

19-21 Broad Street | St Helier  
Jersey | JE2 3RR

Deputy Beatriz Poree  
Chair, Work Permit Holder Welfare Review Panel  
States Greffe

**Via email**

9 August 2023

Dear Chair

**Work Permit Holder Welfare Review Panel: Clarifications on work permit policy**

I have been pleased to engage with your Panel's work to better understand the experience of work permit holders in Jersey. As part of that engagement, and in the hope of further aiding the Panel's work, I write to you to provide some context and clarification on some aspects of the work permit policy that have been raised in evidence. I hope the Panel finds this useful.

*Use of 'unskilled worker' terminology:* I am pleased to clarify that this is not a term that is used in the Work Permit Policy. Whilst it may be inferred by having temporary and skilled routes in the policy, it is clear that all routes require the employee to be sufficiently skilled and experienced to undertake a specific role for a named employer.

*'Golden Standard' for employers:* There has been suggestion that the Government does not support industry seeking to implement a set of standards for employees which exceeds the legal requirements, a so-called set of 'golden standards'. This is not a fair representation.

This subject has been raised on multiple occasions within the GoJ Labour Shortage Taskforce that was set up towards the end of 2022. It is felt that Jersey's employment legislation provides a good foundation to ensure there is a consistent standard across all employers whether they are recruiting from within the CTA or on work permits. However, it would certainly be welcomed if any industry body were to implement such a standard for their members.

*Silo working environment within Government:* There has been a suggestion that there is siloed working within government and that different departments are acting in isolation. Rather, there is a significant amount of cross government work underway to ensure that we are acting in a joined up way. This includes the Labour Shortage Taskforce and Employer Standards Oversight Board at an officer level and extends to the Population and Skills Ministerial Group at a political level.

*Difference between UK skilled worker lists and Jersey's list:* The fact that Jersey's list of occupations eligible on the skilled route differs from the UK list has been raised both within the context of the Panel's work, and more broadly in other public fora. It seems beneficial to clarify how this list was developed.

The pre-Brexit work permit policy was far more restrictive on employee routes than the current policy. The development of the current policy after Brexit was done in conjunction with Business Licensing using Standard Occupation Classification (SOC) Codes assessed by the UK Migration Advisory Committee (MAC) in recognition that there would be a greater requirement for work permit employment when free movement of EU nationals ceased.

A comparison of the SOC codes was done against data held by Business Licensing in relation to registered or licenced permissions granted where the salary was greater than £30,000. Any person coming to Jersey who is not entitled or entitled to work requires a registered or licenced permission to live and work in the Island.

Certain hospitality roles do not appear on the skilled occupations list as they do not meet the minimum salary requirement and have been assessed by MAC as not being level 3 or higher of the Regulated Qualifications Framework.

Roles that had not previously attracted registered or licenced persons were removed from the list on the basis that there was not a demonstrable need for these roles, with the ability to have them added to the policy in the future where it could be demonstrated that there was a need and a business licence had been successfully applied for.

Business licencing are currently working with Statistics Jersey to analyse occupation data from the recent census and doing a comparison against the SOC codes. Once complete a review will also be done on the salary thresholds.

*Temporary work permit applications outside of eligible sectors:* There has been some discussion about the process for employing those in roles which fall outside of the eligibility for the temporary work permit routes, for example butchers, bakers or ships captains.

As these roles are not defined as being within one of the eligible sectors (e.g. hospitality, agriculture or construction) they are not eligible under the temporary route. However, business cases were successfully submitted for baker and captain to be included under the skilled route. To date, JCIS have not received an application for the addition of butchers. Representation from a sector carries more weight than a single business so employers are encouraged to submit a sector-based business case to support their request.

Business cases have been successfully submitted to add tree surgeons, landscape gardeners, pilots, ballet dancers, sea-going fishing crew and others. The submission of a business case does not need to be onerous but needs to demonstrate a need – a work permit will not be issued unless a registered or licenced permission would be granted by Business Licensing.

*Accessibility of immigration:* I have noted some comments about the accessibility of immigration officers, both by businesses and members of the public.

It should be noted that JCIS are not an immigration advisory service – their role is to grant immigration permissions and enforce immigration legislation. JCIS do not have a public office but do deal with enquiries daily from those attending Maritime House seeking immigration advice.

*Legal background and rationale for break period for 12-month temporary routes:* It has been noted that some have questioned the legal basis for break periods equal to the amount of time spent in Jersey under the temporary routes.

There is no specific legislation that determines the length of absence on the expiry of a work permit. It is a policy decision that rests with the Minister.

The Immigration (Work Permits) (Jersey) Rules 1995, at paragraph 4(6) provide that ‘the Minister may issue a work permit subject to such conditions, restrictions and requirements as the Minister considers appropriate’.

The temporary employment routes offered in Jersey are in response to the Islands labour needs in specific sectors. These routes are an exception to the Common Travel Area (CTA) standards which are justified by placing restrictions on those who would not otherwise be granted a visa to work elsewhere in the CTA. These routes are temporary, with permits issued for a limited period of time to fill genuine vacancies and any time spent in Jersey on these routes does not lead to settlement (permanent residency).

The absence period for the 12-month Hospitality and Construction routes mirrors the Population Management (Guernsey) Law, 2016 which states that a recognised break is defined as a period equal to or greater than the last period of continuous residence (there is no equivalent in the Control of Housing and Work (Jersey) Law 2012).

Rationale behind the absence period includes consideration of the following points;

- These are designed as temporary routes but may not be recognised as such where consecutive work permits are issued with short periods of absence.
- The importance of clarity in managing the expectation of the employees.
- There is currently no Jersey Population Policy
- To encourage employers to develop their employees with a view of moving to skilled employment and encourage employees to develop themselves with a view of moving to skilled employment.
- Enable employers to succession plan knowing that they could retain staff for three years.
- The longer an employee remains in Jersey (even with short breaks) the higher the likelihood of them forming relationships leading to Article 8 human rights claims – right to private and family life which would undermine the temporary route.
- Temporary work permit employees cannot bring their dependants to the Island with them.
- Employers have the option to employ on the 9-month or 12-month route – the 9-month route continues to have a shorter absence period and may offer a more suitable option for some businesses which are more seasonal.
- There is the ability to review the current policy and amend where evidence can be presented to show a need for shorter break periods.

*Ability to switch employers:* Various stakeholders have in giving evidence commented on the inability of work permit employees to switch employers.

A work permit is issued for a named individual to take employment in Jersey for a named employer, in a specific role for a set period. Historically there was nothing in the work permit policy to prevent an employee changing employer once in Jersey, subject to meeting the requirements of the policy.

Further to recruitment challenges post-Brexit the work permit policy was expanded. Employers were investing more in recruitment and were being left out of pocket when an employee changed employer. At the request of industry, and in particular the Jersey Hospitality Association, restrictions were introduced into the policy to prevent employees changing employer in the first 12 months of their employment.

However, where there have been issues in the workplace JCIS have reviewed on a case-by-case basis and employees have been allowed to switch exceptionally.

As I said at the public hearing I attended, I am reviewing the continued appropriateness of the 12-month timeline for this restriction and am open to reducing this, I await any recommendations from the Panel as part of that consideration.

*Additional work:* The policy allows for those on temporary work permits to take on an additional 20 hours per week with another employer within the sector for which a permit would be issued.

The employee will require the permission of their primary employer to take on additional employment so that it can be determined how the additional employment will impact their ability to fulfil their primary role under work permit conditions.

It is important to note that the primary employer holds the registered or licenced permission for the employee under Control of Housing and Work legislation, it is not just the work permit that binds them to employer. The second employer does not require a licenced or registered permission for the employee but must include their employment on their manpower returns.

It is not uncommon practice for employment contracts to prevent employment with another employer or to obtain consent from the employer to take on a second job. Government of Jersey contracts, for example, have a clause preventing other employment without the prior consent of the employer.

*Information Packs:* To briefly clarify in relation to what information is provided to work permit holders by JCIS.

JCIS have not produced an information pack containing details about living and working in the Island. They have updated the notices that are sent to employers and employees to provide more information on the immigration routes that the permits have been issued under, provide guidance on how to apply for visas, signpost to JACS/CAB, provide a link to the Moving to Jersey webpage and how to contact JCIS. They also include a copy of an employee rights notice produced by Strategic Policy Planning and Performance (SPPP). This is being translated into several languages by SPPP and will be available via gov.je which JCIS will sign post to. In addition to providing advice on employee rights it also signposts to independent organisations, charities, and honorary consuls.

*Visa legislation supersedes everything/curtailment of leave:* Immigration legislation determines a person's permissions to enter and remain in the Common Travel Area and is recognised across the CTA. Part 9 of the Jersey Immigrations Rules states that where a person is no longer meeting the requirements for which their visa has been issued then those permissions may be cancelled. The work permit policy and notices that are sent to employees and employers reflect this. Work permits are issued for specific roles, and therefore if someone is dismissed from this role they are no longer meeting the requirements for their permission.

JCIS apply part 9 of the Rules fairly and consistently when any person under immigration permissions is no longer meeting the requirements for which their visa has been issued – this applies to work permit holders as well as those who entered Jersey under other immigration routes.

Wherever possible JCIS do consider circumstances and assist where possible to find alternative immigration routes or solutions.

Unfortunately, the feedback given to the Panel is not balanced and no reference is made to the support that has been given by JCIS in allowing numerous work permit holders to switch employment or offering alternative immigration routes.

JCIS will meet with an individual to understand their circumstances before determining the period of curtailment. This period will be determined on a case-by-case basis and any period of curtailment can be extended if necessary. The curtailment is notifying the individual that they are no longer meeting the requirements for which their visa has been issued and therefore no longer able to remain in the CTA.

If JCIS did not do this, then the immigration rules would not be applied fairly and consistently, and individuals would be in the island in breach of the permissions they had been granted – for a work permit holder their visa is issued for employment in Jersey with a named employer, for a specified role, and specific duration.

*Zero-hour contracts:* Zero-hour contracts are not permitted under the Work Permit Policy and the example highlighted in the Panel's hearing with Friends of Africa was dealt with promptly by JCIS and all employees were issued with new contracts reflecting 40-hours per week.

*Figures of people being supported:* We have been surprised at the high numbers being reported of work permit holders requiring the support of Friends of Africa, as reported in their public hearing. The inference is that that these are all being supported on immigration matters, however this does not align with the level of interactions JCIS have had with the organisation.

JCIS estimate that they deal with one work permit issue per week which equates to less than 2% of the work permits issued annually.

*Work permit policy does not permit development:* There was a suggestion that 'Jersey is not in the business of developing people'. The work permit policy is in place to give a route to skilled individuals to find work in Jersey. A person needs to have the necessary skills and/or experience to fill the vacancy. The work permit policy is not designed to attract people to Jersey who do not have skills or qualifications to take on a role and for them to be trained in the Island.

The work permit policy encourages employers to develop their staff in their roles to enable them to move from temporary work permits onto skilled work permits, where the role exists in Appendix 1 or 3 of the policy.

*Modern Day Slavery:* It has been highlighted that Jersey does not have modern-day slavery legislation and reference is made to the statement in the work permit policy 'to protect employees from Modern Day Slavery and ensure their welfare is maintained'.

JCIS try and adhere to the principals of modern-day slavery legislation by ensuring that employees coming to the Island are treated fairly, paid the going wage, have contracts of employment, are coming to Jersey to fulfil a genuine vacancy and that there is a robust and tested recruitment process in place. We also expect employers to give due consideration to the welfare of their employees and that employers take reasonable steps to ensure that employees are suitably accommodated.

Yours sincerely

A handwritten signature in blue ink that reads "Helen Miles". The signature is written in a cursive style with a dot over the 'i' in Miles.

**Deputy Helen Miles**  
**Minister for Home Affairs**