



Children's Commissioner for Jersey
Promoting and Protecting Children's Rights

Formal Advice Migration and Population Review Panel - Common Population Policy Review

January 2022

One of the ways the Commissioner's office protects the rights of children and young people is to comment on proposed policies and legislation that may affect them.

We do this by:

- giving evidence to Scrutiny panels around issues that affect children and young people;
- responding to consultations around issues that affect children and young people; and
- writing briefings for States Members.

This report comprises of formal advice to the Scrutiny review of the Common Population Policy. The focus of this advice is on the Migration Control Policy and the forthcoming Common Population Policy. Advice has previously been submitted to a Scrutiny review of the Migration and Population Review Panel in January 2021. Rather than repeat that advice, I would ask Scrutiny to refer to it. Here is a link to that formal advice: <https://www.childcomjersey.org.je/media/1448/20210126-scrutiny-re-migration-policy.pdf>

I refer Scrutiny to the handbook entitled 'Protecting migrants under the ECHR', as it may be useful in research. Here is a link to the handbook:

<https://www.childcomjersey.org.je/media/1447/handbook.pdf>

At a global level, all human beings, whether migrants or not, enjoy the rights guaranteed by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Children are protected by the United Nations Convention on the Rights of the Child (UNCRC). There are other international legal instruments specifically dealing with migrants' rights. These are examined in the aforementioned handbook.

Both the Migration Control Policy and the forthcoming Common Population Policy should consider and refer to these covenants and conventions, especially the UNCRC and the European Convention on Human Rights (ECHR). Indeed, there is a requirement for public authorities to act in a way that is compatible with the ECHR and with the UNCRC and to consider and apply those two conventions when reading the laws and regulations of Jersey. Therefore, these policies must ensure that both conventions' stipulations on human rights are at the forefront of their approach.

The right to freedom of movement is guaranteed under Article 2, Protocol 4, of the ECHR '**everyone shall be free to leave any country, including his own.**' Article 18(4) of the ESC(R) guarantees the right of nationals to leave their own country to '**engage in gainful occupation in the territories of the other parties.**' As a general principle, the ECHR does not guarantee the right of an alien to enter and remain in the territory of a member state. However, in exercising their borders, member states must act in conformity with ECHR standards. Migrants seeking entry to a member state of the Council of Europe

must be protected from discrimination, with no discrimination in the process of immigration controls and in the decision of granting entry.

Migration is both required and necessary, but it must be achieved in a way which is fair – a key point raised during consultation.

Consultation

I note that Islanders' views have been listened to and considered in developing this policy. Whilst consultation has taken place with a range of stakeholders, I note that consultation did not include children and young people aged under 18 years. **Article 12 of the UNCRC establishes the right of every child to freely express her or his views**, to have a voice and to be taken seriously. One of the focus groups were aged 18 and 30 years, and it is pleasing to see the views of students and recent graduates. I note that the review states that the views of children and young people in Jersey are important and will be considered as the population policy is developed. However, to date, children and young people have not been consulted – an issue that was raised in the 18-30 focus group. They stated that the younger generation should be involved in decision-making on a future population policy as they will be most affected by it. Some felt that young people's views are currently poorly represented in States decision-making. I would strongly recommend that, in the next phase of policy development, all children and young people are given the opportunity to participate and engage.

The consultation considered the participants' vision for Jersey:

- affordable housing / housing options;
- for Jersey to be a sustainable and eco-friendly Island;
- affordable cost of living / making living in Jersey accessible to all, not just the wealthy;
- educational opportunities, including skills-based training and vocational courses;
- diversified job market;
- a multi-cultural island where equality is valued;
- less development;
- low crime and a safe place to live;
- retaining Island identity and heritage; and
- being a place where locals want to stay and are given opportunities.

It is interesting to compare these views with those expressed in my own research in the 2018 Island Wide Survey and my more recent report '**Life on the Rock**'. The key themes are very similar. I am pleased to see that the Common Population Policy Review has made use of these documents and has drawn from them the views and opinions of children and young people. I quote:

'The Life on the Rock looked at housing issues through children's eyes. Primary school-age children recognised that where families live is sometimes connected to their parents' work, and that accommodation is not always satisfactory. There was also a recognition that housing in Jersey is expensive. This was echoed by respondents of secondary school age, who also considered that certain areas of the Island, such as St. Helier, were overpopulated and that the government should do more to regulate housing for migrant workers and their families. The unqualified housing sector was also identified by respondents to the Children's Commissioner's Island-wide consultation of 2018 which identified the negative effect that living in poor quality homes had on some families. A key message from the Life on the Rock consultation was that there should be a greater emphasis on the transition from school to adult life, with life skills lessons normalised in schools to prepare young people better for the outside world. Young people also felt that the school curriculum was too focused on academic attainment, with lower priority given to vocational subjects. Careers advice in schools should be improved, which will empower young people to shape their own future based on their aptitudes, abilities and preferences. Young people in the survey also equated 'densely populated towns' with too

many cars, traffic jams, lack of parking spaces and high parking charges. They felt that public transport should be improved, both for convenience and environmental reasons.'

Education

I am pleased to see the emphasis on education. **UNCRC Article 27 recognises the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.**

Therefore, I welcome the commitment to improve education, skills and training in the Island and the commitment that our education system should ensure everyone is reaching their full potential.

I am pleased to see that equipping school leavers with the right skills to enter the workplace was given a high priority. It was perceived that significant emphasis is currently placed on students getting a university education and that vocational training and apprenticeships should be more widely available, with these students given equivalent financial support. **Article 28 of the UNCRC says that children and young people have the right to education no matter who they are: regardless of race, gender or disability; if they're in detention, or if they're a refugee.** It goes on to explain that **children and young people have the right to both primary and secondary education and should be able to choose different subjects when in secondary school. This should include the option of technical and vocational training, so they shouldn't have to focus on academic subjects if they don't want to.**

Control of Housing and Work law

I am pleased to read that amendments to the Control of Housing and Work Law (CHWL) will be debated during 2022. My report 'Legislative Gap Analysis' 2020

<https://www.childcomjersey.org.je/media/1389/legislative-gap-analysis-oct-2020.pdf>

finds that the CHWL fails to provide for housing, or access to housing to be determined by reference to need or vulnerability, including vulnerability by reason of age. It also found that the Affordable Housing Gateway (AHG) discriminates amongst those in housing need based on residential status, rather than by vulnerability, and that the AHG discriminates against children, as only adults may apply. These human rights violations must be addressed in the amendments to the CHWL when brought forward in 2022.

Migration Policy

Following the Assembly's adoption of P.137/2020 I note that detailed legislation is being finalised to amend the current CHWL. States Members supported changes to the CHWL controls in March 2021 and law changes will be debated in early 2022 with detailed regulations following later in the year.

The amended controls will allow for long- and short-term permissions and will allow improved control over the number of migrants receiving permission to live permanently in Jersey. I have provided advice on this issue previously and refer to my earlier submission to scrutiny rather than repeat that advice here. Here is a link to my advice to the Migration Policy Development Board

<https://www.childcomjersey.org.je/media/1449/letter-to-mpdb.pdf>

All respondents in the 18 to 30 year-old age group expressed the need for Jersey to become a more inclusive and diverse community. It will also promote good community relations if migrants can choose to have their family with them in Jersey. It creates a sense of inclusion, thereby avoiding the view that there is a hierarchy of who is, and who is not, able to bring their partners and/or children to Jersey. Therefore, all migrants feel valued and welcome by such an approach, and the children of such migrants are not separated out as having fewer rights or being less important. This will assist those children to integrate better in schools and not feel like an underclass of child. Further, to deal with the

global competition for migrants, if Jersey is viewed as being a good example of an inclusive, fair and safe place for families and less skilled migrants, then this is also likely to attract even more of the skilled and medical/care industry migrants which Jersey needs as a priority. This is because those more skilled and medical/skilled migrants are more likely to want to live in and be part of a society that promotes fairness for all.

To get the best and most committed migrants, it is vital to respect, promote and protect the private and family lives of those migrants. It should not merely be a matter of getting the most hard-working migrants into Jersey. Jersey should set a good example and ensure that the migrants it attracts also have the option to have their partners and/or children live with them in the Island. Conventions such as Article 8 ECHR and various Articles of the UNCRC require that to be so.