

STATES OF JERSEY



MIGRATION CONTROL POLICY (P.137/2020): THIRD AMENDMENT

Lodged au Greffe on 16th February 2021
by the Migration and Population Review Panel

STATES GREFFE

MIGRATION CONTROL POLICY (P.137/2020): THIRD AMENDMENT

1 PAGE 2, PARAGRAPH (c) -

Before sub-paragraph (viii) insert the following new sub-paragraph and re-designate subsequent sub-paragraphs accordingly –

“(viii) to provide for the Chair and other members of the panel established in accordance with sub-paragraph (vii) to be appointed by the States Assembly on a proposition from the Chief Minister;”

MIGRATION AND POPULATION REVIEW PANEL

Note: After this amendment, the proposition would read as follows –

THE STATES are asked to decide whether they are of opinion –

- (a) 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;
- (b) to request the Chief Minister to bring forward amendments to the States of Jersey Law 2005 to require the Council of Ministers to develop a common policy on population;
- (c) to request the Chief Minister to bring forward the following amendments to the Control of Housing and Work (Jersey) Law 2012 (CHWL):
 - (i) to introduce a 9 month CHWL permission that does not lead to permanent residential status;
 - (ii) to introduce a 4 year CHWL permission that does not lead to permanent residential status;
 - (iii) to introduce a 10 year CHWL permission that may lead to permanent residential status;
 - (iv) to introduce a long-term CHWL permission that does provide permanent residential status;
 - (v) to require the applicant for a new permit to make a declaration of any unspent criminal convictions;
 - (vi) to introduce enhanced identity requirements for all CHWL cards issued to new residents;
 - (vii) to provide for an independent, statutory, expert panel to research and advise on population matters; and

- (viii) to provide for the Chair and other members of the panel established in accordance with sub-paragraph (vii) to be appointed by the States Assembly on a proposition from the Chief Minister;
- (ix) to provide for a Committee of States members to hold responsibility for determining applications under the CHW law that fall outside formal guidelines.

REPORT

Part (a) and Part (b)

Part (a) and Part (b) are unchanged by this amendment.

Part (c)

Paragraphs (i) – (vi) of p.137/2020 are unchanged by this amendment.

Paragraph (vii) proposed change

This amendment adds the requirement that the independent, statutory, expert panel proposed (“the Independent Panel”) in the Migration Control Policy proposition [[P.137/2020](#)] must be appointed by the States Assembly.

Good governance in the public sector relies on implementing good practices in transparency and reporting to deliver effective accountability.

Therefore, to ensure the States Assembly acts in the public interest it is fundamental that the Independent Panel advising the Government on population policy must be approved by the States Assembly to ensure openness and comprehensive stakeholder engagement.

Other independent authorities such as the Police (Complaints and Discipline) and independent boards such as the Comptroller and Auditor General and boards on which the States is a shareholder are also approved by the States Assembly.

Background

During the [Migration and Population Review Panel’s Public Hearing with the Chief Minister on 5th February 2021](#), 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 Independent Panel would be developed in due course¹. The Migration Control Policy proposition P.137/2020 (“the Proposition”) report highlights the Employment Forum as another independent body which could be considered during the Independent Panel formation².

The Assistant Chief Minister noted at the Public Hearing with the Migration and Population Review Panel (“the Panel”) that developing a population policy would involve finding the right compromise between economic, environmental and community tensions and that the role of the Independent Panel would be to advise on that compromise and “engage heavily in the local community to understand those tensions on what the Island really wants”³.

The Migration Policy Development Board report (“the MPDB report”) suggest modelling the proposed Independent Panel on the UK’s Migration Advisory Committee (“the MAC”), which is an independent and non-statutory, non-departmental public body established to provide transparent, independent, and evidence-based advice to the UK

¹ [Public Hearing with the Chief Minister, p.28](#)

² [P.137/2020, p.31](#)

³ [Public Hearing with the Chief Minister, p.30](#)

Government on migration issues⁴. The Proposition report further outlines that Ministers are expected to undertake a review of the “most appropriate model” for this Independent Panel⁵.

The Panel notes that the Terms of Reference for the Independent Panel are still to be developed⁶ and it is therefore difficult to ascertain exactly how it will be run. However, the Panel suggests that the practice of publishing an annual report on its work, in line with the [requirements of the MAC](#), should be replicated.

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](#) (“the CSSP report”) on Migration and Population. While this recommendation was made in relation to the MPDB report, the Panel believes that it provides the right starting point for the composition and operation of the Independent panel. The CSSP report 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”⁷.

The Panel notes the [amendment 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”⁸. Deputy Perchard notes the need for the proposed Independent Panel to both reflect the diversity of the Island and that Islanders are “best placed” to understand the Public’s “concerns and perceptions of the population size and spread at any given time”⁹.

The Panel has noted from the Public Hearing that the Assistant Chief Minister has confirmed that “active and positive discussion” was taking place with Deputy Perchard about her amendment and discussing with her “how to work around the Jersey Appointments Commission’s ways of appointing”¹⁰.

Deputy Perchard’s amendment is further supported by the Children’s Commissioner, Deborah McMillan, who, during her [Public Hearing with the Panel](#), stated that the Independent Panel must be “diverse and representative”¹¹.

The Children’s Commissioner also recommended to the Panel 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 upheld¹².

⁴ [Final Report of the Migration Policy Development Board, p.59](#)

⁵ [P.137/2020, p.31](#)

⁶ [P.137/2020, p.38](#)

⁷ [S.R.14/2019, p.8](#)

⁸ [P.137/2020 amd., p.2](#)

⁹ [P.137/2020 amd., p.4](#)

¹⁰ [Public Hearing with the Chief Minister, p.29](#)

¹¹ [Public Hearing with the Children’s Commissioner, p.24](#)

¹² [Public Hearing with the Children’s Commissioner, p.18](#)

The Children’s Commissioner recommended that the Independent 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” and these boards should be “truly representative of the whole Island community”¹³.

This observation was also reflected in the key findings (Findings 3 and 4) of the CSSP report which outlined that the Migration Policy Development Board 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 Migration Policy Development Board – 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 Panel¹⁴.

The Commissioner highlighted to the Panel 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 this¹⁵.

The Panel questioned the Chief Minister on the issue of diversity during its Public hearing and the Assistant Chief Minister stressed that the appointments would be approved by the Jersey Appointments Commission and that they would be looking at experts in areas including “population, statistics, et cetera, that bring direct relevant skills that we require in order to inform our population policy”¹⁶.

A number of the submissions provided to the Panel as part of its review support the creation of a diverse and representative Independent Panel.

[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”¹⁷.

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”, and that “industry experts from all sectors, particularly those that rely on CHWL permissions as a large part of their workforce” should be included¹⁸.

[Jersey Finance](#) also stated that it would “like to see appropriate representation on this panel from our sector”¹⁹.

At the Panel’s request, the Chief Minister confirmed that the terms of reference for the Independent Panel will be made available to the Panel in confidence once they have been produced and the 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 published²⁰.

¹³ [Public Hearing with the Children’s Commissioner, pp.18-9](#)

¹⁴ [S.R.14/2019, pp.7-9](#)

¹⁵ [Public Hearing with the Children’s Commissioner, pp.18-9](#)

¹⁶ [Public Hearing with the Chief Minister, pp.28-9](#)

¹⁷ [Friends of Africa, Jersey, p.3](#)

¹⁸ [Jersey Business, p.3](#)

¹⁹ [Jersey Finance, p.3](#)

²⁰ [Public Hearing with the Chief Minister, pp.29-30](#)

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.

The Panel feels that in developing the composition of the Independent Panel attention needs to be focused on the diversity of its members and how stakeholders from across the community and with relevant expertise are represented. Although Deputy Perchard's amendment seeks to ensure diversity within the Independent Panel the composition of the Panel will nevertheless lie in the hands of the Chief Minister. The Panel feel it is vital that the makeup of the Panel is agreed by the States Assembly as a whole.

Part (viii)

Part (viii) of p.137/2020 is unchanged by this amendment.

Financial and manpower implications

There are no additional financial or manpower implications of this amendment.