

STATES OF JERSEY



MIGRATION POLICY

**Lodged au Greffe on 8th July 2003
by the Policy and Resources Committee**

STATES GREFFE

PROPOSITION

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

- (a) to agree, in principle, that having regard to paragraph 2.1 of the attached report of the Policy and Resources Committee dated 8th July 2003, all inward migration by persons wishing to establish themselves by living or working in the Island, and who do not have links with the Island which would enable them to qualify currently under Regulation 1(1)(a)(h) of the Housing (General Provisions) (Jersey) Regulations 1970, as amended, should be monitored and regulated;
- (b) to charge the Policy and Resources Committee, in consultation with the Housing, Home Affairs, Economic Development and Employment and Social Security Committees; and with other committees as appropriate, with reviewing the Housing (Jersey) Law 1949, the Housing (General Provisions) (Jersey) Regulations 1970, the Lodging Houses (Registration) (Jersey) Law 1973 and the Regulation of Undertakings and Development (Jersey) Law 1973, together with other related legislation, with a view to giving effect to paragraph (a) above by bringing forward proposals for a new Migration Policy and supporting regulatory system(s) by the end of 2003;
- (c) to agree, in principle, that such new Migration Policy and supporting regulatory system(s) should be developed to meet the basic objectives outlined in paragraph 5.5 of the report of the Policy and Resources Committee dated 8th July 2003.

POLICY AND RESOURCES COMMITTEE

REPORT

1. Introduction

1.1 The Policy and Resources Committee, as previously constituted, published an interim report on Population in June 2001 (RC.21/2001). In that report the Committee set out the main factors that needed to be weighed in assessing options for 'population policy', including sustainability, the working of the Island's economy, the implications of an ageing population, issues concerning the Regulations of Undertakings Law and the Housing Regulations, legal considerations relating to immigration and a best estimate (based at that point on old census data) of the size and projected future profile of the Island's population. R.C.21/2001 was presented as an interim document because information from the 2001 Census was not yet available and economic analysis commissioned from the University of Strathclyde and OXERA was still in progress. At that time, the Committee stated its determination not to come forward with any recommendations on 'population policy', in whichever direction they might point, before it was sufficiently confident that there was enough information available, about the implications and consequences of given policy choices, to ensure that any eventual decisions on such an important matter would be well founded.

1.2 On 11th June 2002, in the clear belief that sufficient good quality information was available for a satisfactory debate on 'population policy' to be held, the Committee published its Projet entitled "Population Policy" (P.101/2002). This report did not aim to repeat the main factors set out in R.C.21/2001 but sought to build on that earlier work and both R.C.21 and P.101 were to be considered together. P.101 was debated over a three-day period of 2nd to 4th July 2002 and, as a result of there being an equality of votes, and the President informing the Assembly that she had neither an original nor a casting vote, the question [the proposition] was determined in the negative and thus the proposition was rejected.

1.3 Reflecting the belief that there was –

- a high degree of consensus in the States during the debate, that it was essential to tackle the inequities that were arising from the 'two-tier' housing market and that work therefore needed to be put in hand on a new, single licensing scheme to govern all newly-arrived persons who seek to occupy property or work in the Island, but also that there was;
- clearly a degree of unease on the part of some Members about the proposal to introduce an assumption of allowing, for policy planning purposes, an average annual net inward migration of up to 200 persons,

the Committee lodged a new Projet on 5th November 2002 entitled 'Population Policy Report (P.205/2002)' which, with a much shorter summary statistical report, proposed that the most immediate task was to seek agreement in principle on the strategic objective of ending the two-tier housing market over time and to get endorsement by the States for a start to be made by the new Housing and Economic Development Committees on detailed work on a licensing scheme to facilitate that objective.

1.4 Although it was clearly recognised that the question 'What, if any, given migration assumption should eventually underpin a licensing scheme?' – would eventually have to be addressed, it was also recognised that that debate should take place within the context of the licensing scheme proposals when they were brought forward.

1.5 In submitting the proposals now contained within this report, the Policy and Resources Committee has had careful regard to the work undertaken by the previous Committee and has concluded, as it believes the majority of States members concluded in July last year, that much of what was proposed previously still has considerable merit.

1.6 However, it has also concluded that the proposals went too far and that a more measured approach to

introducing overt population ‘management’ systems and procedures should be adopted. A step-by-step approach would not only ensure that new proposals could be developed to be more effective and transparent, if sufficient time is allowed for broad consultation and the gaining of consensus at each step, but would also allow the States to consider proposals, as part of a developing package, on an individual basis as they are brought forward. This is not to say that this work should be delayed or that the length of time taken need be excessive. What the Committee does commend to States members, however, is a ‘parallel working’ approach, with streams of work and proposals being developed concurrently. This approach is explained more fully later in this report.

1.7 The Committee wishes to make it absolutely clear that these proposals do not seek to divert attention away from the ‘population issue’. Quite the contrary: the Committee fully recognises that ‘population’ remains a major area of concern within the Island and that the States will need to address again the various population issues in order to establish population parameters and policies within which the Island is prepared to operate. However, it has become clear to the Committee that –

- given the legal constraints (see below) within which the Island must work, where it is not possible, in the short to medium term, to introduce any kind of meaningful ‘border controls’; and
- in the absence of such controls mechanisms, the regulatory systems that are in place are neither sufficiently focussed nor tight enough to provide regulation of the vast majority of inward migrants – let alone accurate information on them,

a new system needs to be put into place, supported by sound underlying principles, which will not only provide accurate information on all inward migrants, but will also provide a robust mechanism for monitoring and regulating the large cohort of persons, with no previous Island connection, who are at present able to come and go at will.

1.8 The Committee, therefore, is proposing what will be, in effect, the first real and substantive step towards the introduction of a comprehensive range of policies and regulatory systems which will enable the States, within the current framework, to positively influence the structure and size of the Island’s population.

1.9 The Committee will also, of course, be taking forward these ideas on population and migration regulation and building them into the developing Strategic Plan for the States; thereby ensuring they are linked with and are interdependent with other relevant social, economic and environmental policies.

2. Legal context

2.1 Development of a migration policy has to be seen against the current legal position in relation to the rights of persons to enter and remain and establish themselves in the Island under United Kingdom law^[1] as extended to Jersey and under the relevant current Community law^[2].

- All British citizens and, certain Commonwealth citizens have the right of abode in Jersey and are free to live in and come and go into and from Jersey without let or hindrance, except as may be required under the Immigration Act¹ or as otherwise may be lawfully imposed on any person.
- All nationals of other E.E.A. Member States (E.U. member States plus Iceland, Norway and Liechtenstein), do not need leave to enter or remain in Jersey – if they do so in circumstances in which they would be entitled to enter or remain in the U.K.^[3]
- These rights are not currently infringed by existing housing and job controls.
- If a new migration policy were to amount to control over these rights, it would be inconsistent with the law, as presently in force. (i.e. a control of immigration at point of entry could not be

introduced for British, certain Commonwealth and E.E.A. nationals without change to existing international law, which would be extremely difficult and would require the agreement of all affected parties).

- Any new migration policy must be applied equally, and in a non-discriminatory manner, to both U.K. and other E.E.A. nationals.

3. Discussion

3.1 Careful analysis of the Census and other data indicates that the Island's population is not rising "out of control". Although it is true that there has been a modest rise over the last decade, this was due, in aggregate, almost entirely to natural factors – of which a reduction in the death rate is probably the most significant. The total population figure recorded in the 2001 census was the outcome of this natural growth and complex and large ebbs and flows into and out of the Island, of people of all ages and backgrounds. However, it should be noted that in the last five-year period the actual net migration flow has been outward at an average rate of 150 per annum. Furthermore, while the latest estimate for the total population, at 87,500, is some 300 higher than that of the 2001 census; natural growth accounted for 93% of this increase.

At the same time, there is evidence that the population of working age is at best static and perhaps falling and this is a very different trend from that of the 1970s and 1980s. The Committee is therefore convinced that it is wrong to characterise the gradual change over the last decade or so as indicating some kind of crisis.

3.2 There are many aspects of this matter over which the States have no control, or at best only very indirect means of influence. The States have virtually no influence over who is born, who marries and who dies, although the birth rate and longevity may to an extent be influenced by income levels net of taxation and spending on (public or private) health care. Nor have the States any direct means of influence over the arrival of people with previous connections to the Island (that is, essentially those with (a) – (h) housing qualifications) and the manner in which those people choose to assimilate themselves into the local economy, including the housing market. As a significant number of persons with housing qualifications leave the Island each year, to train or follow career paths elsewhere, the external 'pool' of residentially qualified potential 'returners' is sustained and the States has no means of stopping those persons from returning. Indeed, in other related policy areas, the States is actively seeking to encourage such persons to return.

3.3 Considerable resources are currently expended on 'controlling' residentially qualified people actually to prevent, or at least inhibit, those classed as 'non-qualified' from gaining access to housing which is reserved for 'locals'. Such resources are applied to managing and enforcing the Housing and the Regulation of Undertakings and Development laws, and it is contended that these resources instead should be refocused so that it is the cohort of 'non-local' people who are in some way 'controlled'.

3.4 It is noteworthy that, as far as the Housing rules are concerned, there is no meaningful control of the majority of those arriving, who have no Island connections, except to oblige them to occupy unregulated accommodation. It is also recognised that a principal outcome of those rules, while originally implemented in good faith and in response to the needs, principally, of the tourism and agriculture sectors, is that many people occupy sub-standard accommodation for long periods until they 'qualify'. A very large group of people, resident for many years and making an important contribution to the Island's success, may face the prospect of up to half a working life in insecure and at times unsatisfactory accommodation conditions. The Committee agrees strongly with the Housing Committee, and many others such as the Eradication of Poverty Group who have commented on the subject, that this state of affairs is fundamentally wrong and that the outcomes to which it has given rise in terms of unsuitable, inferior accommodation and personal hardship for many people, including families, is unacceptable in a modern, liberal, open society.

3.5 By contrast, extensive regulatory attention is paid to the relatively small "(j)" category group, currently averaging about 240 per year, and which by and large occupies the top end of the skills spectrum and

turns over relatively quickly and, of whom some 40% are employed in the public sector, mainly in Health and Education. The Committee is concerned that the main regulatory effort in respect of arrivals of persons not previously connected with the Island is focused on about 60% of this already small group – that is “(j)” category persons in the private sector – while the largest cohort of arrivals is effectively not within the housing regulatory system at all.

3.6 The 2001 Census data about the composition of inward migration, and its size relative to outward migration, has shown, together with the analysis of the Housing Needs Survey, that the greatest problem in the housing market has not been demand from ‘immigrants’ but a failure over many years to build sufficient dwellings to meet demand from those who are residentially qualified and to take sufficient account of changing patterns of household size and formation among that group. This has not only led to an increase in the size of the unregulated sector, but has also pushed up the price of housing and imposed heavy burdens of debt upon younger people anxious to get onto the housing ladder. These are factors which not only have a damaging economic impact upon the whole Island but which also must lie behind the sentiments expressed by residentially qualified respondents, in the Housing Requirements survey, about desire or intention to leave the Island.

3.7 While net outward migration might seem attractive, on the surface, as a way of ‘solving’ the population ‘problem’, such incentives might also encourage those with the kind of skills the Island most needs to retain to leave. That would simply compound the problem the Island has to face up to, that as the population ages the demand for labour in the wealth-producing sectors and, indeed, key public service sectors such as healthcare, continues to fall short of supply. It is important to note, too, that people of pensionable age who left the Island would in any event normally continue to retain their rights to pensions paid from public funds in Jersey.

3.8 The Committee is of the view that it is impossible to escape the conclusion that, as the population ages, the Island needs to ensure that it continues to have an appropriate balance between an appropriately skilled and sized workforce and those who are in some way supported by that workforce, in order to maintain wealth generation, the public revenues and public services, and hence the sustainability of the community itself as a whole. The Committee also recognises that this particular challenge is not unique to Jersey, but is one being faced by most economies in the western world.

3.9 In all of these considerations, sustainability is obviously of vital importance. This is not just in terms of the environment but also about the economy and social policy. The three are necessarily interlinked. The Brundtland Commission’s 1987 report ‘Our Common Future’, widely regarded as the key text on sustainable development, makes clear the need for economic systems which can generate surpluses and technical knowledge on a self-reliant and sustained basis as an integral part of sustained development. It has been demonstrated that, as the population ages, the Island’s current living standards, based on current tax and spending patterns, are almost certainly unsustainable. This is a structural problem in the Island’s economy which will, if not addressed, impact on the delivery of environmental and social policy, and therefore requires a structured and sustained response.

3.10 It is evident that much of recent concern about the population level in the Island starts from people having seen the effects of significant increases in net immigration in the 1970s and 1980s. Some memories will go back even further. However, not only is that in the past, it must also not be forgotten that population growth in, say, the last 30 years has coincided with unparalleled economic prosperity for Jersey. Indeed, it has been the engine of that economic prosperity and we are where we are, today, mostly as a result of that growth.

4.0 Conclusions

4.1 There is no doubt that ‘population’ has been a dominant issue of debate in the Island for many years and, without going too far back, it is clear that the rising population of the 1970s and 1980s fuelled concern at the end of the 1980s about the size of the population that had by then emerged. This concern was expressed despite the significant economic growth that had accompanied that population increase.

- 4.2 Concerns about the population issue were voiced in “Jersey into the Millennium: A Sustainable Future”. The main view emerging from that particular process was that maintaining a permanent resident population the same or less than the present was seen by those involved as central to the environmental, economic and social objectives discussed during the process of strategy formulation in relation to sustainability. Despite recognition of the economic implications of a constrained population (e.g. wage inflation in a restricted labour market and the need to generate adequate tax revenues to meet future requirements as the population aged), there was a strong feeling expressed by many of those involved that many of the characteristics that they considered made Jersey “unique” were being eroded at an increasing rate as a consequence of population growth. It was seen as essential that economic growth should not be at the expense of negative social and environmental consequences. The Committee is able to wholeheartedly support this general view.
- 4.3 The Committee also acknowledges the considerable concern that has been expressed by employers, and others, about the adverse economic implications of seeking to constrain population numbers. Particular focus of such concerns has been on the impact on business of labour shortages, a lack of appropriate skills within the workforce, and the impact of these trends upon business costs and competitiveness, and hence profitability. Similar concern has been voiced in relation to parts of the public sector.
- 4.4 Opinion will no doubt always differ to a degree between the two poles of the argument about population, and the answer probably lies, as with the 1995 strategic objectives, in an appropriate balance between all the different perspectives on the problem.
- 4.5 However, the Committee urges the States to recognise that, notwithstanding the deeply-held views that have emerged from the various consultation exercises over the years and the circumstances that gave rise to them, the position in which the Island now finds itself in 2003 is rather different, and potentially problematic.
- 4.6 Net inward migration averaged over the whole of the last decade has been low. Birth rates have fallen, longevity has increased, and the population is beginning to age quite significantly. As the population of the Island ages, the dependency ratio of those who are of working age to those who are not will worsen. These trends, which as has already been said, are not unique to Jersey, are now beginning to create a new set of problems for the sustainability of the Island’s economy and its public services and, therefore, for the maintenance of the living standards that flow from those.
- 4.7 What is important is to put a range of policies into place which, when combined, will try to ensure that the current dependency ratio is at least maintained and that maximum benefit is derived from whatever is the current population composition.
- 4.8 Any new policies must certainly endeavour to provide for better mechanisms to encourage local people to train and gain experience, possibly (but not necessarily) away from the Island, and return or stay to fit these skill shortages. However, it will also remain a feature of Island life that some skills will continue to have to be supplied in the short, medium and long term through inward migration. In the past, the “(j)” category housing consent applied only to those considered essential to the Island with rare skills or to cover the short term while a local person was trained, but there is now growing recognition that a much wider range of skills is essential to support the Island community and that the bearers of those skills ought to be able to participate in our society on an equitable basis, once here.
- 4.9 In considering the way forward, the Committee recognises that a system to monitor and regulate inward migration should be focused, in a non-discriminatory manner, on those arriving, or who wish to arrive, who do not have previous connection with the Island.
- 4.10 The Committee believes that the best policy option would be to try to ensure that, as far as possible, the cohort of inward migrating persons without previous connections with the Island is regulated and that it exhibits an appropriate skill mix required in the Island.

This would necessitate –

- changing the way in which the Island currently attempts to regulate the inflow of people through separate housing and labour market rules; and
- greater and consistent understanding of the Island's skill-mix and skill- shortfall;

and the aim should be balanced employment in a range of sectors including, for example, tourism, light industry and electronic commerce as well as finance.

4.11 This is where the 'parallel working' arrangements arise. The Committee intends that the following strands of work will be undertaken, although they need not all begin simultaneously –

- a full review of the existing 'population' controls and the development of an alternative and integrated system of migration regulation;
- a project to develop a greater and consistent understanding of the Island's skill-mix and skill-shortfall, and current and likely future skills requirements for both public and private sectors;
- the development of existing and new policies which would encourage the employment within the Island of persons who have benefited from the Island's education system; and
- an ongoing project to identify best market practices in relation to any specific incentives which might be needed in the future in order to attract those the Island needs most, over and above current special arrangements for people such as teachers or health professionals.

4.12 The Committee feels, however, that the first of the above work streams is the most vital and therefore the purpose of this Project is, before work is commenced which could prove abortive, to seek the approval of the States now to the proposed development of a 'Migration Policy' and supporting regulatory system(s). The other strands of work can be developed further in the interim period and firm proposals for each can be brought forward when ready.

5.0 The way forward

5.1 The objective of achieving a population at or below the figure reported in 1995 remains in existence but now, as in 1997 when the target was established, the States does not have sufficient control mechanisms in place to achieve this objective. The Committee therefore believes that debate about population ceiling numbers and whether the population should be decreased or increased is a debate which should be set aside for the time being. It is further contended that the discussions on population numbers need to move away from consideration of the overall number to a much more constructive debate about the overall population mix and, in this context, the 'numbers' debate' should be properly aired if and when the States consider the detail of a proposed new 'migration licensing scheme'.

5.2 The Committee is recommending that work should begin immediately on the development of a new 'Migration Policy' and supporting regulatory system(s) which will enable all inward migration by persons without previous Island connections to be monitored and, as necessary regulated. Of course, once the detail is ready the whole issue will be brought back to the States for full and open debate.

5.3 The Committee intends that the regulatory system(s) will be supported by the introduction of 'smartcards', which will, subject to Human Rights and data protection issues being properly addressed, and to such uses being agreed, bring the added benefit, over time, of being able to be used for other purposes such as or access to public services. In using the smartcard system in this way, as a first step tied initially to simple registration, the Committee believes that public acceptance of such cards will grow and that the advantages of using the system will, in time, outweigh any perceived disadvantages.

5.4 It is proposed that, subject to the States giving its in-principle approval now, work on the development of

the proposed migration policy and regulatory system(s) should be completed by the end of this year and that the whole package could be debated early in 2004. Part of that debate will, of necessity, return to the issue of overall population numbers, as limits of some kind may need to be established for regulation of inward migration purposes.

5.5 In asking the States to give its in-principle approval to the development of a new Migration Policy and supporting regulatory system(s), the Committee proposes that any such policy and system should be developed to achieve the following basic objectives –

The proposed new policy and system should ensure that –

- **there should be definitions of persons who are considered to be ‘residents’ which differentiate between those persons who are ‘entitled’ (by virtue of familial or other connections with the Island) and those who may be ‘licensed’ (as essential persons) to live or work in the Island;**

Notes: In simple terms, what is proposed here is along the lines of: (a)-(h) = ‘entitled’ and (j), (k) and ‘others’ = ‘not-entitled’.

This proposal does not (unless otherwise determined) affect those from countries outside of the European Economic Area (E.U. countries, Iceland, Norway and Liechtenstein) who will continue to have to apply for a work permit under the Immigration Act 1971.

- **there should be regulation by licence of all ‘non-entitled’ persons wishing to establish themselves by living or working in the Island;**

Note: All persons not already ‘entitled’ or ‘licensed’ would have to ‘register’ to either have entitlement approved or apply for a licence.

- **subject to initial registration, all ‘entitled’ residents’ should be free from ongoing regulation;**

Note: All ‘entitled’ persons would have only to be registered once and once registered would, by simply showing their ‘proof’ of entitlement be able to move accommodation (within defined categories?) or apply for other jobs without needing to be registered/checked again.

- **there should be a licensing scheme which can be operated effectively and efficiently by a single authority through a ‘one-stop-shop’ access point;**

Note: Although a new ‘licensing scheme’ may (or may not) be based on the existing Housing Regulations or Regulation of Undertakings and Development Law, it should be capable of being operated by a single States (or non-States) authority.

5.6 It is proposed that the work of developing this new policy and regulatory system(s) will be carried out by a working group of senior officers from the Policy and Resources, Housing, Home Affairs, Economic and Development and Employment and Social Security Departments, whose work will be overseen and directed by a Steering Group, consisting of members of the respective Committees, and led by the Policy and Resources Committee.

6. Two-tier housing system

6.1 The term ‘two-tier housing system’ describes a very complex set of issues. There is a ‘two-tier’ housing system in that there is a stock of controlled housing and a stock of uncontrolled housing. There are also two groups of individuals; those who qualify under the housing regulations and those who do not. In general terms (although not exclusively) people with a housing qualification reside in accommodation

available to persons with that qualification. The real issue is social disadvantage created by the interaction of the employment rights and housing of the majority of those people occupying uncontrolled accommodation. This results in relatively low incomes for people living in a constrained stock of unmanaged and unregulated housing.

- 6.2 Members will have noticed that these proposals exclude specific mention of an aim of the previous Committee; seeking to eradicate the so-called 'two-tier' housing system. This is not because the Committee has moved away from this strategic objective. Rather it is because the Committee has recognised that the proposal to regulate inward migration is aimed, primarily, at addressing the demographic and fiscal challenges by ensuring that the skill-mix of licensed persons meets the needs of the Island.
- 6.3 While it is proposed that in the new system, the occupation of suitable accommodation will be linked to the issuing of a licence, the immediate effect of this on the housing market would be minimal. Over time, the licensing scheme could lead to a significant structural change in the housing market.
- 6.4 It is also recognised that a proportion (of a size yet to be defined) of accommodation in the Island may have to remain 'un-controlled' so as not to inhibit the rights of British, certain Commonwealth and European Economic Area nationals being free to live in and come and go from Jersey without let or hindrance (See paragraph 2.1 above).
- 6.5 The Committee remains of the view that the eradication of the social problems and the awful inequities caused by the existing Housing Regulations and the permitted, if not encouraged, extended use of accommodation which is designed and registered for short term use only, must remain one of the States' principal objectives over the coming years.
- 6.6 The Committee recognises and acknowledges that much work in developing the approved Island Plan and the Housing Committee's Strategy has also been aimed very much at achieving this long term objective. The Committee will therefore be bringing forward policy proposals; within the new Strategic Plan it is developing with others, to ensure that this major objective is a core feature within that Strategic Plan and that policies which currently support the development of uncontrolled accommodation are, as necessary, amended to achieve a better balance in the housing stock.

7. Financial and manpower implications

There are no financial or manpower implications as a direct result of this proposition. Although the intention is to develop a one-stop system, and hence there could be savings made by combining staff and other resources which are currently deployed to manage the Housing and Regulation of Undertakings and Development Law, such savings can only be identified during the proposed next phase of detailed work.

8th July 2003

[1] *Immigration Acts 1971 as extended to Jersey by the Immigration (Jersey) Order 1993.*

[2] *Article 4 of Protocol 3 to the United Kingdom's Act of Accession to the Treaty of Rome.*

[3] *Immigration Act 1988 as extended to Jersey by the Immigration (Jersey) Order 1993.*