

2014.09.09 3.13 Deputy R.G. Le Hérissier of St. Saviour of the Minister for External Relations regarding efforts to remove the restrictions on some Jersey residents to work in the E.U. without a permit:

What steps, if any, are currently being taken to remove the necessity for some Jersey residents to have a “stamp” in their passports restricting them from working in the European Union without a permit?

Senator P.M. Bailhache (The Minister for External Affairs):

As the Deputy will well know, Jersey’s relationship with the European Union and the status of Channel Islanders is defined in Protocol 3 of the United Kingdom’s Treaty of Accession to the European Communities. It would only be possible to change Protocol 3 in relation to the status of Channel Islanders, and indeed in any other respect, with the agreement of all 28 Member States of the European Union and that is a prospect which seems unlikely to be easy to achieve.

3.13.1 Deputy R.G. Le Hérissier:

I do realise this question may be becoming a bit tiresome but could the Minister tell us whether informal approaches have been made? Because it does seem a totally over-the-top procedure that 28 states have to be convened in order to look at what, to a lot of the population, is a very irritating issue. Is there no other way? Have informal approaches been made to the European Union? Thank you.

Senator P.M. Bailhache:

The short answer is no.

3.13.2 The Deputy of Grouville:

Would the Minister acknowledge that the Jersey residents who form part of this group are increasing in number? Also, as the issues are complex to change it, could he set out how he would envisage how we could use this restriction to our advantage, for example, restricting entry to certain people known as drug dealers?

Senator P.M. Bailhache:

Well the Deputy of course is right that it is always very tempting to see if one can find means of restricting the entry of undesirable people, whether from the European Union or indeed from the United Kingdom. I am not aware of evidence that the number of people categorised as Channel Island under the protocol was increasing. I think it is probably worth restating the point that the problems faced by such Channel Islanders are not really very frequent. I have received no representations from anyone defined as a Channel Islander under the protocol indicating that he or she has had any difficulties in relation to that status. If such a person wishes to work in the European Union it is true that a permit would be required. But so far as I am aware there are no particular difficulties in achieving such a permit.

The Deputy of Grouville:

Could I ask a supplementary?

The Deputy Bailiff:

I will come back to you. Deputy Higgins.

3.13.3 Deputy M.R. Higgins:

Would the Minister acknowledge that the reason why it is not on the agenda for discussion with the common market is that to raise this issue would be opening up all the Protocol 3

which would open up a can of worms for the finance industry which did not exist when the protocol was first drafted and that if we raise the issue they will want to bring in all sorts of controls in the finance industry which obviously the Council of Ministers do not want to have? That is the core of it. That is why we do not renegotiate it and I would like the Minister to acknowledge that. Secondly, does he think it is reasonable that all 28 Member States have free movement and people can come to Jersey and reside here even though Jersey men and women do not?

Senator P.M. Bailhache:

The reason why representations are not made to alter the status of Channel Islanders under the protocol has nothing whatsoever to do with the financial services industry. It is because, as a matter of law, it would be very difficult, if not impossible, to achieve an amendment to Protocol 3 without changing the status of Jersey in relation to the European Union. As the Deputy will know very well, there is no present intention to achieve any such change. Sorry, the Deputy asked a second part to the question but I have lost it.

Deputy M.R. Higgins:

Just whether it is right that members in 28 states can come to Jersey and be here but obviously Jersey men and women who have that restriction cannot as an automatic right?

Senator P.M. Bailhache:

It is true that there appears to be this imbalance but the appearance is deceptive because it is open to Jersey to restrict the entry of citizens of the European Union if Jersey wishes to do so. The only caveat upon that is that restrictions would have to be introduced across the board to all citizens of the European Union, including British citizens. As we have no desire at the moment to risk upsetting the common travel area which allows citizens of Jersey to travel freely throughout the common travel area, the prospect of introducing such restrictions has not been contemplated.

The Deputy Bailiff:

The Deputy of Grouville, I cut you off and you had a supplementary.

[11:30]

3.13.4 The Deputy of Grouville:

It was to do with the answer to my question whereby we could use this to our advantage but the last answer has somewhat confused me in that the Minister has now said that we can introduce restrictions. So I would just like to flag-up, can we not use these restrictions in a discriminatory way as I alluded to before, as I gave an example before, so that as indigenous Jersey people are discriminated against, surely we can find a mechanism where we can discriminate against the people that we do not want in this Island, drug dealers as an example.

Senator P.M. Bailhache:

The Deputy is, I am sure, aware that there are 2 different provisions of the protocol that are relevant in this context. The first provision is the definition of a Channel Islander which prevents those who are defined as Channel Islanders from working without a permit in the European Union. The second is the provision of the protocol which provides that the Government of Jersey may not discriminate between nationals of Member States and therefore, as in my answer to Deputy Higgins, it is not possible for restrictions to be placed upon the entry of European Union nationals from other countries without imposing the same restrictions upon United Kingdom citizens and, for the reasons that I have given, we would

not wish to do that. So far as restrictions on drug traffickers and the like are concerned we are able, or that is to say the courts of the Island are able to recommend to the Lieutenant Governor that non-U.K. citizens can be deported from the Island and the Lieutenant Governor has the power under the Immigration Act, as extended to Jersey, to order the deportation of criminals from Jersey in certain circumstances but that does not apply to citizens of the United Kingdom.

3.13.5 Deputy M. Tadier:

Given that the Senator stood on an election platform as being the only one being able to convince 26 States Members all to agree, does he not think that the task of getting 28 European Member States to agree would be much simpler?

Senator P.M. Bailhache:

No, I do not.

3.13.6 Deputy N.B. Le Cornu:

Would the Minister not agree that actual discrimination is being carried out by the Government of this Island and it is indeed ironic that visiting us today is the Ambassador of Romania? His citizens who work here face a 5-year rule; potentially can be regarded discriminatory because they are restricted to the type of employment that they can undertake and many of them are critical that their skills are not fully recognised when a graduate is working in a coffee shop. Whereas, a Channel Islander, although bearing this stigmata, can indeed apply to the relevant government body in France, or wherever in the E.U., and remove that stigmata and then work whereas, here in Jersey, the 5-year rule is unchallengeable.

Senator P.M. Bailhache:

I do not accept that the rule relating to residence in the Island for 5 years is discriminatory. It is a provision that applies across the board to people of all nationalities and it is something which is necessary in order to prevent the population of the Island from rising out of control, which is something that I think the majority of people in this Island would not wish to see.

3.13.7 Deputy R.G. Le Hérissier:

I wonder if the Minister is happy with a situation where it strikes me ... it has often been suggested people use informal means to circumvent basically the stamp. Is he really suggesting that people do that, because surely it should be done in a much more upfront fashion? Secondly, would he promise to take informal soundings? Thirdly, would he look into the issue of people who do not have a grandparent born in Great Britain and therefore do not have automatic European Union mobility? Would you look into that issue because I think the Deputy of Grouville has raised a point there of unintended consequences?

Senator P.M. Bailhache:

I think I have already indicated to the Deputy that no informal soundings have so far been made and I do not think that there is any prospect of such informal soundings being made. The seeking to avoid a provision, which is set out in a protocol that has lasted for 40 years, is not, as I have explained, legally possible without the consent and approval of the governments of all 28 Member States of the European Union and that is just a prospect which is not likely to be capable of being achieved.