

2.5 Deputy R.G. Le Hérissier to the Chief Minister regarding health and criminal checks as an integral part of an immigration policy:

Would the Minister state whether there is any legal issue in Protocol 3 or other relevant legislation which prevents health and criminal checks being carried out which are customarily seen as an integral part of an immigration policy?

Senator I.J. Gorst (The Chief Minister):

I would like to ask my Assistant Minister with responsibility for the Migration Advisory Group to answer this.

Senator P.F. Routier (Assistant Chief Minister - rapporteur):

Performing health or criminal background checks which resulted in nationals of the European economic area being prevented from entering and remaining in Jersey would generally be incompatible with the provisions of the Immigration Act 1971 and Jersey's Protocol 3 obligations. Nevertheless, alongside the introduction of the new Control of Housing and Work Law, we are also considering additional controls on nationals of the European economic area, for example, around the 5-year qualifying rule. Also how migrants gain access to some public services and the use of criminal record checks when it comes to the ability to work. If the Deputy would like to assist us in this urgent work, we will report our findings to all Members as soon as we have them.

2.5.1 Deputy R.G. Le Hérissier:

Would the Assistant Minister not concede that the current so-called substitute for an immigration policy has been a catastrophic failure over the last 10 years and would he not accept that a so-called immigration policy which sets up a system of first and second-class treatment once people have arrived is not the way to go? Proper control at the point of entry is the way to go. Would he accept that?

Senator P.F. Routier:

I think Members recognise that our existing legislation needs quite a considerable overhaul and we have decided to do that. The existing legislation does have its flaws, there is no doubt about that, and that is why we have brought forward the new Control of Housing and Work legislation which is a lot stronger than the current legislation. It does allow us to record people's names and addresses and to keep knowledge of where they are working and where they are living. You will have to remind me on the second part of the question, I do apologise.

Deputy R.G. Le Hérissier:

Would he accept that the policy has been a catastrophic failure? That was the first part.

Senator P.F. Routier:

No, I do not, certainly not.

2.5.2 Deputy J.A.N. Le Fondré of St. Lawrence:

Without commenting on the advisability of health checks or not, could the Assistant Minister note, speaking from personal experience, when I worked in an E.U. (European Union) Member State on a work permit, I was required to have a health check so the question is why does it work one way but not the other?

Senator P.F. Routier:

Yes, certainly if you are on a work permit that is possible to have a health check. The original question which was laid, I did speak to the Deputy about the difference between migration and immigration because the immigration policy that we currently have, which is controlled by the Minister for Home Affairs, does give discretion for an Immigration Officer to ask for a health

check or a criminal record check so that already exists in the case of those work permits which are already issued.

2.5.3 Deputy J.A.N. Le Fondré:

The point is if somebody going from here working in the European Union is treated one way, can we not apply that principle coming back into the Island?

Senator P.F. Routier:

I would need to seek advice from the Solicitor General on that. I would certainly find out and come back to the Deputy.

2.5.4 Deputy M.R. Higgins:

The Assistant Minister mentioned about carrying out police checks on people coming into the Island. As Members may be aware from an answer given by the Minister for Home Affairs in the last sitting, on a question I asked about police checks, currently there is no way that we can conduct police checks on European Union citizens or people from Eastern Europe. One of the criticisms I have of that is the fact that local residents applying for work are being told by their employers they must get a police check and yet people coming in from outside the Island are not subject to the same check. They are getting the jobs and our people are not. How are you going to do those police checks if there is no mechanism?

[10:15]

Senator P.F. Routier:

I think the Deputy is mixing up 2 issues here with regard to an employer who has asked for a police check, which is quite within their rights to do that, every employer can seek a police check for any potential employee. What the legislation is focused on is presently the work permit system does allow the discretion of the Immigration Officer to seek a criminal records check but, as identified in the answer which was given previously by the Minister for Home Affairs, the people within the E.U. economic area that is not the case. That does not apply at the present time. It is down to each employer if they wish to have a criminal record check, they can do that.

2.5.5 Deputy M.R. Higgins:

Does that mean that the Customs Officers are going to be stopping everyone when they come into the Island and if they have not got their letter showing they have not got a criminal record, they will be refused entry?

Senator P.F. Routier:

That will be a matter for the Immigration Officer to make any decisions that they wish.

2.5.6 Deputy C.F. Labey of Grouville:

The Assistant Minister keeps on referring to the names and address register as a form of control. Does he still not accept it offers no control whatsoever? It is, as the name suggests, a names and address register that anyone and everyone can put their names to.

Senator P.F. Routier:

The Deputy makes a fair point that the names and address register on its own is not a control mechanism. It is working in conjunction with the Control of Housing and Work legislation where the control comes about. The information which the names and address register provides and with all the other information which is collated from the manpower returns, that is where when a decision has had to be made by an applicant to come into the Island or to set up a business, that is when the control is put in place with all the information that will now be available which has not been available in the past.

2.5.7 Deputy J.A. Martin:

I have just come back from the U.K. I spent 10 days there and the moan is and it is what I would say to our Chief Minister, and say again, a plea. The U.K. is who we are attached to through the E.U., are the softest touch in Europe and they have been for years and everybody is fed up with it. I think when we negotiated our deal, at the time it was good but we have attached our horse to this cart and it is not working. We need to renegotiate because, as Deputy Le Fondré says, it does not work both ways. The U.K. is a soft touch and by that makes us a soft touch. Does the Assistant Minister not agree or can he please look into this?

Senator P.F. Routier:

Certainly, the Deputy raises a fair point about the soft touch culture which may be seen to be an issue in the United Kingdom. We also in Jersey, as I said in my initial answer, need to look at the access to services within our Island because people come to the Island for varying economic reasons. It may be because we have a good education system. It may be because we have a good health system and they do come and use those services. We may need to toughen up on our access to those services and our benefit system. That is part of the work. It is separate from the work that is happening with the new Control of Work and Housing legislation but, as a separate piece of work, we need to seriously look at the access to our services. I think that answers the question.

2.5.8 Deputy M. Tadier:

I am concerned that the Assistant Minister has given inadvertently incorrect information when he says any employer can get a criminal background check. Does he not mean that he can make it conditional on a job offer but if a potential employee does not want to get a background check for whatever reason that the employer, unless it is for certain categories of job, cannot insist on that taking place?

Senator P.F. Routier:

I think the Deputy has a fair point.

2.5.9 Deputy M. Tadier:

If we are talking about an even playing field for local workers versus those who may come from the U.K., with regard to criminal background checks, there is no requirement in Jersey for the police and no ability for them to be able to give a résumé of criminal acts including spent items, so spent items for Jersey people would appear on the background check which the employer has no business asking for whereas somebody in the U.K. could benefit from that not being on their background check. So will the Minister undertake to look into that with data protection because I know it has been raised as an issue in the past?

Senator P.F. Routier:

I think that question would be far better answered by the Minister for Home Affairs than myself but certainly I will discuss it with him and see where it takes us.

2.5.10 Deputy J.G. Reed of St. Ouen:

The Assistant Minister stated earlier on that his department was considering additional controls for E.U. citizens. How confident is he that these controls will comply with Protocol 3 when health and criminal checks do not?

Senator P.F. Routier:

We will obviously look at all the issues with regard to whether things are feasible or not but I think, from the general mood, there is a need to look at what other controls we can put in place. Whether it revolves around really access to services in Jersey and access to benefits is why

people come to the Island that may, in combination with our Control and Housing Work legislation, be the way that we address the issue.

2.5.11 Deputy R.G. Le Hérissier:

It is partly a repeat of our last session. Could the Assistant Minister confirm whether or not the work and residential permit system operated by Guernsey is compatible with Protocol 3? Has he managed to research that issue?

Senator P.F. Routier:

I have not but I know it has been challenged in the European Court a few times over recent years but I cannot recall the outcome of that, but I know it has been challenged.