

SCHEDULE 6A

Article 8

Provisions of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 as extended to Jersey

**Commencement Information**

**II** Sch. 6A comes into force in accordance with **art. 1(1)**

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*Provision as extended to Jersey*

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*Offences*

**Entering Jersey without passport, &c.**

**2.—(1)** A person commits an offence if at a leave or asylum interview he does not have with him an immigration document which—

(a) is in force, and

(b) satisfactorily establishes his identity and nationality or citizenship.

(2) A person commits an offence if at a leave or asylum interview he does not have with him, in respect of any dependent child with whom he claims to be travelling or living, an immigration document which—

(a) is in force, and

(b) satisfactorily establishes the child's identity and nationality or citizenship.

(3) But a person does not commit an offence under subsection (1) or (2) if—

(a) the interview referred to in that subsection takes place after the person has entered Jersey, and

(b) within the period of three days beginning with the date of the interview the person provides to an immigration officer or to the Minister a document of the kind referred to in that subsection.

(4) It is a defence for a person charged with an offence under subsection (1)—

(a) to prove that he is —

(i) an Irish citizen, or

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

(b) to prove that he has a reasonable excuse for not being in possession of a document of the kind specified in subsection (1),

(c) to produce a false immigration document and to prove that he used that document as an immigration document for all purposes in connection with his journey to Jersey, or

(d) to prove that he travelled to Jersey without, at any stage since he set out on the journey, having possession of an immigration document.

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*Provision as extended to Jersey*

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- (5) It is a defence for a person charged with an offence under subsection (2) in respect of a child—
- (a) to prove that the child is —
    - (i) an Irish citizen, or
    - (ii) has leave to enter or remain in Jersey which was granted by virtue of residence scheme immigration rules,
  - (b) to prove that the person has a reasonable excuse for not being in possession of a document of the kind specified in subsection (2),
  - (c) to produce a false immigration document and to prove that it was used as an immigration document for all purposes in connection with the child’s journey to Jersey, or
  - (d) to prove that he travelled to Jersey with the child without, at any stage since he set out on the journey, having possession of an immigration document in respect of the child.
- (6) Where the charge for an offence under subsection (1) or (2) relates to an interview which takes place after the defendant has entered Jersey—
- (a) subsections (4)(c) and (5)(c) shall not apply, but
  - (b) it is a defence for the defendant to prove that he has a reasonable excuse for not providing a document in accordance with subsection (3).
- (7) For the purposes of subsections (4) to (6)—
- (a) the fact that a document was deliberately destroyed or disposed of is not a reasonable excuse for not being in possession of it or for not providing it in accordance with subsection (3), unless it is shown that the destruction or disposal was—
    - (i) for a reasonable cause, or
    - (ii) beyond the control of the person charged with the offence, and
    - (b) in paragraph (a)(i) “reasonable cause” does not include the purpose of—
      - (i) delaying the handling or resolution of a claim or application or the taking of a decision,
      - (ii) increasing the chances of success of a claim or application, or
      - (iii) complying with instructions or advice given by a person who offers advice about, or facilitates, immigration into Jersey, unless in the circumstances of the case it is unreasonable to expect non-compliance with the instructions or advice.
- (8) A person shall be presumed for the purposes of this section not to have a document with him if he fails to produce it to an immigration officer or official of the Minister on request.
- (9) A person guilty of an offence under this section shall be liable on conviction to imprisonment for a term not exceeding two years, to a fine or to both.

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*Provision as extended to Jersey*

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(10) If a police officer or immigration officer reasonably suspects that a person has committed an offence under this section he may arrest the person without warrant.

(11) An offence under this section shall be treated as—

(a) a relevant offence for the purposes of sections 28B and 28D of the Immigration Act 1971 (search, entry and arrest), and

(b) an offence under Part III of that Act (criminal proceedings) for the purposes of sections 28(4), 28E, 28G and 28H (search after arrest, &c.) of that Act.

(12) In this section—

“immigration document” means—

(a) a passport, and

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

“leave or asylum interview” means an interview with an immigration officer or an official of the Minister at which a person—

(a) seeks leave to enter or remain in Jersey, or

(b) claims that to remove him from or require him to leave Jersey would breach Jersey’s obligations under the Refugee Convention or would be unlawful under Article 7 of the Human Rights (Jersey) Law 2000 as being incompatible with his Convention rights, and

“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.

(13) For the purposes of this section—

(a) a document which purports to be, or is designed to look like, an immigration document, is a false immigration document, and

(b) an immigration document is a false immigration document if and in so far as it is used—

(i) outside the period for which it is expressed to be valid,

(ii) contrary to provision for its use made by the person issuing it, or

(iii) by or in respect of a person other than the person to or for whom it was issued.

(14) Section 11 of the Immigration Act 1971 shall have effect for the purpose of the construction of a reference in this section to entering Jersey.

**Trafficking people for exploitation.**

4.—(1) A person commits an offence if he arranges or facilitates the arrival in Jersey of an individual (the “passenger”) and—

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*Provision as extended to Jersey*

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- (a) he intends to exploit the passenger in Jersey or elsewhere, or
- (b) he believes that another person is likely to exploit the passenger in Jersey or elsewhere.
- (2) A person commits an offence if he arranges or facilitates travel within Jersey by an individual (the “passenger”) in respect of whom he believes that an offence under subsection (1) may have been committed and—
- (a) he intends to exploit the passenger in Jersey or elsewhere, or
- (b) he believes that another person is likely to exploit the passenger in Jersey or elsewhere.
- (3) A person commits an offence if he arranges or facilitates the departure from Jersey of an individual (the “passenger”) and—
- (a) he intends to exploit the passenger outside Jersey, or
- (b) he believes that another person is likely to exploit the passenger outside Jersey.
- (4) For the purposes of this section a person is exploited if (and only if)—
- (a) he is the victim of behaviour that contravenes Article 4 of the Human Rights Convention (slavery and forced labour),
- (c) he is subjected to force, threats or deception designed to induce him—
- (i) to provide services of any kind,
- (ii) to provide another person with benefits of any kind, or
- (iii) to enable another person to acquire benefits of any kind, or
- (d) he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that—
- (i) he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and
- (ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.
- (5) A person guilty of an offence under this section shall be liable on conviction to imprisonment for a term not exceeding 14 years, to a fine or to both.

Treatment of claimants

**Claimant’s credibility.**

**8.—**(1) In determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or a human rights claim, a deciding authority shall take account, as damaging the claimant’s credibility, of any behaviour to which this section applies.

(2) This section applies to any behaviour by the claimant that the deciding authority thinks—

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*Provision as extended to Jersey*

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- (a) is designed or likely to conceal information,
- (b) is designed or likely to mislead, or
- (c) is designed or likely to obstruct or delay the handling or resolution of the claim or the taking of a decision in relation to the claimant.
- (3) Without prejudice to the generality of subsection (2) the following kinds of behaviour shall be treated as designed or likely to conceal information or to mislead—
- (a) failure without reasonable explanation to produce a passport on request to an immigration officer or to the Minister,
- (b) the production of a document which is not a valid passport as if it were,
- (c) the destruction, alteration or disposal, in each case without reasonable explanation, of a passport,
- (d) the destruction, alteration or disposal, in each case without reasonable explanation, of a ticket or other document connected with travel, and
- (e) failure without reasonable explanation to answer a question asked by a deciding authority.
- (4) This section also applies to failure by the claimant to take advantage of a reasonable opportunity to make an asylum claim or human rights claim while in a safe country.
- (5) This section also applies to failure by the claimant to make an asylum claim or human rights claim before being notified of an immigration decision, unless the claim relies wholly on matters arising after the notification.
- (6) This section also applies to failure by the claimant to make an asylum claim or human rights claim before being arrested under an immigration provision, unless—
- (a) he had no reasonable opportunity to make the claim before the arrest, or
- (b) the claim relies wholly on matters arising after the arrest.
- (7) In this section—
- “asylum claim” has the meaning given by section 113(1) of the Nationality, Immigration and Asylum Act 2002 (subject to subsection (9) below),
- “deciding authority” means—
- (a) an immigration officer,
- (b) the Minister, or
- (c) the Royal Court,
- “human rights claim” has the meaning given by section 113(1) of the Nationality, Immigration and Asylum Act 2002 (subject to subsection (9) below),

**Changes to legislation:** There are currently no known outstanding effects for the The Immigration (Jersey) Order 2021, SCHEDULE 6A. (See end of Document for details)

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*Provision as extended to Jersey*

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“immigration decision” means–

- (a) refusal of leave to enter Jersey,
- (b) refusal to vary a person’s leave to enter or remain in Jersey,
- (c) grant of leave to enter or remain in Jersey,
- (d) a decision that a person is to be removed from Jersey by way of directions under section 10 of the Immigration and Asylum Act 1999 (removal of persons unlawfully in Jersey),
- (e) a decision that a person is to be removed from Jersey by way of directions under paragraphs 8 to 12 of Schedule 2 to the Immigration Act 1971 (control of entry: removal),
- (f) a decision to make a deportation order under section 5(1) of that Act, and
- (g) a decision to take action in relation to a person in connection with extradition from Jersey,

“immigration provision” means–

- (a) sections 28A, 28AA, 28B and 28C of the Immigration Act 1971 (immigration offences: enforcement),
- (b) paragraph 17 of Schedule 2 to that Act (control of entry),
- (c) section 14 of this Act, and
- (d) a provision of the Extradition (Jersey) Law 2004,

“notified” means notified in such manner as may be specified by Order made by the Minister,

“passport” includes a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport, and

“safe country” means a country to which Part 2 of Schedule 3 to this Act applies for the time being in the United Kingdom.

(8) A passport produced by or on behalf of a person is valid for the purposes of subsection (3)(b) if it–

- (a) relates to the person by whom or on whose behalf it is produced,
- (b) has not been altered otherwise than by or with the permission of the authority who issued it, and
- (c) was not obtained by deception.

(9) In subsection (4) a reference to an asylum claim or human rights claim shall be treated as including a reference to a claim of entitlement to remain in a country or territory other than Jersey made by reference to the rights that a person invokes in making an asylum claim or a human rights claim in Jersey.

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*Provision as extended to Jersey*

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(11) An Order under subsection (7) specifying a manner of notification may make incidental, consequential or transitional provision.

(12) This section shall not prevent a deciding authority from determining not to believe a statement on the grounds of behaviour to which this section does not apply.

Enforcement powers

**Immigration officer: power of arrest.**

**14.**—(1) Where an immigration officer in the course of exercising a function under the Immigration Acts forms a reasonable suspicion that a person has committed or attempted to commit an offence listed in subsection (2), he may arrest the person without warrant.

(2) Those offences are—

(a) the offence of conspiracy at customary law (in relation to conspiracy to defraud),

(b) at customary law, any of the following offences—

(i) fraud,

(ii) conspiracy to defraud,

(iii) uttering and fraud,

(iv) bigamy,

(v) larceny, and

(c) an offence under section 4 of this Act.

(3) The following provisions of the Immigration Act 1971 shall have effect for the purpose of making, or in connection with, an arrest under this section as they have effect for the purpose of making, or in connection with, arrests for offences under that Act—

(a) section 28C (entry and search before arrest),

(b) sections 28E and 28F (entry and search after arrest),

(c) sections 28G and 28H (search of arrested person), and

(d) section 28I (seized material).

(4) The States may by Regulations amend subsection (2) and subsection (3).

**Retention of documents.**

**17.** Where a document comes into the possession of the Minister or an immigration officer in the course of the exercise of an immigration function, the Minister or an immigration officer may retain the document while he 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

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*Provision as extended to Jersey*

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

Removal and detention

**Removing asylum seeker to safe country.**

**33.** Schedule 3 (which concerns the removal of persons claiming asylum to countries known to protect refugees and to respect human rights) shall have effect.

**Deportation or removal: cooperation.**

**35.—**(1) The Minister may require a person to take specified action if the Minister thinks that—

(a) the action will or may enable a travel document to be obtained by or for the person, and

(b) possession of the travel document will facilitate the person's deportation or removal from Jersey.

(2) In particular, the Minister may require a person to—

(a) provide information or documents to the Minister or to any other person;

(b) obtain information or documents;

(c) provide biometric information (within the meaning of section 15 of the UK Borders Act 2007), or submit to a process by means of which such information is obtained or recorded;

(d) make, or consent to or cooperate with the making of, an application to a person acting for the government of a country or territory outside Jersey;

(e) cooperate with a process designed to enable determination of an application;

(f) complete a form accurately and completely;

(g) attend an interview and answer questions accurately and completely;

(h) make an appointment.

(3) A person commits an offence if he fails without reasonable excuse to comply with a requirement of the Minister under subsection (1).

(4) A person guilty of an offence under subsection (3) shall be liable on conviction to imprisonment for a term not exceeding two years, to a fine or to both.

(5) If an immigration officer reasonably suspects that a person has committed an offence under subsection (3) he may arrest the person without warrant.

(6) An offence under subsection (3) shall be treated as—

(a) a relevant offence for the purposes of sections 28B and 28D of the Immigration Act 1971 (search, entry and arrest), and

(b) an offence under Part III of that Act (criminal proceedings) for the purposes of sections 28(4), 28E, 28G and 28H (search after arrest, &c.) of that Act.



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*Provision as extended to Jersey*

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(7) In subsection (1)–

“travel document” means a passport or other document which is issued by or for Her Majesty’s Government or the government of another State and which enables or facilitates travel from Jersey to another country or territory, and

“removal from Jersey” means removal under–

(a) Schedule 2 to the Immigration Act 1971 (control on entry) (including a provision of that Schedule as applied by another provision of the Immigration Acts),

(b) section 10 of the Immigration and Asylum Act 1999 (removal of person unlawfully in United Kingdom), or

(c) Schedule 3 to this Act.

General

**Interpretation.**

**45.** In this Act –

“immigration officer” means a person appointed in accordance with the Employment of States of Jersey Employees (Jersey) Law 2005 as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;

“the Minister” means the Minister for Home Affairs.

**Short title.**

**50.** This Act may be cited as the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

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**Changes to legislation:**

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