

STATES OF JERSEY



IMMIGRATION, ASYLUM AND NATIONALITY ACT, 2006 AND IMMIGRATION AND ASYLUM ACT, 1999: EXTENSION OF CERTAIN SECTIONS TO JERSEY

Lodged au Greffe on 14th June 2010
by the Chief Minister

STATES GREFFE

PROPOSITION

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

to signify, pursuant to Article 31 (1)(b)(i) of the States of Jersey Law 2005, whether 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 and adaptations, the provisions of –

- (a) sections 31, 32, 34 and 39 of the Immigration, Asylum and Nationality Act 2006; and
- (b) section 18 of the Immigration and Asylum Act 1999,

as summarised in the report of the Chief Minister dated 18th May 2010.

CHIEF MINISTER

REPORT

Executive summary

1. The purpose of this Proposition is to request the States to consider whether to agree to the extension to Jersey of sections 31, 32, 34 and 39 of the Immigration, Asylum and Nationality Act 2006 as well as section 18 of the Immigration and Asylum Act 1999. The extension of these sections will strengthen the existing requirements for carriers to provide information to the Police and Customs and Immigration Service and will allow Jersey to participate fully in the United Kingdom's e-Borders regime.

Background

2. On 14th February 2008 the Ministry of Justice wrote to the Island authorities enquiring as to whether Jersey wished to participate in the United Kingdom's e-Borders programme.
3. The main purpose of e-Borders is to collect and analyse passenger and crew data provided by air and sea carriers, in respect of all journeys to and from the UK in advance of their travel. This data is checked against watch-lists, analysed, risk assessed and shared between UK border agencies. This improves border security and assists in the fight against organised crime and illegal immigration.
4. By letter dated 3rd March 2008, the then Deputy Bailiff, Michael Birt, confirmed through official channels the intention of the Jersey Government to participate fully in the development and implementation of the e-Borders programme.

Legislation requirements

5. To achieve this, Jersey's legislation needs to be compatible with the UK system for the collection and sharing of passenger data. As a result sections 31, 32, 34 and 39 of the Immigration, Asylum and Nationality Act 2006 and section 18 of the Immigration and Asylum Act 1999 will need to be extended to Jersey. These sections relate to the following –

Immigration, Asylum and Nationality Act, 2006

- section 31 – provision of information to immigration officers;
- section 32 – passenger and crew information: police powers;
- section 34 – offence;
- section 39 – disclosure to law enforcement agencies.

A more detailed explanation of what these sections relate to is attached at Appendices 1 and 2.

Immigration and Asylum Act, 1999

- section 18 – passenger information. See Appendices 1 and 3.

6. If Jersey's legislation is not compatible with the UK system, it would place the Island outside the e-Border regime. As a result the UK authorities could require all carriers to provide advance information on all passengers travelling between Jersey and the United Kingdom.
7. With Jersey inside the e-Border regime, such information would only be required in relation to direct routes between the Island and places outside the United Kingdom.
8. Where it is proposed that an Order in Council should be made to extend to Jersey sections of an Act of the United Kingdom Parliament, the Chief Minister is required to lodge a proposition in pursuance of Article 31 of the States of Jersey Law 2005, in order for the States to signify their view.
9. If the States signify their agreement with the proposition, the draft Order in Council will be prepared in consultation with officials in the Law Officers' Department and the Customs and Immigration Service in the Home Affairs Department and Legal Advisers at the Home Office in the UK. Once the final version is prepared by legal advisers at the Ministry of Justice in accordance with instructions from the Jersey authorities, the draft Order will be submitted to the Privy Council.
10. The Order in Council, once made, will be forwarded for registration by the Royal Court before coming into force in Jersey.

Memorandum of understanding

11. There are other legislative measures that will need to be introduced but these require more time, for the reasons given in the following paragraphs.
12. To allow the sharing of e-Borders data between the United Kingdom and Jersey will require section 36 of the Immigration, Asylum and Nationality Act 2006 also to be extended to the Island. Unfortunately as the section is currently drafted it does not enable the Secretary of State, a Chief Officer of Police or Her Majesty's Revenue and Customs to share any data with the Customs and Immigration Service in Jersey or the other Crown dependencies. As such it would not be appropriate to extend section 36, to Jersey in its present format.
13. It is contemplated by the respective legal advisers in the Crown dependencies and the United Kingdom that this section be re-drafted in a form that enables the data sharing regime to be placed on a proper, fully reciprocal, statutory footing. This could take some time and delay the introduction of the e-Borders regime across the Crown Dependencies.
14. In view of this, it has been agreed that a Memorandum of Understanding should be entered into between the Crown Dependencies and the United Kingdom allowing for an exchange of data in both directions on the basis that the United Kingdom authorities commit to amending section 36 at the earliest opportunity so that the data sharing arrangements are established on a fully reciprocal statutory basis.

Manpower and resource implications

There will be no additional manpower, revenue or capital requirements arising.

Immigration, Asylum and Nationality Act 2006 Summary

Section 31 – enables the collection of passenger lists and crew information on or before the arrival of a ship or aircraft into the United Kingdom. It also enables the collection of passenger lists or crew information from a ship or aircraft which is leaving or is expected to leave the UK. (If extended to Jersey the legislation will substitute UK with the Bailiwick of Jersey).

Section 32 – gives the Police information acquisition powers in respect of ships and aircraft arriving (or expected to arrive) in or leaving (or expected to leave) the UK. A police officer of at least the rank of superintendent (the rank will be chief inspector if extended to Jersey) may request passenger or crew information from the owner or agent of a ship or aircraft. (If extended to Jersey the legislation will substitute UK with the Bailiwick of Jersey).

Section 34 – explains the penalties that can be applied for non-compliance with a requirement to provide information under section 32.

Section 39 – provides a power for a police service to disclose information obtained in accordance with section 32 to the police services in Jersey, Guernsey, the Isle of Man and a foreign law enforcement agency. A foreign law enforcement agency is defined as a person outside the UK with functions similar to a police force in the UK or the UK. Serious Organised Crime Agency. (If extended to Jersey the legislation will allow the Chief Officer of the States of Jersey Police to disclose information to a police force in the UK, Guernsey, Isle of Man and a foreign law enforcement agency).

Immigration and Asylum Act 1999 Summary

Section 18 – defines the meaning of “passenger information” and inserts this definition into Schedule 2 of the Immigration Act 1971 at paragraph 27B.



Immigration, Asylum and Nationality Act 2006

CHAPTER 13

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31 Provision of information to immigration officers

- (1) Schedule 2 to the Immigration Act 1971 (controls on entry: administration) shall be amended as follows.
- (2) In paragraph 27 (provision of passenger lists, &c.) for sub-paragraph (2) substitute –
 - “(2) The Secretary of State 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 the United Kingdom;
 - (b) to all ships or aircraft leaving or expected to leave the United Kingdom;
 - (c) to ships or aircraft arriving or expected to arrive in the United Kingdom from or by way of a specified country;
 - (d) to ships or aircraft leaving or expected to leave the United Kingdom 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,
 - (c) shall be made by statutory instrument, and
 - (d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (3) In paragraph 27B (passenger information) –
 - (a) in each place after “passenger information” insert “or service information”, and
 - (b) after sub-paragraph (9) insert –
 - “(9A) “Service information” means such information relating to the voyage or flight undertaken by the ship or aircraft as may be specified.”
- (4) In section 27 of the Immigration Act 1971 (c. 77) (offences) –
 - (a) in paragraph (b)(iv) for “the requirements of paragraph 27B or 27C of Schedule 2” substitute “a requirement imposed by or under Schedule 2”, and
 - (b) in paragraph (c) omit “as owner or agent of a ship or aircraft or”.

32 Passenger and crew information: police powers

- (1) This section applies to ships and aircraft which are –
 - (a) arriving, or expected to arrive, in the United Kingdom, or
 - (b) leaving, or expected to leave, the United Kingdom.
- (2) The owner or agent of a ship or aircraft shall comply with any requirement imposed by a constable of the rank of superintendent 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 constable may impose a requirement under subsection (2) only if he thinks it necessary –
 - (a) in the case of a constable in England, Wales or Northern Ireland, for police purposes, or
 - (b) in the case of a constable in Scotland, for police purposes which are or relate to reserved matters.
- (5) In this section –
 - (a) “passenger or service information” means information which is of a kind specified by order of the Secretary of State and which relates to –
 - (i) passengers,
 - (ii) members of crew, or

- (iii) a voyage or flight,
 - (b) “police purposes” has the meaning given by section 21(3) of the Immigration and Asylum Act 1999 (c. 33) (disclosure by Secretary of State), and
 - (c) “reserved matters” has the same meaning as in the Scotland Act 1998 (c. 46).
- (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.
- (7) The Secretary of State 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 Act 1998 (c. 42)).
- (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,
 - (c) may specify the form and manner in which information is to be provided,
 - (d) shall be made by statutory instrument, and
 - (e) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

34 Offence

- (1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed under section 32(2) or (3) or 33(2).
- (2) But –
 - (a) a person who fails without reasonable excuse to comply with a requirement imposed under section 32(2) or 33(2) by a constable in England and Wales or Northern Ireland otherwise than in relation to a reserved matter (within the meaning of the Scotland Act 1998 (c. 46)) shall not be treated as having committed the offence in Scotland (but has committed the offence in England and Wales or Northern Ireland), and
 - (b) a person who fails without reasonable excuse to comply with a requirement which is imposed under section 32(3) for the purpose of complying with a requirement to which paragraph (a) applies –

- (i) shall not be treated as having committed the offence in Scotland, but
 - (ii) shall be treated as having committed the offence in England and Wales or Northern Ireland.
- (3) A person who is guilty of an offence under subsection (1) shall be liable on summary conviction to –
 - (a) imprisonment for a term not exceeding 51 weeks in England and Wales or 6 months in Scotland or Northern Ireland,
 - (b) a fine not exceeding level 4 on the standard scale, or
 - (c) both.
- (4) In relation to a conviction occurring before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44) (51 week maximum term of sentences) the reference to 51 weeks in subsection (2)(a) shall be taken as a reference to three months.

39 Disclosure to law enforcement agencies

- (1) A chief officer of police may disclose information obtained in accordance with section 32 or 33 to –
 - (a) the States of Jersey police force;
 - (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 the United Kingdom with functions similar to functions of –
 - (a) a police force in the United Kingdom, or
 - (b) the Serious Organised Crime Agency.
- (3) In subsection (1) “chief officer of police” means –
 - (a) in England and Wales, the chief officer of police for a police area specified in section 1 of the Police Act 1996,
 - (b) in Scotland, the chief constable of a police force maintained under the Police (Scotland) Act 1967, and
 - (c) in Northern Ireland, the chief constable of the Police Service of Northern Ireland.



Immigration and Asylum Act 1999

1999 CHAPTER 33

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18 Passenger information

In the 1971 Act, in Schedule 2, after paragraph 27, insert –

“Passenger information

- 27B (1) This paragraph applies to ships or aircraft –
- (a) which have arrived, or are expected to arrive, in the United Kingdom; or
 - (b) which have left, or are expected to leave, the United Kingdom.
- (2) If an immigration officer asks the owner or agent (“the carrier”) of a ship or aircraft for passenger information, the carrier must provide that information to the officer.
- (3) The officer may ask for passenger 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 in relation to the ship or aircraft concerned; or
 - (b) particular passenger 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 Secretary of State may direct; and
 - (b) at such time as may be stated in the request.
- (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.
- (10) “Specified” means specified in an order made by statutory instrument by the Secretary of State.
- (11) Such an instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.”