

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.