

STATES OF JERSEY



EXTENSION OF SECTION 75 (ELECTRONIC TRAVEL AUTHORISATIONS) OF THE NATIONALITY AND BORDERS ACT 2022 TO JERSEY (P.58/2025): AMENDMENT (P.58/2025 AMD.) – COMMENTS

**Presented to the States on 5th September 2025
by the Minister for Justice and Home Affairs**

STATES GREFFE

COMMENTS

Summary

The Minister for Justice and Home Affairs urges Members to reject this amendment on the basis that accepting it would critically undermine the ability to operate the Electronic Travel Authorisation (ETA) Scheme.

It is noted that Deputy Bailhache accepts that the introduction of the ETA scheme is necessary, but the Deputy contends that Section 11E is an unnecessary inclusion which is not required to effect the introduction of the scheme.

Unfortunately, the Deputy is operating under a misapprehension, and the removal of Section 11E as proposed would place the operation of the scheme in Jersey in jeopardy. That is because, without a firm legislative basis and the ability of Jersey to delegate certain decision-making, the UK would not be able to operate the scheme in collaboration with Jersey.

Given that the implementation of the scheme has been predicated on the UK handling applications on Jersey's behalf, at no additional cost, and Jersey would not be equipped to handle these applications (which may require the design and funding of a bespoke application system), without the inclusion of the provision in section 11E it is highly likely it will not be possible to implement the scheme as planned.

It is not believed that this is the desired outcome of the Deputy's amendment, but it would be the unfortunate consequence were it to be accepted.

Section 11E – request for the UK Secretary of state to exercise functions on behalf of the Jersey Minister

As drafted, it is proposed that a new section 11E is added into the Immigration Act 1971 as it extends to Jersey.

That section is:

“The Minister may—

(a) request the Secretary of State to carry out any function ..., and

(b) arrange for the Secretary of State to carry out any such function.”

It then makes clear that any act/decision of the SoS under such an arrangement “has the same effect as if taken by the decision-maker” (i.e. the Jersey Minister).

Normally, in Jersey immigration law, powers of the UK Secretary of State are transposed to the Jersey Minister via Order in Council. The section 11E provision is novel, in that it gives the Jersey Minister an explicit statutory ability to request and arrange that the UK Secretary of State exercises functions on Jersey's behalf.

It is worth noting first that the provision does not *require* the Jersey Minister to delegate functions but it provides clarity and legal certainty as to the practical implementation of the ETA scheme, which, for all the Crown Dependencies, will be heavily reliant on UK Home Office systems. Secondly, it is important to note that the power to delegate under section 11E is restricted to functions *“in relation to the granting of ETAs”*. This power does not therefore extend to the determination of the rules under which the scheme will operate (including for example what exemptions may be put in place).

Section 11D(3) of the Immigration Act 1971, as it applies in the United Kingdom, contains a reciprocal provision:

“The Secretary of State may, where requested to do so by any of the Islands, carry out functions on behalf of that island in relation to the granting of authorisations in electronic form to travel to that island.

The entire proposed operation of the ETA scheme has been designed under the premise that the Crown Dependencies will have the ability to delegate certain ETA decisions to the United Kingdom. Legislation has been drafted to ensure replication and reciprocity, whilst jurisdictions retain control over their immigration rules against which decisions are assessed. A lack of reciprocity, and consistency between the Crown Dependencies’ implementation of the scheme, opens up questions about the legitimacy of the UK undertaking functions on their behalf.

Article 28A of the States of Jersey Law 2005 provides that a Minister may delegate functions vested in any enactment having effect in Jersey to an Assistant Minister or an officer, such as a States of Jersey employee or Police Officer but does not encompass the sort of delegation envisaged under section 11E. It is considered therefore that in order to legally effect the delegation contemplated, section 11E is required. The functions that the UK Secretary of State is envisaged undertaking are decisions not merely administrative arrangements and so an MoU or something similar is not considered a viable alternative to section 11E.

The omission of Section 11E would lead to unnecessary legal uncertainty about the legal validity in Jersey of ETA decisions made in the United Kingdom and may mean that the UK is not prepared to act on Jersey’s behalf with respect to ETA applications (noting that Jersey is not equipped to handle these applications on its own at this stage).

Jersey immigration rules and decision-making

The parameters under which the scheme will work are to be set down in Immigration Rules (which must be presented in due course to the States under Section 3 of the Immigration Act 1971) and any delegation of functions to the Secretary of State on Jersey’s behalf will be underpinned by appropriate MOUs or Standard Operating Procedures. Ultimately the manner in which the ETA scheme is implemented in Jersey will be determined by Jersey (including for example exemptions for French visitors to the Island) and including the UK Secretary of State’s position to enable the scheme to be operationally effective. The UK Secretary of State is not given any power under section 11E; their actions in respect of Jersey applications will be defined by the Minister (and any delegation may be withdrawn).

Once operational, it is intended that the vast majority of ETA applications will be subject to automated processing:

- Decisions to approve ETA applications to Jersey will be taken automatically by the Home Office, once screened through relevant databases; and
- Decisions to reject ETA applications to Jersey (e.g. where the application has failed on technical grounds or documents are missing) will be taken automatically by the Home Office.

Decisions to refuse ETA applications to Jersey (e.g. on grounds of criminality, deportation, exclusions, false information or prior immigration breaches) will however be referred to Jersey Officers, with decisions being made on a case-by-case basis.

All decisions taken by the Home Office on Jersey's behalf will be carried out in accordance with Immigration Rules which are owned and controlled by Jersey.

Guernsey and the Isle of Man

Equivalent Orders in Council in Guernsey and the Isle of Man have been passed by their respective Assemblies, and both Islands will include equivalent Section 11E provisions to allow the delegation of functions to the Secretary of State.

Their respective Orders in Council are due to be considered by the Privy Council at its next sitting, along with Jersey's version, so that all the Crown Dependencies are moving in tandem to align with the UK's enforcement of ETAs (they have been implemented in the UK but are not yet being enforced). Jersey's Order in Council will need to be pulled from the next Privy Council meeting should section 11E be deleted and so Jersey will fall out of step with the timetable for enforcement of ETAs (as well as potentially impacting on the other Crown Dependencies due to the expectation that the legislative roll out would be done simultaneously).

Risks

It is essential for the maintenance of Jersey's position within the Common Travel Area, and as an external border for the purpose of Electronic Travel Authorisations, that this Proposition is passed with the inclusion of Section 11E. If we fail to align, we risk operational divergence – leading to confusion for travellers, reputational damage, and even the real possibility of restrictions being placed on movement from Jersey into the UK.

Costs of ETA software applications and support, which are significant, are being met wholly by the United Kingdom, and application fees will be retained by them. Should the rollout of ETA take place as planned, there will be no resource implications for the Jersey Customs and Immigration Service. However, should a situation arise where a unique ETA application regime would need to be implemented in Jersey, cost, time and resource implications would be significant.

This is a necessary, proportionate and modern measure that protects Jersey; upholds our obligations within the Common Travel Area; provides for continued ownership, and control, of immigration legislation and processes; and aligns us with our closest partners.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]:

These comments were submitted to the States Greffe after the noon 4th September 2025 deadline, as set out in Standing Order 37A, due to the time required to consider the implications of the Amendment.
