

SCHEDULE 12A

Article 14

Provisions of the Immigration Act 2016 as extended to Jersey

Provision as extended to Jersey

PART 3
ENFORCEMENT

Commencement Information

II Sch. 12A Pt. 3 comes into force in accordance with **art. 1(1)**

Powers of immigration officers etc.

Seizure and retention in relation to offences.

48.—(1) This section applies if an immigration officer is lawfully on any premises.

(2) The immigration officer may seize anything which the officer finds in the course of exercising a function under the Immigration Acts if the officer has reasonable grounds for believing—

(a) that it has been obtained in consequence of the commission of an offence, and

(b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) The immigration officer may seize anything which the officer finds in the course of exercising a function under the Immigration Acts if the officer has reasonable grounds for believing—

(a) that it is evidence in relation to an offence, and

(b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

(4) The immigration officer may require any information which is stored in any electronic form and is accessible from the premises to be produced if the officer has reasonable grounds for believing—

(a) that—

(i) it is evidence in relation to an offence, or

(ii) it has been obtained in consequence of the commission of an offence, and

(b) that it is necessary to seize it in order to prevent it being concealed, lost, tampered with or destroyed.

Changes to legislation: There are currently no known outstanding effects for the The Immigration (Jersey) Order 2021, SCHEDULE 12A. (See end of Document for details)

(5) The reference in subsection (4) to information which is stored in any electronic form being produced is to such information being produced in a form—

(a) in which it can be taken away, and

(b) in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(6) This section does not authorise an immigration officer to seize an item which the officer has reasonable grounds for believing is an item subject to legal privilege.

(7) Anything seized by an immigration officer under this section which relates to an immigration offence may be retained so long as is necessary in all the circumstances and in particular—

(a) may be retained, except as provided for by subsection (8)—

(i) for use as evidence at a trial for an offence, or

(ii) for forensic examination or for investigation in connection with an offence, and

(b) may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

(8) Nothing may be retained for a purpose mentioned in subsection (7)(a) if a photograph or copy would be sufficient for that purpose.

(9) Section 28I of the Immigration Act 1971 (seized material: access and copying) applies to anything seized and retained under this section which relates to an immigration offence as it applies to anything seized and retained by an immigration officer under Part 3 of that Act.

(11) In this section and section 49 “immigration offence” means an offence which relates to an immigration or nationality matter.

Duty to pass on items seized under section 48.

49.—(1) This section applies if an immigration officer exercises—

(a) the power under section 48 to seize or take away an item on the basis that the item or information contained in it has been obtained in consequence of the commission of, or is evidence in relation to, an offence other than an immigration offence (a “relevant offence”), or

(b) a power to that effect in Part 3 of the Immigration Act 1971 as applied by section 14(3) of the Asylum and Immigration (Treatment of Claimants etc) Act 2004.

(2) Subject to subsection (3), the immigration officer must, as soon as is reasonably practicable after the power is exercised, notify a person who the immigration officer thinks has functions in relation to the investigation of the relevant offence.

(3) If the immigration officer has reasonable grounds for believing that the item referred to in subsection (1) has also been obtained in consequence of the commission of, or is evidence in relation to, an immigration offence, the immigration officer may notify a person who the immigration officer thinks has functions in relation to the investigation of the relevant offence.

- (4) A person notified under this section of the exercise of a power mentioned in subsection (1) in relation to an item must, as soon as is reasonably practicable after being so notified, inform the immigration officer whether the person will accept the item.
- (5) The person may inform the immigration officer that the person will not accept the item only if—
- (a) the person does not think the item or information contained in it has been obtained in consequence of the commission of, or is evidence in relation to, an offence,
 - (b) the person does not have functions in relation to the investigation of the relevant offence, or
 - (c) the person thinks that it would be more appropriate for the relevant offence to be investigated by another person with such functions.
- (6) If the person informs the immigration officer that the person will accept the item, the immigration officer must give it to the person as soon as is reasonably practicable.
- (7) Once the item has been given as mentioned in subsection (6), any provision of an enactment which applies to items seized or taken away by the person applies to the item as if it had been seized or taken away by the person for the purposes of the investigation of the relevant offence.
- (8) If the person informs the immigration officer that the person will not accept the item because subsection (5)(a) applies, the immigration officer must, as soon as is reasonably practicable, return the item in accordance with subsection (10).
- (9) If the person informs the immigration officer that the person will not accept the item because subsection (5)(b) or (c) applies, the immigration officer must, as soon as is reasonably practicable—
- (a) notify the exercise of a power mentioned in subsection (1) in relation to the item to another person (if any) who the immigration officer thinks has functions in relation to the investigation of the relevant offence, or
 - (b) if there is no such person, return the item in accordance with subsection (10).
- (10) An item which must be returned in accordance with this subsection must be returned—
- (a) to the person from whom it was seized, or
 - (b) if there is no such person, to the place from which it was seized or taken away.
- (11) Where an item to which this section applies or information contained in such an item has been obtained in consequence of the commission of, or is evidence in relation to, more than one offence, references in this section to the relevant offence are to any of those offences.
- (12) A function conferred or imposed by this section on an immigration officer may be exercised by any other immigration officer.

Search for nationality documents by certain officers.

51.—(1) The Minister may direct a prison officer or prisoner custody officer to exercise any of the powers in subsection (6) in relation to a detained person who is detained in a prison or young offender institution.

(2) The Minister may direct a prison officer or prisoner custody officer to exercise any of the powers in subsection (6) in relation to a person detained in a prison or young offender institution—

(a) who has been recommended for deportation by a court under section 3(6) of the Immigration Act 1971, or

(b) in respect of whom the Minister has made a deportation order under section 5(1) of that Act.

(3) In this section and section 52 “relevant officer” means a prison officer or prisoner custody officer.

(4) The Minister may give a direction in relation to a person detained as mentioned in subsection (1) or (2) only if the Minister has reasonable grounds to believe a relevant nationality document will be found if a power in subsection (6) is exercised in relation to the person.

(5) A relevant officer to whom a direction is given under subsection (1) or (2) must (if able to do so) comply with it.

(6) The powers referred to in subsections (1), (2) and (4) are—

(a) to require the person to hand over to the relevant officer all relevant nationality documents in his or her possession,

(b) to search for such documents and to take possession of any that the relevant officer finds,

(c) to inspect any relevant nationality documents obtained in the course of the exercise of a power in paragraph (a) or (b), and

(d) to seize and retain any such documents so obtained.

(7) The power in subsection (6)(b) is a power to search any of the following—

(a) the person;

(b) anything the person has with him or her;

(c) the person’s accommodation in the prison or young offender institution;

(d) any item of the person’s property in the prison or young offender institution.

(8) A full search may be carried out under subsection (7)(a); but such a search may not be carried out in the presence of—

(a) another person detained as mentioned in subsection (1) or (2), or

(b) a person of the opposite sex.

(9) An intimate search may not be carried out under subsection (7)(a).

(10) A relevant officer may if necessary use reasonable force for the purposes of exercising a power in subsection (6)(a) or (b).

(11) A relevant officer must pass a relevant nationality document seized and retained under subsection (6)(d) to the Minister as soon as is reasonably practicable.

(12) The Minister may retain a relevant nationality document which comes into the Minister's possession under subsection (11) while the Minister suspects that—

(a) a person to whom the document relates may be liable to removal from Jersey in accordance with a provision of the Immigration Acts, and

(b) retention of the document may facilitate the removal.

(13) If subsection (12) does not apply to a document which comes into the Minister's possession under this section, the Minister may—

(a) arrange for the document to be returned in accordance with subsection (14), or

(b) if the Minister thinks that it would not be appropriate to return the document, dispose of the document in such manner as the Minister thinks appropriate.

(14) A document which is required to be returned in accordance with this subsection must be returned to—

(a) the person who was previously in possession of it, or

(b) if it was not found in the possession of a person, the location in which it was found.

(15) In this section and section 52—

“full search” means a search which involves the removal of an item of clothing which—

(a) is being worn wholly or partly on the trunk, and

(b) is being so worn either next to the skin or next to an article of underwear;

“intimate search” means a search which consists of a physical examination of a person's body orifices other than the mouth;

“nationality document” means a document which might—

(a) establish a person's identity, nationality or citizenship, or

(b) indicate the place from which a person has travelled to Jersey or to which a person is proposing to go.

(16) For the purposes of this section and section 52 a nationality document is “relevant” if it relates to a person who is liable to removal from Jersey in accordance with a provision of the Immigration Acts.

(17) In this section “detained person” means persons a person detained or required to be detained under the 1971 Act or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Minister).

Seizure of nationality documents by detainee custody officers etc.

52.—(1) A relevant officer may seize a nationality document which the relevant officer finds in the course of the exercise of a power to search other than one conferred by section 51.

(2) Where a relevant officer seizes a nationality document under subsection (1), the relevant officer—

(a) (must seek the consent of the Minister to retain the document, and

(b) if the relevant officer obtains the Minister’s consent, must pass the document to the Minister as soon as is practicable.

(3) The Minister may give consent under subsection (2) only if the Minister has reasonable grounds to believe that—

(a) the document is a relevant nationality document, and

(b) the document may facilitate the removal of the person to whom it relates from Jersey in accordance with a provision of the Immigration Acts.

(4) If the Minister does not give consent under subsection (2), the Minister must—

(a) direct the relevant officer to return the document as mentioned in subsection (5), or

(b) if the Minister thinks that it would not be appropriate to return the document, direct the relevant officer to dispose of the document in such manner as the Minister may direct.

(5) A document which is required to be returned in accordance with this subsection must be returned to—

(a) the person who was previously in possession of it, or

(b) if it was not found in the possession of a person, the location in which it was found.

(6) The Minister may retain a relevant nationality document which comes into the Minister’s possession under this section while the Minister suspects that—

(a) a person to whom the document relates may be liable to removal from Jersey in accordance with a provision of the Immigration Acts, and

(b) retention of the document may facilitate the removal.

(7) If subsection (6) does not apply to a document which comes into the Minister’s possession under this section, the Minister may—

(a) arrange for the document to be returned in accordance with subsection (5), or

(b) if the Minister thinks that it would not be appropriate to return the document, dispose of the document in such manner as the Minister thinks appropriate.

Interpretation of Part.

58.—(1) In this Part “immigration officer” means a person appointed in accordance with paragraph 1 of Schedule 2 to the Immigration Act 1971.

(2) In this Part “premises” and “item subject to legal privilege” have the same meaning as in the Police Procedures and Criminal Evidence (Jersey) Law 2003

Detention

Guidance on detention of vulnerable persons.

59.—(1) The Minister must issue guidance specifying matters to be taken into account by a person to whom the guidance is addressed in determining—

(a) whether a person (“P”) would be particularly vulnerable to harm if P were to be detained or to remain in detention, and

(b) if P is identified as being particularly vulnerable to harm in those circumstances, whether P should be detained or remain in detention.

(2) In subsection (1) “detained” means detained under—

(a) the Immigration Act 1971, or

(b) section 62 of the Nationality, Immigration and Asylum Act 2002,

and “detention” is to be construed accordingly.

(3) A person to whom guidance under this section is addressed must take the guidance into account.

(4) Before issuing guidance under this section the Minister must present a draft of the guidance to the States.

(5) Guidance under this section comes into force on the date specified by the Minister when the guidance is issued.

(6) The Minister may from time to time review guidance under this section and may revise and re-issue it.

(7) References in this section to guidance under this section include revised guidance.

Limitation on detention of pregnant women.

60.—(1) This section applies to a woman if the Minister is satisfied that the woman is pregnant.

(2) A woman to whom this section applies may not be detained under a relevant detention power unless the Minister is satisfied that—

(a) the woman will shortly be removed from Jersey, or

(b) there are exceptional circumstances which justify the detention.

(3) In determining whether to authorise the detention under a relevant detention power of a woman to whom this section applies, a person who, apart from this section, has power to authorise the detention must have regard to the woman’s welfare.

Changes to legislation: There are currently no known outstanding effects for the The Immigration (Jersey) Order 2021, SCHEDULE 12A. (See end of Document for details)

(4) A woman to whom this section applies may not be detained under a relevant detention power for a period of—

(a) more than 72 hours from the relevant time, or

(b) more than seven days from the relevant time, in a case where the longer period of detention is authorised personally by a Minister (within the meaning of the States of Jersey Law 2005).

(5) In subsection (4) “the relevant time” means the later of—

(a) the time at which the Minister is first satisfied that the woman is pregnant, and

(b) the time at which the detention begins.

(6) A woman to whom this section applies who has been released following detention under a relevant detention power may be detained again under such a power in accordance with this section.

(7) This section does not apply to the detention under paragraph 16(2) of Schedule 2 to the Immigration Act 1971 of an unaccompanied child to whom paragraph 18B of that Schedule applies.

(8) In this section—

“relevant detention power” means a power to detain under—

(a) paragraph 16(2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal),

(b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation), or

(c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal);

“woman” means a female of any age.

Passports

Power to make passport fees Orders.

86.—(1) The Minister may by Order provide 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.

(2) An Order under subsection (1) is referred to in this section and section 87 as a “passport fees Order”.

(3) A passport fees Order must provide for the fee in respect of the exercise of each specified function to comprise one or more amounts each of which is—

(a) a specified fixed amount, or

(b) an amount calculated by reference to a specified hourly rate or other specified factor.

(4) Provision made under subsection (3) may be intended to result in a fee in respect of a specified function which exceeds the costs of exercising the function.

(5) In respect of any fee provided for under this section, a passport fees Order may—

(a) provide for exceptions;

(b) provide for the reduction, waiver or refund of part or all of a fee (whether by conferring a discretion or otherwise);

(c) make provision about—

(i) the consequences of failure to pay a fee;

(ii) enforcement;

(iii) when a fee may or must be paid.

(6) In this section—

“costs” includes—

(a) the costs of the Minister, and

(b) the costs of any other person (whether or not funded from public money);

“function” includes a power or a duty;

“specified” means specified in a passport fees Order;

“travel document” means a document which enables or facilitates travel from one state to another and a “UK travel document” means such a document issued by the Secretary of State;

“United Kingdom passport” has the same meaning as in the Immigration Act 1971 (see section 33 of that Act).

(7) Any reference in this section to the exercise of a function includes a reference to its exercise in particular circumstances, including its exercise—

(a) at particular times or in a particular place;

(b) under particular arrangements;

(c) otherwise in particular ways,

and, for this purpose, “arrangements” includes arrangements for the convenience of applicants or persons making requests for the exercise of a function.

Passport fees Orders: supplemental.

87.—(1) A fee under section 86 may relate to something done outside Jersey.

(2) Fees payable by virtue of section 86 may be recovered as a debt due to the Minister.

Changes to legislation: There are currently no known outstanding effects for the The Immigration (Jersey) Order 2021, SCHEDULE 12A. (See end of Document for details)

(3) Fees paid to the Minister by virtue of section 86 shall form part of the annual income of the States.

(4) Section 86 is without prejudice to any other power to charge a fee.

Power to charge for passport validation services.

88.—(1) The Minister may charge a fee in respect of the provision of passport validation services to persons on request.

(2) “Passport validation services” are 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.

(3) In this section “United Kingdom passport” has the same meaning as in the Immigration Act 1971 (see section 33 of that Act).

(4) A fee payable under this section may be recovered as a debt due to the Minister.

(5) Fees paid to the Minister under this section shall form part of the annual income of the States.

(6) This section is without prejudice to any other power to charge a fee.

PART 9

MISCELLANEOUS AND GENERAL

Commencement Information

I2 Sch. 12A Pt. 9 comes into force in accordance with [art. 1\(1\)](#)

Welfare of children

Duty regarding the welfare of children.

90. For the avoidance of doubt, this Act does not limit any duty imposed on the Minister or any person by section 55 of the Borders, Citizenship and Immigration Act 2009 (duty regarding welfare of children).

Final provisions

Short title.

96. This Act may be cited as the Immigration Act 2016.

Changes to legislation:

There are currently no known outstanding effects for the The Immigration (Jersey) Order 2021, SCHEDULE 12A.