

2.8 Deputy F.J. Hill of St. Martin of the Minister for Home Affairs regarding the compatibility of the Draft Prison (Amendment No. 6) (Jersey) Law 200- with the Human Rights (Jersey) Law 2000:

In light of the response given by the Assistant Minister for Home Affairs on 27th March 2007, would the Minister advise Members what advice she has now received to enable her to make the statement in P.18/2007 that the Draft Prison (Amendment No. 6) (Jersey) Law 200- (P.18/2007) is indeed compatible with Convention Rights of the Human Rights (Jersey) Law 2000?

Senator W. Kinnard (The Minister for Home Affairs):

I will be dealing with these matters in detail when I propose the amendment under public business so I will be brief now to save the States time. In accordance with advice received, I am content that the power to test for drugs, which is a new Article 13(a) in the amendment referred to in the question; the power to test for alcohol, which is 13(b) in the amendment; and the power to search prisoners under 13(c) in the amendment are compatible with Article 8.2 of the European Convention on Human Rights. These powers can be justified on grounds that they provide a reasonable and proportionate means of dealing with discipline, crime prevention and health and safety in the prison. The rules that will eventually be made under Article 29 for the photography, measuring and fingerprinting of prisoners will be submitted for a Human Rights check in due course once they have been drafted.

2.8.1 The Deputy of St. Martin:

The Law as drafted will allow for authorised male employees to search females, and *vice versa*. Would the Minister inform Members as to advice she received in respect of this particular practice?

Senator W. Kinnard:

Again, this will be covered when I propose the amendment in public business. Article 13(c) is silent on whether a search by an authorised employee should only be carried out by a person of the same sex as the person to be searched. My intention is that Article 13(c) should only be brought into force after the rules governing the implementation of this power have been drafted and checked for further compliance. In due course, therefore, Article 13(c) can only be brought into force through an Appointed Day Act when the rules are ready.

2.8.2 Deputy R.G. Le Hérissier

Could the Minister indicate whether in reaching her decision and considering the advice she made reference to experience in other jurisdictions and whether Jersey's practice is indeed in conformity with that of other jurisdictions?

Senator W. Kinnard:

I am always researching other jurisdictions in relation to matters, and in the general matter of all of the areas that are covered in 13(c), yes, indeed I have researched other jurisdictions, and I will be again referring to those when we come to the main debate.

2.8.3 The Deputy of St. Martin:

Could I ask the Minister that if a female prison officer or a female authorised employee objects to search a male prisoner, would that officer or female authorised employee be subject to discipline action?

Senator W. Kinnard:

Article 77(6) of the Prison (Jersey) Rules says that searches shall be carried out by an officer, i.e. a prison officer, not other employee at the moment, of the same sex as the prisoner, except that a female officer may, unless the prisoner objects, carry out a search of a male prisoner. Obviously, again the rules have to be read in conjunction with the amendments, and that is the position at the

moment, and as I have said, the further rules will be made under the amendment and will be checked and brought into force at the appropriate time by an Appointed Day Act.

2.8.4 The Deputy of St. Martin:

In view of the statement made by the Minister that the provisions under the draft Prison Amendment were compatible with the Convention of Human Rights, but there was no date - and in fact when we asked last time we were informed that an opinion had not been sought - would the Minister agree maybe in future, and maybe not only for Home Affairs but maybe for every Ministerial department, that when that statement is made that a date is put as to when a statement was agreed?

Senator W. Kinnard:

That seems to me quite a sensible suggestion. I think the point was made and I do not know why we have to go over old ground again, how many political points does he intend to score? My Assistant Minister explained that a number of items were lodged together, this was lodged out of turn, and we apologised for that at the time, and the apology still stands.