

STATES OF JERSEY



‘(J)’ CATEGORY HOUSING CONSENTS: CONTRACT POLICY – REPORT

**Presented to the States on 20th June 2006
by the Minister for Housing**

STATES GREFFE

REPORT

Introduction

The following report has recently been approved by the Housing Minister. The Migration Advisory Group has also considered the issue, and supported the recommended steps.

In developing the migration policy as approved by the States, the existing Regulation and Undertakings and Development Law, and the Housing Laws, are being reviewed with a view to identifying areas where they can be harmonised with the migration policy.

The contract policy is one such area, made the more urgent by the apparent inconsistencies with the Economic Growth Plan and Employment Law.

“(j)” Category Consents ‘Contract Policy’ – Report for Housing Minister

Summary

In the significant proportion of cases, time restricting ‘(j)’ Category consents is no longer consistent with approved policy and law – being the Migration Policy, the Economic Growth Plan, and the Employment Law. Therefore, it is recommended that time limits on ‘(j)’ Category consents be applied only where the employment is time-limited, or where a sizeable uncertainty exists, e.g. a start up venture.

Regulation 1(1)(j) Contract Policy

1. In January 1987 the States, as part of its Immigration Policy, asked the Housing Committee to make time restricted 1(1)(j) consents wherever possible. The objective was to encourage employers to use the time of such an employee to enable local persons to be trained in order to take over from essential employees when time restricted consents expired. This would in time minimise employers requirements for essential employees which in turn would lessen their demand on the housing stock.
2. Since that time the majority of 1(1)(j) Category consents have been time-restricted and where an essential employee moves from one employer to another the period is aggregated to ensure that no individual automatically reaches ten years essential employment and therefore local qualifications. At the time of agreeing to this Policy, it was recognised that employers would face a continuity problem, but within the overall economic circumstances at that time this was considered a price worth paying in order to endeavour to curb inward migration.
3. Over the last couple of years the Housing Committee, as a result of discussions with the then Policy and Resources Committee and business leaders generally, have taken a more relaxed view to the Contract Policy. This relaxation has taken place in order to encourage more highly skilled specialists required by the various business to the Island, and in order to encourage diversity and continuity in the business sector in line with overall States strategic policies. Consents have in the main still been restricted within the 10-year period.
4. With the development of the Economic Growth Plan and the Migration Policy, it would appear that the Contract Policy is less relevant in that it’s aims have been superseded.
5. The continuance of the Contract Policy in its current form is generally not facilitative of economic growth. It provides disincentives to potential applicants from applying for specialist and essential posts, and brings customer and business continuity problems for employers. Further, it adds an additional administrative burden on businesses having to continually re-apply^[1].
6. The Migration Policy recognises that businesses are the best placed to decide who is an essential employee. As businesses are handed the decisions on allocating licenses, it seems reasonable to conclude that time

limits will become obsolete as decisions become focused on pure business grounds. Further, the migration policy supersedes the specific objectives around training a replacement for the time-limited consent, and promotes the training of residents as a whole by firmly linking the granting of licenses to good quality training programmes across the business.

7. Employment Law is an important consideration. It extends its protection to contract staff to prevent contracts being used as an avoidance mechanism. Since employment can continue once a '(j)' consent expires, the non-renewal of a '(j)' contract on the grounds of expiry is potentially unfair (expiry simply means the loss of the right to reside in controlled accommodation).
8. The key point is that a '(j)' contract is the same as any other contract under Employment Law, and therefore it is not expiry of the consent that makes non-renewal fair, but the achievement of the underlying rationale for the '(j)' consent – replacement by a trained up local person. A company which simply replaces one '(j)' with another is likely to be in breach of Employment Law.
9. Concluding on the relationship between Employment Law and the Contract Policy is complex and subject to the details of, as yet, unheard cases. Perhaps the simplest conclusion is that the co-existence of the Contract Policy and Employment Law sends confusing signals to employers and employees, and leaves more open the prospect of unfair dismissal. Reasonably one could go further, and suggest that the Contract Policy on the one hand, and the migration policy and Employment Law on the other, are inconsistent in their aims; the latter seeking to bring greater equity and protects those on contracts, the former explicitly seeks to enable termination.

Impact on Employment and Housing markets.

10. It must be remembered that the current Regulations are likely to remain until new legislation comes into force implementing fully the Migration Policy, and the controls are such that the Minister does retain a fair degree of discretion when determining applications for essential employment. This enables him to treat each case on its merits, and to react to changes in employment and housing needs, and to encourage business that comply with States Economic and Strategic policies.
11. It is very difficult to identify the number of '(j)' Category residents at any one time. The department knows how many consents in principle are granted, but many are not taken up, some employees live in uncontrolled accommodation, some share with locally qualified, and others leave the Island. The monitoring aspect of the Migration Policy will provide this information. The manpower returns for 2005 indicated that there were 740 private sector '(j)' employees, and based on updated figures from the 2001 census, it is estimated that there are currently about 455 '(j)' employees in the public sector and using a '(j)' Category consent. It is not expected that this change in itself will lead to significantly more '(j)' employees, but it should lessen the 'churn' in employees and applications.
12. There is no doubt that at the height of enforcing the policy relating to restricting any particular consent for an individual to no more than 5 years, it did not necessarily achieve the aim of the policy in ensuring that the employee left the Island. Where an employer took the view that the post holder's departure would have a detrimental effect on his business, he merely paid a premium for the employee to move into the uncontrolled sector. With the increased availability of decent more affordable accommodation in the uncontrolled sector, any continued imposition of the policy would be further negated.
13. The impact on the housing market through increased demand through more '(j)' Category employees and their families qualifying is difficult to quantify. It must be remembered that throughout the business sector there is a continuous movement of employees in and out of the Island in response to the economic environment generally, so the granting of unlimited '(j)' consent at the outset does not mean that all will stay and achieve local housing status.

Recommendation

14. The Housing Minister adopt the following policy in relation to the time period of a '(j)' category consent –

- (i) All posts which meet the ‘(j)’ category consent criteria, as noted below, where the employer is well established, and which require extensive knowledge and experience, be granted an unlimited ‘(j)’ category consent on commencement.
 - (ii) All posts which meet the ‘(j)’ category consent criteria, as noted, below, and are required for a specific purpose or time limited period, or where the employer is a new start up, be granted a time limited ‘(j)’ category consent
 - (ii) All existing consents that meet the above criteria be treated as above, either when the employer seeks an extension, or 18 months prior to expiry.
15. The main criteria applied when considering a ‘(j)’ category consent application remain, and are as follows –
- Contribution to the Island
 - Track record in recruiting and training local individuals
 - No suitable local candidate
16. No legislative amendment is required. An approach to the Council of Ministers, and presentation to the States is thought appropriate given the policy issues under consideration.

Re-issue Note

This report has been re-issued as the original version incorrectly showed that it was presented by the Chief Minister.

^[1] *Replacement and extension consents are about 40% of all applications.*