

STATES OF JERSEY



NATIONALITY ACTS: EXTENSION TO JERSEY (P.55/2024) – COMMENTS

Presented to the States on 25th September 2024
by the Children, Education and Home Affairs Scrutiny Panel

STATES GREFFE

COMMENTS

The proposition '*Nationality Acts: Extension to Jersey*' [P.55/2024] (hereafter the 'Proposition') asks the States Assembly to consent to the extension of various provisions which relate to British citizenship which are contained in Acts and Subordinate Legislation of the Parliament of the United Kingdom (UK) and allow for their subsequent registration in the Royal Court.

The Children, Education and Home Affairs Scrutiny Panel (hereafter, the 'Panel') received an officer led briefing on a draft version of the Proposition on 7th June 2024 and a subsequent update, post lodging, was provided to the Chair of the Panel on 2nd September 2024. This comments paper will set out the Panel's understanding, in the hope that it may be of assistance to States Members ahead of the debate.

Background and Rationale

Jersey, like other Crown Dependencies, has a unique constitutional position. Although it operates with autonomy there are certain aspects of legislation, such as laws governing British Citizenship, which are derived from UK law.

As set out in the report accompanying the Proposition, Article 31 of the [States of Jersey Law 2005](#) stipulates that UK legislation can apply directly to Jersey only after the States Assembly's approval. This Article operates as a safeguard, to ensure that Jersey retains control over its own legislative processes and prevents the UK from imposing laws on the Island without its consent.

The Panel was advised that Government had become aware that several pieces of UK legislation which related to nationality, had not undergone the Article 31 process and, resultingly, the Proposition, therefore, represents a necessary "housekeeping" exercise to ensure that Jersey's nationality provisions are consistent with UK legislation.

Legislative Overview

As listed in the report accompanying the Proposition, there are various UK Acts and subordinate legislation that pertain to British nationality which have not gone through the Article 31 process. These include:

1. **Nationality and Borders Act 2022**
2. **British Nationality (Regularisation of Past Practice) Act 2023**
3. **British Nationality (Irish Citizens) Act 2024; and**
4. **Other historic British Nationality Legislation**

The other historic legislation (as listed in Appendix 1 on the Proposition report) includes older legislative acts, such as the British Nationality (Falkland Islands) Act 1983 and the Borders, Citizenship and Immigration Act 2009, among others. The purpose of including these older acts is to rectify past omissions and ensure comprehensive alignment with current UK law provisions reflecting nationality.

The Panel asked why some of the historic legislation had not previously been presented to the States Assembly, or why this issue had not been noticed or addressed before now. It was advised that this was because there had not always been consistent communication between the jurisdictions to advise of changes to UK legislation which

impacted nationality and there would be no reason for Jersey to be aware of all changes to UK law where it has its own legislation in place.

Addressing Potential Concerns

When the Panel was initially briefed about the Proposition, the nationality provisions that would be extended included some from the UK's Illegal Migration Act 2023. In the briefing on 7th June the Panel spent some time discussing the inclusion of these with Officers, as the Illegal Migration Act 2023 has generally been considered politically controversial by some in the UK. However, all references to the Illegal Migration Act 2023 have been removed from the lodged version of the Proposition. The Panel was advised that this was due to the change of Government in the UK following the General election in summer 2024, who lodged an amending Act meaning the nationality provisions were no longer in force.

The Panel was assured by Government Officers that the changes proposed by the Proposition and the extension of nationality provisions to Jersey was administrative in nature and did not involve any contentious immigration issues.

Implications of Non-Approval

The Panel asked what the consequences would be if the States Assembly was to reject the Proposition. The Panel was advised that nationality is a core preserve of the UK and that any legislation that impacted nationality should align with the British Nationality Act of 1981. Without solid constitutional reasons, any misalignment should be avoided in order to minimise the risk of legal challenge. Although there is currently some minor misalignment which this Proposition seeks to remedy, there are no operational problems as a result. Officers advised that, if the States Assembly was not minded to approve the Proposition, the Government would likely have to take the approach of examining and addressing "what is it about the nationality provisions that causes issues for Jersey?" and officials would subsequently be tasked with finding ways to align the positions of Jersey and the UK. Although there are currently no operational problems arising from the technical misalignment of legislation, the Panel understands that addressing the discrepancies is important to avoid any future complications.

Child Rights Impact Assessment

The accompanying screener for the Child Rights Impact Assessment (CRIA) indicates that the Proposition does not impact children differently to adults.

Following Panel enquiries about wording in the CRIA, clarification was provided and a corrected version of the CRIA document was made available on the States Assembly website.

Comparative Context

The Panel was advised that Guernsey's States of Deliberation had debated the new sections of the British Nationality Act in July 2023, however, they had taken a different approach and had not undertaken their tidy-up housekeeping exercise yet. Officers advised that the Islands had cooperated on some work as a result of this.

Conclusion

The Panel is supportive of the draft proposition on the basis that it aims to align Jersey with various UK Acts that address British citizenship, ensuring that Jersey's laws reflect relevant nationality provisions in UK Law.