

**WRITTEN QUESTION TO THE PRESIDENT OF THE HOME AFFAIRS COMMITTEE
BY DEPUTY J.A. HILTON OF ST. HELIER**

ANSWER TO BE TABLED ON TUESDAY 19th JULY 2005

Question

Would the President inform members –

- (a) whether the States of Jersey Police have the legal authority to stop, apprehend, refuse entry and deport if necessary, offenders arriving in the Island who have criminal records from other jurisdictions in serious crimes including drug related crime, violence against women and children and other violence in general, and, if so, to what extent?
- (b) whether the States of Jersey Police have the legal authority to escort persons off the Island who are apprehended and who have outstanding warrants issued by U.K., EU or Irish jurisdictions who are otherwise not collected by officials from those jurisdictions following notification?
- (c) whether the Committee will review, in liaison with other States Committees as appropriate, legal provisions to control who may, and who may not, enter the Island legally and seek residence and employment? and,
- (d) whether the Committee will enter into discussions with the appropriate authorities on our sister Channel Island, Guernsey, in relation to the implementation of law in connection with (c) above in order to explore how both Islands might work together?

Answer

- (a) The States of Jersey Police have no powers to restrict entry to the Island to persons who are arriving from within the Common Travel Area on the grounds that they have a criminal record, or to refuse entry, or to arrest, detain, or impede the movement of any person on the grounds that they appear to be wanted for an offence in another jurisdiction, or are subject to any warrant or other court order requesting their arrest.

Immigration officers may refuse leave to enter to immigration offenders who arrive from abroad, (not the Common Travel Area), and return them abroad. The Lieutenant Governor may order the deportation of a person, who is not a British National, on the recommendation of the Court, and having taken into account all relevant factors, including any previous criminal record.

- (b) The States of Jersey Police do not have the legal authority to escort persons off the Island who are apprehended and who have outstanding warrants issued by U.K., EU or Irish jurisdictions who are otherwise not collected by officials from those jurisdictions, as they have no power to arrest persons wanted for offences in other jurisdictions. In the case of persons wanted on warrant in other jurisdictions there is still no power of arrest until that warrant is 'backed' in Jersey.

As stated in the previous written answer to the Deputy's question on 21st June 2005, legislation on the 'backing' of English warrants in Jersey is specific in respect of those warrants that can be backed. (Indictable Offences Act 1848, s 13, as amended by the Courts Act 1971, Schedule 8).

Warrants can normally be backed in Jersey in the following cases –

Warrant of arrest of the accused on failure to appear before a Magistrate's Court.

Warrant of commitment in default of payment of a sum adjudged to be paid by a conviction or order of a Magistrate's Court.

Warrant of commitment in default of payment of a sum payable in forfeiture of recognizance.

Warrant of arrest of a witness on failure to appear before a Magistrate's Court.

Warrant of arrest issued by a court having jurisdiction in bankruptcy.

Warrants cannot be backed in the under mentioned cases –

Warrants of arrest of the accused on failure to surrender to bail before a Magistrate's Court (with the exception that one can normally be backed if the offence is indictable).

Warrants of arrest for breach of a probation or community service order.

Warrant of arrest on the commission of a further offence by a person in whose case a probation order or order of conditional discharge has been made.

Legislation in respect of the backing of warrants (Republic of Ireland and Jersey) Order 1965 is again specific

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Where a warrant for the arrest of a person accused or convicted of –

an indictable offence;

an offence punishable on summary conviction within six months of imprisonment, and

an application for endorsement of the warrant is made to the Bailiff by a police officer who produces a warrant and swears on oath that he has reason to believe the person named or described therein to be within the Bailiwick.

However, where a person is accused of an offence, not being an indictable offence but an offence which on summary conviction is punishable by six months' imprisonment, a warrant shall not be endorsed unless the person has previously failed to answer to a summons, or has failed to appear in answer to bail.

(c) The Migration policy, which was adopted by the States in June 2005, states at section 3(c) –

'Ensuring the rights of free movement of people

All British citizens and certain Commonwealth citizens have the right of abode in Jersey and are free to live in and come and go into and from Jersey without let or hindrance, except as may be required under the Immigration Act or as otherwise may be lawfully imposed on any person. Also, all nationals of other E.E.A. Member States (E.U. member States plus Iceland, Norway and Liechtenstein), do not need leave to enter or remain in Jersey – if they do so in circumstances in which they would be entitled to enter or remain in the U.K.

If a new migration policy and regulation systems were to amount to control over these rights, it would be inconsistent with the law, as presently in force. Control of immigration at the point of entry could not be introduced for British, certain Commonwealth and E.E.A. nationals without change to existing international law, which would be extremely difficult and would require the agreement of all affected parties.

In short, the international legal position in which Jersey exists prohibits –

the introduction of immigration or border controls in relation to UK, EEA and certain Commonwealth citizens;

taking measures which would amount to control over the rights of such citizens to come and live in the

Island;

the Island from treating UK citizens differently from citizens of other EU states and EEA citizens - in relation to their rights to establish themselves in the Island, and;

taking actions which might not be consistent with the UK Immigration Act as extended to Jersey, Article 4 of Protocol 3 and European Court judgements relating thereto.

Another aim of the proposals is to uphold these existing international commitments regarding the rights of free movement of people.'

During the debate on the Migration Policy, adopted by the States in June 2005, the President of the Policy and Resources Committee undertook to review the international legal position with regard to people's right to freedom of entry and whether the States could tighten border controls. The President of the Policy and Resources Committee further undertook to investigate the position in Guernsey with particular reference to whether it would be possible and effective to require individuals seeking entry to state any criminal convictions on application, while maintaining the Island's international commitments. The Home Affairs Committee would welcome the opportunity to contribute to any such policy review and has stated in the Committee's draft Criminal Justice Policy, 'Developing Jersey's Criminal Justice Policy', June 2005, that the Committee will have regard to the outcome of the review undertaken by the Policy and Resources Committee prior to the lodging of the Policy for debate.

- (d) Again, during the debate on Migration Policy, the President of Policy and Resources Committee indicated that he would be willing to raise the issue of border controls with the other British Islands. This issue will be raised at the forthcoming inter-Island conference to be held in the Isle of Man on 26th July 2005. Both the Presidents of the Policy and Resources and the Home Affairs Committees will be attendees at the conference.