

**WRITTEN QUESTION TO THE MINISTER FOR HOME AFFAIRS
BY DEPUTY S.S.P.A. POWER OF ST BRELADE**

ANSWER TO BE TABLED ON TUESDAY 4th DECEMBER 2007

Question

- (a) Following the recent Criminal Justice policy debate, will the Minister clarify for members whether a drugs offender or drug trafficker, having been arrested on arrival in Jersey and sentenced to lengthy custodial sentence in Jersey, is also deemed to have committed an offence at the airport or port outside the Island that the he or she departed from?
- (b) Would the Minister inform members why any such drug trafficker/offender cannot be deported back to that departing airport or port before the end of any sentence imposed in Jersey and then banned from entering Jersey again for that undischarged portion of his or her sentence?

Answer

- (a) If a person imports controlled drugs into Jersey, they have committed one, or probably more than one, offence in the Island. As they would have exported the drugs from another jurisdiction they would, probably also have committed one or more than one offence in the other jurisdiction.
- (b) There are a number of points raised in part (b) of the question which I will deal with in turn.

Deportation of foreign nationals

Persons who are not British nationals and who are convicted for serious offences can be, and quite often are, recommended by the courts for deportation at the end of their sentences. The Lieutenant Governor is responsible for ordering the deportations and he will usually follow the court's recommendation though he is not obliged to do so. This is provided for under the Immigration Act 1971, as extended to Jersey.

Deportation before the end of the sentence

Persons recommended by the courts for deportation can be deported before the end of their sentence where arrangements are made for them to serve part of their sentence in the United Kingdom. In these circumstances the Lieutenant Governor will order the deportation immediately prior to the persons removal from the Island.

Although Jersey does not yet have a repatriation of offenders law, the United Kingdom Prison Services treat us as if we did in relation to prisoners from the UK. This means that if a prisoner from the UK (principally England and Wales) requests to transfer to a prison in that jurisdiction and if they can provide supporting evidence of a link and confirmation that they would receive visits from close family if they were transferred then the Prison Service of England and Wales will accept them at zero cost.

We also have an agreement that England and Wales will take any of our prisoners, even if they do not wish to be transferred. This option will incur significant cost to Jersey.

Deportation of British Nationals

British Nationals cannot be deported under Immigration legislation, and there is no other legislation that allows any person, including British nationals, to be forcibly removed from the Island and banned from returning.

Sending persons back for prosecution

The answer to this is given in section 9.41 of the CJP which succinctly explains the position.

"..... the legal position appears to be that there is no existing legal power for the States of Jersey Police or

Customs and Immigration to return suspects to their point of departure. Furthermore, to create such a power might cause legal difficulties with the Common Travel Area (CTA) concept. Since most drug importations originate from the U.K., it is doubtful whether any controls that might be possible would be effective. British nationals arriving from and returning to the U.K. could subsequently arrive from abroad (i.e. outside the CTA) but could not be returned abroad. It could also be argued that law enforcement agencies have a duty to detect and prosecute crime where it occurs. Returning suspects to their point of departure goes against this principle and could cause political difficulties with neighbouring jurisdictions. The international legal position in which Jersey exists prohibits^[1] –

- the introduction of immigration or border controls in relation to U.K., 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 U.K. 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 U.K. Immigration Act as extended to Jersey, Article 4 of Protocol 3 and European Court judgments relating thereto.”

^[1] P.25/2005, *Migration: Monitoring and Regulation*, paragraph 3(c).