

STATES OF JERSEY



MIGRATION: CONTROL OF HOUSING AND WORK (S.R.9/2011) – RESPONSE OF THE CHIEF MINISTER

Presented to the States on 22nd August 2011
by the Chief Minister

STATES GREFFE

**MIGRATION: CONTROL OF HOUSING AND WORK (S.R.9/2011) –
RESPONSE OF THE CHIEF MINISTER**

Ministerial Response to: S.R.9/2011

Ministerial Response required by: 12th August 2011

Review title: Migration: Control of Housing and Work

Scrutiny Panel: Corporate Services

Introduction

The overall direction of the sub-Panel’s recommendations are welcome and are very much appreciated as a valuable contribution. We also found the process to be constructive and to have been conducted in a spirit of openness and co-operation.

Findings

	Findings	Comments
1	The Control of Housing and Work Law will improve rights relating to obtaining and retaining residential status for non Jersey-born Islanders.	Noted and agreed.
2	There is potential conflict of interest in transferring responsibility for the determination of ‘Licensed’ post applications to the Chief Minister, given the Chief Minister’s central role in the development of population policy and the relatively high number of such posts (currently J-Category) within that Department.	Of the 568 1(1)(j)s employed by the States as at March, 2011, only 8 were employed within the Chief Minister’s Department. Furthermore, and by design, the Advisory Group will provide advice, and naturally a level of scrutiny, for decisions. The Minister can also be held to account by the Assembly, and indeed, by the relevant Panel.
3	The Sub-Panel welcomes the formation of a formal advisory group on the Control of Housing and Work Law and associated licence applications, which will contain the Minister for Economic Development, the Minister for Housing and other ad-hoc Ministers. It is important in helping to maintain a balanced approach to the determination of licence applications and associated matters.	Noted and agreed.
4	The Social Security Department would be in a unique position to correlate the numbers of people arriving with the number and	The operational synergies between the Social Security Department and Population Office are considerable and will be exploited. However, the control of work and housing and of immigration and

	nature of jobs available that cannot be filled by locally qualified persons.	population, are not matters best directed by the Minister for Social Security. It is preferable then that the Population Office remain responsive and flexible, co-ordinating its work with various Departments, including Social Security, Housing, Economic Development, Planning, etc., and directed by the Chief Minister as the Minister best placed to take an over arching view of these central policy areas.
5	The criteria of the J-Category licence will effectively remain under the new guise of the 'Licensed' status.	Both 1(1)(j) category permissions under the existing Law and Licenced status under the new Law give access to housing by virtue of essential employment, to enable the controlled migration of skilled workers. However, the new administrative mechanisms will be far more efficient and cheaper for both business and government, while still containing a high degree of control, for example, specifying the job roles to which Licenced status may be attached, and enabling the Minister to specify Licenced employees by name, direct where they can live, and apply time limits.
6	The concept of the J-Category licence as a short-term appointment to train a locally qualified person to undertake that job has not been adequately applied in the determination of licence applications.	<p>The sub-Panel is incorrect in its understanding of 1(1)(j) policies. The Minister for Housing presented to the States a new "Contract Policy" in 2006 which clearly outlined that the presumption when granting 1(1)(j) consents was that they should be <i>permanent</i> and without time limit.</p> <p>This was considered in the best interests of having a stable workforce and continuity for employers, with less administration for all.</p> <p>In addition, the Island has historically had difficulty generating sufficient numbers of accountants, lawyers, compliance professionals, etc, to support Jersey as an international finance centre. Indeed, local people want a range of career options, hence the need to import some skills and to diversify the economy.</p> <p>At the same time, it is very clear that employing and training locally qualified persons is a foremost consideration in granting 1(1)(j) permissions, and the thrust of the policies is to promote local recruitment and training <i>across</i> an organisation rather than narrowly focused on specific replacements. Notwithstanding this, approximately 40% of permissions remain time limited.</p>
7	Whilst J-Category licences have recently been more tightly controlled by the current Minister for Housing, the pressures from net inward migration have arisen predominantly from the numbers of unskilled and semi skilled workers. This may compound	Every application for staff with less than 5 years residence is subject to scrutiny, including close working with Social Security to support local people into roles in preference to migrant labour. At the same time, where an employer demonstrates they have made all possible efforts to find locally qualified staff, and cannot, and granting the permission appears in the best interests of the

	future problems in the Island as it is this cadre of workers who may be most likely eventually to require income support and social rented housing.	Island, then permissions may be granted <i>within the immigration, housing and economic</i> objectives established by the Assembly and in accordance with prevailing circumstances. These migrants also come to Jersey to work, without having access to benefits, and therefore, tend to be economically active, and no evidence exists that on completing 5 or 10 years they constitute any sizeable drain on Income Support or social rented housing, for example, only 3% of new qualifiers access social housing of any kind. At the same time, this is an important issue, and will receive further analysis.
8	Policy documents relating to the issue of migration should come forward together in a cohesive manner. Such documents would include Economic Growth Strategy, Strategic Plan, Population and Housing policy.	Policies which have implications for population and migration are co-ordinated, and further efforts will be made to ensure they are available to the public and members as a package, for example, by using the Population Office web pages, the Strategic Plan, etc.
9	The Sub-Panel welcomes the provision of the Control of Housing and Work Law enabling a licence for unqualified staff to be varied at any point.	Noted and agreed.
10	The new legislation will provide the States with a much improved depth and range of information, which in turn should lead to decisions related to migration and population policy being made on a much more informed basis.	Noted and agreed.
11	Benefits of the new legislation to businesses will include decreased bureaucracy as manpower, I.T.I.S. (Income Tax Instalment Scheme) and Social Security will be done as one rather than 3 different returns.	Noted and agreed.
12	The introduction of the new Control of Housing and Work Law will lead to noticeably improved rights for unqualified (Registered) residents who will be able to lease in future and therefore have security of tenure, which they do not currently enjoy. This may, however, lead to additional pressure on housing stock.	It will be the responsibility of the Minister to manage permissions for new workers in accordance with the availability of accommodation and within population and immigration targets; and the Island Plan is geared towards ensuring a sufficient supply of accommodation commensurate with population and immigration targets. Accordingly, it is not envisaged that the new rights will lead to excessive or notable additional pressures in terms of demand for housing. To clarify, Registered individuals will only be able to lease Registered property.
13	Work is underway on the Citizens' Online Services Programme aimed at trying to provide easier electronic access across States services, including electronic payments, for Islanders.	Noted and agreed.
14	Closer working between relevant	Noted and agreed.

	parts of Departments in the area of compliance, most notably the Population Office with Social Security, Customs and Immigration and Income Tax will make best use of available resources. Combined with improved sharing of information this will lead to a more efficient and effective compliance operation.	
15	Despite an improved system of compliance it is inevitable that a 'black market' of some size will continue to exist.	The new system will substantially reduce the scope for non compliance and therefore the 'black market'.
16	Many States Departments already successfully handle a lot of sensitive information, and no reason was found to lead the Sub-Panel to believe that this situation will not continue with the introduction of the Name and Address Register. It is of additional reassurance that the Data Protection Commissioner will undertake an independent oversight role of the management of the data on the Register.	Noted and agreed.
17	There is an overall projected saving of £33,000 to the annual cost of administering the new legislation, compared to the current system.	Noted and agreed.
18	A process of public engagement will take place on fees, including outline proposals to achieve full cost recovery for the administration of the Law.	Noted and agreed.
19	The Sub-Panel has not been convinced that sufficient work has been carried out in examination of all of the alternatives to the proposed system of migration controls.	The alternatives have been explored, and that the proposed Law is considered the optimal solution for Jersey. The new tools are also very flexible, able to adapt to changing circumstances and a range of scenarios, for example, a quota of staffing permissions can be granted, or workers can be permitted on an individual basis, and licences can be varied.
20	The use of photographs on registration cards as a means to help prevent fraud has not been given adequate consideration.	The issue of photographs on the cards was given extensive consideration, including being subject to consultation and questions in the Jersey Annual Social Survey. A photograph is not strictly needed on the card for the purposes of the Law, and indeed, presents its own identify fraud risks and costs. However, an option has been included in the Law for the States to make a decision on including a photograph on the card at a later date by Regulation

		if so desired and necessary.
21	The relevant authorities are confident that the provisions of the new legislation give them the ability to prevent untoward increases in inward migration levels outside States approved policy, but the Sub-Panel does not necessarily fully share this confidence. There is an implicit assumption that unqualified immigrants who cannot find jobs will leave the Island, but it remains the case that they might merely sink into the black economy.	It is correct that the new controls do not restrict British and EU nationals from residing in Jersey, by dint of the present constitutional and legal arrangements. However, the controls are constructed and can be applied to achieve population objectives. In particular, the new system will substantially reduce the scope for non compliance and the existence of a black market, and people without jobs, or benefits, or the ability to own or obtain affordable housing, are a lot less likely to come to Jersey or to remain here. Instructively, it is strongly believed that should a prosperous and pleasant place such as Jersey be open to all without restriction to live and work then many more people would come to the Island.

Recommendations

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
1	The Sub-Panel agrees with the improvement of rights relating to obtaining and retaining residential status for new Islanders, but recommends that due attention is given to ensuring that the legitimate expectations and rights of existing Islanders are not overlooked.	CM	Accept	The new Law continues to hold a fundamental presumption that those with strong connections or associations with Jersey will have preferential treatment when it comes to work and housing, as is appropriate in a small jurisdictions with limited resources. At the same time, increased tenancy rights for new migrants and fairer qualifications rules are also long overdue.	July 2012, when Regulations are presented.
2	The Control of Housing and Work Law should be amended to give responsibility for the determination of 'Licensed' post applications to the Minister for Housing, in line with the current system for J-Category licence applications.	CM	Reject	The position of the Chief Minister was outlined in Comments presented to the States in response to amendments lodged to the Laws. In brief, it is felt that the Chief Minister is best placed to take an overview of the competing issues and demands involved with managing immigration and population.	
3	The Sub Panel recommends that the Population Office should	CM/ States	Reject	See all comments above, including in the	

	be located within the Social Security Department.			“findings” section.	
4	There needs to be a more concerted and transparent approach to ensuring that J-Category equivalent licences are issued, wherever possible, for the purpose of training up locally qualified people to permanently undertake the temporarily licensed role.	CM	Accept	Local talent should be supported wherever possible and in so far as practical. Although, 1(1)(j) figures are publicly available, a review as to how and what is published will be undertaken to enhance transparency.	Immediate
5	There must be an inherently cautious approach applied to the allocation of unqualified licences.	CM	Accept	This approach is already adopted to support population objectives and in response to prevailing economic and employment conditions.	Immediate
6	Consideration should be given to addressing the following points: <ul style="list-style-type: none"> • wording in the Policy Statement for giving unqualified people work is ambiguous and should be made absolutely clear; • headcount should not be applied or count to young and old people thus giving incentives to firms to train the young and employ the older generation. They should however be residentially qualified. • evidence of jobs being widely advertised locally should be demonstrated before any unqualified licences are given. • temporary contracts should not be renewed in a continuous manner. The time worked on temporary contract should not count towards the 5 year licence. 	CM	See comments	<ul style="list-style-type: none"> • Accept: The policy statement remains under continual review and a revised statement will be issued shortly, likely before end 2011, having reference to the recommendation. However, applications from businesses are by nature varied, and the policy statement needs to be sufficiently flexible to apply to all types of circumstances. • Reject: The new Law enables all Entitled people, whatever their age, to be engaged without restriction. It follows that the recommendation is not applicable. • Accept: Evidence that suitable locally qualified people are not available is already required, including proper advertising. It is agreed that this should continue to be the case. 	End 2011 Immediate

				<ul style="list-style-type: none"> Reject: The rules around Entitlement will be linked to length of residence in Jersey, not the type of contract under which an individual is engaged. 	
7	The annual <i>Jersey In Figures</i> should include publication of an industry sector breakdown of the numbers of unqualified and J-Category (and equivalent) licences.	CM	Accept	These figures are already readily obtained from the Statistics Unit website. However, it has been agreed with the Statistics Unit that these figures will also be included in the “Jersey in Figures” booklet in future (indeed, that the all population, workforce and immigration disclosures in “Jersey in Figures” will be reviewed and enhanced).	Immediate
8	The Business Assessment and Licensing Section General Policy Statement 2009 should be re-drafted with greater clarity and precision on the criteria it contains regarding licence applications.	CM	Accept	The policy statement remains under continual review and a revised statement will be issued shortly, likely before end 2011, having reference to the recommendation. However, applications from businesses are by nature varied, and the policy statement needs to be sufficiently flexible to apply to all types of circumstances.	End 2011
9	All efforts should be made to achieve the savings being examined by Information Services regarding the new IT system for the Population Office.	CM	Accept		August 2012
10	Further research should be carried out on the areas of work permits, border controls and Protocol 3, and reported accordingly. Decisions should then be made at a political level as to their worth.	CM	Accept	Ongoing review of legislation and related arrangements are appropriate and will take place, for example, the Migration Advisory Group will review the new Housing and Work legislation following its implementation to assess its effectiveness, and	Ongoing

				<p>related constitutional matters will be considered by the Constitutional Review Group. Furthermore, the Isle of Man and Guernsey are reviewing their own arrangements, and close contacts will be maintained. Some points should be noted, however:</p> <ul style="list-style-type: none"> • Border controls designed to prevent persons residing in Jersey who are currently able to do so, may have unwelcome consequences for the ability of Island residents to reside elsewhere. It follows that great care is needed. • Work Permits have costs associated for businesses and government, when the proposed new Law already has all the necessary powers to restrict the ability to work in the Island. • Individual work permit/licence systems as operated in the Isle of Man and Guernsey have not led to any noticeable difference in their population and immigration trends compared to Jersey. 	
11	More work should be undertaken on the benefits of the inclusion of photographs on registration cards.	CM	Accept	This is accepted in so far as these matters remain under continual review, and in particular, a post implementation review of the new system as to its effectiveness, etc, including in relation to the photograph issue, is appropriate.	Ongoing
12	There should be an	CM	Accept		Ongoing

	examination of the levying of a charge for the registration card to help cover costs and act as an incentive to hand the card back, which in turn will lead to a more efficient way of knowing who has left the Island.				
13	Further work needs to be undertaken to ensure that there can be certainty in the ability of the authorities to align the number of net inward migrants with those levels established by States decisions.	CM	Reject	The system has the ability to achieve States objectives over time, and will be operated as such. Having said this, as noted above, these matters are not closed, and a post implementation review is appropriate.	Ongoing

Conclusion

The overall direction of the sub-Panel's recommendations are welcome and the individual recommendations have been accepted in the main as a valuable contribution.

However, in particular, it should be pointed out that the Minister's view remains that (i) Work Permits are not the best solution for Jersey in view of the bureaucracy involved, and (ii) that the new controls will enable strategic objectives to be achieved over time. Furthermore, any constitutional changes need to involve great care and should only be progressed with a mind to the overall benefits and wider future of the Island.

Having said this, most of the matters raised by the sub-Panel remain under review, and a post implementation review of the legislation and systems once it has been introduced should take place to verify its effectiveness in achieving its outlined aims, and that it is "fit for purpose".

On a final note, it would be welcome should a sub-Panel in the area of migration and population continue to exist to support and secure the overall objectives of the Assembly.