

SCHEDULE 4A

Article 6

Provisions of the Immigration and Asylum Act 1999 as extended to Jersey

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*Provision as extended to Jersey*

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PART I

IMMIGRATION: GENERAL

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*Leave to enter, or remain in, Jersey*

**Removal of persons unlawfully in Jersey**

**10.**—(1) A person may be removed from Jersey under the authority of the Minister or an immigration officer if the person requires leave to enter or remain in Jersey but does not have it.

(2) Where a person (“P”) is liable to be or has been removed from the Jersey under subsection (1), a member of P’s family who meets the following three conditions may also be removed from Jersey under the authority of the Minister or an immigration officer, provided that the Minister or immigration officer has given the family member written notice of the intention to remove him or her.

(3) The first condition is that the family member is—

(a) P’s partner,

(b) P’s child, or a child living in the same household as P in circumstances where P has care of the child,

(c) in a case where P is a child, P’s parent, or

(d) an adult dependent relative of P.

(4) The second condition is that—

(a) in a case where the family member has leave to enter or remain in Jersey, that leave was granted on the basis of his or her family life with P;

(b) in a case where the family member does not have leave to enter or remain in Jersey, in the opinion of the Minister or immigration officer the family member—

(i) would not, on making an application for such leave, be granted leave in his or her own right, but

(ii) would be granted leave on the basis of his or her family life with P, if P had leave to enter or remain.

(5) The third condition is that the family member is none of the following—

(a) a British citizen,

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- (b) an Irish citizen,
- (c) a person who has leave to enter or remain in Jersey which was granted by virtue of residence scheme immigration rules.
- (6) A notice given to a family member under subsection (2) invalidates any leave to enter or remain in Jersey previously given to the family member.
- (7) For the purposes of removing a person from Jersey under subsection (1) or (2), the Minister or an immigration officer may give any such direction for the removal of the person as may be given under paragraphs 8 to 10 of Schedule 2 to the 1971 Act.
- (8) But subsection (7) does not apply where a deportation order is in force against a person (and any directions for such a person's removal must be given under Schedule 3 to the 1971 Act).
- (9) The following paragraphs of Schedule 2 to the 1971 Act apply in relation to directions under subsection (7) (and the persons subject to those directions) as they apply in relation to directions under paragraphs 8 to 10 of Schedule 2 (and the persons subject to those directions)—
  - (a) paragraph 11 (placing of person on board ship or aircraft);
  - (b) paragraph 16(2) to (4) (detention of person where reasonable grounds for suspecting removal directions may be given or pending removal in pursuance of directions);
  - (c) paragraph 17 (arrest of person liable to be detained and search of premises for person liable to arrest);
  - (d) paragraph 18 (supplementary provisions on detention);
  - (e) paragraph 18A (search of detained person);
  - (f) paragraph 18B (detention of unaccompanied children);
  - (g) paragraphs 19 and 20 (payment of expenses of custody etc);
  - (h) paragraph 21 (temporary admission to Jersey of person liable to detention);
  - (i) paragraphs 25A to 25E (searches etc).
- (10) The Minister may by Order make further provision about—
  - (a) the time period during which a family member may be removed under subsection (2);
  - (b) the service of a notice under subsection (2).
- (11) In this section—

“child” means a person who is under the age of 18;

“residence scheme immigration rules” means immigration rules which are identified as having effect in connection with the withdrawal of the United Kingdom from the European Union.

**Proof of identity of persons to be removed or deported**

**13.**—(1) This section applies if a person—

- (a) is to be removed from Jersey to a country of which he is a national or citizen; but
  - (b) does not have a valid passport or other document establishing his identity and nationality or citizenship and permitting him to travel.
- (2) If the country to which the person is to be removed indicates that he will not be admitted to it unless identification data relating to him are provided by the Minister, he may provide them with such data.
- (3) In providing identification data, the Minister must not disclose whether the person concerned has made a claim for asylum.
- (4) For the purposes of Article 49(1)(d) of the GDPR, the provision under this section of identification data is a transfer of personal data which is necessary for important reasons of public interest.
- (4A) “The GDPR” has the same meaning as in the Data Protection (Jersey) Law 2018 (see Article 1(1) of that Law).
- (5) “Identification data” means —
- (a) fingerprints taken under section 141; or
  - (b) data collected in accordance with Regulations made under section 144.
- (6) “Removed” means removed as a result of directions given under section 10 or under Schedule 2 or 3 to the 1971 Act.

**Escorts for persons removed from Jersey under directions.**

**14.**—(1) Directions for, or requiring arrangements to be made for, the removal of a person from Jersey may include or be amended to include provision for the person who is to be removed to be accompanied by an escort consisting of one or more persons specified in the directions.

- (2) The Minister may by Order make further provision supplementing subsection (1).
- (3) Such Order may, in particular, include provision—
- (a) requiring the person to whom the directions are given to provide for the return of the escort to Jersey;
  - (b) requiring him to bear such costs in connection with the escort (including, in particular, remuneration) as may be prescribed;
  - (c) as to the cases in which the Minister is to bear those costs;
  - (d) prescribing the kinds of expenditure which are to count in calculating the costs incurred in connection with escorts.

*Reporting suspicious marriages*

**Duty to report suspicious marriages.**

**24.**—(1) Subsection (3) applies if—

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- (a) the Superintendent Registrar is given a notice of intended marriage under Article 8 of the Marriage and Civil Status (Jersey) Law 2001, or
- (b) a registrar, or deputy registrar, within the meaning of Article 42 of the Marriage and Civil Status (Jersey) Law 2001 receives information in advance of a person giving such a notice, and has reasonable grounds for suspecting that the intended marriage will be a sham marriage.
- (3) The person concerned must report his suspicion to the Minister without delay and in writing.
- (5) A marriage (whether or not it is void) is a “sham marriage” if—
  - (a) either, or both, of the parties to the marriage is not a relevant national,
  - (b) there is no genuine relationship between the parties to the marriage, and
  - (c) either, or both, of the parties to the marriage enter into the marriage for one or more of these purposes—
    - (i) avoiding the effect of one or more provisions of immigration law or the immigration rules in Jersey or elsewhere in the British Islands;
    - (ii) enabling a party to the marriage to obtain a right conferred by that law or those rules to reside in Jersey or elsewhere in the British Islands.
- (6) In subsection (5)—

“relevant national” means—

  - (a) a British citizen,
  - (b) an Irish citizen, or
  - (c) a person who is not an Irish citizen and who—
    - (i) has leave to enter or remain in Jersey which was granted by virtue of residence scheme immigration rules, or
    - (ii) is a person to whom paragraph 2 of the Immigration (Leave to Enter and Remain) (Grace Period) (Jersey) Directions 2020 applied and the grace period under those Directions or under an Order replacing those Directions still applies in relation to that person.
- (7) In subsection (6) “residence scheme immigration rules” means immigration rules which are identified as having effect in connection with the withdrawal of the United Kingdom from the European Union.

**Duty to report suspicious civil partnerships.**

**24A.**—(1) Subsection (3) applies if—

- (a) the Superintendent Registrar is given a notice of civil partnership under Article 7 of the Civil Partnership (Jersey) Law 2012, or

(b) a registrar, or a civil partnership registrar, within the meaning of Article 1 of the 2012 Law receives information in advance of a person giving such a notice,

and has reasonable grounds for suspecting that the civil partnership will be a sham civil partnership.

(2) Subsection (3) also applies if—

(a) two people register as civil partners of each other under Article 3 of the 2012 Law in the presence of a civil partnership registrar, and

(b) before, during or immediately after they do so, the registrar has reasonable grounds for suspecting that the civil partnership will be, or is, a sham civil partnership.

(3) The person concerned must report his suspicion to the Minister without delay and in writing.

(4) A civil partnership (whether or not it is void) is a “sham civil partnership” if—

(a) either, or both, of the parties to the civil partnership is not a relevant national,

(b) there is no genuine relationship between the parties to the civil partnership, and

(c) either, or both, of the parties to the civil partnership enter into the civil partnership for one or more of these purposes—

(i) avoiding the effect of one or more provisions of immigration law or the immigration rules in Jersey or elsewhere in the British Islands;

(ii) enabling a party to the marriage to obtain a right conferred by that law or those rules to reside in Jersey or elsewhere in the British Islands.

(5) In subsection (4)—

“relevant national” means—

(a) a British citizen,

(b) an Irish citizen, or

(c) a person who is not an Irish citizen and who—

(i) has leave to enter or remain in Jersey which was granted by virtue of residence scheme immigration rules, or

(ii) is a person to whom paragraph 2 of the Immigration (Leave to Enter and Remain) (Grace Period) (Jersey) Directions 2020 applied and the grace period under those Directions or under an Order replacing those Directions still applies in relation to that person.

(6) In subsection (5) “residence scheme immigration rules” means immigration rules which are identified as having effect in connection with the withdrawal of the United Kingdom from the European Union.

*Immigration control: facilities and charges*

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**Provision of facilities for immigration control at ports.**

**25.**—(1) The person responsible for the management of a control port (“the manager”) must provide the Minister free of charge with such facilities at the port as the Minister may direct as being reasonably necessary for, or in connection with, the operation of immigration control there.

(2) Before giving such a direction, the Minister must consult such persons likely to be affected by it as he considers appropriate.

(5) A direction under this section is enforceable, on the application of the Minister by injunction granted by the Royal Court.

(6) “Control port” means a port in which a control area is designated under paragraph 26(3) of Schedule 2 to the 1971 Act.

(7) “Facilities” means accommodation, facilities, equipment and services of a class or description specified in an Order made by the Minister.

**Charges: immigration control.**

**26.**—(1) The Minister may, at the request of any person and in consideration of such charges as he may determine, make arrangements—

(a) for the provision at any control port of immigration officers or facilities in addition to those (if any) needed to provide a basic service at the port;

(b) for the provision of immigration officers or facilities for dealing with passengers of a particular description or in particular circumstances.

(2) “Control port” has the same meaning as in section 25.

(3) “Facilities” includes equipment.

(4) “Basic service” has such meaning as may be prescribed.

**Defences based on Article 31(1) of the Refugee Convention.**

**31.**—(1) It is a defence for a refugee charged with an offence to which this section applies to show that, having come to Jersey directly from a country where his life or freedom was threatened (within the meaning of the Refugee Convention), he—

(a) presented himself to the authorities in Jersey without delay;

(b) showed good cause for his illegal entry or presence; and

(c) made a claim for asylum as soon as was reasonably practicable after his arrival in Jersey.

(2) If, in coming from the country where his life or freedom was threatened, the refugee stopped in another country outside Jersey, subsection (1) applies only if he shows that he could not reasonably have expected to be given protection under the Refugee Convention in that other country.

(3) The offences to which this section applies are those—

(a) of fraud,

- (b) of uttering a forged document,
  - (c) under section 24A of the 1971 Act (deception), or
  - (d) under section 26(1)(d) of the 1971 Act (falsification of documents),
- and any attempt to commit any of those offences.
- (5) A refugee who has made a claim for asylum is not entitled to the defence provided by subsection (1) in relation to any offence committed by him after making that claim.
- (6) “Refugee” has the same meaning as it has for the purposes of the Refugee Convention.
- (7) If the Minister has refused to grant a claim for asylum made by a person who claims that he has a defence under subsection (1), that person is to be taken not to be a refugee unless he shows that he is.
- (10) The States may by Regulations amend subsection (3) by adding offences to those for the time being listed there.
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## PART II CARRIERS’ LIABILITY

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### *Clandestine entrants*

#### **Penalty for carrying clandestine entrants.**

**32.**—(1) A person is a clandestine entrant if—

- (a) he arrives in Jersey concealed in a vehicle, ship or aircraft,
- (b) he passes, or attempts to pass, through immigration control concealed in a vehicle, or
- (c) he arrives in Jersey on a ship or aircraft, having embarked—
  - (i) concealed in a vehicle; and
  - (ii) at a time when the ship or aircraft was outside Jersey,

and claims, or indicates that he intends to seek, asylum in Jersey or evades, or attempts to evade, immigration control.

(2) The Minister may require a person who is responsible for a clandestine entrant to pay—

- (a) a penalty in respect of the clandestine entrant;
- (b) a penalty in respect of any person who was concealed with the clandestine entrant in the same transporter.

(2A) In imposing a penalty under subsection (2) the Minister—

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(a) must specify an amount which does not exceed the maximum prescribed for the purpose of this paragraph,

(b) may, in respect of a clandestine entrant or a concealed person, impose separate penalties on more than one of the persons responsible for the clandestine entrant, and

(c) may not impose penalties in respect of a clandestine entrant or a concealed person which amount in aggregate to more than the maximum prescribed for the purpose of this paragraph.

(3) A penalty imposed under this section must be paid to the Minister before the end of the prescribed period.

(4) Where a penalty is imposed under subsection (2) on the driver of a vehicle who is an employee of the vehicle's owner or hirer—

(a) the employee and the employer shall be jointly and severally liable for the penalty imposed on the driver (irrespective of whether a penalty is also imposed on the employer), and

(b) a provision of this Part about notification, objection or appeal shall have effect as if the penalty imposed on the driver were also imposed on the employer (irrespective of whether a penalty is also imposed on the employer in his capacity as the owner or hirer of the vehicle).

(4A) In the case of a detached trailer, subsection (4) shall have effect as if a reference to the driver were a reference to the operator.

(5) In the case of a clandestine entrant to whom subsection (1)(a) applies, each of the following is a responsible person—

(a) if the transporter is a ship or aircraft, the owner and captain;

(b) if it is a vehicle (but not a detached trailer), the owner, hirer and driver of the vehicle;

(c) if it is a detached trailer, the owner, hirer and operator of the trailer.

(6) In the case of a clandestine entrant to whom subsection (1)(b) or (c) applies, each of the following is a responsible person—

(a) if the transporter is a detached trailer, the owner, hirer and operator of the trailer;

(b) if it is not, the owner, hirer and driver of the vehicle.

(6A) Where a person falls within the definition of responsible person in more than one capacity, a separate penalty may be imposed on him under subsection (2) in respect of each capacity.

(7) Subject to any defence provided by section 34, it is immaterial whether a responsible person knew or suspected—

(a) that the clandestine entrant was concealed in the transporter; or

(b) that there were one or more other persons concealed with the clandestine entrant in the same transporter.



(8) Subsection (9) applies if a transporter (“the carried transporter”) is itself being carried in or on another transporter.

(9) If a person is concealed in the carried transporter, the question whether any other person is concealed with that person in the same transporter is to be determined by reference to the carried transporter and not by reference to the transporter in or on which it is carried.

(10) “Immigration control” means Jersey immigration control and includes any Jersey immigration control operated in a prescribed control zone outside Jersey.

**Level of penalty: code of practice.**

**32A.**—(1) The Minister shall issue a code of practice specifying matters to be considered in determining the amount of a penalty under section 32.

(2) The Minister shall have regard to the code (in addition to any other matters he thinks relevant)—

(a) when imposing a penalty under section 32, and

(b) when considering a notice of objection under section 35(4).

(5) The Minister may from time to time revise the whole or any part of the code and issue the code as revised.

**Prevention of clandestine entrants: code of practice.**

**33.**—(1) The Minister must issue a code of practice to be followed by any person operating a system for preventing the carriage of clandestine entrants.

(2) Before issuing the code, the Minister must consult such persons as he considers appropriate.

(5) The Minister may from time to time revise the whole or any part of the code and issue the code as revised.

(6) Subsection (2) also applies to any revision, or proposed revision, of the code.

**Defences to claim that penalty is due under section 32.**

**34.**—(1) A person (“the carrier”) shall not be liable to the imposition of a penalty under section 32(2) if he has a defence under this section.

(2) It is a defence for the carrier to show that he, or an employee of his who was directly responsible for allowing the clandestine entrant to be concealed, was acting under duress.

(3) It is also a defence for the carrier to show that—

(a) he did not know, and had no reasonable grounds for suspecting, that a clandestine entrant was, or might be, concealed in the transporter;

(b) an effective system for preventing the carriage of clandestine entrants was in operation in relation to the transporter; and

(c) on the occasion in question the person or persons responsible for operating that system did so properly.

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(4) In determining, for the purposes of this section, whether a particular system is effective, regard is to be had to the code of practice issued by the Minister under section 33.

(6) Where a person has a defence under subsection (2) in respect of a clandestine entrant, every other responsible person in respect of the clandestine entrant is also entitled to the benefit of the defence.

**Procedure.**

**35.**—(1) If the Minister decides that a person (“P”) is liable to one or more penalties under section 32, he must notify P of his decision.

(2) A notice under subsection (1) (a “penalty notice”) must—

(a) state the Minister’s reasons for deciding that P is liable to the penalty (or penalties);

(b) state the amount of the penalty (or penalties) to which P is liable;

(c) specify the date before which, and the manner in which, the penalty (or penalties) must be paid; and

(d) include an explanation of the steps—

(i) that P may take if he objects to the penalty;

(ii) that the Minister may take under this Part to recover any unpaid penalty.

(3) Subsection (4) applies where a person to whom a penalty notice is issued objects on the ground that—

(a) he is not liable to the imposition of a penalty, or

(b) the amount of the penalty is too high.

(4) The person may give a notice of objection to the Minister.

(5) A notice of objection must—

(a) be in writing,

(b) give the objector’s reasons, and

(c) be given before the end of such period as may be prescribed.

(6) Where the Minister receives a notice of objection to a penalty in accordance with this section he shall consider it and—

(a) cancel the penalty,

(b) reduce the penalty,

(c) increase the penalty, or

(d) determine to take no action under paragraphs (a) to (c).

- (7) Where the Minister considers a notice of objection under subsection (6) he shall—
- (a) inform the objector of his decision before the end of such period as may be prescribed or such longer period as he may agree with the objector,
  - (b) if he increases the penalty, issue a new penalty notice under subsection (1), and
  - (c) if he reduces the penalty, notify the objector of the reduced amount.
- (9) The Minister may by Order provide, in relation to detached trailers, for a penalty notice which is issued in such manner as may be prescribed to have effect as a penalty notice properly issued to the responsible person or persons concerned under this section.
- (10) Any sum payable to the Minister as a penalty under section 32 may be recovered by the Minister as a debt due to him.
- (11) In proceedings for enforcement of a penalty under subsection (10) no question may be raised as to—
- (a) liability to the imposition of the penalty, or
  - (b) its amount.
- (12) A document which is to be issued to or served on a person outside Jersey for the purpose of subsection (1) or (7) or in the course of proceedings under subsection (10) may be issued or served—
- (a) in person,
  - (b) by post,
  - (c) by facsimile transmission, or
  - (d) in another prescribed manner.
- (13) The Minister may by Order provide that a document issued or served in a manner listed in subsection (12) in accordance with the Order is to be taken to have been received at a time specified by or determined in accordance with the Order.

**Appeal.**

**35A.—**(1) A person may appeal to the court against a penalty imposed on him under section 32 on the ground that—

- (a) he is not liable to the imposition of a penalty, or
  - (b) the amount of the penalty is too high.
- (2) On an appeal under this section the court may—
- (a) allow the appeal and cancel the penalty,
  - (b) allow the appeal and reduce the penalty, or

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(c) dismiss the appeal.

(3) An appeal under this section shall be a re-hearing of the Minister's decision to impose a penalty and shall be determined having regard to—

(a) any code of practice under section 32A which has effect at the time of the appeal,

(b) the code of practice under section 33 which had effect at the time of the events to which the penalty relates, and

(c) any other matters which the court thinks relevant (which may include matters of which the Minister was unaware).

(4) Subsection (3) has effect despite any provision of Rules of Court.

(5) An appeal may be brought by a person under this section against a penalty whether or not—

(a) he has given notice of objection under section 35(4);

(b) the penalty has been increased or reduced under section 35(6).

**Power to detain vehicles etc. in connection with penalties under section 32.**

**36.—**(1) If a penalty notice has been issued under section 35, a senior officer may detain any relevant—

(a) vehicle,

(b) small ship, or

(c) small aircraft,

until all penalties to which the notice relates, and any expenses reasonably incurred by the Minister in connection with the detention, have been paid.

(2) That power—

(a) may be exercised only if, in the opinion of the senior officer concerned, there is a significant risk that the penalty (or one or more of the penalties) will not be paid before the end of the prescribed period if the transporter is not detained; and

(b) may not be exercised if alternative security which the Minister considers is satisfactory, has been given.

(2A) A vehicle may be detained under subsection (1) only if—

(a) the driver of the vehicle is an employee of its owner or hirer,

(b) the driver of the vehicle is its owner or hirer, or

(c) a penalty notice is issued to the owner or hirer of the vehicle.

(2B) A senior officer may detain a relevant vehicle, small ship or small aircraft pending—

- (a) a decision whether to issue a penalty notice,
  - (b) the issue of a penalty notice, or
  - (c) a decision whether to detain under subsection (1).
- (2C) That power may not be exercised in any case—
- (a) for longer than is necessary in the circumstances of the case, or
  - (b) after the expiry of the period of 24 hours beginning with the conclusion of the first search of the vehicle, ship or aircraft by an immigration officer after it arrived in Jersey.
- (3) If a transporter is detained under this section, the owner, consignor or any other person who has an interest in any freight or other thing carried in or on the transporter may remove it, or arrange for it to be removed, at such time and in such way as is reasonable.
- (4) The detention of a transporter under this section is lawful even though it is subsequently established that the penalty notice on which the detention was based was ill-founded in respect of all or any of the penalties to which it related.
- (5) But subsection (4) does not apply if the Minister was acting unreasonably in issuing the penalty notice.

**Detention in default of payment.**

**36A.**—(1) This section applies where a person to whom a penalty notice has been issued under section 35 fails to pay the penalty before the date specified in accordance with section 35(2)(c).

(2) The Minister may make arrangements for the detention of any vehicle, small ship or small aircraft which the person to whom the penalty notice was issued uses in the course of a business.

(3) A vehicle, ship or aircraft may be detained under subsection (2) whether or not the person to whom the penalty notice was issued owns it.

(4) But a vehicle may be detained under subsection (2) only if the person to whom the penalty notice was issued—

- (a) is the owner or hirer of the vehicle, or
- (b) was an employee of the owner or hirer of the vehicle when the penalty notice was issued.

(5) The power under subsection (2) may not be exercised while an appeal against the penalty under section 35A is pending or could be brought (ignoring the possibility of an appeal out of time with permission).

(6) The Minister shall arrange for the release of a vehicle, ship or aircraft detained under this section if the person to whom the penalty notice was issued pays—

- (a) the penalty, and
- (b) expenses reasonably incurred in connection with the detention.

**Effect of detention.**

**37.**—(1) This section applies if a transporter is detained under section 36.

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(2) The person to whom the penalty notice was addressed, or the owner or any other person claiming an interest in the transporter, may apply to the court for the transporter to be released.

(3) The court may release the transporter if it considers that—

(a) satisfactory security has been tendered in place of the transporter for the payment of the penalty alleged to be due and connected expenses;

(b) there is no significant risk that the penalty (or one or more of the penalties) and any connected expenses will not be paid; or

(c) there is a significant doubt as to whether the penalty is payable and the applicant has a compelling need to have the transporter released.

(3A) The court may also release the transporter on the application of the owner of the transporter under subsection (2) if—

(a) a penalty notice was not issued to the owner or an employee of his, and

(b) the court considers it right to release the transporter.

(3B) In determining whether to release a transporter under subsection (3A) the court shall consider—

(a) the extent of any hardship caused by detention,

(b) the extent (if any) to which the owner is responsible for the matters in respect of which the penalty notice was issued, and

(c) any other matter which appears to the court to be relevant (whether specific to the circumstances of the case or of a general nature).

(4) If the court has not ordered the release of the transporter, the Minister may sell it if the penalty in question and connected expenses are not paid before the end of the period of 84 days beginning with the date on which the detention began.

(5) “Connected expenses” means expenses reasonably incurred by the Minister in connection with the detention.

(5A) The power of sale under subsection (4) may be exercised only when no appeal against the imposition of the penalty is pending or can be brought (ignoring the possibility of an appeal out of time with permission).

(5B) The power of sale under subsection (4) shall lapse if not exercised within a prescribed period.

(6) Schedule 1 applies to the sale of transporters under this section.

(7) This section applies to a transporter detained under section 36A as it applies to a transporter detained under section 36(1); but for that purpose—

(a) the court may release the transporter only if the court considers that the detention was unlawful or under subsection (3A) (and subsection (3) shall not apply), and

(b) the reference in subsection (4) to the period of 84 days shall be taken as a reference to a period prescribed for the purpose of this paragraph.

*Passengers without proper documents*

**Charge in respect of passenger without proper documents.**

**40.**—(1) This section applies if an individual requiring leave to enter Jersey arrives in Jersey by ship or aircraft and, on being required to do so by an immigration officer, fails to produce—

(a) an immigration document which is in force and which satisfactorily establishes his identity and his nationality or citizenship, and

(b) if the individual requires a visa, a visa of the required kind.

(2) The Minister may charge the owner of the ship or aircraft, in respect of the individual, the sum of £2,000.

(3) The charge shall be payable to the Minister on demand.

(4) No charge shall be payable in respect of any individual who is shown by the owner to have produced the required document or documents to the owner or his employee or agent when embarking on the ship or aircraft for the voyage or flight to Jersey.

(5) For the purpose of subsection (4) an owner shall be entitled to regard a document as—

(a) being what it purports to be unless its falsity is reasonably apparent, and

(b) relating to the individual producing it unless it is reasonably apparent that it does not relate to him.

(6) For the purposes of this section an individual requires a visa if—

(a) under the immigration rules he requires a visa for entry into Jersey, or

(b) as a result of section 41 he requires a visa for passing through Jersey.

(9) In this section “immigration document” means—

(a) a passport, and

(b) a document which relates to a national of a country other than the United Kingdom and Islands and which is designed to serve the same purpose as a passport.

(10) The Minister may by Order substitute a sum for the sum in subsection (2).

**Notification and objection.**

**40A.**—(1) If the Minister decides to charge a person under section 40, the Minister must notify the person of his decision.

(2) A notice under subsection (1) (a “charge notice”) must—

(a) state the Minister’s reasons for deciding to charge the person,

(b) state the amount of the charge,

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- (c) specify the date before which, and the manner in which, the charge must be paid,
  - (d) include an explanation of the steps that the person may take if he objects to the charge, and
  - (e) include an explanation of the steps that the Minister may take under this Part to recover any unpaid charge.
- (3) Where a person on whom a charge notice is served objects to the imposition of the charge on him, he may give a notice of objection to the Minister.
- (4) A notice of objection must—
- (a) be in writing,
  - (b) give the objector's reasons, and
  - (c) be given before the end of such period as may be prescribed.
- (5) Where the Minister receives a notice of objection to a charge in accordance with this section, he shall—
- (a) consider it, and
  - (b) determine whether or not to cancel the charge.
- (6) Where the Minister considers a notice of objection, he shall inform the objector of his decision before the end of—
- (a) such period as may be prescribed, or
  - (b) such longer period as he may agree with the objector.
- (7) Any sum payable to the Minister as a charge under section 40 may be recovered by the Minister as a debt due to him.
- (8) In proceedings for enforcement of a charge under subsection (7) no question may be raised as to the validity of the charge.
- (9) Subsections (12) and (13) of section 35 shall have effect for the purpose of this section as they have effect for the purpose of section 35(1), (7) and (10).

**Appeal.**

- 40B.—**(1) A person may appeal to the court against a decision to charge him under section 40.
- (2) On an appeal under this section the court may—
- (a) allow the appeal and cancel the charge, or
  - (b) dismiss the appeal.
- (3) An appeal under this section—
- (a) shall be a re-hearing of the Minister's decision to impose a charge, and



(b) may be determined having regard to matters of which the Minister was unaware.

(4) Subsection (3)(a) has effect despite any provision of Rules of Court.

(5) An appeal may be brought by a person under this section against a decision to charge him whether or not he has given notice of objection under section 40A(3).

**Visas for transit passengers.**

**41.**—(1) The Minister may by Order require transit passengers to hold a transit visa.

(2) “Transit passengers” means persons of any description specified in the Order who on arrival in Jersey from a country outside the British Islands pass through to another country outside the British Islands without entering Jersey; and

“transit visa” means a visa for that purpose.

(3) The Order—

(a) may specify a description of persons by reference to nationality, citizenship, origin or other connection with any particular country but not by reference to race, colour or religion;

(b) may not provide for the requirement imposed by the Order to apply to any person who under the 1971 Act has the right of abode in Jersey;

(c) may provide for any category of persons of a description specified in the Order to be exempt from the requirement imposed by the Order;

(d) may make provision about the method of application for visas required by the Order.

*Interpretation*

**Interpretation of Part II.**

**43.**—(1) In this Part—

“aircraft” includes hovercraft;

“captain” means the master of a ship or commander of an aircraft;

“concealed” includes being concealed in any freight, stores or other thing carried in or on the vehicle, ship or aircraft concerned;

“detached trailer” means a trailer, semi-trailer, caravan or any other thing which is designed or adapted for towing by a vehicle but which has been detached for transport—

(a) in or on the vehicle concerned; or

(b) in the ship or aircraft concerned (whether separately or in or on a vehicle);

“equipment”, in relation to an aircraft, includes—

(a) any certificate of registration, maintenance or airworthiness of the aircraft;

(b) any log book relating to the use of the aircraft; and

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(c) any similar document;

“hirer”, in relation to a vehicle, means any person who has hired the vehicle from another person;

“operating weight”, in relation to an aircraft, means the maximum total weight of the aircraft and its contents at which the aircraft may take off anywhere in the world, in the most favourable circumstances, in accordance with the certificate of airworthiness in force in respect of the aircraft;

“owner” includes—

(a) in relation to a ship or aircraft, the agent or operator of the ship or aircraft;

(b) in relation to a transporter which is the subject of a hire-purchase agreement, the person in possession of it under that agreement;

“penalty notice” has the meaning given in section 35(2);

“senior officer” means an immigration officer not below the rank of chief immigration officer;

“ship” includes every description of vessel used in navigation;

“small aircraft” means an aircraft which has an operating weight of less than 5,700 kilogrammes;

“small ship” means a ship which has a gross tonnage of less than 500 tonnes;

“transporter” means a vehicle, ship or aircraft together with—

(a) its equipment; and

(b) any stores for use in connection with its operation;

“vehicle” includes a trailer, semi-trailer, caravan or other thing which is designed or adapted to be towed by another vehicle.

(2) A reference in this Part to “the court” is a reference to the Petty Debts Court.

(3) But the Petty Debts Court may transfer proceedings under this Part to the Royal Court.

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## PART VII

### POWER TO ARREST, SEARCH AND FINGERPRINT

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#### *Fingerprinting*

#### **Fingerprinting.**

**141.**—(1) Fingerprints may be taken by an authorised person from a person to whom this section applies.

(2) Fingerprints may be taken under this section only during the relevant period.

(3) Fingerprints may not be taken under this section from a person under the age of sixteen (“the child”) except in the presence of a person of full age who is—

- (a) the child’s parent or guardian; or
- (b) a person who for the time being takes responsibility for the child.

(4) The person mentioned in subsection (3)(b) may not be—

- (a) an officer of the Minister who is not an authorised person;
- (b) an authorised person.

(5) “Authorised person” means—

- (a) a police officer;
- (b) an immigration officer;
- (c) a prison officer; or
- (d) an officer of the Minister authorised for the purpose.

(7) This section applies to—

- (a) any person (“A”) who, on being required to do so by an immigration officer on his arrival in Jersey, fails to produce a valid passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship;
- (b) any person (“B”) who has been refused leave to enter Jersey but has been temporarily admitted under paragraph 21 of Schedule 2 to the 1971 Act if an immigration officer reasonably suspects that B might break any condition imposed on him relating to residence or as to reporting to the police or an immigration officer;
- (c) any person (“C”) in respect of whom the Minister has decided to make a deportation order;
- (ca) any person (“CA”) who requires leave to enter or remain in Jersey but does not have it;
- (d) any person (“D”) who has been detained under paragraph 16 of Schedule 2 to the 1971 Act or arrested under paragraph 17 of that Schedule;
- (e) any person (“E”) who has made a claim for asylum;
- (f) any person (“F”) who is—
  - (i) a member of the family of a person within any of paragraphs (a), (b) or (ca) to (e), or
  - (ii) a dependant of a person within paragraph (c).

(8) “The relevant period” begins—

- (a) for A, on his failure to produce the passport or other document;

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- (b) for B, on the decision to admit him temporarily;
  - (c) for C, when he is notified of the decision mentioned in subsection (7)(c);
  - (ca) for CA, when he becomes a person to whom this section applies;
  - (d) for D, on his detention or arrest;
  - (e) for E, on the making of his claim for asylum; and
  - (f) for F, at the same time as for the person of whose family he is a member or whose dependant he is.
- (9) “The relevant period” ends on the earliest of the following—
- (a) the grant of leave to enter or remain in Jersey;
  - (b) for A, B, C, CA or D, his removal or deportation from Jersey;
  - (c) for C the revocation of the deportation order made against him, or its otherwise ceasing to have effect;
  - (ca) for CA, when he no longer requires leave to enter or remain in Jersey;
  - (d) for D, his release if he is no longer liable to the detained under paragraph 16 of Schedule 2 to the 1971 Act;
  - (e) for E, the final determination or abandonment of his claim for asylum; and
  - (f) for F, at the same time as for the person of whose family he is a member or whose dependant he is.
- (10) No fingerprints may be taken from A if the immigration officer considers that A has a reasonable excuse for the failure concerned.
- (11) No fingerprints may be taken from B unless the decision to take them has been confirmed by a chief immigration officer.
- (12) An authorised person may not take fingerprints from a person under the age of sixteen unless his decision to take them has been confirmed—
- (a) if he is a police officer, by a person designated for the purpose by the Chief Officer of the States of Jersey Police Force;
  - (b) if he is a person mentioned in subsection (5)(b) or (e), by the Chief Immigration Officer;
  - (c) if he is a prison officer, by a person designated for the purpose by the governor of the prison;
  - (d) if he is an officer of the Minister, by a person designated for the purpose by the Minister.
- (13) Neither subsection (3) nor subsection (12) prevents an authorised person from taking fingerprints if he reasonably believes that the person from whom they are to be taken is aged sixteen or over.

(13A) For the purposes of subsection (7)(f)(i), a person is a member of the family of another person (“P”) if—

(a) the person is—

(i) P’s partner,

(ii) P’s child, or a child living in the same household as P in circumstances where P has care of the child,

(iii) in a case where P is a child, P’s parent, or

(iv) an adult dependant relative of P, and

(b) the person does not have a right of abode in Jersey or indefinite leave to enter or remain in Jersey.

(13B) In subsection (13A) “child” means a person who is under the age of 18.

(14) For the purposes of subsection (7)(f)(ii), a person is a dependant of another person if—

(a) he is that person’s spouse or child under the age of eighteen; and

(b) he does not have a right of abode in Jersey or indefinite leave to enter or remain in Jersey.

(15) “Claim for asylum” means a claim that it would be contrary to the United Kingdom’s obligations in respect of Jersey under the Refugee Convention or under Article 3 of the Human Rights Convention for the claimant to be removed from, or required to leave, Jersey.

**Attendance for fingerprinting.**

142.—(1) The Minister may, by notice in writing, require a person to whom section 141 applies to attend at a specified place for fingerprinting.

(2) In the case of a notice given to a person of a kind specified in section 141(7)(a) to (d) or (f) (in so far as it applies to a member of the family of, or a dependant of, a person of a kind specified in section 141(7)(a) to (d)), the notice—

(a) must require him to attend during a specified period of at least seven days beginning with a day not less than seven days after the date given in the notice as its date of issue, and

(b) may require him to attend at a specified time of day or during specified hours.

(2A) In the case of a notice given to a person of a kind specified in section 141(7)(e) or (f) (in so far as it applies to a member of the family of a person of a kind specified in section 141(7)(e)), the notice—

(a) may require him to attend during a specified period beginning with a day not less than three days after the date given in the notice as its date of issue,

(b) may require him to attend on a specified day not less than three days after the date given in the notice as its date of issue, and

(c) may require him to attend at a specified time of day or during specified hours.

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(3) A police officer or immigration officer may arrest without warrant a person who has failed to comply with a requirement imposed on him under this section (unless the requirement has ceased to have effect).

(4) Before a person arrested under subsection (3) is released—

(a) he may be removed to a place where his fingerprints may conveniently be taken; and

(b) his fingerprints may be taken (whether or not he is so removed).

(5) A requirement imposed under subsection (1) ceases to have effect at the end of the relevant period (as defined by section 141).

**Destruction of fingerprints.**

143.—(1) If they have not already been destroyed, fingerprints must be destroyed before the end of the specified period beginning with the day on which they were taken.

(2) If a person from whom fingerprints were taken proves that he is—

(a) a British citizen, or

(b) a Commonwealth citizen who has a right of abode in Jersey as a result of section 2(1)(b) of the 1971 Act,

the fingerprints must be destroyed as soon as reasonably practicable.

(9) Fingerprints taken from F (within the meaning of section 141(7)) must be destroyed when fingerprints taken from the person of whose family he is a member or whose dependant he is have to be destroyed.

(10) The obligation to destroy fingerprints under this section applies also to copies of fingerprints.

(11) The Minister must take all reasonably practicable steps to secure—

(a) that data which are held in electronic form and which relate to fingerprints which have to be destroyed as a result of this section are destroyed or erased; or

(b) that access to such data is blocked.

(12) The person to whom the data relate is entitled, on request, to a certificate issued by the Minister to the effect that he has taken the steps required by subsection (11).

(13) A certificate under subsection (12) must be issued within three months of the date of the request for it.

(15) “Specified period” means—

(a) such period as the Minister may specify by Order;

(b) if no period is so specified, ten years.

**Other methods of collecting data about physical characteristics.**

**144.**—(1) The States may make Regulations containing provisions equivalent to sections 141, 142 and 143 in relation to such other methods of collecting biometric information as may be specified in the Regulations.

(2) “Biometric information” has the meaning given by section 15 of the UK Borders Act 2007.

**Use and retention of fingerprints etc.**

**144A.**—(1) Section 8 of the UK Borders Act 2007 (power to make Regulations about use and retention of biometric information) applies to—

(a) fingerprints taken by virtue of section 141, and

(b) biometric information taken by virtue of Regulations under section 144,

as it applies to biometric information provided in accordance with Regulations under section 5(1) of that Act.

(2) Regulations made by virtue of subsection (1)(a) must require fingerprints taken from a person (“F”) by virtue of section 141(7)(f) to be destroyed when fingerprints taken from the person of whose family F is a member or whose dependant F is are destroyed.

(3) Regulations made by virtue of subsection (1)(b) must make equivalent provision in relation to biometric information taken by virtue of any provision of Regulations under section 144 which is equivalent to section 141(7)(f).

*Codes of practice*

**Codes of practice.**

**145.**—(1) An immigration officer exercising any specified power to—

(a) arrest, question, search or take fingerprints from a person,

(b) enter and search premises, or

(c) seize property found on persons or premises,

must have regard to such provisions of a code as may be specified.

(2) Subsection (1) also applies to an authorised person exercising the power to take fingerprints conferred by section 141.

(2A) A person exercising a power under Regulations made by virtue of section 144 must have regard to such provisions of a code as may be specified.

(3) Any specified provision of a code may have effect for the purposes of this section subject to such modifications as may be specified.

(4) “Specified” means specified in a direction given by the Minister.

(5) “Authorised person” has the same meaning as in section 141.

(6) “Code” means any code of practice for the time being in force under the Police Procedures and Criminal Evidence (Jersey) Law 2003.

**Use of force.**

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**146.**—(1) An immigration officer exercising any power conferred on him by the Immigration Acts may, if necessary, use reasonable force.

(2) A person exercising a power under any of the following may if necessary use reasonable force—

(a) section 28FB of the 1971 Act (search for personnel records: with warrant),

(b) section 141 or 142 of this Act, and

(c) Regulations under section 144 of this Act.

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## PART X

### MISCELLANEOUS AND SUPPLEMENTAL

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#### **Regulations and Orders.**

**166.** Any Regulations or Order made under this Act may—

(a) contain such incidental, supplemental, consequential and transitional provision as the States or, as the case may be, the Minister considers appropriate;

(b) make different provision for different cases or descriptions of case; and

(c) make different provision for different areas.

#### **Interpretation.**

**167.**—(1) In this Act—

“the 1971 Act” means the Immigration Act 1971;

“claim for asylum” (except in section 141) means a claim that it would be contrary to the United Kingdom’s obligations in respect of Jersey under the Refugee Convention for the claimant to be removed from, or required to leave, Jersey;

“country” includes any territory;

“the Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to Jersey;

“the Minister” means the Minister for Home Affairs;

“prescribed” means prescribed by Order made by the Minister;

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention.

(2) The following expressions have the same meaning as in the 1971 Act—



“certificate of entitlement”; “entry clearance”; “illegal entrant”; “immigration officer”;  
“immigration rules” “port”; “United Kingdom passport”; “work permit”.

**Transitional provisions.**

**169.** Schedule 15 contains transitional provisions.

**Short title.**

**170.** This Act may be cited as the Immigration and Asylum Act 1999.

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