

## Customs and Immigration Service

## Briefing Paper

To: Migration Policy Development Board

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Subject: Immigration Controls and Work Permits

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**Introduction**

This briefing paper provides an overview of Immigration controls in Jersey. We tend to think of immigration control at the border, but a considerable amount of immigration legislation and control deals with regulating people either before they leave their home country or once they are in Jersey.

The UK Immigration Act 1971 (the Act), was extended to Jersey by the Immigration (Jersey) Order 1993<sup>1</sup>. It is the primary legislation governing the procedures for “leave to enter” and “leave to remain” for overseas nationals and is the basis of immigration controls in the UK and Jersey.

The Act vests powers in the Minister for Home Affairs to make directions to the practice to be followed for regulating entry and the stay of persons in Jersey who do not have the right of abode. These directions are known as the Immigration Rules (the Rules). The Minister may also make rules as to the practice to be followed for regulating the taking of employment by persons not having the right of abode.

**Common Travel Area (CTA)**

The UK, Channel Islands, Isle of Man and the Republic of Ireland collectively form the CTA. The CTA is established as a matter of law to facilitate the principles of free movement of British and Irish citizens between the UK, Republic of Ireland and the Islands. There are no formal immigration border controls in the CTA. Border checks are undertaken at the first point of entry

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<sup>1</sup> Immigration (Jersey) Order 1993 <https://www.jerseylaw.je/laws/revised/PDFs/21.700.pdf> (as amended by The Immigration (Jersey) (Amendment) Order 2017) <https://www.jerseylaw.je/laws/enacted/PDFs/L-23-2017.pdf>

to the CTA. Persons who have been granted entry into Jersey are therefore able to travel freely to the UK. In practice, this means that “leave to enter” and “leave to remain” granted in Jersey is deemed to apply in the UK.

Non-European Economic Area (non-EEA) nationals are subject to the immigration rules of the CTA jurisdiction they are entering and residing (visa requirements, restrictions on employment and length of stay).

Jersey’s position in the CTA is crucial in maintaining the integrity of the CTA by having robust immigration controls to prevent illegal entry and abuse.

## **Jersey Immigration Rules**

The Rules set out the requirements to be met by Non-EEA nationals seeking to enter Jersey. The Rules also set out the requirements that need to be met to extend their stay in Jersey for either a limited or indefinite period.

The Rules cover provisions for visitors, students, employment and family members such as spouses, civil partners, partners and dependent children under 18. The Rules also set out how the deportation provisions apply, including the circumstances in which a person is liable to deportation. They also provide a comprehensive framework for assessing and determining claims for asylum in Jersey.

## **Immigration Controls**

These can be split into 3 categories:

### **1. Pre-entry – Entry Clearances (visas)**

The Jersey Customs and Immigration Service (JCIS) Casework section is responsible for working in partnership with British Diplomatic Posts overseas to manage entry clearance (visa) applications for non-EEA nationals seeking to enter Jersey. Applications are assessed against the criteria set out in the Jersey Rules and will approve or reject applications as appropriate.

Applicants are subject to a number of mandatory checks which vary depending on the migration route but include checks against the UK police criminality database, UK Warnings Index and Immigration database.

### **2. On-entry – Border Immigration Control – JCIS Frontier Section**

A physical immigration control is undertaken on all scheduled commercial movements from outside the CTA at the 3 designated ports of entry namely, St Helier, Gorey and Jersey Airport.

European Economic Area (“EEA”) nationals are admitted on production of a valid national identity card or valid national passport and do not require leave to enter under the Rules because of exercising rights of free movement. Non-EEA nationals are granted leave to enter at the controls by way of their entry clearance (visa) which confers leave to enter or by granting leave to enter with a stamp in their passport.

Passengers are subject to mandatory checks on entry and further questioning where necessary.

### 3. After-entry – Limited leave to remain and Indefinite leave to remain (settlement)– JCIS Casework Section

Persons who have valid leave to enter or remain may apply to extend their stay provided they satisfy the requirements of the relevant immigration category in the Rules.

After a person has lived in the UK and/or the Islands for a certain length of time, they may be able to apply for permission to remain here for an indefinite period (settlement). The right to apply for permission to stay will depend on a person's current immigration category. Normally a person becomes eligible to apply for settlement after 5 years lawful residence.

Applications for further leave and indefinite leave to remain are subject to further mandatory checks including checks against the UK police criminality database.

#### **Irish Citizens**

Irish citizens are not subject to Immigration controls and are free to travel, live and work within the CTA. The Republic of Ireland is not considered to be a "foreign country" for the purposes of UK immigration laws, and Irish citizens are not considered to be "foreigners". They have a special status which is separate to and pre-dates the rights they have as EU citizens.

Irish citizens are treated as if they have permanent immigration permission to remain in the UK and Islands from the date they arrive. They may, however, still be liable to deportation or exclusion. The rights of Irish citizens in the British Islands are rooted in the Ireland Act 1949 which was registered by the Royal Court. This position will not change irrespective of the outcome of Brexit.

#### **EEA Nationals**

Currently EEA Nationals and their family members enjoy free movement and are admitted at the Immigration controls on production of a valid national identity card or national passport which establishes their identity and nationality. They may enter, live and work in Jersey through Protocol 3 to the UK's Act of Accession.

As a result of the UK leaving the EU the status of EU citizens living in Jersey will change. The UK government reached a deal with the EU to operate a scheme known as the "EU Settlement Scheme" which allows EU citizens to remain in the UK post Brexit. Jersey has launched its own similar scheme. This allows those that have been resident in Jersey for more than 5 years to apply for "settled status". Those that have been resident for less than 5 years may apply for "pre-settled status" and are able to continue to build time until they reach "settled status". This also applies to their non-EU family members.

Applicants to the scheme are subject to UK police criminality checks.

EU nationals will have until the end of the transition period, 31<sup>st</sup> December 2020, to apply. If the UK leaves the EU with a deal free movement will be maintained until that date.

If the UK leaves the EU without a deal on 29<sup>th</sup> March 2019 EU nationals arriving in Jersey after that date will have to apply for temporary leave to remain to stay for longer than 3 months.

When free movement ends after 31<sup>st</sup> December 2020 there will be a new skilled based immigration system which has yet to be designed.

## **Non-EEA Nationals**

Non-EEA nationals are subject to Immigration control. There are nationals who will always require a visa to travel to Jersey irrespective of the purpose or duration of their stay. These nationals are deemed “visa nationals”.

All other Non-EEA nationals, as appropriate depending upon their status and reason for seeking entry, are required to apply for a visa prior to travel and do so via the UK Visa Application Centres. These visas are referred to the JCIS Casework Section for authorisation to issue or refuse and are assessed against the requirements of the Rules.

## **Work Permits**

JCIS Casework Section is responsible for the issue of work permits under the Immigration (Work Permits) (Jersey) Rules 1995 and in line with the policy of the Minister for Home Affairs. There are 2 categories of work permit holders, skilled and unskilled. Work permits are issued to non-EEA nationals pre-entry to the Island for new employees and post entry for extension of work if required.

The Customs and Immigration Service must ensure that the operation of the work permit scheme strikes a balance between the political obligation to protect the resident labour market and growing the economy, by allowing overseas staff, who bring significant experience and expertise, to take employment in Jersey.

Work permit applications are considered from employers in all sectors on a case by case basis and in line with current policy. However, an employer must demonstrate and provide evidence that the vacancy cannot be filled from within the permit free UK and EEA labour market.

In addition JCIS carefully review and consider the immigration aspects of work permit applications to guard against the risk of those who may seek to abuse these controls by not complying with the terms and conditions of their visas.

Work Permits in the majority of cases are issued for no more than 3 years in the first instance and can at the end of this period be granted for a further 3 years subject to satisfactory applications.

Until recently the unskilled category only catered for seasonal employment in the hospitality industry for those who were granted permits prior to May 2004. The policy has now been amended by the Minister for Home Affairs to allow for unskilled seasonal workers in both the agricultural and hospitality industries following applications by both the Jersey Farmers Union and Jersey Hospitality Association. Both sectors articulated a strong business case for the need to recruit non-EEA workers due to difficulties they have been facing recruiting from within the EEA.

The policy allows for the seasonal employment for up to 9 months in both sectors. The number of permits is capped at 130 for the Agricultural industry and 150 for the Hospitality industry. Applicants are subject to the mandatory checks at the visa application stage and are also required to provide Police certificates that summarise criminal history. This is a pilot scheme that will be reviewed in 2 years.

The UK has faced the same issues in recruiting workers for the agricultural sector and has introduced a similar pilot scheme.

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