

STATES OF JERSEY



IMMIGRATION (AMENDMENT) (JERSEY) ORDER 2017: EXTENSION TO JERSEY BY ORDER IN COUNCIL (P.26/2017) – COMMENTS

Presented to the States on 16th June 2017
by the Corporate Services Scrutiny Panel

STATES GREFFE

COMMENTS

Background

The Panel received a briefing from Officers on this Proposition¹ in May 2017. In light of the potential constitutional implications of part of the proposals, the Panel asked the Chief Minister to defer the debate to allow it to undertake scrutiny.

The Proposition asks the States Assembly to agree changes to existing legislation which extends certain parts of UK Immigration Law to Jersey. The Proposition contains the text of a proposed Order in Council to be made by the Privy Council to put the proposed changes into effect.

The Proposition is made up of 3 parts. The Panel's review has focussed on part (a), which proposes the transfer of certain powers and functions in relation to Immigration from the Lieutenant Governor to the Minister for Home Affairs.

Parts (b) and (c) are administrative and technical changes to the Law, to remove any remaining references to "Committees of the States" and to update a part of the Law relating to the offence of assisting illegal entry, bringing it into line with changes implemented to the UK law in 2007.

Transfer of Immigration functions and powers

Under the proposals, certain functions and powers in relation to Immigration and Asylum, which are currently vested in the Lieutenant Governor, will be transferred to the Minister for Home Affairs. If the changes are approved, the Minister for Home Affairs will be the deciding authority in the future on matters such as deportation, asylum and applications to enter or remain in Jersey. The Minister will also, in the future, have the power to issue the detailed rules relating to immigration (*see* Jersey Immigration Rules²).

In reviewing the proposals, the Panel identified the following questions to address –

1. The rationale for transferring functions and powers from the Lieutenant Governor to the Minister for Home Affairs.
2. The implications of moving away from an independent, non-political figure making the final decision on immigration cases.
3. The appropriateness of operational procedures and the checks and balances in place.
4. The adequacy of the consultation undertaken in bringing forward the proposals.

¹ [P.26/2017 – Immigration \(Amendment\) \(Jersey\) Order 2017: extension to Jersey by Order in Council](#)

² The [Jersey Immigration Rules](#) are published on the States website

Immigration legislation in Jersey is based on the UK Immigration Act (1971), which was extended to Jersey in 1993³. This vested certain powers and functions in the Lieutenant Governor. It was explained to the Panel that, following a review of the legislation, it was considered more appropriate that these powers be exercised by the Minister for Home Affairs. This would also follow UK practice, where the Home Secretary holds the equivalent powers.

In the event of an appeal of a decision reaching the stage of Judicial Review, the changes would mean that the Minister for Home Affairs, rather than the Lieutenant Governor, would be a party to the Judicial Review.

The Jersey Immigration Rules are the operational procedures for the implementation of immigration law. They are issued by the Lieutenant Governor and closely follow the equivalent UK rules. In areas such as asylum and the grant of refugee status, the rules already provide that the Lieutenant Governor will make a decision “on a recommendation made to him by the Minister [for Home Affairs]”. In the future, if the changes are approved by the States Assembly, the Rules will be issued by the Minister for Home Affairs.

The rationale for the changes, as explained to the Panel, is to ensure that both policy and decision-making in relation to immigration is subject to democratic accountability and oversight by the States Assembly.

Conclusion

As a matter of principle, the Panel had some reservations about the transfer of powers from the Lieutenant Governor to the Executive.

The review has established the following –

1. The changes will bring Jersey legislation in line with UK practice.
2. In future, a democratically accountable Minister will have responsibility for making decisions on immigration, asylum and deportation cases.
3. The Minister for Home Affairs will be expected to provide oversight and checks and balances in relation to immigration decisions.
4. The Jersey Immigration Rules will in future be issued (*by Ministerial Decision*) and implemented by the Minister. The Panel is of the view that any changes should be presented to the relevant Scrutiny Panel before being implemented. The Rules (and their interpretation and application) should be no less stringent than in the UK.
5. The Panel has established that an adequate level of consultation seems to have been undertaken before bringing forward these changes.

³ A consolidated set of all relevant Immigration legislation showing the proposed changes has been presented to the States as [R.35/2017 – Consolidated Immigration Laws](#)