

P.137/2020 Migration Control Policy (Phase 1)

Migration and Population
Review Panel

25 February 2021

S.R.6/2021



States of Jersey
States Assembly



États de Jersey
Assemblée des États

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Chair's Foreword



The depth of feeling which exists among all Islanders about migration and population control, coupled with the limited time available to carry out this review, meant that I approached the role of Chair of the Migration and Population Review Panel with a great deal of caution.

All the candidates who stood for election in May 2018 were aware that both migration controls and population policy were a major concern to the electorate. Those of us who then entered the States Assembly remain acutely aware of those concerns and the need to differentiate between the controls that are put in place and the broader policy which determines future growth.

Islanders understand many of the consequences of not putting controls in place to limit inward migration and have seen Jersey's population grow above the targets sets by previous governments, with unsustainable growth still continuing today.

The current Chief Minister, Senator Le Fondré and his Council of Ministers made the decision not to proceed with the Migration Policy, lodged by the previous Council of Ministers on the 15th March 2018, and would have been cognisant of the need to act as quickly as possible to develop proposals of their own that would not only provide options to control migration but also set out their own vision for a common population policy.

Such action would be required to balance Jersey's limited resources against the need for continued economic prosperity for the benefit of all in our community. This balance remains a tightrope that this government and its successors will need to walk if it is to maintain the quality of life that Jersey offers its residents.

I think we would all accept that increasing the island's population at 1,000+ a year is unsustainable. The consequences for our health service, schools, roads, housing and our cherished environment will be extremely damaging and, ultimately, lead to a much lower level of wellbeing for islanders.

However, our economic sectors require the necessary workforce to be able to thrive and grow, and some need staff and skills that are not currently available to hire as and when they require them. We have, over a long period of time, become more reliant on a migrant workforce to fill these gaps, and this will continue to be the case but we need to find a way to make sure that this doesn't come at the cost of a lower quality of life for those already living and working here. In addition, and as this review highlights, we must make sure that the lives of those who come to work in the island and that of their families are not negatively impacted. Our policies and controls must abide by International conventions and local employment laws and treat migrant workers fairly and equitably.

The Migration Control Policy (P.137/2020) is based on the work carried out by the Migration Policy Development Board set up by the Chief Minister and its recommendations made in the proposition flowed from this work. The work of this Panel, as set out in its Terms of Reference, has been to focus on the rationale behind the amendments, to assess if the amendments

succeed in providing mechanisms to structure future migration and to consider whether the amendments are fair and equitable.

In the limited time available, we received a good number of submissions from stakeholders on all areas of a proposition that includes a new work permit system and removes the ability to automatically move from one permission level to another (automatic graduation). While the rationale for this is clear, for some potential migrant workers this may be seen as a disincentive to taking up a role in Jersey, and there is a real danger that we will put our economic recovery at risk if local businesses find it increasingly difficult to find the necessary workers, especially at a time when the dual impact of the global pandemic and the implementation of Brexit have not been fully realised.

One of the themes which became clear from the respondents to this review was that there was a lack of understanding about how the new work permits would work alongside immigration rules and whether the costs of new regulation could have financial implications for some businesses. The Panel has included in its recommendations that clarity be provided in these areas to ensure that States Members – and the public - are fully aware of the relationship between the immigration and work permit requirements.

As Chair, I am confident that all of the recommendations we have made are integral to the States Assembly having a better understanding of P.137 and its aims and, will ensure that a population policy can be developed that takes full account of the views of key stakeholders. The new Independent, Statutory, Expert Panel to research and advise on population matters, as set out the proposition and the amendment from Deputy Jess Perchard, will be crucial to this process. To ensure this new panel is truly representative, this Panel has also lodged an amendment to P.137 that provides for the States Assembly to agree the membership of the new independent panel, rather than leaving this responsibility in the sole hands of the Chief Minister.

As I have mentioned, the Panel had an extremely tight timeframe in which to deliver its review and, when work began in early January, it was clear that we would not be able to complete our report in time for the scheduled States Assembly sitting on the 9th of February. We are, therefore, appreciative of the extra time afforded to the Panel by the Chief Minister to complete its work by deferring the debate.

Even with the deferral it was difficult for some stakeholders to provide their written submissions on such a complex issue in the time allocated and the Panel is extremely thankful to organisations and individuals who provided such detailed and thoughtful responses. From the Chamber of Commerce to the Friends of Africa, Jersey, we were provided with comments that not only highlighted their concerns, but displayed an understanding of the complexity of the task the Government has to undertake to ensure that a balanced, fair and equitable approach to migration and population is delivered. Generally, it is accepted that new migration controls are both necessary and long overdue but our report does highlight areas that remain of concern and need to be considered by States Members during the debate.

This report covers a complex policy area and one which often provokes heated discussion from people in all walks of life in Jersey. To maintain the strong community that we are, rightly, so proud of, it's important that migration controls and future population policy work for all who choose to work here, support our economy and make their home in Jersey.

I want to express my sincere thanks to the hardworking and dedicated Scrutiny officers, who the Panel worked so closely with during the review and who kept the Panel focused on the task in hand. I am very grateful to you all. I have mentioned the Panel throughout this foreword without mentioning them by name, but I want to thank my political colleagues Deputy Graham Truscott of St Brelade and Deputy Steve Ahier of St Helier for their support and knowledgeable input throughout a review of such importance to Jersey's future.

A handwritten signature in black ink, appearing to read 'Steve Pallett', with a long horizontal stroke extending to the right.

Senator Steve Pallett
Chair
Migration and Population Review Panel

Executive Summary

The Migration and Population Review Panel was established to review migration and population propositions put forward by the Council of Ministers.

The Panel has applied a phased approach to its work which correlates to the timeline of Government actions which runs over 18 months until the 2022 election.

The first phase of the Panel's work, which is the subject of this report, has been to deliver a high-level assessment of the suggested amendments to the Control of Housing and Work (Jersey) Law 2012 ("CHWL") which provides the Island's current controls regarding access to employment and housing for adults who are legally resident in Jersey.

The Panel has considered the migration and population reports of the Migration Policy Development Board and Corporate Services Scrutiny Panel and views held by Ministers, relevant stakeholders and members of the public.

The Panel wrote to Ministers and relevant stakeholders to obtain further information on their views and policy position. The Panel held two public hearings.

Many of the findings and recommendations that the Panel makes in this report are directly related to the engagement with Ministers and relevant stakeholders. All evidence received by the Panel has been published on the Scrutiny section of the States Assembly website.

The Panel has made a number of recommendations for the Chief Minister to consider. The recommendations focus on making sure that suitable data is available to inform decision making in relation to policy; reviewing further the effect of international factors (Brexit/COVID) on the migration policy and prioritising transparency to the States Assembly to ensure that the changes to the Control of Housing and Work (Jersey) Law 2012 deliver outcomes which match the islands requirements.

The Panel has lodged an amendment to the proposition in relation to the independent, statutory, expert panel which, if accepted, will ensure that the composition of the Panel is subject to a proposition being lodged by the Chief Minister for debate by the States Assembly.

Subsequent phases of the Panel's review will be guided by the timeframes for the Government's action on each part of the proposition. This will give the Panel the opportunity to examine each respective area in detail through targeted reviews.

Findings and Recommendations

FINDING 1

The Immigration (Work Permits) (Jersey) Rules 1995 and its relationship with the Control of Housing and Work (Jersey) Law 2012 is not clear for all stakeholders.

FINDING 2

As currently set, out the short-term proposed Control of Housing and Work Law Permissions in proposition P.137/2020 (“CHWL Permissions”) appear unworkable for agriculture and construction. There is a lack of clarity on skill levels within CHWL Permissions to ensure industry can consider whether they are practical.

FINDING 3

It is not clear to certain stakeholders what would be considered a key role within the CHWL Permissions and therefore what qualifies for long-term status.

FINDING 4

Information about how and what aspects of the CHWL Permissions can be appealed has not been defined which causes concern as the ability to appeal is fundamental to the controls.

FINDING 5

If an applicant is unsuccessful in their application to move from one CHWL Permission to another (for instance, from a nine-month to a four-year permission) they will not be able to re-apply.

FINDING 6

Information on the costs and cost structure have not been outlined in the Proposition and there is confusion among stakeholders about how charges would be applied, whether they would be applied for year-on-year returners and if they are additional to those levied under the immigration.

FINDING 7

Areas such as health professionals and teachers, and qualified finance, legal and digital professionals, may continue to receive a ten-year permission immediately. This is subject to further clarification of the new guidelines.

FINDING 8

Businesses will be able to apply to transfer an employee from a four-year CHWL permission to a ten-year CHWL permission, provided the employer demonstrates that an employee has acquired a level of skill and/or responsibility to justify this permission. Employees will be required to work for the remainder of the ten-year period in the same type and level of occupation.

FINDING 9

Those who wish to renew a nine-month or four-year CHWL Permission will be required to leave the Island for either three months or one year, respectively, to successfully re-apply.

FINDING 10

There is a lack of information about how the CHWL permissions will adapt and react to changing global conditions or fluctuations in industry demand.

FINDING 11

Government acknowledge that robust data to underpin a common population policy is not currently available and this lack of information also has implications for the development of the CHWL permissions.

FINDING 12

Government has provided contradictory statements on the data surrounding the impact of Brexit and COVID-19.

FINDING 13

The new data system which received a £1 million allocation in the 2021 Government Plan is in development and it is anticipated that it will be live by the end of 2021.

FINDING 14

The coherence of policy across Government departments and industry is not clear. This is particularly concerning in relation to economy, immigration, housing, health and community services.

FINDING 15

Renewed CHWL Permissions do not accumulate any entitlement to housing. Access to other services, such as health and social security benefits, may also be inconsistent during the shortest permission period.

FINDING 16

There is currently a disparity between the access to benefits and services which a migrant worker can claim. For instance, while a pension is accrued as a result of a worker's social security record the same individual may be denied a claim for short-term sickness benefit. This will be examined as part of the ongoing benefit review.

FINDING 17

The Children's Commissioner has expressed concern on how international conventions on human rights and the rights of children have been applied when developing the CHWL Permissions and the removal of automatic graduation.

FINDING 18

Digital identification cards will be phased in and will apply in the short-term only to new residents under the CHWL Permissions.

FINDING 19

If paragraph (a) of the proposition is adopted, then the automatic graduation of migrant workers into "entitled to work" and then "entitled" status under the current law will end.

FINDING 20

There is a lack of data about the movement of individuals between industry sectors which is needed to inform the decision to remove automatic graduation.

FINDING 21

The Island's Fiscal Policy Panel, Employment Forum, and the UK's Migration Advisory Committee are being considered as potential models for the proposed Independent Panel.

FINDING 22

An independent, statutory, expert Panel ("Independent Panel") will be established to consult with Islanders, local businesses, environmental and community groups, and other organisations, to advise the Council of Ministers on the common population policy.

FINDING 23

The diversity of the Independent Panel and its ability to reflect the population of Jersey has not been fully considered when developing this proposition. Deputy Perchard has sought to amend this through amendments.

FINDING 24

The Independent Panel is currently expected to consist of three to four members, with members to be selected by the Jersey Appointments Commission.

FINDING 25

It is not specified in the Proposition whether the minutes of the Independent Panel will be made public.

FINDING 26

A Committee of States Members ("the Committee") will be established to determine applications under the Control of Housing and Work Law that fall outside of formal guidelines.

FINDING 27

The Committee will be formed of both executive and non-executive States Members, with Officers making a recommendation on exceptional cases and the Committee responsible for a final decision through majority voting.

FINDING 28

A review is being undertaken by Customer and Local Services and Jersey Customs and Immigration Services into the customer-facing aspects of CHWL applications and immigration entry clearances to improve transparency.

FINDING 29

The Planning Committee, Privileges and Procedures Committee and Public Accounts Committee are being considered as potential models for this Committee. Membership will likely be filled through a mixture of appointments and election.

FINDING 30

The proposal of the Committee has been welcomed by stakeholders, with the caveat that they would like to see flexibility in the lead times for decisions.

FINDING 31

Stakeholders are of the opinion that membership of the Committee should be extended to non-States individuals to represent key industries.

FINDING 32

The Chief Minister is working to deliver a Common Population Policy for debate by the end of 2021.

FINDING 33

It is currently unclear to what extent the 2021 Census will influence the development of a Common Population Policy or amendments to CHWL Permissions.

FINDING 34

The evidence provided confirms that a clear common policy for migration and population is essential for Jersey's future.

RECOMMENDATION 1

Prior to the proposition being agreed by the States Assembly the Chief Minister must provide clarification on the relationship between the Immigration (Work Permit) (Jersey) Rules 1995 and the Control of Housing and Work (Jersey) Law 2012 to ensure they are workable for all sectors of the economy.

RECOMMENDATION 2

Prior to the proposition being debated a report should be provided by the Chief Minister to the States Assembly which details the costs which businesses will incur for employing a migrant worker through the Immigration (Work Permit) (Jersey) Rules 1995 and the Control of Housing and Work (Jersey) Law 2012.

RECOMMENDATION 3

Given the current lack of relevant data in relation to the Control of Housing and Work Law Permissions (“CHWL Permissions”), the Chief Minister must provide a report to the States Assembly on an annual basis confirming:

- the number of CHWL Permissions granted, in what sector of industry and movement between sectors and permissions;
- the appeal process and procedures and number of appeals (successful/unsuccessful);
- how CHWL Permissions responded to demand linked to an economic framework which provides sector plans and anticipated skills gaps;
- coherent policy across departments including immigration, island plan, health and community services;
- how CHWL Permissions remain compliant with Jersey Employment Legislation and International conventions to which Jersey is a signatory;
- the ongoing impact of global factors, including Brexit and COVID-19;
- unintended consequences and impact of the CHWL Permissions for migrant workers inside and outside the Common Travel Area; and recommendations to maintain or alter CHWL Permissions.

RECOMMENDATION 4

The Chief Minister must commit to undertaking further consultation with Agricultural, Hospitality and Construction sectors before the Control and Housing Work Law Permissions are enshrined in law to alleviate their concerns and also address the guidelines for ten-year permissions open to key professionals.

RECOMMENDATION 5

The proposed independent, statutory, expert panel to research and advise on population matters should publish an annual report on its work as is currently done by the UK’s Migration Advisory Committee and include information to inform the States Assembly and Islanders of the work undertaken by the Independent Panel that year and its use of resources, with a potential scope for the report to contain comment on, and recommendations relating to, the Common Population Policy, to help provide a regular review of the Policy.

RECOMMENDATION 6

The Terms of Reference for the proposed independent, statutory, expert panel should be presented to the States Assembly for approval which should include:

- a commitment to include a diverse membership reflecting the Island in terms of race, ethnicity, age religion and gender, as outlined in P.137/2020 Amd;

- a commitment to include representation from the Island's key economic sectors;
- a member who is a human rights lawyer, or receive expert advice from one, to ensure that the European Convention on Human Rights and United Nations Convention on +the Rights of the Child are upheld; and
- targeted civic organisations, such as those which focus on the voice of children and young people.

RECOMMENDATION 7

The independent, statutory, expert panel should seek to fulfil Recommendation 1 of the Corporate Services Scrutiny Panel's 2019 Report on Population and Migration and provide clarity on how we as an Island define, measure and monitor different kinds of contributions, and its Terms of Reference should seek to fulfil the Recommendations of that report related to its composition and diversity.

RECOMMENDATION 8

The Committee of States Members which will hold responsibility for determining applications under the CHW Law must provide Terms of Reference which will be approved by the States Assembly and should include flexibility in lead times to allow for it to respond appropriately to fast-changing environments and changing business needs. The Committee should include key sectors from the community as well as States members.

RECOMMENDATION 9

The Council of Ministers developing a common policy on population should publish a report by the end of December 2021 outlining the work it has conducted on the development of a Common Policy on Population during 2021 and the progress made on each review and system updates outlined in the report to P.137/2020.

Background

1. The amendments proposed to the CHWL by the Council of Ministers are set out in P.137 – Migration Control Policy (“the Proposition”) which was lodged with the States Assembly on 20th October 2020. In his foreword to the Proposition, the Chief Minister, Senator John Le Fondré, asserts that the work is not to be seen as a ‘population policy’ but instead proposals for more responsive migration controls.
2. The Proposition asks the States to decide:
 - (a) that action should be taken to provide more responsive controls in the number of migrants who acquire the right to settle permanently in Jersey and to remove the automatic ‘graduation’ for one Control of Housing and Work permission to another.
 - (b) that the Chief Minister bring forward amendments to the States of Jersey Law 2005 to require the Council of Ministers to develop a common policy on population.
 - (c) that the Chief Minister bring forward amendments to the Control of Housing and Work (Jersey) Law 2012 which:
 - (i) introduce a 9-month CHWL permission that does not lead to permanent residential status.
 - (ii) introduce a 4-year CHWL permission that does not lead to permanent residential status.
 - (iii) introduce a 10-year CHWL permission that may lead to permanent residential status.
 - (iv) introduce a long-term CHWL permission that does provide permanent residential status.
 - (v) introduce enhanced identity requirements for all CHWL cards issued to new residents.
 - (vi) establish an independent, statutory, expert Panel to research and advise on population matters; and
 - (vii) provide for a Committee of States Members to determine applications under the CHW law that fall outside formal guidelines.
3. The Proposition is based on the findings and recommendations of the Migration Policy Development Board (“MPDB”) report. The MPDB was established on 7th March 2019 following a Ministerial Decision signed by the Chief Minister. The remit of the MPDB was: ‘To develop comprehensive migration policy proposals which will deliver more responsive controls over who can come to live, work and access public services in Jersey, improving consistency wherever practical and helping to reduce the Island’s reliance on inward migration’.
4. In addition, amendments to the Proposition have been lodged by Deputy Jess Perchard. The amendments include a deadline of December 2021 for the proposed common population policy development and commits the Government to updating the policy annually based on prior year population growth. It also requests that the Independent Panel being put forward in the proposition should represent the diversity

of the Island's population in age, gender and ethnicity, and that any expert advisors engaged by the Panel should be locally resident.

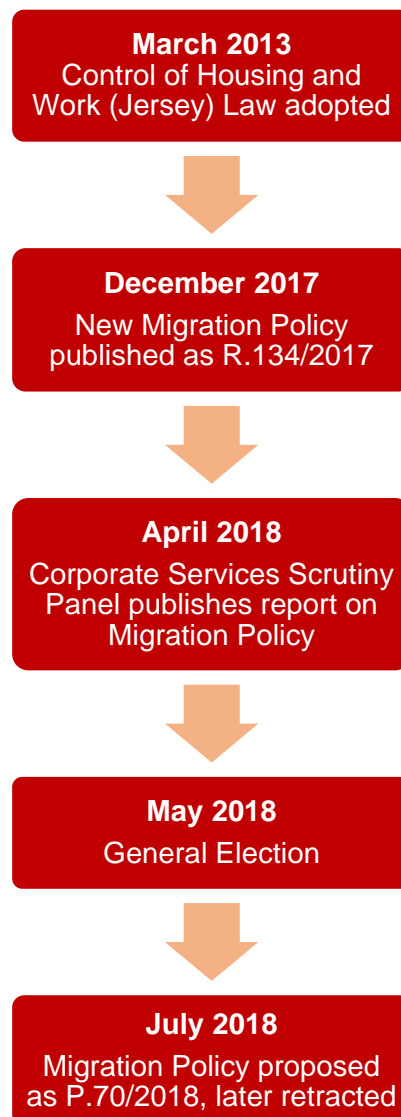
5. This review examines the rationale underpinning the Government's suggested amendments to the CHWL against the backdrop of both the MPDB report published on 31st January 2020 and the findings of the Corporate Services Scrutiny Panel's (CSSP) report on Population and Migration published in November 2019.
6. The Corporate Services Scrutiny Panel's review was established to analyse the Government's approach to delivering a new migration policy and to gain a greater understanding of the views of both the public and relevant stakeholders.

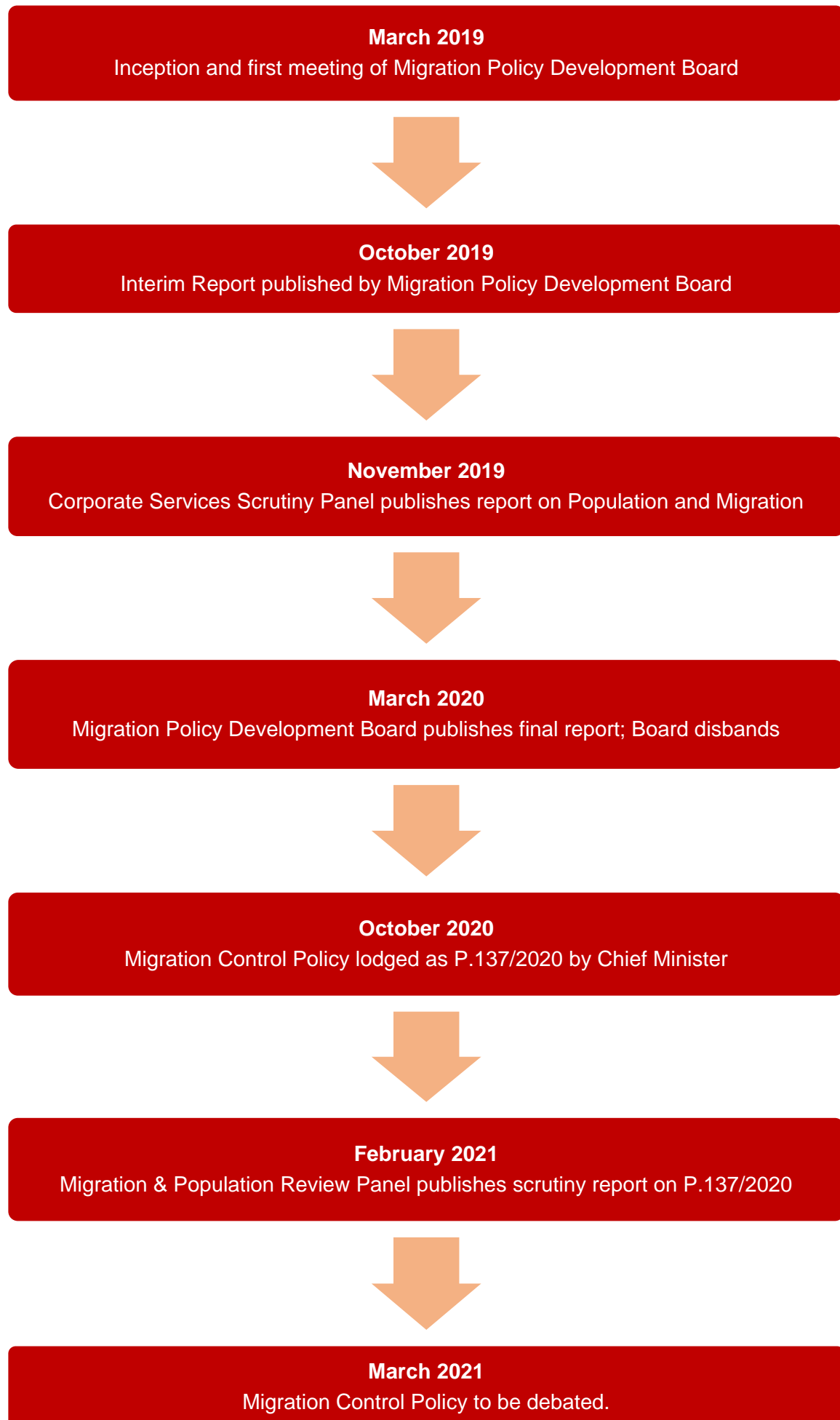
The report outlined statistics for the current population and rate of migration in Jersey and considered future trends. The review also considered the structure and remit of the MPDB and took account of the views of Ministers, relevant stakeholders and members of the public.

As they concluded their work the CSSP was concerned that the approach to developing a policy was not being led by a clear vision for the future population of Jersey and that no agreed Government position existed on what it wanted to achieve in terms of the population size. A ministerial response issued following the CSSP report accepted several of the recommendations made by the Panel.

7. Subsequent phases of the Panel's review will be guided by the timeframes for the Government's action on each part of the proposition. This will give the Panel the opportunity to examine each respective area in detail through targeted reviews.

Figure 1 – Timeline to P.137/2020 Migration Control Policy





Control of Housing and Work (Jersey) Law Proposed Amendments

New Housing and Work Permissions

8. The Proposition lodged by the Chief Minister seeks to agree a course of action which provides the Island with more responsive controls on the number of migrants who 'acquire the right to settle permanently in Jersey'.

Foremost of the actions which the Government suggests will achieve these controls are changes to the permission statuses (proposition (c) (i) – (v)).¹ which currently exist, as follows:

- A nine-month CHWL permission which does not lead to permanent residential status.
 - A four-year CHWL status which does not lead to permanent residential status.
 - A ten-year CHWL that may lead to permanent residential status, and
 - A long-term CHWL that provides residential status.
9. Concerns have been raised by a number of industry sectors about the duration of the permissions and how these would work in practice.
10. Submissions to the Panel made by industry representatives, including those from construction and agriculture, raised issues with the practical application of the nine-month permission within their sector. Individuals who wish to renew a nine-month or four-year CHWL permission will be required to leave the Island for either three months or one year to successfully re-apply. During the factual accuracy checking of this report, the Jersey Construction Council highlighted that in their view the absence period for construction workers under the four-year Work Permit arrangement agreed with the Jersey Customs and Immigration Service equates to the period of employment on the Island (ie if the work period is 3 years, then the period of absence before reapplying is also 3 years). All provided sector-specific examples of areas in which they foresaw difficulty in applying the new permissions.
11. The Jersey Farmers Union (JFU) provided the Panel with two examples. The first was that of skilled workers currently employed under 'registered' status – such as herdsman – who were usually in Jersey for around 10 or 11 months of the year. Many would be able to continue working using the new four-year status permission. However, the four-year permission carries a requirement to leave the Island for 12 months at the end of the period which, according to the industry, could result in the loss of skilled staff.²
12. The second example cited by JFU members focused on the apparent inflexibility for both employer and employee of year-on-year applications for the nine-month permission and the requirement to leave for three months at the end of a permission period. Currently, some seasonal staff in this sector complete two seasons per year, the first as January to July and then returning again in October for a couple of months. The three-month rule would prohibit a return the following January.³

¹ [P.137/2020 – p2](#)

² [Written submission – Jersey Farmers Union](#)

³ [Written submission – Jersey Farmers Union](#)

13. The Jersey Construction Council (JeCC) also highlighted practical issues for an industry which typically hires workers for the duration of a project – the larger of which can be scheduled to take up to six years to complete. Their view is that short-term measures such as nine-month permissions are unworkable in this context and also have implications for both the implementation and cost of health and safety training.⁴ The JeCC also factors in on-boarding issues, such as ITIS and Social Security registrations, and team-building as reasons why the nine-month permissions are not economic for the sector.
14. These concerns were raised at the Migration and Population Review Panel Hearing with the Chief Minister held on Friday 5th February 2021.⁵ The Government response was that the skills base for each of these permission levels would be where the ‘population policy would feed into the controls’. However, a lack of transparency at this stage about which skills levels will be applicable within each permission means it is not possible for industry sectors to fully understand whether the controls would be practical and allow them to employ the staff they required.
15. It is clear from the submissions that despite the consultation, which the Migration Policy Board has conducted with several organisations across the community, the submissions made to the Panel as part of this review evidenced a lack of understanding in some sectors about the conditions which would be applied to the permission statuses and what types of job role and skill level would be considered within each – especially in relation to the short-term permission. Further, the evidence⁶ given by Government is that this information will not be available at the time that the States Assembly is debating the P137 CHWL permissions.
16. The Panel received further submissions from those representing staff in health and social care⁷, who felt that consideration should be given to an automatic long-term permission for key roles. The proposition, as currently worded, provides that roles such as health professionals and teachers, and qualified finance, legal and digital professionals, may continue to receive a ten-year permission immediately but it remains unclear to some stakeholders what roles do or do not qualify. The Panel considers that it is vital that employers and industry bodies receive sufficient clarity on the conditions attached to applications for the various permissions and the ability they have to appeal decisions which could have a detrimental impact on their businesses. Clear information about what aspects of the CHWL permissions can be appealed and how an appeal can be brought also needs to be made available.
17. Businesses will be able to apply to transfer an employee from a four-year CHWL permission to a ten-year CHWL permission, provided the employer demonstrates that an employee has acquired a level of skill and/or responsibility to justify this permission. Employees will be required to work for the remainder of the ten-year period in the same type and level of occupation.
18. Concern has been raised that the four-year permission could be problematic for businesses. ‘A four-year permission is not in line with immigration permissions. This would add another layer of complexity for businesses to navigate and for government

⁴ [Written submission – Jersey Construction Council](#)

⁵ [Migration and Population Review Panel Hearing p15](#)

⁶ [Migration and Population Review Panel Hearing pp14, 15](#)

⁷ [Written submission – Royal College of Nursing](#)

who wish to create a cohesive “one stop” application for work permit and CHWL permissions.’⁸

19. The Panel also considers that it is fundamental to the acceptance of the new permissions that industry sectors understand what consideration of the need for Jersey to maintain and develop economic diversity has been applied and whether Islanders can be assured that the skills which will best achieve that diversity are given sufficient weight in the permissions.
20. Some of the organisations which made submissions to this review sought clarity on the recurrent cost for work permits and for visas as each permission would be viewed as a new contract. The Panel is of the opinion that whether those charges relate to work permits and immigration costs or are fees levied under the CHWL⁹, businesses need a coherent and comprehensive account of the costs involved and how they would be applied. Without this information it is difficult for industry bodies to calculate rather these costs would prohibitive and likely to disproportionately effect specific sectors or business type.
21. The submissions and the questions that industry have in relation to costs and how they would apply the permission periods to their sector points to a wider lack of understanding about how the Immigration (Work Permit) (Jersey) Rules 1995¹⁰ and the CHWL fit together. The Panel is of the view that far greater clarity must be provided around the relationship between the two and whether the former provides the discretion that employers will seek in applying the permissions. Businesses need to be able to make fully informed decisions about whether the permissions are workable for their workforce and sector.
22. The Panel would recommend that the Chief Minister commits to undertaking further consultation with Agricultural, Hospitality and Construction sectors before the CHWL permissions are adopted to alleviate their concerns and also address the guidelines for ten-year permissions open to key professionals.

FINDING 1

The Immigration (Work Permits) (Jersey) Rules 1995 and its relationship with the Control of Housing and Work (Jersey) Law 2012 is not clear for all stakeholders.

FINDING 2

As currently set out the short-term proposed Control of Housing and Work Law Permissions in proposition P.137/2020 (“CHWL Permissions”) appear unworkable for agriculture and construction. There is a lack of clarity on skill levels within CHWL Permissions to ensure industry can consider whether they are practical.

⁸ [Written submission – Jersey Business](#)

⁹ [Chief Minister’s written responses following the Migration and Population Review Panel Public Hearing](#)

¹⁰ [Gov.je – Work Permits: make an application](#)

FINDING 3

It is not clear to certain stakeholders what would be considered a key role within the CHWL Permissions and therefore what qualifies for long-term status.

FINDING 4

Information about how and what aspects of the CHWL Permissions can be appealed has not been defined which causes concern as the ability to appeal is fundamental to the controls.

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If an applicant is unsuccessful in their application to move from one CHWL Permission to another (for instance, from a nine-month to a four-year permission) they will not be able to re-apply.

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Information on the costs and cost structure have not been outlined in the Proposition and there is confusion among stakeholders about how charges would be applied, whether they would be applied for year-on-year returners and if they are additional to those levied under the immigration.

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Areas such as health professionals and teachers, and qualified finance, legal and digital professionals, may continue to receive a ten-year permission immediately. This is subject to further clarification of the new guidelines.

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Businesses will be able to apply to transfer an employee from a four-year CHWL permission to a ten-year CHWL permission, provided the employer demonstrates that an employee has acquired a level of skill and/or responsibility to justify this permission. Employees will be required to work for the remainder of the ten-year period in the same type and level of occupation.

FINDING 9

Those who wish to renew a nine month or four-year CHWL Permission will be required to leave the Island for either three months or one year to successfully re-apply.

RECOMMENDATION 1

Prior to the proposition being agreed by the States Assembly the Chief Minister must provide clarification on the relationship between the Immigration (Work Permit) (Jersey) Rules 1995 and the Control of Housing and Work (Jersey) Law 2012 to ensure they are workable for all sectors of the economy.

RECOMMENDATION 2

Prior to the proposition being debated a report should be provided by the Chief Minister to the States Assembly which details the costs which businesses will incur for employing a migrant worker through the Immigration (Work Permit) (Jersey) Rules 1995 and the Control of Housing and Work (Jersey) Law 2012.

RECOMMENDATION 3

Given the current lack of relevant data in relation to the Control of Housing and Work Law Permissions (“CHWL Permissions”), the Chief Minister must provide a report to the States Assembly on an annual basis confirming:

- number of CHWL Permissions granted, in what sector of industry and movement between sectors and permissions;
- appeal process and procedures and number of appeals (successful/unsuccessful);
- how CHWL Permissions responded to demand linked to an economic framework which provides sector plans and anticipated skills gaps;
- coherent policy across departments including immigration, island plan, health and community services;
- how CHWL Permissions remain compliant with Jersey Employment Legislation and International conventions to which Jersey is a signatory;
- ongoing impact of global factors, including Brexit and COVID-19;
- unintended consequences and impact of the CHWL Permissions for migrant workers inside and outside the Common Travel Area; and recommendations to maintain or alter CHWL Permissions.

RECOMMENDATION 4

The Chief Minister must commit to undertaking further consultation with Agricultural, Hospitality and Construction sectors before the Control and Housing Work Law Permissions are enshrined in law to alleviate their concerns and also address the guidelines for ten-year permissions open to key professionals.

The impact of Brexit and COVID

23. The Panel recognises that the Government is in an unenviable position in relation to the timing of the Proposition. On the one hand, the need for a population policy and a review of the Island's migration controls is urgent and has been for many years. On the other, a combination of global and national factors, compounded by existing local issues around the collection of data do mean that the States Assembly are likely to be debating controls without being able to see the whole picture.
24. The Migration Policy Board published its report before both the onset of the COVID-pandemic and before Brexit and it is not, therefore, based on an accurate picture of the Island's current economic circumstances. Whilst the Panel fully appreciates that change is a constant, its members believe that it is contradictory to suggest that a common policy can be developed taking full account of the impact of these global factors at a time when we are still determining what that impact will be.
25. The Panel remains concerned that while the Chief Minister has given assurances that the development of the population policy will take 'full account of Brexit and COVID issues'¹¹ and that the new permissions would be implemented without this knowledge. In addition, the Panel also remains unclear how the CHWL permissions will be able to adapt and react to changing global conditions or fluctuations in industry demand.
26. In their submission, the Chamber of Commerce point out that: 'Brexit itself has brought the requirement for the Future Border and Immigration System Work Permit, which will itself prove more challenging and costly to attract the skills and workforces required for many sectors in Jersey from outside of the Common Travel Area (CTA).' In addition to this new challenge, Chamber believes that many of the sectors which have been disrupted the most by the restrictions necessary to control the pandemic are those which would be most affected by the changes to the CHWL contained in the Proposition.¹²
27. The post-pandemic and post-Brexit trading conditions and the need to fully understand the impact that both will have are concerns for all our industries and, of course, most particularly those with a reliance on a migrant workforce. The Jersey Hospitality Association submission notes the reduction in the available labour market post-Brexit and cautions against making changes now without a fuller understanding of the new landscape they are operating in.¹³

FINDING 10

There is a lack of information about how the CHWL permissions will adapt and react to changing global conditions or fluctuations in industry demand.

¹¹ [Chief Minister's written responses following the Migration and Population Review Panel Public Hearing](#)

¹² [Written submission – Jersey Chamber of Commerce](#)

¹³ [Written submission – Jersey Hospitality Association](#)

Decisions based on data

28. Coupled with this changed economic landscape, and as acknowledged by the Chief Minister¹⁴, there is a lack of data on a number of key issues which will dictate, not only the shape of a future population policy, but also, in the Panel's opinion, the migration controls which sit alongside that policy.
29. Many of the submissions made to the Panel, including those from Jersey Finance, Jersey Business and the Chamber of Commerce reflect on the need for solid statistical information on key areas. These include, current and projected skills gaps and how workers move between industry sectors once they achieve Entitled Status under the current CHWL¹⁵.
30. The Government's own view is that: 'The data that we collect is very specific at the moment and it does not help us see the picture as a whole. Holding the history of people working through the system is an absolutely key requisite of the new data system that we are setting up at the moment.'¹⁶
31. However, it is also clear from the evidence provided to the Panel that the new data system, for which £1 million was allocated in the Government Plan¹⁷, is still in the scoping phase following the recent appointment of a project manager. The Government anticipates that 'it will be close to the end of the year by the time that it is up and running'¹⁸ and that it will not be until 2022 that the benefits of the system begin to be felt.¹⁹ Yet, this is the system which will be producing the data to inform the Government's Population Policy – also due to be presented before the end of the year at the timing of writing this report.
32. The IT system is not the only major project in train this year which have a material impact on the development of migration controls which support a comprehensive Population Policy. The Census takes place in March this year with the resulting information not becoming available in late 2021.

There is an obvious danger that without detailed information, the migration controls outlined in the Proposition will not achieve what they seek to.

33. Given the current lack of relevant data in relation to the Control of Housing and Work Law permissions ("CHWL permissions"), the Panel recommends that the Chief Minister must undertake to provide the States Assembly with an annual report which confirms:
 - the number of CHWL Permissions granted, in what sector of industry and movement between sectors and permissions;
 - the appeal process and procedures and number of appeals (successful/unsuccessful);
 - how CHWL Permissions responded to demand linked to an economic framework which provides sector plans and anticipated skills gaps;
 - coherent policy across departments including immigration, island plan, health and community services;

¹⁴ [Migration and Population Review Panel Public Hearing p7](#)

¹⁵ [Written submission – Jersey Finance](#)

¹⁶ [Migration and Population Review Panel Public Hearing p25](#)

¹⁷ [Migration and Population Review Panel Public Hearing p26](#)

¹⁸ [Migration and Population Review Panel Public Hearing p26](#)

¹⁹ [Migration and Population Review Panel Public Hearing p7](#)

- how CHWL Permissions remain compliant with Jersey Employment Legislation and International conventions to which Jersey is a signatory;
- ongoing impact of global factors, including Brexit and COVID-19;
- unintended consequences and impact of the CHWL Permissions for migrant workers inside and outside the Common Travel Area; and recommendations to maintain or alter CHWL Permissions.

FINDING 11

Government acknowledges that robust data to underpin a common population policy is not currently available and this lack of information also has implications for the development of the CHWL permissions.

FINDING 12

Government have provided contradictory statements on the data surrounding the impact of Brexit and COVID-19.

FINDING 13

The new data system which received a £1 million allocation in the 2021 Government Plan is in development and it is anticipated that it will be live by the end of 2021.

Access to Services

34. The Panel are concerned about both the rights of migrant workers and how these are reflected in the controls and their access to services and care, these concerns were also raised by the JFU and the Children's Commissioner in their submissions.²⁰ Renewed CHWL Permissions do not accumulate any entitlement to housing. Access to other services, such as health and social security benefits, may also be inconsistent during the shortest permission period.
35. At the Public Hearing it was confirmed to the Panel that a Government review is currently taking place and there is an acknowledgement that the current system is complex and confusing and that access to hospital services is not equitable.
36. There is currently a disparity between the access to benefits and services which a migrant worker can claim. For instance, while a pension is accrued as a result of a worker's social security record the same individual may be denied a claim for short-term sickness benefit.
37. It is also not currently clear how these services and Government policy across a wide range of related topics, from the economy, immigration, housing, health and community services come together to create a coherent whole.
38. This is work which the Panel believes, along with the provision of robust statistical data and clarity on the application of permissions, should ideally be available to States

²⁰ Written submissions – [Jersey Farmer's Union](#) and [The Children's Commissioner for Jersey](#)

Members and the public before they can make informed decisions on whether the controls set out in P137 would be effective and equitable.

39. The Council of Ministers developing a common policy on population should publish a report by the end of December 2021 outlining the work it has conducted on the development of a Common Policy on Population during 2021 and the progress made on each review and system updates outlined in the report to P.137/2020.

FINDING 14

The coherence of policy across Government departments and industry is not clear. This is particularly concerning in relation to economy, immigration, housing, health and community services.

FINDING 15

Renewed CHWL Permissions do not accumulate any entitlement to housing. Access to other services, such as health and social security benefits, may also be inconsistent during the shortest permission period.

FINDING 16

There is currently a disparity between the access to benefits and services which a migrant worker can claim. For instance, while a pension is accrued as a result of a worker's social security record the same individual may be denied a claim for short-term sickness benefit. This will be examined as part of the ongoing benefit review.

Migrants Rights

40. The Children's Commissioner for Jersey, Deborah McMillan, provided a detailed and helpful written submission to the Panel and was also called as a witness to a Public Hearing²¹.
41. The core of the Commissioner's submission was that there was an opportunity to mould policy and controls which are based, from the outset on the rights of migrant workers and their families. 'The Migration Control Policy should consider and refer to the United Nations Convention on the Rights of the Child (UNCRC) and the European Convention on Human Rights (ECHR). Indeed, there is a requirement for public authorities to act in a way which is compatible with the ECHR and with the UNCRC and to take into account and apply those two Conventions when reading the laws and regulations of Jersey. Therefore, the Policy has to ensure that both Conventions are at the forefront of its approach.'²²
42. The Panel is of the opinion that there is currently little assurance that the rights of workers and their families have formed a central part of the decision-making behind the controls which have been set out in P137.

²¹ [Migration and Population Review Public Hearing with the Children's Commissioner for Jersey](#)

²² [Written submission – the Children's Commissioner for Jersey](#)

43. While it is understood that the scope of this review is focused on the changes necessary to the CHWL not the wider population policy, it is not clear how the development of the permission periods dovetail with the rights that workers have under current legislation or as a result of international conventions.
44. It would be helpful to understand whether the social and humanitarian concerns raised by Friends of Africa, Jersey, and the Children's Commissioner, including the impact on family life, the impact on children's rights, the integration of migrants in the Jersey community and equality of access to services, were considered in the development of the permission time periods and the loss of automatic graduation. The Panel comments further on this later on in the report.
45. A migrant workforce is important for Jersey and the Island needs to remain an attractive place for people to come and work. Concerns have been raised, not least in the post-Brexit landscape, that this will not be the case if too many restrictions are in place and, crucially, if the Island is not offering the benefits and rights that meet workers' expectations.
46. Concerns remain that, as currently drafted, the permissions will create unfairness – especially for those on short-term permissions – hinder their integration into the community and provide a lower quality of life.²³ In turn, this disparity could mean that people seek work somewhere other than Jersey.

FINDING 17

The Children's Commissioner has expressed concern on how international conventions on human rights and the rights of children have been applied when developing the CHWL Permissions and the removal of automatic graduation.

Enhanced Identity Requirements

47. Paragraph (c) (v) of the Proposition calls for the introduction of 'enhanced identity requirements for all CHWL cards issued to new residents'²⁴. The proposal for this digital identification is phased and allows, in the first instance for a physical card, including a photograph of the cardholder.²⁵
48. The Panel is of the opinion that more detailed information needs to be provided on the identification cards, not least whether photographic identification could be used in a discriminatory way, especially given that the current proposal only requires new residents to have a card.

FINDING 18

Digital identification cards will be phased in and will apply in the short-term only to new residents under the CHWL Permissions.

²³ [Written submission – Friends of Africa, Jersey](#)

²⁴ [P.137/2020 – p2](#)

²⁵ [P.137/2020 – p28](#)

Loss of Automatic Graduation

49. Paragraph (a) of the Proposition requires the States Assembly to agree that: 'action should be taken to provide more responsive controls on the number of migrants who acquire the right to settle permanently in Jersey and to remove the automatic 'graduation' from one CHWL permission to another.'²⁶
50. This is a key component of the Proposition and both the Panel and many of those who made submissions agree that more responsive controls are needed and are lacking in the current CHWL.
51. The removal of the automatic ability to move between permissions is predicated on the assumption, given the data that is currently available, that this ability to graduate to a different status and accumulate rights and access to housing and services is a significant factor in the Island's rising population since the introduction of the CWHL.
52. It is the view of the Chief Minister that it is right that this control, together with the amended CHWL permissions, should be in place in order that a meaningful debate is able to take place on a population policy.
53. In contrast, the view of the Panel is that many of the issues which have already been highlighted in detail in this report and in the submissions provided, need to be carefully considered by the States Assembly when making changes to the controls that it and future Assemblies have over the employment and housing of those who seek to live and work in Jersey.
54. The fear expressed to the Panel is that the loss of automatic graduation could have unintended consequences for a number of industries if it is implemented without access to robust information, including data about the movement of workers between industries once they have achieved Entitled Status. As already detailed in this report, this information will not be available until the Government's new migration data system is in place, at the end of this year at the earliest.
55. It has also been highlighted to the Panel that the Proposition does not seem to provide a clear path for an individual to move between the permissions; from a nine-month to four-year permission, for instance. The Jersey Farmers Union provided an example which also resonates for other industries: 'The semi-permanent migrant staff who hold key roles in our businesses all started as low skilled workers. But these individuals displayed something in their early time in Jersey which made their employer select them for training in skills such as tractor driving or herdsman. In future, this will become increasingly difficult if they cannot be kept for more than nine months.'²⁷
56. The submission made by Jersey Business also outlines areas which require clarity and consideration in relation to the removal of automatic graduation. These include the fact that the removal essentially turns roles into 'temporary fixed terms contracts' which are harder to recruit for and create potential challenges for succession planning and the attractiveness of Jersey to migrant workers.²⁸

²⁶ [P.137/2020 – p2](#)

²⁷ [Written submission – Jersey Farmers Union](#)

²⁸ [Written submission – Jersey Business](#)

57. As a result of the submissions, the view of the Panel is that more information needs to be available to stakeholders about how transition between permissions would be achieved and at what point in a permission it could be requested.
58. As outlined earlier in this report, the Panel also feel that there needs to be a clearer understanding of how social and humanitarian considerations had a bearing on the development of the amendment to remove automatic graduation. For instance, whether due consideration was given to any potential conflict with the United Nations Convention on the Rights of the Child. Again, while the Chief Minister has suggested that there will be further consultation with the Children's Commissioner through subsequent phases of this work, the Panel is of the opinion that this information should underpin the amendments contained in the Proposition.

FINDING 19

If paragraph (a) of the proposition is adopted, then the automatic graduation of migrant workers into "entitled to work" and then "entitled" status under the current law will end.

FINDING 20

There is a lack of data about the movement of individuals between industry sectors which is needed to inform the decision to remove automatic graduation.

Creation of an Independent, Statutory, Expert Panel

59. Paragraph (c) (vii) of the Proposition provides for the creation of "an independent, statutory, expert Panel to research and advise on population matters".²⁹ The Independent Panel would provide recommendations directly to the Council of Ministers³⁰ on the impact of their agreed population policy and proposals for changes to policy as needed".³¹
60. The Proposition outlines the evidence collected as being taken from "local business, environmental and social groups as well as collecting statistics and examining international factors", as well as "expanded data collection"³² from the CHWL administration system. The proposition also suggests that subgroups may be formed to research and advise on specific topics.
61. During the Panel's Public Hearing with the Chief Minister, it was confirmed that the Independent Panel would be set up "along the lines of the Fiscal Policy Panel" and that the terms of reference for the Panel would be developed in due course.³³ The

²⁹ [P.137/2020, p.2](#)

³⁰ [P.137/2020, p.7](#)

³¹ [P.137/2020, p.30](#)

³² [P.137/2020, p.31](#)

³³ [Public Hearing with the Chief Minister, p.30](#)

- proposition's report highlights the Employment Forum as another body which could be considered during the Independent Panel's formation.³⁴
62. The Assistant Chief Minister noted at the hearing that developing a population policy would involve finding the best compromise between economic, environmental and community tensions and that the role of the Independent Panel would be to advise on reaching that balance and to "engage heavily in the local community to understand those tensions on what the Island really wants."³⁵
63. The MPDB suggested modelling this proposed Independent Panel on the UK's Migration Advisory Committee (MAC), which is an independent and non-statutory, non-departmental public body established to provide transparent, independent, and evidence-based advice to the UK Government on migration issues.³⁶ The report to the Proposition further outlines that Ministers are expected to undertake a review of the "most appropriate model" for this Independent Panel.³⁷ The Panel recommends that the practice of publishing an annual report on its work, in line with the requirements of the MAC, be replicated.
64. The Panel is of the opinion that further attention also needs to be focused on the diversity of the Independent Panel and how stakeholders from across the community and with specific and relevant expertise are represented.
65. As a starting point, the Panel would like to draw attention back to the first recommendation made by the Corporate Services Scrutiny Panel in its 2019 report on Migration and Population. While this recommendation was made in relation to the MPDB, the Panel believes that it provides the right basis for the composition and operation of the Independent Panel. CSSP stated that: "Clarity is needed on how the Island measures the value of residents, including how we define, measure, and monitor different kinds of contributions. Defining the value of a resident purely in economic terms poses a risk to how they are treated, and the social value of vital industries and vocations should be considered as much as the economic value."³⁸
66. The Panel notes the February 2021 amendment (replacing a withdrawn amendment originally lodged in October 2020) lodged by Deputy Jess Perchard which seeks to make it mandatory that the Independent Panel be "representative of the population in terms of age, gender and ethnicity and includes locally resident expert advisors".³⁹ Deputy Perchard notes the need for the proposed Independent Panel to both reflect the diversity of the Island and that Islanders are "best placed"⁴⁰ to understand the Public's "concerns and perceptions of the population size and spread at any given time"⁴¹.
67. The Panel notes the confirmation given by the Assistant Chief Minister made at the Public Hearing prior to the lodging of Deputy Perchard's updated amendment that: "We are in active and positive discussion with Deputy Perchard. We all know that it is a matter that she takes very seriously, and quite rightly so. However, we are discussing

³⁴ [P.137/2020, p.31](#)

³⁵ [Public Hearing with the Chief Minister, p.30](#)

³⁶ [P.137/2020, p.31](#)

³⁷ [P.137/2020, p.31](#)

³⁸ [Corporate Services Scrutiny Panel – Population and Migration Report, pp.7-8](#)

³⁹ [P.137/2020 Amd., p.4](#)

⁴⁰ [P.137/2020 Amd., p.3](#)

⁴¹ [P.137/2020 Amd., p.3](#)

with her how to work around the Jersey Appointments Commission ways of appointing such boards that is paramount to the way that we do things. We are in discussion so watch this space.”⁴²

68. The amendment is further supported by the Children’s Commissioner who stated that the Independent Panel must be “diverse and representative”.⁴³
69. The Children’s Commissioner also recommended that a human rights lawyer should be included on the panel or provide advice to it so that the European Convention on Human Rights and United Nations Convention on the Rights of the Child are upheld.⁴⁴
70. The Children’s Commissioner recommended that the Panel should be made up of a “broad range of Islanders”, noting concerns that the membership of the Migration Policy Development Board was not “broad enough and diverse enough”⁴⁵ and these boards should be “truly representative of the whole Island community”⁴⁶.
71. This observation was also reflected in the key findings (Findings 3 and 4) of the Corporate Services Scrutiny Panel’s 2019 report on Population and Migration which outlined that the MPDB had not reached out to relevant stakeholders during its formation. The CSSP report also outlined a number of key recommendations for the structure of the MPDB – including representation from industry, the voice of children, expertise on human rights and the economy – which remain pertinent to the establishment of the proposed Independent Panel.⁴⁷
72. The Children’s Commissioner noted that there was an opportunity to “engage children and young people across the Island because they will have a view on how migrants should be welcomed and treated once they are in the Island”, and suggested establishing a Children’s Advice Group to achieve this.⁴⁸
73. The Panel questioned the Chief Minister on the issue of diversity during its Public Hearing. The Assistant Chief Minister said: “Yes, very much this will come under the umbrella of the Jersey Appointments Commission and the rules are very clear. The way we cast our net to ask people to apply is as far and as wide and as diverse as possible to encourage all people, all colours, creeds, faiths and sects regardless to apply. However, the Jersey Appointments Commission is very strong on after that when we are down to the applications the selection will be made on merit and merit alone. The challenge we have is probably like the Fiscal Policy Panel, which is a very small number, 3 people, of absolute experts in their field. We will be probably a similar-sized panel, 3 or 4, I do not know, but we will be looking at experts in population, statistics, et cetera, that bring direct relevant skills that we require in order to inform our population policy.”⁴⁹
74. At the Panel’s request, the Chief Minister confirmed that the terms of reference will be made available to the Panel in confidence once they have been produced⁵⁰ and the

⁴² [Public Hearing with the Chief Minister, p.9](#)

⁴³ [Public Hearing with the Children’s Commissioner, pp.23-4](#)

⁴⁴ [Public Hearing with the Children’s Commissioner, p.18](#)

⁴⁵ [Public Hearing with the Children’s Commissioner, p.18](#)

⁴⁶ [Public Hearing with the Children’s Commissioner, p.19](#)

⁴⁷ [CSSP report on Population and Migration S.R. 14/2019](#)

⁴⁸ [Public Hearing with the Children’s Commissioner, pp.19-20](#)

⁴⁹ [Public Hearing with the Chief Minister, p.28](#)

⁵⁰ [Public Hearing with the Chief Minister, p.30](#)

Panel's expectation is that it will be made clear at this point whether it is intended that the Independent Panel's minutes will be published.

75. A number of the submissions provided to the Panel support the creation of a diverse and representative Independent Panel.
76. The Friends of Africa, Jersey's submission somewhat reflects Deputy Perchard's amendment in seeking an Independent Panel "made of up a diverse group of individuals, in terms of race, ethnicity, age, religion and gender"⁵¹.
77. Other stakeholders also expressed a wish to be represented in the formation of the Independent Panel. Jersey Business outlined its belief that its contribution would be "valuable"⁵², and that "industry experts from all sectors, particularly those that rely on CHWL permissions as a large part of their workforce"⁵³ should be included.
78. Jersey Finance also stated that it would "like to see appropriate representation on this panel from our sector"⁵⁴.
79. The Panel believes that it is critical that the diversity of the Independent Panel and its ability to source relevant and capable experts from all sectors will be essential for its successful operation, and that a failure to satisfactorily consider these two areas will lead to the production of lower-quality advice. This should also be reflected in the Independent Panel's terms of reference.
80. The Terms of Reference for the proposed independent, statutory, expert panel should be presented to the States Assembly for approval which should include:
 - a commitment to include a diverse membership reflecting the Island in terms of race, ethnicity, age religion and gender, as outlined in P.137/2020 Amd;
 - a commitment to include representation from the Island's key economic sectors;
 - a member who is a human rights lawyer, or receive expert advice from one, to ensure that the European Convention on Human Rights and United Nations Convention on the Rights of the Child are upheld; and
 - targeted civic organisations, such as those which focus on the voice of children and young people.
81. The Panel believes that it is vital that the composition of this important panel is agreed by the States Assembly, as a whole, rather than lying solely in the hands of the Chief Minister.

FINDING 21

The Island's Fiscal Policy Panel, Employment Forum, and the UK's Migration Advisory Committee are being considered as potential models for the proposed Independent Panel.

⁵¹ [Submission – Friends of Africa, Jersey p.3](#)

⁵² [Submission – Jersey Business p.3](#)

⁵³ [Submission – Jersey Business p.3](#)

⁵⁴ [Submission – Jersey Finance, p.3](#)

FINDING 22

An independent, statutory, expert Panel (“Independent Panel”) will be established to consult with Islanders, local businesses, environmental and community groups, and other organisations, to advise the Council of Ministers on the common population policy.

FINDING 23

The diversity of the Independent Panel and its ability to reflect the population of Jersey has not been fully considered when developing this proposition. Deputy Perchard has sought to amend this through amendments.

FINDING 24

The Independent Panel is currently expected to consist of three to four members, with members to be selected by the Jersey Appointments Commission.

FINDING 25

It is not specified in the Proposition whether the minutes of the Independent Panel will be made public.

RECOMMENDATION 5

The proposed independent, statutory, expert panel to research and advise on population matters should publish an annual report on its work as is currently done by the UK’s Migration Advisory Committee and include information to inform the States Assembly and Islanders of the work undertaken by the Independent Panel that year and its use of resources, with a potential scope for the report to contain comment on, and recommendations relating to, the Common Population Policy, to help provide a regular review of the Policy.

RECOMMENDATION 6

The Terms of Reference for the proposed independent, statutory, expert panel should be presented to the States Assembly for approval which should include:

- a commitment to include a diverse membership reflecting the Island in terms of race, ethnicity, age religion and gender, as outlined in P.137/2020 Amd;
- a commitment to include representation from the Island's key economic sectors;
- a member who is a human rights lawyer, or receive expert advice from one, to ensure that the European Convention on Human Rights and United Nations Convention on the Rights of the Child are upheld; and
- targeted civic organisations, such as those which focus on the voice of children and young people.

RECOMMENDATION 7

The independent, statutory, expert panel should seek to fulfil Recommendation 1 of the Corporate Services Scrutiny Panel's 2019 Report on Population and Migration and provide clarity on how we as an Island define, measure and monitor different kinds of contributions, and its Terms of Reference should seek to fulfil the Recommendations of that report related to its composition and diversity.

Committee of States Members

82. Alongside the establishment of an Independent, Statutory, Expert Panel, the Proposition also recommends the creation of a "Committee of States members to hold responsibility for determining applications under the CHWL that fall outside formal guidelines"⁵⁵. It is expected that this Committee will likely succeed the Housing and Work Advisory Group (HAWAG), as currently established by the [Control of Housing and Work \(Jersey\) Law 2012](#).
83. The creation of this Committee follows Recommendation 6.9 by the Migration Policy Development Board, which states that:
- "Where applications genuinely fall outside published guidelines or are subject to appeal, decision making should be undertaken by a committee of 3 States members, elected for that purpose"*⁵⁶
84. The Proposition's report outlines that the Committee would be formed of States Members from both the executive and non-executive members, with a composition similar to that of the States Employment Board, with Officers making a recommendation on exceptional cases and the Committee being responsible for the final decision by majority voting⁵⁷. During the Panel's Public Hearing with the Chief Minister, the Planning Committee, originally recommended by the MPDB in their final

⁵⁵ [P.137/2020, p.2](#)

⁵⁶ [Migration Policy Development Board Final Report, p.56](#)

⁵⁷ [P.137/2020, p.32](#)

- report⁵⁸, the Privileges and Procedures Committee and Public Accounts Committee⁵⁹ were also suggested as potential models for the Committee's structure.
85. The Proposition's report states that the decisions made for appeals are not currently transparent, leading to "a significant volume of enquiries from businesses, as well as the need to refer a significant proportion of individual cases to HAWAG"⁶⁰.
 86. The Panel notes that the Migration Policy Development Board's final report included the suggestion that a review should be undertaken to provide a better external appeal process, which is less time-consuming and expensive for applicants⁶¹. It is expected that this will be facilitated by the formation of this Committee, and the "production and regular review of formal guidelines by the responsible Minister"⁶².
 87. The Panel notes that a similar a review, involving Customer and Local Services and Jersey Customs and Immigration Services, is underway of the "customer facing aspects of CHWL applications and immigration entry clearances to provide a single, clear and transparent application process across both sets of legislation for businesses and migrants"⁶³.
 88. The Chief Minister also said during the Public Hearing that the membership could potentially be a mixture of appointments and election by the Assembly to produce a "mix of members on there to give that right balance"⁶⁴.
 89. It was confirmed by the Head of Policy, Strategic Policy, Planning and Performance that details on the statutory powers would be developed subject to the States Assembly's approval of P.137/2020. The Chief Minister further confirmed that the publication of the Committee's minutes would be "in accordance with legal advice" depending on the nature of decisions taken⁶⁵.
 90. As with the Independent Panel, the terms of reference are expected to be produced by May 2021⁶⁶.
 91. During the Panel's Public Hearing with the Children's Commissioner, the Commissioner confirmed that she supported a broad and diverse base of States Members taking part and noted concerns about the consensus views shared by Members of the Migration Policy Development Board, noting that they were all "very like-minded and that did not allow for the debate and the sharing of different views"⁶⁷.
 92. The Children's Commissioner recommended that the committee should have access to independent legal advice, noting that she had been seeking advice from the leading UK children's rights lawyer Manjit Gill Q.C.⁶⁸.

⁵⁸ [Migration Policy Development Board Final Report, p.71](#)

⁵⁹ [Public Hearing with the Chief Minister, pp.30-1](#)

⁶⁰ [P.137/2020, p.61](#)

⁶¹ [Migration Policy Development Board, p.71](#)

⁶² [P.137/2020, p.32](#)

⁶³ [P.137/2020, p.8](#)

⁶⁴ [Public Hearing with the Chief Minister, p.31](#)

⁶⁵ [Public Hearing with the Chief Minister, p.32](#)

⁶⁶ [P.137/2020, p.38](#)

⁶⁷ [Public Hearing with the Children's Commissioner, p.20](#)

⁶⁸ [Public Hearing with the Children's Commissioner, p.20](#)

93. In their submission, Jersey Business welcomed the proposal to establish this committee, but note that “some flexibility” should be granted to prevent long lead times for decisions. Jersey Business have also recommended that only a majority of members should be politicians, with “a minority membership from the business community”⁶⁹.
94. The submission from Jersey Finance expresses the hope that the Committee “would be enabled to operate flexibly within both policy and its own terms of reference”⁷⁰ and also recommended that the Committee’s composition be “balanced to ensure well-informed representation across the population and political spectrum”⁷¹.
95. The Panel notes that the recommendations made by Jersey Business, requesting the inclusion of core industry experts, and Jersey Finance would indicate that the best model for the formation of the Committee would be the Public Accounts Committee, which, under Standing Orders⁷², consists of an equal balance of States Members and lay (non-States) members, with an additional States Member chairing the Committee⁷³.
96. As outlined earlier in this report, in relation to the formation of the Independent Panel, this Panel believes that recommendations made by the Corporate Services Scrutiny Panel in their report on Population and Migration could be usefully applied when drafting the terms of reference and remit of this Committee. These recommendations include the engagement of industry; awareness of diversity; the aim to include the voices of children and young people; the examination of human rights implications and the impact of migration and population on young people⁷⁴
97. The Panel is of the opinion that the Chief Minister must provide Terms of Reference which will be approved by the States Assembly and should include flexibility in lead times to allow for it to respond appropriately to fast-changing environments and changing business needs. The Committee should include key sectors from the community as well as States members.
98. The Panel would also recommend that the spirit of Deputy Perchard’s amendment in relation to the Independent Panel should be applied to the composition of the committee to ensure that it is “representative of the population in terms of age, gender and ethnicity and includes locally resident expert advisors”⁷⁵.

FINDING 26

A Committee of States Members (“the Committee”) will be established to determine applications under the Control of Housing and Work Law that fall outside of formal guidelines.

⁶⁹ [Submission – Jersey Business, p.3](#)

⁷⁰ [Submission – Jersey Finance, pp.2-3](#)

⁷¹ [Submission – Jersey Finance, p.3](#)

⁷² [Standing Orders of the States of Jersey](#)

⁷³ [Standing Orders of the States of Jersey](#)

⁷⁴ [Corporate Services Scrutiny Panel – Population and Migration Report, pp.8-9](#)

⁷⁵ [P.137/2020 Amd., p.3](#)

FINDING 27

The Committee will be formed of both executive and non-executive States Members, with Officers making a recommendation on exceptional cases and the Committee responsible for a final decision through majority voting.

FINDING 28

A review is being undertaken by Customer and Local Services and Jersey Customs and Immigration Services into the customer-facing aspects of CHWL applications and immigration entry clearances to improve transparency.

FINDING 29

The Planning Committee, Privileges and Procedures Committee and Public Accounts Committee are being considered as potential models for this Committee. Membership will likely be filled through a mixture of appointments and election.

FINDING 30

The proposal of the Committee has been welcomed by stakeholders, with the caveat that they would like to see flexibility in the lead times for decisions.

FINDING 31

Stakeholders are of the opinion that membership of the Committee should be extended to non-States individuals to represent key industries.

RECOMMENDATION 8

The Committee of States Members which will hold responsibility for determining applications under the CHW Law must provide Terms of Reference which will be approved by the States Assembly and should include flexibility in lead times to allow for it to respond appropriately to fast-changing environments and changing business needs. The Committee should include key sectors from the community as well as States members.

Amendment to P.137/2020

98. As previously detailed, Deputy Perchard has lodged an amendment to P.137/2020 that would make the following changes:
- a. to develop the proposed common policy on population by the end of December 2021;
 - b. To annually review the population policy based on “the prior year’s population growth and that includes annually updated infrastructural, educational, health-related, environmental and social requirements of any projected population growth”; and
 - c. To require the independent, statutory, expert panel to be “representative of the population in terms of age, gender and ethnicity and includes locally resident expert advisors”⁷⁶.

The third part of the amendment, outlined above as paragraph c, has already been examined in this report, and therefore does not require further scrutiny. This section will instead focus on the proposals listed above as paragraph a and paragraph b.

99. As previously noted, the Assistant Chief Minister has confirmed that they were “in active and positive discussion” with the Deputy⁷⁷ and the Panel expects that this includes discussion over the set timeframe.
100. The deliverability of the proposed common policy by the end of 2021 is unclear. During the Panel’s Public Hearing with the Chief Minister, the Assistant Chief Minister confirmed that this deadline would be “inconvenient”, because the data from the 2021 Census will not be available until November, and would pose a “risk to the efficacy... of the data to make informed decisions for the population policy”⁷⁸. It is therefore unclear what full role the 2021 Census will play in the development of the Common Population Policy.
101. However, the Head of Policy, Strategic Policy, Planning and Performance clarified that the Population Policy “may have taken place just before or just after that number [the Census figures] is released” and that the policy “will not rely on needing a Census number”⁷⁹.
102. The Panel notes that the timetable provided in the report of the Proposition states that the Interim Population Policy will be published by the current Council of Ministers between January and March 2022, the same time period given to the publication of the Independent Panel’s production of its initial report on population issues. In response to written questions submitted by the Panel following their public hearing, the Chief Minister confirmed that “Ministers are under an obligation to present a policy to the Assembly for debate by the end of this year. We are working to achieve this timetable”⁸⁰.

⁷⁶ [P.137/2020 Amd, p.3](#)

⁷⁷ [Public Hearing with the Chief Minister, p.29](#)

⁷⁸ [Public Hearing with the Chief Minister, pp.6-7](#)

⁷⁹ [Public Hearing with the Chief Minister, p.7](#)

⁸⁰ [Letter from the Chief Minister to the Migration and Population Review Panel, 11 February 2021, p.3](#)

103. The timetable further outlines the expectation that the next Council of Ministers, to be formed after the 2022 General Election, will have responsibility for producing the population policy proper between July and December 2022⁸¹, with the report's foreword stating that:

“Following the election in 2022, the new Council of Ministers will be required to make full use of the new legal and political structures available to them and will be obliged to publish their full population proposals during 2022”⁸².

104. The Panel notes that, alongside the improved diversity of the Independent Panel and deadline of the end of December 2021 for the Common Population Policy, the amendment also calls for an annual review of the population policy based on prior year population growth and updated requirements of future growth. The Panel notes that P.137 includes a commitment to develop and update the IT and technology infrastructure for improved operational processes and the collation of migration data⁸³, which would likely improve the ability to produce this review.
105. During her public hearing with the Panel, the Children's Commissioner stated that she believed a regular review of the policy to be “absolutely necessary” and would be welcomed because of the frequent changes, and that she would support “any better provision of data to States Assembly Members and to any board”⁸⁴.

FINDING 32

The Chief Minister is working to deliver a Common Population Policy for debate by the end of 2021.

FINDING 33

It is currently unclear to what extent the 2021 Census will influence the development of a Common Population Policy or amendments to CHWL Permissions.

FINDING 34

The evidence provided confirms that a clear common policy for migration and population is essential for Jersey's future.

RECOMMENDATION 9

The Council of Ministers developing a common policy on population should publish a report by the end of December 2021 outlining the work it has conducted on the development of a Common Policy on Population during 2021 and the progress made on each review and system updates outlined in the report to P.137/2020.

⁸¹ [P.137/2020, p.38](#)

⁸² [P.137/2020, p.4](#)

⁸³ [P.137/2020, p.23](#)

⁸⁴ [Public Hearing with the Children's Commissioner, p.24](#)

Panel Phase 2 Review

106. As stated earlier in the report, the Panel recognises that the task before the Chief Minister and his Ministers and Officers is an unenviable one. They have an extremely constricted timeframe in which to produce a long-anticipated policy which is crucial to Jersey's future and has now been further complicated by the impact of global factors which will have a far-reaching impact.
107. The Chief Minister set out in his foreword to P137 – Migration Control Policy that the first focus in 2021 would be the controls outlined in the Proposition.⁸⁵ These controls have been the focus of this report.
108. In addition to this work, which the Chief Minister believes should be a precursor to the wider policy⁸⁶, Ministers will begin the work of develop the broader range of policies that will be needed to support a full population policy.
109. This work includes an economic framework; a skills strategy; a fiscal policy that acknowledges the increasing cost of public services due to the ageing of our population; a housing policy that provides good quality accommodation for all local residents.
110. In addition, the Panel has learned that a review of benefits is underway and also anticipates that the new data system, currently under construction and due for completion by the end of 2021, will provide the Government with information which will be crucial both to the development of the policy and equitable access to services for all the Island's residents.
111. As a result, the second phase of the work that this Panel will undertake, will focus on and develop many of the themes and concerns which have arisen in the preparation of this report, from ensuring our economic prosperity to evidencing that the rights of all those who come to live and work in Jersey and their families have been placed at the heart of policy.

⁸⁵ [P.137/2020 – P4](#)

⁸⁶ [Migration and Population Public Hearing transcript p3](#)

Appendix

Migration and Population Review Panel

Senator S.W Pallett - Chair



Deputy S.M Ahier, St Helier



Deputy G.J Truscott, St Brelade



Terms of Reference

Migration and Population Review Panel

P.137/2020 Migration Control Policy Review - Phase 1

Terms of Reference

The Phase 1* review by the Review Panel will provide a high-level assessment of P.137/2020 - Migration Control Policy (Part C) which specifically relate to the proposed amendments to the Control of Housing and Work (Jersey) Law 2012.

The Panel will:

1. Examine the rationale underpinning the proposed amendments to the Control of Housing and Work (Jersey) Law 2012.
2. Assess if the proposed amendments to the Control of Housing and Work (Jersey) Law 2012 succeed in structuring migration in Jersey against clear strategic priorities.
3. Evaluate if the proposed amendments to the Control of Housing and Work (Jersey) Law 2012 are fair and equitable.

(*Phase 1 correlates to the timeline associated with P137/2020. Subsequent phases will invariably be guided by the timeframes for Government action on the separate parts of the Proposition. This enables the Review Panel to examine the detail of each part through targeted reviews.)

Evidence Considered

Public Hearings

The panel held two public hearings as part of its review:

- 4th February 2021

Witness: Ms D. McMillan, Children's Commissioner.

- 5th February 2021

Witnesses: Senator J.A.N Le Fondré - The Chief Minister
Deputy R.E Huelin of St Peter - Assistant Chief Minister
Ms. S. Duhamel – Head of Policy, Strategic Policy, Planning and Performance
Mr N. Stocks - Senior Policy Officer

The recordings and transcripts for the public hearings can be accessed via the States Assembly website.

Review cost

The costs of this review totalled £700

Written Submissions

The Panel requested evidence from forty stakeholders and responses were received from the following:

- Two Anonymous Members of the Public;
- The Children's Commissioner;
- Citizens Advice Jersey;
- Cycle4Jersey;
- Friends of Africa, Jersey;
- Institute of Directors, Jersey;
- Jersey Business;
- Jersey Chamber of Commerce;
- Jersey Construction Council;
- Jersey Finance;
- Jersey Farmers' Union;
- Jersey Hospitality Association;
- Liberate;
- NASUWT
- Royal College of Nursing; and
- Unite the Union

To view all the submissions, responses to written questions and public hearing transcripts, please visit the Panel's review [page](#) on the States Assembly website.



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