

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 28TH MARCH 2017**

Question

Will H.M. Attorney General explain how Articles 8(3)(b) and 8(4)(b) of the States of Jersey Law 2005 are Human Rights compliant?

Answer

From a European Convention on Human Rights (“**ECHR**”) perspective the most relevant right is Article 3 of the First Protocol to the ECHR (“**A3P1**”), which provides –

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

Limitations on A3P1 rights are permitted provided that they do not impair the very essence of the rights or deprive them of their effectiveness and provided they are imposed in pursuit of, and proportionate to, some legitimate aim (*Mathieu-Mohin v Belgium* (1987) 10 EHRR 1, para 52).

A state is afforded a considerable margin of appreciation by the European Court of Human Rights (“**ECtHR**”) in determining what is proportionate. The ECtHR case law reflects that restrictions on eligibility to be a candidate may amount to a limitation on A3P1 rights. However, the ECtHR has accepted that stricter restrictions can be placed on the right to be a candidate than on the right to vote and in *Zdanoka v. Latvia* (2007) 45 EHRR 478, the Grand Chamber held (para 106):

“the Contracting States enjoy considerable latitude in establishing constitutional rules on the status of members of parliament, including criteria governing eligibility to stand for election. Although they have a common origin in the need to ensure both the independence of elected representatives and the freedom of choice of electors, these criteria vary in accordance with the historical and political factors specific to each State. The multiplicity of situations provided for in the constitutions and electoral legislation of numerous member States of the Council of Europe shows the diversity of possible approaches in this area.”

Disqualifying a person who has become bankrupt or made a composition or arrangement with his or her creditors from being elected serves legitimate aims of protecting public money and mitigating the risk of undue financial influence effecting the work of the legislature. Arguably a person who is bankrupt or has entered into an arrangement with regard to his or her debts may present a greater risk, both with regard to the proper management of public money and of being subject to undue financial influence. Preventing a person from standing for election for up to five years from the conclusion of the bankruptcy proceedings or the making of the arrangement is not disproportionate to these aims.