

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE and COMMITTEE FOR HOME AFFAIRS

RECENT UK ACT OF PARLIAMENT AND BILLS REGARDING NATIONALITY – ARTICLE 72A
OF THE REFORM (GUERNSEY) LAW 1948:
NATIONALITY AND BORDERS ACT 2022; ILLEGAL MIGRATION BILL; AND BRITISH
NATIONALITY (REGULARISATION OF PAST PRACTICE) BILL

The States are asked to decide: -

Whether, after consideration of the Policy Letter entitled ‘Recent UK Act of Parliament and Bills regarding Nationality - Article 72A of the Reform (Guernsey) Law, 1948: Nationality and Borders Act 2022; Illegal Migration Bill; and British Nationality (Regularisation of Past Practice) Bill’ dated 19th June 2023, they are of the opinion:-

1. To acknowledge that the nationality sections of the UK’s Nationality and Borders Act, 2022 have direct effect in the Bailiwick of Guernsey.
2. To the extent that it is necessary, to signify agreement to the application of Part 1 of the Nationality and Borders Act 2022, insofar as it has effect in Guernsey, for the purposes of Article 72A of the Reform (Guernsey) Law, 1948, as amended.
3. To acknowledge that the nationality clauses only of the UK’s Illegal Migration Bill will have direct effect in the Bailiwick of Guernsey.
4. To signify agreement to the substance of the nationality clauses only of the Illegal Migration Bill, insofar as they will have effect in Guernsey, for the purposes of Article 72A of the Reform (Guernsey) Law, 1948, as amended.
5. To note that the immigration provisions of the Illegal Migration Bill are not yet settled and will be laid before the States of Deliberation in due course for consideration if it was proposed to extend any of them to Guernsey (and the wider Bailiwick) by Order in Council.
6. To acknowledge that the UK’s British Nationality (Regularisation of Past Practice) Bill will have direct effect in the Bailiwick of Guernsey.
7. To signify agreement to the substance of the British Nationality (Regularisation of Past Practice) Bill referred to in this Policy Letter, insofar as it will have effect

in Guernsey, for the purposes of Article 72A of the Reform (Guernsey) Law, 1948, as amended.

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**RECENT UK ACT OF PARLIAMENT AND BILLS REGARDING NATIONALITY – ARTICLE
72A OF THE REFORM (GUERNSEY) LAW 1948:
NATIONALITY AND BORDERS ACT 2022; ILLEGAL MIGRATION BILL; AND BRITISH
NATIONALITY (REGULARISATION OF PAST PRACTICE) BILL**

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

19th June, 2023

Dear Sir

1 Executive Summary

- 1.1 This Policy Letter considers **two recent UK Bills**, that will apply directly to the Bailiwick in respect of their **nationality provisions only**, and **one recent Act of Parliament relating to nationality** which was not considered when it was a Bill. Article 72A of the Reform (Guernsey) Law, 1948 (as amended)¹ ('Article 72A') (at Appendix 1) is engaged for provisions in UK Bills or Acts which will apply directly to Guernsey. The direct application of nationality provisions in UK Acts of Parliament is a long-standing part of the constitutional relationship and in itself is not controversial.
- 1.2 This Policy Letter does **not** relate to immigration measures that may or may not be extended (with appropriate modifications) to the Bailiwick in the future. Those immigration matters, some of which are controversial and being reported widely in UK media, are not yet settled. Any immigration measures which the Committee *for* Home Affairs considers to be necessary in due course will be brought before the States of Deliberation for consideration, along with any modifications, after any Act of Parliament resulting from these Bills has been given Royal Assent.
- 1.3 The Nationality and Borders Act 2022 ('NABA'), recently enacted in the UK, contains provisions about nationality, asylum and immigration which have

¹ [Reform \(Guernsey\) Law, 1948.](#)

relevance due to the Bailiwick's constitutional relationship with the UK, through the Crown, and its participation in the Common Travel Area ('CTA'). The nationality provisions apply directly to the Bailiwick in the usual way. This Policy Letter seeks the agreement of the States of Deliberation to the substance of those nationality provisions. There is also a Permissive Extent Clause ('PEC') which enables other parts of the law to be extended to the Bailiwick with suitable modifications as required.

- 1.4 The first Bill, the Illegal Migration Bill ('IMB'), has been laid by the UK Government in response to its concerns about increased numbers of migrants arriving in small boats by illegal and unsafe routes as operated by criminal organisations, and to enable the removal of migrants to a safe country² and processing there. The IMB is currently in passage through the UK Parliament. The UK Government is aiming for that process to be completed and for the resulting legislation to be granted Royal Assent before the 2023 parliamentary summer recess.
- 1.5 Certain provisions of the IMB regarding nationality will apply directly to the Bailiwick and to the other Crown Dependencies in the usual way. This Policy Letter enables the States of Deliberation to signify their views on the substance of those nationality provisions, in accordance with Article 72A.
- 1.6 The majority of the IMB deals with immigration matters. Those provisions do not have direct application to the Bailiwick. There is a Permissive Extent Clause ('PEC') in the IMB which would enable the Bailiwick to introduce such measures as it may deem necessary in the future. If any immigration provisions were to be extended (or proposed to be extended) to the Bailiwick, they can be modified as required for its immigration regime and in accordance with its own needs.
- 1.7 The immigration elements of the IMB as currently drafted are controversial and still being considered/ debated in the UK Parliament and, as such, are unsettled. The UK Government asserts that those immigration provisions do not offend the UK's international obligations. As the immigration provisions do not directly extend to the Bailiwick, Article 72A requirements will be engaged only if and when the extension of any of those provisions is proposed and after the terms of those provisions have been settled and the IMB has become an Act of Parliament. To reiterate, **immigration matters are not considered within this Policy Letter**. Instead, it is narrowly framed upon nationality matters, in order to meet the explicit requirements of Article 72A to enable the States to express their views on the provisions which will have direct effect in the Bailiwick, before the legislation is made in the UK. The advice of the Law Officers of the Crown is that the States signifying their views under Article 72 A should be included in the Propositions as a binary choice – that they agree or not to the substance of the

² As defined by the UK Government.

provisions. The Propositions have been worded accordingly.

- 1.8 Neither of the two sponsoring Committees to this Policy Letter make any recommendations concerning the appropriateness or the morality of the provisions of the IMB. By bringing this Policy Letter to the States, neither Committee endorses or condones that draft legislation. The focus of this Policy Letter is the **implementation/ exercise of Guernsey's own Article 72A in regard to nationality provisions**.
- 1.9 The second Bill considered in this Policy Letter is the British Nationality (Regularisation of Past Practice) Bill ('Regularisation Bill'), recently introduced into Parliament by the UK Government, which contains nationality measures to correct a historical issue concerning European Economic Area nationals. Those measures will apply directly to the Bailiwick in the usual way. This Bill is not considered to be controversial. The Regularisation Bill is in passage through the UK Parliament. This Policy Letter seeks the agreement of the States of Deliberation to the substance of the provisions in the Regularisation Bill in accordance with Article 72A requirements.

2 Background

Mandate

- 2.1 This Policy Letter is brought to the States jointly by the Committee *for* Home Affairs and the Policy & Resources Committee because they each have relevant mandates and responsibilities. The mandate of the Committee *for* Home Affairs includes responsibilities to advise the States and develop and implement policies, including the immigration regime. The Policy & Resources Committee's mandate includes responsibilities for external relations and international and constitutional affairs, including relations with the United Kingdom and other jurisdictions. The Policy & Resources Committee's mandate also includes exercising powers and performing duties conferred on it by extant legislation, in this case, those in Article 72A of the Reform (Guernsey) Law, 1948, as amended.

Nationality and Citizenship

- 2.2 Nationality and citizenship matters are part of the constitutional relationship between the Bailiwick of Guernsey and the UK (that relationship being a direct one between the Bailiwick and the Crown). It has long been accepted that British citizenship is in the gift of the UK (the Crown) to determine, and the British Nationality Act 1981 ('BNA')³, which is stated to apply to the Crown Dependencies, regulates the conferral and acquisition of British citizenship. "The

³ [British Nationality Act 1981](#) – An act to make fresh provision about citizenship and nationality, and to amend the Immigration Act 1971 as regards to the right of abode in the United Kingdom.

Islands” (meaning the Channel Islands and the Isle of Man) are included within the definition of the UK for the purposes of that Act⁴. Amendments to that Act apply directly to the Bailiwick⁵ and to the other Crown Dependencies.

- 2.3 This legislative framework forms a necessary component of the constitutional relationship, preserves the integrity of British nationality and maintains uniformity across the UK and the Crown Dependencies. This means that eligible persons in the Crown Dependencies remain British citizens and ensures the recognition of passports issued in the Bailiwick for entry purposes globally, in the same manner as other British passports. It also provides the support of British consulates and worldwide representation for citizens. In the Bailiwick, the powers of the Secretary of State under nationality provisions are exercised by the Lieutenant-Governor by agreement of the Secretary of State. The Lieutenant-Governor issues British passports (to British citizens in the Bailiwick) on behalf of His Majesty under the Royal Prerogative.
- 2.4 As a matter of course, nationality provisions apply directly to the Bailiwick on the face of the relevant Acts of Parliament. Article 72A of the Reform (Guernsey) Law, 1948 is a relatively new provision, introduced in 2019⁶ which requires that all provisions of draft UK legislation that are intended to have direct application may be laid before the States of Deliberation so that it can signify its views upon that legislation, unless the Policy & Resources Committee considers that to be unnecessary.

3 Nationality and Borders Act 2022

- 3.1 The UK Parliament has enacted NABA,⁷ with Royal Assent granted on 28th April 2022. The Act contains provisions about nationality, asylum and immigration which have relevance due to the Bailiwick’s constitutional relationship with the UK, through the Crown, and its participation in the CTA.

⁴ Section 50(1) of the Act.

⁵ In terms of UK legislation, the long-standing practice is for nationality provisions to apply directly to the Bailiwick, and the Bailiwick does not legislate on nationality. Nevertheless, because of Article 72A of the Reform (Guernsey) Law, 1948 the Bailiwick has requested that it be consulted before nationality provisions that extend directly to the Bailiwick are proposed in any Bill.

⁶ The Reform (Guernsey) Law, 1948, was amended following consideration of a [Policy Letter \('Referral of UK Acts of Parliament and Orders in Council to the States of Deliberation'\)](#) in March 2019. [The Reform \(Guernsey\) \(Amendment\) Law, 2019](#) came into effect from 4th November, 2019.

Examples of occasions on which the Committee has referred matters to the States under Article 72A of the Reform (Guernsey) Law, 1948 include:

- Policy Letter dated 7th January, 2020, 'The Withdrawal Agreement between the United Kingdom and European Union – Implications for the Bailiwick of Guernsey', [Billet d'État II of 2020](#).
- Policy Letter dated 16th November, 2020, 'Brexit & biometric data: Extending relevant provision of UK Immigration Acts', [Billet d'État XXVII of 2020](#).

⁷ [Nationality and Borders Act 2022](#)

- 3.2 The nationality provisions (Part 1 of NABA) (at Appendix 2) apply directly to the Bailiwick. These provisions consist of amendments to the British Nationality Act 1981. The amendments made by NABA introduce new registration provisions for children of British Overseas Territories citizens, who were unable to acquire that status under earlier legislation, either because women could not pass on citizenship at the time of their birth, or because their parents were not married. The Act introduces a provision for children to acquire their father's citizenship where they were unable to do so previously because their mother was married to someone else. NABA also creates a new time-limited route for the descendants of those born on the Chagos Islands, now known as the British Indian Ocean Territory, to apply to register as both British Overseas Territories citizens and British citizens.
- 3.3 A new adult registration route allows the Secretary of State to grant citizenship where, in the Secretary of State's opinion, a person failed to become a British citizen and/or British Overseas Territories citizen because of historical legislative unfairness; an act or omission by a public authority; or other exceptional circumstances relating to the person's case.
- 3.4 This Act also removes the requirement to have been in the United Kingdom at the start of the five (or three) year residential qualifying period for naturalisation in exceptional cases. This will mean that people will not be prevented from qualifying if there are good reasons why they could not have been in the United Kingdom at that time.
- 3.5 NABA allows the Secretary of State to disapply the requirement to give notice of a decision to deprive a person of their nationality where notice of the decision would be impractical or a threat to national security.
- 3.6 The Act amends the existing provisions for the registration of a stateless child as a citizen, adding a requirement that a child aged 5-17 will not qualify if they could reasonably acquire another nationality. This means that a child cannot benefit if their parents could, but chose not to, acquire their own nationality for their child.
- 3.7 Article 72A of the Reform (Guernsey) Law, 1948 (as amended) is engaged in relation to the **nationality provisions** in NABA which apply directly to the Bailiwick (as outlined above).
- 3.8 NABA also introduced changes to the UK's immigration regime. In the usual way, the UK Home Office consulted the Committee *for* Home Affairs during drafting and the Committee considered it was appropriate to provide for the extension of certain provisions to the Bailiwick. Consequently, a PEC was included in NABA to enable relevant immigration provisions to be extended to the Bailiwick of Guernsey at a future time.

- 3.9 The provisions in NABA which the Committee *for* Home Affairs considers necessary to be extended to the Bailiwick are due to be outlined in a forthcoming Policy Letter and do not need to be considered as part of this Policy Letter. That future Policy Letter would also engage Article 72A.

4 Illegal Migration Bill (IMB)

Policy Background

- 4.1 The IMB⁸ was introduced in the House of Commons on 7th March 2023. This Bill forms part of the UK Government's wider strategy to strengthen measures to tackle illegal migration. Illegal entry into the UK by small boats crossing the English Channel from mainland Europe, mainly from France, has increased significantly since 2020, with 45,700 people arriving in the UK in small boats in 2022, compared to 8,500 such arrivals in 2020⁹. The UK Government considers that reform to the UK's current system is essential, referencing risks to migrants arriving by unsafe routes operated by criminal organisations, the wish to deter such activities, delays in determining asylum claims and the increasing costs of the asylum system (including for the funding of accommodation for migrants in the UK, at an estimated cost of £6 million per day) as reasons for reform.
- 4.2 The IMB has received significant media coverage and has attracted controversy amongst UK parliamentarians and the media, with concerns raised about its compliance with the European Convention on Human Rights ('ECHR')¹⁰, the Refugee Convention¹¹ and the Convention on the Reduction of Statelessness¹² (see also paragraph 4.15).
- 4.3 The UK Government has prioritised the swift passage of the IMB. The IMB was introduced on 7th March 2023 and passed the third reading in the House of Commons on 26th April 2023¹³. The Bill has now progressed to the House of

⁸ [Illegal Migration Bill](#) – A Bill to make provision for and in connection with the removal from the United Kingdom of persons who have entered or arrived in breach of immigration control; to make provision about detention for immigration purposes; to make provision about unaccompanied children; to make provision about victims of slavery or human trafficking; to make provision about leave to enter or remain in the United Kingdom; to make provision about citizenship; to make provision about the inadmissibility of certain protection and certain human rights claims relating to immigration; to make provision about the maximum number of persons entering the United Kingdom annually using safe and legal routes; and for connected purposes.

⁹ [Illegal Migration Bill: overarching factsheet](#)

¹⁰ [European Convention on Human Rights](#).

¹¹ The Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to that Convention ([The 1951 Refugee Convention](#)).

¹² [Convention on the Reduction of Statelessness](#) done at New York on 30 August 1961.

¹³ Votes-Ayes: 289, Noes: 230- Bill passed 3rd reading on 26 April 2023.

Lords: it has now had its Second Reading and has reached Report Stage¹⁴. The UK Government hopes to complete the Bill's passage before the summer recess, with a target for Royal Assent of 20th July 2023.

- 4.4 On 8th March 2023, the Home Office published a collection of documents about the IMB¹⁵. The introduction to that collection says that: "The Illegal Migration Bill will change the law so that those who arrive in the UK illegally will not be able to stay here and will instead be detained and then promptly removed, either to their home country or a safe third country".
- 4.5 In that collection of documents, the UK Government has described the IMB's objectives as being to:
- "put a stop to illegal migration into the UK by removing the incentive to make dangerous small boat crossings.
 - speed up the removal of those without legal rights to remain no right to be here, in turn this will free up capacity so that the UK can better support those in genuine need of asylum through safe and legal routes.
 - To crack down on the opportunities to abuse modern slavery protections, by preventing people who come to the UK through illegal and dangerous journeys from misusing modern slavery safeguards to block their removal
 - ensure that the UK continues to support those in genuine need by committing to resettling a specific number of the most vulnerable refugees in the UK every year."

Overview of the IMB:

- 4.6 The nationality provisions in the IMB will have direct application to the Bailiwick, providing it passes scrutiny by the UK Parliament. The provisions are clauses 30-36 (see paragraph 4.8).
- 4.7 The IMB includes a number of immigration provisions designed to meet the UK's policy objective of reducing the number of illegal migrants entering the UK travelling across the channel in small boats. Many of these provisions are currently being amended during passage through the UK Parliament. As a consequence, it is not considered appropriate to speculate on these provisions at this stage, nor to consider them in this Policy Letter, nor to include any Propositions except those that deal with the nationality provisions (to the limited extent required by Article 72A). The IMB contains a PEC in respect of immigration provisions, and, once those provisions are settled and the Bill in final form becomes an Act of Parliament, Article 72A will enable the States of Deliberation to signify their views (unless the Policy & Resources Committee

¹⁴ House of Lords Report stage dates are 28 June, 3 & 5 July 2023.

¹⁵ [Collection of documents about the Illegal Migration Bill](#)

consider it unnecessary) with a States' debate on the substance of the provisions before any are extended to Guernsey by Order in Council. In line with the constitutional relationship between the Bailiwick and the UK, the PEC would only be activated following consultation and consent by the Bailiwick about which parts of the IMB are to be extended, when they are to be extended and what modifications are appropriate for the Bailiwick's immigration regime. Accordingly, it is intended that a later Policy Letter would indicate which provisions, if any, would be appropriate to extend to Guernsey (and the wider Bailiwick), whether they should be modified and whether they meet Guernsey's international obligations.

Consideration of the IMB's application to the Bailiwick of Guernsey

4.8 It is important to note that only the following provisions of the IMB, that relate solely to nationality matters, extend directly to the Crown Dependencies, including to the Bailiwick of Guernsey (and are the subject of Propositions 3 and 4):

- Sections 30 to 36 of the IMB¹⁶ make amendments to the BNA: these have the effect of permanently disqualifying 'unlawful' entrants (who satisfy the criteria for removal under section 2 of the IMB) from becoming a British citizen and make consequential amendments to the BNA;
- By section 30(4) of the IMB, references to the United Kingdom in section 2 include reference to the Islands (meaning the Crown Dependencies) and the overseas territories.
- Section 31 of the IMB would have the effect that someone landing in the Bailiwick of Guernsey illegally would also be permanently ineligible to apply for British citizenship. This permanent disqualification applies to many of the pathways to obtaining British citizenship under the British Nationality Act 1981, namely:
 - Acquisition of citizenship by a minor, by registration;
 - Acquisition of citizenship by a British Overseas Territories citizen, a British National (Overseas), a British Overseas citizen, a British subject under this Act or a British protected person, by registration;
 - Acquisition of citizenship by naturalisation;
 - Acquisition of citizenship by registration following renunciation of citizenship of UK and Colonies; and
 - Resumption of citizenship by a person following a declaration of renunciation of citizenship.

¹⁶ Sections in draft UK Bills are called clauses. The clause/ section numbers may change as amendments are made to the Bill. References to sections of the IMB in this Policy Letter are to sections of the IMB as brought from the House of Commons to the House of Lords (HL Bill 133).

- Under sections 32 to 34 of the IMB, someone landing in the Bailiwick of Guernsey illegally would also be permanently ineligible for British overseas territories citizenship, British overseas citizenship or to be registered as a British subject under various pathways in the British Nationality Act 1981.
- Section 35 of the IMB allows the Secretary of State to disapply sections 31 to 34 by determining that a person is not ineligible for the purposes of those provisions, if the Secretary of State considers that it is necessary in order to comply with the European Convention of Human Rights.
- Section 3(7) to (10), and 63 of the IMB also extend directly to the Bailiwick, to the extent that they enable the Secretary of State to make regulations to modify the effect of any provision of sections 30 to 35 of the IMB.

4.9 As the nationality provisions of the IMB will directly apply to the Crown Dependencies, Article 72A(1)(a) of the Reform (Guernsey) Law, 1948 is engaged. This Policy Letter, therefore, includes the substance of the nationality provisions to allow the States to signify their views. The extension of any parts of the IMB, which are not directly applied nationality provisions, will be considered at the time at which it might be proposed to extend any of the immigration provisions (modified as necessary) and are therefore not included in this Policy Letter (Proposition 5).

Engagement and implications of the IMB for the Bailiwick of Guernsey

- 4.10 The States of Guernsey was consulted on an early version of the IMB (in December 2022) and the Committee *for* Home Affairs agreed at that time to seek a PEC. The IMB contains provisions which would amend the British Nationality Act 1981. The inclusion of a PEC itself is a regular occurrence for UK legislation regarding immigration matters.
- 4.11 However, the IMB published in March 2023 differs significantly from the earlier version that was consulted on, including the application of extent provisions. The UK Government did not include the previously requested PEC by the date of the IMB's publication in March 2023 because of the tight timescales it was working to before publication. The IMB, when laid before the UK Parliament, contained a number of provisions that were not included in the earlier draft. However, the core purpose and duty to remove unlawful migrants who meet certain criteria remains the same.
- 4.12 Since the publication of the IMB, engagement has taken place between the Crown Dependencies and the UK Government to consider the IMB, including its potential effect, in particular, in relation to nationality provisions for those

arriving illegally in the Bailiwick.

- 4.13 Concerns have been raised that the provisions in the IMB have changed significantly since the States of Guernsey was originally consulted on the draft Bill. The UK Government has indicated that the speed of passage affected its ability to consult fully on the provisions in the usual way.
- 4.14 With regard to the direct application of the nationality provisions to the Bailiwick, it is possible that any discrepancy between the UK and the Bailiwick may have the negative effect of making the Bailiwick seem a more attractive destination for illegal migrants. It is important that the Bailiwick should have nationality legislation which does not diverge from the UK's measures. If the UK and French governments stem the flow of irregular migrant small boat traffic in the eastern English Channel, such traffic might be displaced and different routes attempted. A significant increase in irregular migrant traffic in the Channel Islands region could quickly overwhelm the capacity of the islands' public services to provide for the safety, security and welfare of those individuals.

IMB and the Bailiwick's international obligations

- 4.15 In international law, the UK is responsible for representing the Bailiwick of Guernsey in respect of applicable international agreements. In addition, in accordance with international law principles, the UK is responsible for any breach of an international agreement. However, the Bailiwick's governments are responsible for introducing and maintaining legislation, policies and practices to meet their own international obligations. The IMB has caused controversy in the UK; in the media, international bodies, Non-Government Organisations ('NGOs') and amongst Westminster parliamentarians because of concerns that the immigration measures may cause the UK to breach its international obligations, particularly in respect of the ECHR¹⁷, the Refugee Convention 1951¹⁸ and the Convention on Statelessness¹⁹. These treaties have been extended to the Bailiwick.
- 4.16 It is only the nationality provisions of the IMB that have direct effect in the Bailiwick. Nationality provisions have not attracted the same controversy as the immigration matters in the IMB.
- 4.17 In this regard, it is important to note again that none of the immigration measures (such as the duty to detain and remove) will have direct effect in the

¹⁷ [European Convention on Human Rights](#).

¹⁸ The Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to that Convention ([The 1951 Refugee Convention](#)).

¹⁹ [Convention on the Reduction of Statelessness](#) done at New York on 30 August 1961.

Bailiwick, and there is no proposal currently to extend these measures to the Bailiwick. Such extension will be considered in the future, and only if required and appropriate, for the reasons outlined in this Policy Letter.

- 4.18 At the time that the IMB becomes an Act of Parliament, immigration matters will be considered by the Committee *for* Home Affairs, which would then refer any proposed extension to Guernsey/the Bailiwick for the Policy & Resources Committee's consideration, in accordance with Article 72A requirements.
- 4.19 Insofar as the IMB is concerned, the UK Government has published a Memorandum and Supplementary Memorandum to confirm that the IMB (including its nationality provisions) is compatible with the European Convention on Human Rights. The Bill will include an exemption so that the Secretary of State may determine that a person is not "ineligible" for citizenship, if treating them as ineligible would breach the United Kingdom's obligations under the Human Rights Convention.
- 4.20 It is expected that, as the IMB progresses through Parliament, greater certainty may emerge as to the compatibility of its provisions with other international obligations binding on the UK (and accordingly the Bailiwick).

The Illegal Migration Bill and Article 72A

- 4.21 As mentioned above in paragraph 2.2, the right to determine and confer British citizenship is exercisable exclusively by the UK Government on behalf of the Crown. With only some limited exceptions, ever since the British Nationality and Status of Aliens Act 1914 first codified the law relating to British nationality, Acts of Parliament have been used to determine and confer citizenship. The 1914 Act and successor statutes dealing with nationality have provided for British citizenship in the context of the United Kingdom and British territories (described in the 1914 Act as "dominions" of the Sovereign of the time) for which the UK is sovereign State and responsible in international law. Given the historical exclusive right of the Crown and Parliament in relation to matters of British citizenship, in the absence of any delegated or customary power, it is neither within the constitutional power of the Bailiwick governments to control British citizenship, nor can the Bailiwick legislatures enact legislation to regulate or control the circumstances in which a person is to be regarded as having British citizenship or to be eligible for it.
- 4.22 As presently drafted, the IMB contains nationality provisions which would apply directly to the Bailiwick of Guernsey (as outlined in paragraph 4.9). Therefore, Article 72A is engaged. This Policy Letter enables the States of Deliberation to signify their views on the substance of those nationality provisions, in accordance with Article 72A.

5 The British Nationality (Regularisation of Past Practice) Bill

- 5.1 The UK Government introduced the British Nationality (Regularisation of Past Practice) Bill ²⁰ ('the Bill') to Parliament on 24th May 2023, to make amendments to the BNA²¹. The legislation resulting from the Bill will apply retrospectively upon enactment and will have direct effect in the Crown Dependencies. The UK Government has agreed to continue to consult with the Committee *for* Home Affairs regarding these measures and the timetable for the Bill's passage.²²
- 5.2 The Bill will rectify a historical issue relating to the method of assessment applied to European Economic Area (EEA) nationals²³ during a certain time period, as considered during recent litigation. Under section 1(1) of the BNA (acquisition by birth or adoption), a person born in the UK (or any Crown Dependency) after a certain date would automatically be a British citizen if at the time of birth, the person's father or mother is "settled" in the UK (or any Crown Dependency). Historically, each jurisdiction in the CTA treated EEA nationals (and their spouses) who lived and worked in the UK (or the relevant Crown Dependency) in the exercise of EU Treaty rights (or similar rights) as "settled" for the purposes of this provision during different periods of time, and thus children born to them during that time as automatically acquiring British citizenship (for example, for the purposes of passport applications). That has resulted in some inconsistency over nationality status. For the Bailiwick of Guernsey, the relevant period was 1st August 1993 to 30th September 2004 (inclusive). Other affected jurisdictions (the UK, other Crown Dependencies and British Overseas Territories) had other relevant time periods. After that period, EU citizens were only considered settled if they had indefinite leave to remain or had acquired permanent residence in the UK (or the Crown Dependencies).
- 5.3 However, a recent High Court case²⁴ cast doubt on whether these nationals and their spouses should have been considered "settled" and, therefore, on whether their children would automatically be entitled to British citizenship.
- 5.4 The legal position stated in that case could result in unfairness, potential claims for discrimination and unintended legal consequences for individuals who

²⁰ [British Nationality \(Regularisation of Past Practice\) Bill](#).

²¹ The British Nationality Act 1981 defines British nationality and has direct territorial extent to the Crown Dependencies.

²² All House of Commons stages took place on 6th June 2023, with all proceedings up to and including Third Reading having to be concluded no later than 5 hours after commencement of proceedings. It has now passed to the House of Lords, with 2nd reading on 19 June.

²³ In practice, this means citizens of the EU, Iceland, Liechtenstein or Switzerland.

²⁴ [Roehrig, R \(On the Application of\) v Secretary of State for the Home Department \[2023\] EWHC 31 \(Admin\) \(20 January 2023\)](#).

assumed they had British nationality, including regarding their eligibility to British passports and issues relating to their continued right of abode.

- 5.5 The Committee *for* Home Affairs supported the introduction of this Bill as a way of rectifying the matter and ongoing consultation with the UK Government should ensure that the legislation works in the domestic context.
- 5.6 As the Bill will directly apply to the Crown Dependencies, Article 72A(1)(a) of the Reform (Guernsey) Law, 1948 is engaged. This Policy Letter, therefore, includes the substance of the nationality clauses to allow the States to signify their views on it.

6 Article 72A

- 6.1 Article 72A(1) refers to draft Acts of Parliament and 72A(2) to actual Acts of Parliament which have any elements which apply directly in Guernsey (summary of Article 72A and text of it included at Appendix 1).
- 6.2 This Policy Letter therefore outlines the substance of the nationality provisions in the Act and two Bills to allow the States to signify their views²⁵. Specifically:
- (i) in relation to the nationality provisions of NABA (Part 1) which will apply directly to Guernsey, as in Proposition 2
 - (ii) in relation to the nationality parts of the IMB that will apply directly to Guernsey, as in Proposition 4; and
 - (iii) with regard to the Regularisation Bill, that will apply directly to Guernsey, as in Proposition 7.
- 6.4 As noted elsewhere in this Policy Letter, the direct application of nationality provisions is a normal part of the constitutional relationship.
- 6.5 When future Policy Letter(s) are brought concerning the extension of any other provisions of the UK legislation (referred to in this Policy Letter) to Guernsey/the Bailiwick by the making of Orders in Council, these will also engage Article 72A.

7 Alderney and Sark

- 7.1 The manner of consultation by the UK Government on the IMB and the subsequent drafting of this Policy Letter have been discussed at Bailiwick Council meetings in March and June 2023. The Committees have shared the Policy Letter with the Policy & Finance Committees of Alderney and Sark for use by their jurisdictions if so wished, with tailored propositions as required.

²⁵ The issue of the prospect of an Article 72A debate on this bill was raised in questions following the President's statement to the States on Wednesday 29th March 2023.

7.2 Sark has enacted equivalent legislation to Article 72A in section 63A of the Reform (Sark) Law, 2008²⁶. Consequently, Sark's Policy & Finance Committee would also need to consider whether to refer the matters considered in this Policy Letter to Chief Pleas.

7.3 Although Alderney has not enacted equivalent legislation, the States of Alderney may wish to consider the same proposals more generally.

8 Engagement and Consultation

8.1 The Law Officers of the Crown – The Law Officers have advised on the proposals, and any legislative and practical changes required as referenced in this Policy Letter.

8.2 Alderney and Sark – As outlined in section 7 above.

8.3 UK Government Departments – Engagement has taken place at Ministerial and officer level with the Home Office, which is responsible for immigration matters, and with the Ministry of Justice, due to its role in managing the UK's constitutional relationship with the Crown Dependencies. Consultation was undertaken by the Home Office about the proposed UK legislation concerning nationality and immigration as set out in this Policy Letter and its application and extension to the Bailiwick. Unfortunately, the extent of engagement prior to publication of the IMB was unsatisfactory and this has been raised with the Home Office and Ministry of Justice.

8.4 Jersey and the Isle of Man – There has been engagement regarding the UK's legislation proposals. In a similar way to the requirements of Guernsey's article 72A, the States of Jersey will be required to consider the direct application and extension of any UK legislation in accordance with its own legislation²⁷.

8.5 The Lieutenant-Governor – Due to his role in nationality and immigration matters, the Lieutenant-Governor has been briefed on the proposals as set out in this Policy Letter.

²⁶ [Reform \(Sark\) Law, 2008.](#)

²⁷ Article 31 of the [States of Jersey Law 2005.](#)

9 Resource implications of the proposals

- 9.1 It is not anticipated that additional resources will be required in respect of the UK legislation identified in this Policy Letter.

10 Compliance with Rule 4

- 10.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

- 10.2 In accordance with Rule 4(1)

- a) In accordance with Rule 4(1)(a), this Policy Letter contributes to States' objectives and policy plans by supporting one of the four main priorities identified within the 2022 Government Work Plan, Priority 2 "Managing the effects of Brexit; Meet international standards", which includes enhancing the Bailiwick's constitutional resilience and the continuing development of Guernsey's international identity, as well as workstreams focused on enhancing the borders of the Bailiwick; implementing and maintaining an appropriate immigration and nationality service structure to enable the delivery of the post-Brexit business-as-usual functions; and meeting the rights and obligations for the CTA.
- b) In accordance with Rule 4(1)(b), the Committees have consulted with other parties as outlined in Section 8 above, in accordance with Rule 4(5). The Committees will continue to consult and engage with relevant stakeholders regarding this matter, including States' Committees, the Office of the Lieutenant-Governor, UK Government departments, Alderney and Sark, together with the Crown Dependencies of Jersey and the Isle of Man.
- c) In accordance with Rule 4(1)(c), the Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- d) In accordance with Rule 4(1)(d), the resources required to fulfil the Propositions of this Policy Letter are set out in this document.

- 10.3 In accordance with Rule 4(2):

- a) In accordance with Rule 4(2)(a), the Propositions relate to the duties of the Committee *for* Home Affairs because its mandate includes responsibilities to advise the States and develop and implement policies on matters including the immigration regime. The Propositions relate to

the duties of the Policy & Resources Committee because its mandate includes responsibilities to, “advise the States and to develop and implement policies and programmes relating to: (a) leadership and co-ordination of the work of the States” which includes “developing and promoting the States’ overall policy objectives”, “promoting and facilitating cross-committee policy development” and “(c) external relations and international and constitutional affairs, which includes: 1. the island’s constitutional position and the relationship with the Crown; and 2. relations with the United Kingdom and other jurisdictions. The Committee’s mandate also includes exercising powers and performing duties conferred on it by extant legislation (in this case, those in Article 72A of the Reform (Guernsey) Law, 1948, as amended).

- b) In accordance with Rule 4(2)(b), it is confirmed that the Propositions have the unanimous support of both Committees. In relation to the Committee *for* Home Affairs, however, its non-voting Member, Advocate Harwood, was not present when the final draft of this Policy Letter was approved.

Yours faithfully

Committee *for* Home Affairs

Policy & Resources Committee

R G Prow
President

P T R Ferbrache
President

S P J Vermeulen
Vice-President

M A J Helyar
Vice-President

S E Aldwell
L McKenna
A W Taylor

J P Le Tocq
D J Mahoney
R C Murray

P A Harwood OBE
Non-States Member

Article 72A of the Reform (Guernsey) Law, 1948

The Reform (Guernsey) Law, 1948 was amended in 2019²⁸ to insert Article 72A, which requires the Policy & Resources Committee (unless it considers it unnecessary) to refer any proposal that:

- (a) a provision of a draft UK Act of Parliament should apply directly to Guernsey, or
- (b) an Order in Council should be made extending a provision of an Act of Parliament or a Church of England measure, or that is otherwise expressed to have effect in, or to be applicable to or otherwise binding upon, Guernsey,

to the States of Deliberation in order that the States may signify their views on it.

Extract (below) from the [Reform \(Guernsey\) Law, 1948 \(as amended\)](#)

Duty to refer certain matters to the States of Deliberation.

72A. (1) Where it is proposed that –

- (a) a provision of a draft Act of the Parliament of the United Kingdom should apply directly to Guernsey, or
- (b) an Order in Council should be made -
 - (i) extending to Guernsey a provision of an Act of the Parliament of the United Kingdom,
 - (ii) extending to Guernsey a Measure, pursuant to the Channel Islands (Church Legislation) Measures 1931 and 1957, or
 - (iii) that is otherwise expressed to have effect in, or to be applicable to or otherwise binding upon, Guernsey,

the Policy and Resources Committee shall, unless that Committee considers it unnecessary, submit the proposal to the States of Deliberation, in order that the States may signify their views on it.

(2) Where, upon transmission of -

- (a) an Act of the Parliament of the United Kingdom containing a provision described in paragraph (1)(a), or
- (b) an Order in Council described in paragraph (1)(b),

²⁸ The Reform (Guernsey) Law, 1948, was amended following consideration of a [Policy Letter \('Referral of UK Acts of Parliament and Orders in Council to the States of Deliberation'\)](#) in March 2019. [The Reform \(Guernsey\) \(Amendment\) Law, 2019](#) came into effect from 4th November, 2019.

to the Royal Court for registration, it appears to the Royal Court that the States of Deliberation have not signified their agreement to the substance of the provision or Order in Council -

- (i) the Royal Court shall refer the provision or Order in Council, as the case may be, to the Policy and Resources Committee, and
- (ii) the Policy and Resources Committee shall, unless that Committee considers it unnecessary, submit it to the States in accordance with paragraph (1).

Nationality and Borders Act 2022: Part 1 – Nationality

PART 1 Nationality

1. *British overseas territories citizenship*
 1. Historical inability of mothers to transmit citizenship
 2. Historical inability of unmarried fathers to transmit citizenship
 3. Provision for Chagos Islanders to acquire British Nationality
 4. Sections 1 to 3: related British citizenship
 5. Period for registration of person born outside the British overseas territories
2. *British citizenship*
 6. Disapplication of historical registration requirements
 7. Citizenship where mother married to someone other than natural father
3. *Powers of the Secretary of State relating to citizenship etc*
 8. Citizenship: registration in special cases
 9. Requirements for naturalisation etc
 10. Notice of decision to deprive a person of citizenship
4. *Registration of stateless minors*
 11. Citizenship: stateless minors