

**QUESTION TO BE ASKED OF HER MAJESTY'S ATTORNEY GENERAL ON TUESDAY, 16th
MARCH 2004 BY SENATOR P.V.F. LE CLAIRE**

Question

What is the Island's legal position, particularly in light of human rights considerations, in imposing immigration controls such as work permits on people already established in the Island?

Answer

1. It is not legally permissible to introduce a direct immigration control inconsistent with the provisions of the Immigration Acts 1971 and 1988 as extended to the Island by the Immigration (Jersey) Order 1993, unless the latter Order were withdrawn and repealed. Such a repeal would be likely to involve Jersey withdrawing from the Common Travel Area, which it might be thought would have far reaching consequences.
2. Measures such as a work permit scheme may have an indirect effect on immigration. It is open to Jersey to introduce a new licensing scheme which would require all persons, including British citizens, who do not have recognised connections with the Island, to obtain a licence in order to take employment in the Island.
3. Although the European Convention on Human Rights does not confer a right to work, human rights considerations will be relevant to any scheme proposed. Generalisations should be made only with caution because the answer in any particular case will depend on the detail of the scheme in question. It is possible to design a work permit scheme which is Convention compliant and it is equally conceivable that some schemes would not be compliant. It is likely that any scheme would need to be forward looking rather than retrospective. However, the principle is that no controls could be introduced which interfered with the right to respect for private and family life or any other Convention rights, such as the right to property, (in contracts of employment for instance), unless the interference responds to a legitimate aim under one of the qualifications in the Articles of the Convention, and is proportionate. Once a scheme has been introduced, it may be that where a very short period of residence in the Island is involved or where the applicable criteria for employment have been clearly set out in advance of or on the person's arrival here, it might be possible, absent other human rights considerations, to argue that the person concerned cannot justify the application for a permit by reliance on such period of residence as he or she has.

It might be hard to justify an interference with the right to respect for family life of those resident in the Island before any scheme is introduced.