

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY K.F. MOREL OF ST. LAWRENCE
ANSWER TO BE TABLED ON TUESDAY 8th OCTOBER 2019**

Question

Is it legal for the Government, States-owned entities or arms-length organisations to maintain a database of images of Islanders' faces for use in facial recognition systems and, if so, what is the legal basis on which this is possible?

Answer

The Deputy will be aware that the Immigration (Relevant Biometric Information (Jersey) Regulations 2019 (the "2019 Regulations") were adopted by the States Assembly on 29 January 2019 (P.12/2019) to provide the legal authority for immigration officers and certain other authorised persons (including police officers) to require applicants under the Jersey EU Settlement Scheme to provide a photograph with the application. When these Regulations came into force Appendix EU(J) of the Jersey Immigration Rules imposed a requirement for an application to the settled status scheme to be accompanied by a photograph. Where an individual does not comply with that requirement their application may be treated as invalid.

The 2019 Regulations were made under section 126 of the Nationality, Immigration and Asylum Act 2002, as extended to Jersey by the Immigration (Biometric Information) (Jersey) Order 2018, which came into force on 28 December 2018. The extension of section 126 to Jersey was approved by the Assembly on 6 November 2018 (P.105/2018).

The 2019 Regulations include safeguards in relation to photographing children, and also require the Minister to destroy any record of a photograph after it is no longer needed in connection with functions relating to immigration laws or nationality. A photograph is no longer needed for this purpose if the applicant becomes a British Citizen and is issued with a passport, or a Commonwealth citizen who has a right of abode in Jersey. For so long as it is retained for those purposes, the photograph and any information derived from it may also be used in connection with criminal investigations or prosecutions, and for the purposes of national security, as well as for identifying dead persons or persons suffering from illness or injury. It may also be used to ascertain whether someone has acted unlawfully, or tried to obtain something to which they were not entitled.

To the extent that images of Islanders' faces are held in a database by the Government or by its agents in accordance with the 2019 Regulations, those regulations provide a sufficient and clear legal basis for processing this information. To process this information using facial recognition software does not require a separate legal basis, provided that any such processing is for the purposes set out in the 2019 Regulations.

The processing of this information will also be subject to the requirements of the Data Protection (Jersey) Law 2018, compliance with which is regulated by the Information Commissioner.