

**WRITTEN QUESTION TO THE MINISTER FOR HOME AFFAIRS
BY DEPUTY M.R. HIGGINS OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 10th SEPTEMBER 2013**

Question

Will the Minister advise members –

- (a) the current policy applied by the Immigration Department in respect of applications by spouses of Jersey citizens/residents for indefinite leave to remain in the Island, distinguishing between EU and Non-EU applicants;
- (b) the previous policy that was applied in this situation and when it was changed to the current policy;
- (c) in what ways the current and previous rules differs/differed from those applied in the United Kingdom;
- (d) the legal basis for these current and former rules?

Answer

The Lieutenant-Governor gives Directions to Immigration Officers, in the same way as the Home Secretary does in the United Kingdom, as to the practice to be followed in the administration of the Immigration Acts for regulating the entry into and the stay in the Bailiwick of Jersey of persons of non-European Economic Area nationality.

Subject to meeting the requirements of these Directions, non-EEA national spouses or civil partners of persons present and settled (British citizens or persons free from any restriction as to their employment and the period in which they can stay in Jersey), may apply for visas to enter with a view to settlement. This is also known as indefinite leave to remain (“ILR”).

- (a) The current requirements for ILR as a spouse or civil partner are that:
 - the applicant has completed a period of 2 years as the spouse or civil partner of a person present and settled in Jersey;
 - the applicant is still the spouse or civil partner of the person he or she was admitted join;
 - the marriage or civil partnership is subsisting;
 - each of the parties intends to live permanently with the other;
 - there is adequate accommodation without recourse to public funds in accommodation which they own or occupy exclusively;

- the parties will be able to maintain themselves and any dependants adequately without recourse to public funds;
- the applicant has sufficient knowledge of the English language and life in the UK and Islands (persons under the age of 18 or aged 65 are exempt from this requirement);
- the applicant does not have one or more unspent convictions within the meaning of the Rehabilitation of Offenders (Jersey) Law 2001.

There is also currently scope for immediate settlement, without having to complete the 2 year probationary period, where spouses and civil partners have been living together overseas for at least 4 years and meet the requirements listed above.

European nationals, in other words persons who are nationals of countries in the European Economic Area (“EEA”) and Switzerland, are not required, under immigration legislation, to obtain indefinite leave to remain or to confirm their right of residence. However, when they have lived in Jersey for a continuous period of 5 years they may apply for a document certifying their permanent residence.

“Settled status” under immigration legislation is separate and distinct to the residential and employment statuses conferred by the Control of Housing and Work (Jersey) Law 2012.

(b) The qualifying criteria were last amended in November 2010 and May 2011.

In 2010 an English language requirement was introduced for applicants to demonstrate a command of the English language at level A1 of the Common European Framework of Reference.

In May 2011 a criminality threshold was introduced to settlement applications, requiring applicants to be clear of unspent convictions, prior to indefinite leave being granted.

(c) Prior to July 2012 the family settlement rules in Jersey were the same as in the United Kingdom. However, after 9 July 2012, spouses and civil partners of non-EEA nationality entering the United Kingdom now have to complete a period of 5 years before they may apply for settlement.

There have been other changes to the family settlement route in the United Kingdom, notably:

- a minimum income threshold of £18,600 for those who wish to sponsor spouses or civil partners;
- the scope for immediate settlement for spouses and civil partners who have been living together overseas for at least 4 years has been abolished.

Whilst consideration is currently being given to modifying the Directions of the Lieutenant-Governor in Jersey, the High Court in the United Kingdom recently delivered a judgment on a legal challenge to the minimum income threshold. The Home Office is considering the implications of the judgment and a pause has been

applied on the decision-making on applications when the minimum income threshold has not been met.

Immigration decisions in the United Kingdom are also now exempt from the Rehabilitation of Offenders Act. As a result, references to unspent convictions, as a requirement to make a successful application for indefinite leave to remain has been removed. In light of this, the Minister for Home Affairs has made a request to the Law Draftsman (Ministerial Decision HA-2013-0040 refers) for law drafting to exclude immigration and nationality decision making from the Rehabilitation of Offenders (Jersey) Law 2001.

- (d) The statutory basis for the Directions of the Lieutenant-Governor can be found in Section 1(4A) of the Immigration Act 1971, which is extended to the Bailiwick of Jersey by the Immigration (Jersey) Order 1993.