
STATES OF JERSEY



P.137/2020 MIGRATION CONTROL POLICY (PHASE 1) (S.R.6/2021): RESPONSE OF THE CHIEF MINISTER

Presented to the States on 27th April 2021
by the Chief Minister

STATES GREFFE

**P.137/2020 MIGRATION CONTROL POLICY (PHASE 1)(S.R.6/2021):
RESPONSE OF THE CHIEF MINISTER**

Ministerial Response to:	S.R.6/2021
Ministerial Response required by:	8th April 2021
Review title:	P.137/2020 Migration Control Policy (Phase 1)
Scrutiny Panel:	Migration and Population Review Panel

INTRODUCTION

The Chief Minister thanks the Scrutiny Panel for its detailed report on Phase 1 of the Migration Control Policy.

The Chief Minister is also grateful for the support of the Panel members in the consideration of P.137/2020 and the recent in-committee debate on the development of a population policy.

FINDINGS

	Findings	Comments
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.	This point is raised in the report that accompanies P.137/2020 – Migration Control Policy P.8 section 1.4 Customer Focus: <i>“The current processes for applying for immigration and migration permission can be confusing and time-consuming for businesses and workers seeking to move to Jersey ... To reduce this confusion surrounding the processes for migration and immigration we have already started a joint review of the customer facing aspects of CHW applications and immigration entry clearances to provide a single, clear and transparent application process across both sets of legislation for businesses and migrants”</i>
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	The Panel’s views are noted. The detailed criteria that will apply to each new CHWL permission have not yet been developed and will be subject to the direction of the common population policy. Liaison with businesses will continue as these permissions are developed.

	Findings	Comments
	on skill levels within CHWL Permissions to ensure industry can consider whether they are practical.	
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.	The Panel's views are noted. See finding 2
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.	The ability to appeal decisions will be maintained and full details will be set out in the amended CHWL legislation.
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.	The details of the transition from one permission to another will be set out in the CHW Law amendments and will be subject to States debate and approval. Applications will be made against published guidelines & criteria, alongside published appeals processes.
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.	The Panel's views are noted. Any change to the fees that will apply to each new CHWL permission have not yet been developed and will be subject to the direction of the common population policy. Liaison with businesses will continue as these fee structures are developed.
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.	The Panel's views are noted. The criteria that will apply to each new CHWL permission have not yet been developed and will be subject to the direction of the common population policy. Liaison with businesses will continue as these permissions are developed.
8	Businesses will be able to apply to transfer an employee from a four-year CHWL permission to a ten-year CHWL	The details of the transition from one permission to another will be set out in the CHW Law amendments and will be subject to States debate

	Findings	Comments
	<p>permission, provided the employer demonstrates that an employee has acquired a level of skill and/or responsibility to justify this permission.</p> <p>Employees will be required to work for the remainder of the ten-year period in the same type and level of occupation.</p>	<p>and approval. Applications will be made against published guidelines & criteria, alongside published appeals processes.</p>
9	<p>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.</p>	<p>This level of detail will be set out in the legislation to be debated by the States Assembly later this year. Immigration permission can only be obtained from outside the jurisdiction. However, it is unlikely that the CHW Law will set similar geographic conditions as it applies equally to CTA and non-CTA citizens.</p>
10	<p>There is a lack of information about how the CHWL permissions will adapt and react to changing global conditions or fluctuations in industry demand.</p>	<p>The Panel's views are noted.</p> <p>The challenges of Brexit and Covid bring the need for a common population policy into sharp focus. A population policy will adjust from time to time as the needs of the island change.</p> <p>The CHWL controls are designed to provide responsive controls to enable government to be more selective in meeting the needs of Jersey's economy and society. They will adapt and react to changes through changes to the common population policy.</p> <p>P.137 includes the creation of an expert panel under the CHW law. The panel may not be formed during 2021 but project resources are available to ensure that a broad view is taken of international evidence where this is relevant to Jersey.</p>
11	<p>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.</p>	<p>The Panel's views are noted.</p> <p>The work of the MPDB was carried out with knowledge of Brexit, and this led to the recommendations to the CM for flexible and responsive controls to be able to adapt to changes from Brexit. P.137/20 was lodged in October 2020 with knowledge of Covid-19 and this led to the flexible and responsive controls being maintained as they were considered to give the flexibility to adapt to Brexit and Covid-19</p>

	Findings	Comments
		implications. The development of these controls was approved in principle by the by the States Assembly on 03/03/21.
12	Government has provided contradictory statements on the data surrounding the impact of Brexit and COVID-19.	The Panel's views are noted.
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.	Correct
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.	The Panel's views are noted. The accompanying report to P.137/2020 (sections 1.3 & 6) highlights that truly reducing the island's reliance upon net inward migration in order to address population growth requires a joined-up approach across multiple Ministerial areas. This is the reason for proposing an amendment the States of Jersey Law 2005 to require the Council of Ministers to develop a common population policy – this proposal was adopted in principle by the States assembly on 03/03/21.
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.	The criteria that will apply to each new CHWL permission have not yet been developed and will be subject to the direction of the common population policy. This includes the ability to accumulate periods of residence towards access to the local housing market. The CHWL does not control access to health or social security benefits. A review of these areas is included in the overall project timetable.
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	P.35 Section 8 of the report accompanying P.137/2020 highlights the importance of a fair package of rights and benefits for migrants, and that Ministers will undertake a review of all government funded services that include

	Findings	Comments
	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.	residency requirements with the aim that access to benefits and services is fair and aligned across all areas.
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.	It is a prerequisite that all legislation that Jersey passes is compliant with the ECHR. As such the existing CHWL, and any proposed changes, are and always will be human rights compliant. We will continue to seek legal advice when considering the changes to the CHWL to ensure that the CHWL remains compliant with ECHR. Children’s Rights Impact Assessments will be conducted for the migration control and population policies to ensure that due regard is given to the UNCRC, and the Children’s Commissioner will continue to be fully involved in the development of these policies.
18	Digital identification cards will be phased in and will apply in the short-term only to new residents under the CHWL Permissions.	The intention is to have enhanced identity requirements so that the registration process is more secure and the options in how to do that are being discussed by the project team. Details will be developed during the year.
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.	Noted. this will apply to residents of Jersey who arrive once the new CHW legislation is adopted and enacted. Paragraph (a) of P.137/20 has now been adopted by the States Assembly.
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.	The Panel’s views are noted.
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.	Correct

	Findings	Comments
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.	Correct and as voted for by the States Assembly in adopting P.137/2020 paragraph (c) vii.
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.	Deputy Perchard’s amendments in this regard to P.137 para (c) vii were not approved by the States Assembly when debated on 03/03/21.
24	The Independent Panel is currently expected to consist of three to four members, with members to be selected by the Jersey Appointments Commission.	Correct. The appointment through the Jersey Appointments Committee will be as per P.137/2020 Second Amendment as amended voted for by the States Assembly on 03/03/21.
25	It is not specified in the Proposition whether the minutes of the Independent Panel will be made public.	Correct. Further consideration will be given to this.
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.	Correct and as voted for by the States Assembly in adopting P.137/2020 paragraph (c) viii.
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.	Correct. The exact details have not yet been decided, but this is a likely avenue to be considered.
28	A review is being undertaken by Customer and Local Services and	Correct. A review of aspects of these processes took place at the end of 2020, in preparation for

	Findings	Comments
	Jersey Customs and Immigration Services into the customer-facing aspects of CHWL applications and immigration entry clearances to improve transparency.	the end of the Brexit transition period. Work will continue between JCIS and CLS to streamline processes where possible.
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.	Correct
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.	Noted.
31	Stakeholders are of the opinion that membership of the Committee should be extended to non-States individuals to represent key industries.	Noted.
32	The Chief Minister is working to deliver a Common Population Policy for debate by the end of 2021.	Correct, and as per P.120/2020 agreed by the States Assembly.
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.	P.120/20 requests that a common population policy be presented for debate by the States Assembly by the end of 2021, and the CM is aiming to publish that policy by November 2021 to meet that deadline. Census 2021 data will not be available until 2022 & after the population policy debate.
34	The evidence provided confirms that a clear common policy for migration and population is essential for Jersey's future.	Noted.

RECOMMENDATIONS

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
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.	CM	Accept	Additional information on the relationship between the Immigration (Work Permit) Jersey) Rules 1995 and the Control of Housing and Work (Jersey) Law 2012 (“CHW Law”) was provided to States Members ahead of the P.137/20 debate. Lodged as an addendum to P.137/2020 & emailed to States members 01/03/20.	01/03/21
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.	CM	Accept	Additional information on 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 was provided to States members ahead of the P.137/20 Debate. Lodged as an addendum to P.137/2020 & emailed to States members 01/03/20.	01/03/21
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:	CM	Consider	Improving the quality and quantity of data available to the general public and States Members will be a key output of the proposed migration and population polices. The exact nature of those reports will be developed over the next year. Section 7 of the accompanying report to P.137/2020 highlights the importance of clarifying the processes involved in applying for CHWL	31/12/2021

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
	<ul style="list-style-type: none"> • 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 			<p>permissions and in having greater transparency of the actions taken by government to manage the island's population.</p> <p>A number of projects are being developed across government over the next year or so (e.g. e-census, monthly combined returns, improved IT system for CHWL permissions). These will be incorporated with other existing information sources to provide regular, comprehensive and publicly available reports.</p> <p>The independent, statutory, expert panel will also produce reports on migration and population matters, and these will be further defined within its terms of reference.</p> <p>Information on CHWL permissions is currently published online at: https://www.gov.je/Government/Departments/CustomLocalServices/Pages/PopulationOfficeReports.aspx?ReportYear=2020</p>	

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	<p>conventions to which Jersey is a signatory;</p> <ul style="list-style-type: none"> the ongoing impact of global factors, including Brexit and COVID-19; <p>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.</p>				
4	<p>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.</p>	CM	Accept	<p>Agriculture and hospitality representatives were invited, and made representations to the Migration Policy Development Board in their considerations of the changes to the migration controls. These were carried forward by the CM into P.137/20.</p> <p>Further consultation will take place with businesses ahead of the States debate on the CHWL amendments. The ACM is liaising with businesses on the impacts of Brexit and Covid-19 in his considerations for the Population policy debate.</p> <p>Guidance on the new CHWL permissions will be produced ahead of the debate on CHWL</p>	31/12/2021
5	<p>The proposed independent, statutory, expert panel to research and advise on population</p>	CM	Consider for Acceptance	<p>The independent, statutory, expert panel will produce reports on migration and population matters, and</p>	

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
	<p>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.</p>			<p>these will be further defined within its terms of reference.</p> <p>Subject to the views of the Independent Panel itself, an annual report would be a suitable method of disseminating and publicising the work of the Panel.</p>	
6	<p>The Terms of Reference for the proposed independent, statutory, expert panel should be presented to the States Assembly for approval which should include:</p> <ul style="list-style-type: none"> • 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 	CM	Consider in part	<p>The P.137/2020 amendment referred to in this recommendation was withdrawn prior to debate by the States Assembly on 03/03/21.</p> <p>The intention is for the panel to be set up as per P.137/2020 Second Amendment as amended voted for by the States Assembly on 03/03/21. This Panel will be outlined in the amended CHWL which the States Assembly will be asked to approve in due course.</p> <p>The CM and ACM have agreed to provide the terms of reference of the Panel to the Scrutiny Panel once these are developed. The need for the Terms of Reference to be approved by the States Assembly will be further considered.</p>	

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
	<p>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.</p> <p>The Committee should include key sectors from the community as well as States members.</p>		<p>Consider</p> <p>Reject</p>	<p>responsibility for determining such applications. The detailed composition of this Committee will be outlined in future CHWL amendments which will be brought to the States Assembly for debate.</p> <p>The CM and ACM have agreed to provide the terms of reference of the Panel to the Scrutiny Panel once these are developed. The need for the Terms of Reference to be approved by the States Assembly will be further considered..</p> <p>The Committee will consider individual decisions on a case by case basis where these fall outside guidelines. The intention is that the Committee will deal promptly with these cases and full details will be developed during 2021.</p> <p>The Committee will hold statutory powers and it is not appropriate that the Committee would include non-elected members.</p> <p>The expert Panel will take regular soundings from key business and community sectors to ensure that the population policy continues to be relevant to current circumstances.</p>	
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	CM	Accept	<p>The Council of Ministers intends to publish a common population policy for debate in the States Assembly by the end of December 2021, as per the States Assembly's decision to support P.120/2020.</p> <p>The Chief Minister will bring forward amendments to the CHW legislation to support the improved migration controls approved by P.137/2020.</p>	

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
	and the progress made on each review and system updates outlined in the report to P.137/2020.			Information will be provided on progress in respect of operational projects.	

CONCLUSION

I thank the Panel for its continued interest in what is an important policy for the island, and for the hard work of the Panel members and the supporting officers in producing this detailed report. A number of the points raised have been resolved following the approval of P.137/2020 as amended. I am confident that we will continue to work together in a collaborative way on this matter to best meet the needs of islanders.