obtained in the course of the exercise of a power in paragraph (a) or (b), and
- (d) to seize and retain any such documents so obtained.

(7) The power in subsection (6)(b) is a power to search any of the following—

- (a) the person;
- (b) anything the person has with him or her;
- (c) the person’s accommodation in the prison or young offender institution;
- (d) any item of the person’s property in the prison or young offender institution.

(8) A full search may be carried out under subsection (7)(a); but such a search may not be carried out in the presence of—

- (a) another person detained as mentioned in subsection (1) or (2), or
- (b) a person of the opposite sex.

(9) An intimate search may not be carried out under subsection (7)(a).

(10) A relevant officer may if necessary use reasonable force for the purposes of exercising a power in subsection (6)(a) or (b).

(11) A relevant officer must pass a relevant nationality document seized and retained under subsection (6)(d) to the Minister as soon as is reasonably practicable.

(12) The Minister may retain a relevant nationality document which comes into the Minister's possession under subsection (11) while the Minister suspects that—

- (a) a person to whom the document relates may be liable to removal from Jersey in accordance with a provision of the Immigration Acts, and
- (b) retention of the document may facilitate the removal.

(13) If subsection (12) does not apply to a document which comes into the Minister's possession under this section, the Minister may—

- (a) arrange for the document to be returned in accordance with subsection (14), or
- (b) if the Minister thinks that it would not be appropriate to return the document, dispose of the document in such manner as the Minister thinks appropriate.

(14) A document which is required to be returned in accordance with this subsection must be returned to—

- (a) the person who was previously in possession of it, or
- (b) if it was not found in the possession of a person, the location in which it was found.

(15) In this section and section 52—

“full search” means a search which involves the removal of an item of clothing which—

- (a) is being worn wholly or partly on the trunk, and
- (b) is being so worn either next to the skin or next to an article of underwear;

“intimate search” means a search which consists of a physical examination of a person's body orifices other than the mouth;

“nationality document” means a document which might—

- (a) establish a person's identity, nationality or citizenship, or
- (b) indicate the place from which a person has travelled to Jersey or to which a person is proposing to go.

(16) For the purposes of this section and section 52 a nationality document is “relevant” if it relates to a person who is liable to removal from Jersey in accordance with a provision of the Immigration Acts.

(17) In this section “detained person” means persons a person detained or required to be detained under the 1971 Act or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Minister).

Seizure of nationality documents by detainee custody officers etc.

52.—(1) A relevant officer may seize a nationality document which the relevant officer finds in the course of the exercise of a power to search other than one conferred by section 51.

(2) Where a relevant officer seizes a nationality document under subsection (1), the relevant officer—

- (a) (must seek the consent of the Minister to retain the document, and
- (b) if the relevant officer obtains the Minister's consent, must pass the document to the Minister as soon as is practicable.

(3) The Minister may give consent under subsection (2) only if the Minister has reasonable grounds to believe that—

- (a) the document is a relevant nationality document, and
- (b) the document may facilitate the removal of the person to whom it relates from Jersey in accordance with a provision of the Immigration Acts.

- (4) If the Minister does not give consent under subsection (2), the Minister must—
- (a) direct the relevant officer to return the document as mentioned in subsection (5), or
 - (b) if the Minister thinks that it would not be appropriate to return the document, direct the relevant officer to dispose of the document in such manner as the Minister may direct.
- (5) A document which is required to be returned in accordance with this subsection must be returned to—
- (a) the person who was previously in possession of it, or
 - (b) if it was not found in the possession of a person, the location in which it was found.
- (6) The Minister may retain a relevant nationality document which comes into the Minister's possession under this section while the Minister suspects that—
- (a) a person to whom the document relates may be liable to removal from Jersey in accordance with a provision of the Immigration Acts, and
 - (b) retention of the document may facilitate the removal.
- (7) If subsection (6) does not apply to a document which comes into the Minister's possession under this section, the Minister may—
- (a) arrange for the document to be returned in accordance with subsection (5), or
 - (b) if the Minister thinks that it would not be appropriate to return the document, dispose of the document in such manner as the Minister thinks appropriate.

Interpretation of Part.

58.—(1) In this Part “immigration officer” means a person appointed in accordance with paragraph 1 of Schedule 2 to the Immigration Act 1971.

(2) In this Part “premises” and “item subject to legal privilege” have the same meaning as in the Police Procedures and Criminal Evidence (Jersey) Law 2003

Detention and bail

Guidance on detention of vulnerable persons.

59.—(1) The Minister must issue guidance specifying matters to be taken into account by a person to whom the guidance is addressed in determining—

- (a) whether a person (“P”) would be particularly vulnerable to harm if P were to be detained or to remain in detention, and
- (b) if P is identified as being particularly vulnerable to harm in those circumstances, whether P should be detained or remain in detention.

(2) In subsection (1) “detained” means detained under—

- (a) the Immigration Act 1971, or
- (b) section 62 of the Nationality, Immigration and Asylum Act 2002,

and “detention” is to be construed accordingly.

(3) A person to whom guidance under this section is addressed must take the guidance into account.

(4) Before issuing guidance under this section the Minister must present a draft of the guidance to the States.

(5) Guidance under this section comes into force on the date specified by the Minister when the guidance is issued.

(6) The Minister may from time to time review guidance under this section and may revise and re-issue it.

(7) References in this section to guidance under this section include revised guidance.

Limitation on detention of pregnant women.

- 60.**—(1) This section applies to a woman if the Minister is satisfied that the woman is pregnant.
- (2) A woman to whom this section applies may not be detained under a relevant detention power unless the Minister is satisfied that—
- (a) the woman will shortly be removed from Jersey, or
 - (b) there are exceptional circumstances which justify the detention.
- (3) In determining whether to authorise the detention under a relevant detention power of a woman to whom this section applies, a person who, apart from this section, has power to authorise the detention must have regard to the woman’s welfare.
- (4) A woman to whom this section applies may not be detained under a relevant detention power for a period of—
- (a) more than 72 hours from the relevant time, or
 - (b) more than seven days from the relevant time, in a case where the longer period of detention is authorised personally by a Minister (within the meaning of the States of Jersey Law 2005).
- (5) In subsection (4) “the relevant time” means the later of—
- (a) the time at which the Minister is first satisfied that the woman is pregnant, and
 - (b) the time at which the detention begins.
- (6) A woman to whom this section applies who has been released following detention under a relevant detention power may be detained again under such a power in accordance with this section.
- (7) This section does not apply to the detention under paragraph 16(2) of Schedule 2 to the Immigration Act 1971 of an unaccompanied child to whom paragraph 18B of that Schedule applies.
- (8) In this section—
- “relevant detention power” means a power to detain under—
- (a) paragraph 16(2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal),
 - (b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation), or
 - (c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal);
- “woman” means a female of any age.

Passports

Power to make passport fees Orders.

- 86.**—(1) The Minister may by Order provide 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.
- (2) An Order under subsection (1) is referred to in this section and section 87 as a “passport fees Order”.
- (3) The Subordinate Legislation (Jersey) Law 1960 shall apply to a passport fees Order.
- (4) A passport fees Order must provide for the fee in respect of the exercise of each specified function to comprise one or more amounts each of which is—
- (a) a specified fixed amount, or
 - (b) an amount calculated by reference to a specified hourly rate or other specified factor.

(5) Provision made under subsection (4) may be intended to result in a fee in respect of a specified function which exceeds the costs of exercising the function.

(6) In respect of any fee provided for under this section, a passport fees 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.

(7) In this section—

“costs” includes—

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

“function” includes a power or a duty;

“specified” means specified in a passport fees Order;

“travel document” means a document which enables or facilitates travel from one state to another and a “UK travel document” means such a document issued by the Secretary of State;

“United Kingdom passport” has the same meaning as in the Immigration Act 1971 (see section 33 of that Act).

(8) Any reference in this section 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 or persons making requests for the exercise of a function.

Passport fees Orders: supplemental.

87.—(1) A fee under section 86 may relate to something done outside Jersey.

(2) Fees payable by virtue of section 86 may be recovered as a debt due to the Minister.

(3) Fees paid to the Minister by virtue of section 86 shall form part of the annual income of the States.

(4) Section 86 is without prejudice to any other power to charge a fee.

Power to charge for passport validation services.

88.—(1) The Minister may charge a fee in respect of the provision of passport validation services to persons on request.

(2) “Passport validation services” are 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.

(3) In this section “United Kingdom passport” has the same meaning as in the Immigration Act 1971 (see section 33 of that Act).

(4) A fee payable under this section may be recovered as a debt due to the Minister.

(5) Fees paid to the Minister under this section shall form part of the annual income of the States.

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

PART 9

MISCELLANEOUS AND GENERAL

Welfare of children

Duty regarding the welfare of children.

90. For the avoidance of doubt, this Act does not limit any duty imposed on the Minister or any person by section 55 of the Borders, Citizenship and Immigration Act 2009 (duty regarding welfare of children).

Final provisions

Short title.

96. This Act may be cited as the Immigration Act 2016.
