



Migration and Population Review Panel

Migration and Population

Witness: Commissioner for Children and Young People

Thursday, 4th February 2021

Panel:

Senator S.W. Pallett (Chair)

Deputy S.M. Ahier of St. Helier

Deputy G.J. Truscott of St. Brelade

Witness:

Ms. D. McMillan, Commissioner for Children and Young People

[15:08]

Senator S.W. Pallett (Chair):

Good afternoon, everybody. A big welcome to the Children's Commissioner and thank you for your attendance this afternoon at this public hearing in regards to the Migration and Population Review Panel. I will just do a short introduction. Our normal hearing standards apply. The hearing will be recorded and it will be transcribed as well. If you want to indicate your wish to speak you can use the chat function. It should be relatively easy today because obviously we have only got yourself and the panel members. Please speak in order, if possible. Try not to interrupt if possible as well. But I think that will be a lot easier with just the 4 of us. Please make sure you are on mute when not speaking and remember to come off mute when you are speaking. Please ensure a clear visual is available when you are speaking. Sometimes it is useful to turn it off because it helps with the quality of the sound and the pictures. Speakers will be shown on video. If we do run out of time for all our questions we just ask, Commissioner, we may send you some questions in writing and then we can publish them on the panel's web page. All speakers will need to introduce themselves in the usual

way for the transcript. I will start off by asking you, if you could introduce yourself and I will introduce the panel.

Commissioner for Children and Young People:

Thank you, Senator. My name is Deborah McMillan and I am the Commissioner for Children and Young People in Jersey.

Senator S.W. Pallett:

I am Senator Steve Pallett. I am chair of the Migration and Population Review Panel.

Deputy S.M. Ahier of St. Helier:

Deputy Steve Ahier, member of the Migration and Population Review Panel.

Deputy G.J. Truscott of St. Brelade:

Deputy Graham Truscott, a member of the panel as well.

Senator S.W. Pallett:

We have gone through the introductions. I want to get into questions as soon as we can because we are aware obviously that we have a limited time. It is due to have until 3.30 but we have quite a number of questions and some of them are quite complex. We will get into it straightaway. If I start with maybe just some opening questions. Paragraph (c) of P.137/2020 includes 8 separate amendments to the Control of Housing and Work (Jersey) Law. I wonder if you could just outline your primary concerns with this particular paragraph please?

Commissioner for Children and Young People:

Yes, if I could, Senator, is to begin with I think I do need to remind you of the formal preamble to the United Nations Convention on the Rights of the Child that should sit centre stage in any decision-making around migration controls where it relates to children and families. That says that the family, as the fundamental group of society and the natural environment for the growth and well-being of all of its members, particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community. It goes on to say: "Recognising that the child for the full and harmonious development of his or her personality should grow up in a family environment, in an atmosphere of happiness, love and understanding. For me, given that the fundamental purpose of these proposals is to define a modern and lasting solution to managing a sustainable healthy immigration into the Island it should not only be feasible but should it not be the core aim of the proposals to establish a policy that models not just the U.N.C.R.C. (United Nations Convention on the Rights of the Child) but a sound and humane attitude towards those people who we have asked to come here and work in and for our community. Such an approach will inevitably

need to be based on the rights of the adults and children and their families. Let us be clear though, that any state - and that includes Jersey - has the right under international law to control the entry of foreigners but what I would say, and any human rights specialist would say, that right has to be exercised consistently with the binding international law obligations that this country has made. So that is not just the U.N.C.R.C. but it is also the European Convention of Human Rights that you know Jersey has incorporated into our national law through the Human Rights (Jersey) Law 2000. I would say that extending those fundamental rights to all migrants is imperative because our rights are not optional extras. But also more than that, surely it will enable all migrant workers in Jersey to feel valued and to feel welcomed, and the same for any children who they may bring with them. It would see that categories of migrants are not discriminated against as having less rights or being less important than other categories. It will also help any children that come to integrate better in schools and not feel like any underclass of child, which is something that we do still see today. I guess from a pragmatic point of view, it will also help Jersey to deal with this global competition that we have for migrants, especially post-Brexit. If our Island is to be regarded as a leading example of an all-inclusive fair and safe place for families then that is what we should do. It is more likely then that Jersey will be in a better place to attract even more of the skilled types of migrants who we need, whether that be in the medical professions or the caring professions.

[15:15]

That is because they are more likely to want to come and live in a society that promotes fairness for all. I think what I am saying there is that the migration control policy should consider and refer to the U.N.C.R.C. and the E.C.H.R. (European Convention on Human Rights) in making their decisions. In fact, there is a requirement for public authorities to act in a way that is compatible with both of those. Therefore it has to be at the forefront of any approach. In my mind, at the moment, these proposals do not have these internationally law-abiding treaties at the forefront of their approach. Now while in Jersey we have not ratified the International Convention for the Protection of the Rights of Migrant Workers and their Families, nevertheless, we should aim to comply with the spirit of that particular convention which says: "The rights of migrant workers and members of their families have not been sufficiently recognised everywhere and therefore they require international protection, taking into account that migration is often the cause of serious problems for members of the families of migrant workers because of the scattering of the family." Of course I agree that migration is necessary and it is required but it must be achieved in a way that is fair to all migrants and even those migrants who will be coming to Jersey for a short period of time - less than one year - who might be undertaking what we might call unskilled work or less skilled work. Surely it will promote good community relations if all migrants and their partners and/or children come with them to Jersey or promote that sense of inclusion. It will remove that sense of hierarchy that exists. To get the best and the most committed migrants, it is vital to respect, promote and protect the private

and family lives of those migrants. It should be about how do we get the most hard-working migrants into Jersey? We should be setting a good example and ensure that those migrants that we attract have the option to bring their children and partners with them. The conventions, Article 8 of the E.C.H.R. and the various articles of the U.N.C.R.C., actually require that to be so. I apologise for that being a long introduction but I thought it was important just to set those important points out.

Senator S.W. Pallett:

I think within your summary you have certainly gone into a lot of areas we are going to ask questions about in more detail so I thank you for that because you have certainly covered the areas where we have some interest. Just to be clear about what you have said, I would be correct in saying that you do not believe the way that these policies have been developed have had these conventions, the U.N.C.R.C. conventions, at the forefront of thinking and that, I suppose in another way, would you have expected more from these policy amendments had they had these 2 conventions at the forefront of their minds?

Commissioner for Children and Young People:

Yes, absolutely so. I have provided written and oral evidence to the Migration Policy Development Board and given them real case examples of families who have been struggling in Jersey because of the existing regulations, and how these new regulations are going to make those even harder, not easier. My written advice set out quite clearly that the proposals did not put children and families at the centre stage. It did not think about and it was not explicit enough around U.N.C.R.C. but particularly E.C.H.R. because that is incorporated into Jersey law and therefore surely you should be doing everything to make sure that Jersey is compliant.

Senator S.W. Pallett:

Okay, I do not want to go into questions that other members are going to ask so I am going to stick to the questions that I have and then we will move through as we can. Just in terms of automatic graduation, do you have any concerns regarding the loss of the automatic graduation from one permission to another?

Commissioner for Children and Young People:

To be honest with you, the automatic graduation for us, as a Children's Commissioner for the Island, is not necessarily an issue. Looking at the different proposals, the 9-month and the 4-year proposals are the ones we have the most concern with because they put restrictions on family life. However, the 10-year and the long-term proposals do not and therefore are absolutely compliant with U.N.C.R.C and E.C.H.R. So I do not think, to be honest with you, there are any clear human rights issues of the inability to graduate from one to another. Some of the issues that do feature is under the 4-year proposals, is where the migrant has to go back home and if they have been able to come

with children and have settled in a Jersey school or any early years settings it would be incredibly disruptive for those children to have to return back before they could return again to carry on their work because they need to have that break.

Senator S.W. Pallett:

Picking up on that, as much as they might not break any conventions in terms of what they are setting out to do, do you believe though they are fair and equitable for those that come and work in the Island?

Commissioner for Children and Young People:

Like I have set out in my opening preamble, we really do need people to come and live and work in Jersey to make it vibrant and to help our economy thrive. If we are going to do that then we have to be inclusive. We have to make sure that we respect and promote the private and family lives of them and therefore any of these proposals that present barriers must be looked at again.

Senator S.W. Pallett:

But for you that would be more around the first 2; that is around the 9-month and the 4-year permissions?

Commissioner for Children and Young People:

Yes, they are the 2 that I would say fall short of expectations of the U.N.C.R.C. and the E.C.H.R.

Senator S.W. Pallett:

Just specifically looking at the worker's spouse and civil and partner. Do you believe their status in any way will be affected under that new system? Or will it be in those first 2 permissions where the most harm could potentially be done?

Commissioner for Children and Young People:

What we have seen in our office, because we do provide human rights advice and support, is we have been able to act for a number of families who have been caught in some really difficult circumstances because of the nature of the law as it stands. You will be familiar with the fact that the Women's Refuge was so full a few months ago that they had to open up another home. While I am unable to give you any details of the cases that we have acted for it is clear to us that it does not matter if families have come here on licences to work in the finance industry or whether families have come here to work in the agricultural or hospitality industry. Those families are being subjected, for example, with domestic abuse and are having to flee their homes to the shelter. Then they are stuck because they do not have any entitlement to access income support and to access housing. So we need to consider that where those migrants can bring family members with them,

so that would be the 4, 10-year and long term that there are some measures put in place for when there is family breakdown and domestic abuse because at the moment what happens is the Government offers to send those families home and for many of those families that puts the children in danger. The only other option is to go back to abusive partners. We cannot allow these proposals to allow this situation to continue.

Senator S.W. Pallett:

Following on from that, are there any immediate improvements or improvements in these particular policy areas, that could be made that would improve the rights of those migrants, those families, and improve their journey when they arrive here? You mentioned family breakdowns in all sorts of areas where there could potentially be problems but how could that be improved within these amendments?

Commissioner for Children and Young People:

There are a number of improvements that could be made. First of all by putting international law-abiding treaties centre stage. We need to consider, particularly for the 9-month proposal, is that in these situations the employer very much has influence and control of migrant employees. I think what these proposals could do is put in place some minimal standards, some guidance to ensure that the employers are acting fairly, that they are acting in compliance with any equality duties that they might have and to protect the employee so that the employer does not take advantage of this imbalance between them and the employee. At the end of the day the employee is in a very weak position coming here for a short period of time, having left their family and children behind, perhaps in unstable countries and situations where children might be at risk of exploitation. They probably might feel unable to take legal advice on their own in their position. Also, the proposals should put in place some sort of independent monitoring, particularly, as I said again, for the 9-month category, with some announced and unannounced visits to make sure that where migrants are and indeed when they do have children with them, where their children are, to make sure that there is compliance with the duties of fairness that sit with the employers. I have been invited to go and visit a farm where families and their children were living and it was really good to be able to advise the employer but also to see the living conditions where the children were there, but I would like to see that firmly in the proposals. I think, as I mentioned in my letter to you, that any period of residence should accumulate towards the other rights. This is because it would give that sense of inclusivity to all migrants and remove this sense of hierarchy. For example, the rights to work towards housing qualifications and a right to work towards the ability to draw down income support and indeed access healthcare. I do feel also there needs to be some sort of right to appeal to a tribunal or some other similar form for free legal advice as well. So that a migrant can make a complaint about their employer and be clearly heard. Those are the areas in which it would make these proposals more

focused on the family and, with those additional protections, would achieve better compliance within a human rights framework.

Senator S.W. Pallett:

Thank you, because there is a lot of detailed issues that you have brought to us there which I think are really important. Certainly the monitoring of businesses is one of them. But in terms of a right of children, what risk is there that these proposed amendments ignore the rights of children and families affiliated with the individual seeking access to housing or work permission or potentially a graduation?

Commissioner for Children and Young People:

So, for example, in relation to the 9-month category ... sorry, let us go for the 4-year category. The migrant must leave for at least one year before they can reapply for any other permission. That is why we say that is difficult because in some circumstances that could potentially violate Article 8 of the European Convention of Human Rights because their family and private life will be affected because they would have lived here for 4 years and it would be disproportionate for Article 8 purposes, and that means having regard to the best interests of the child to require the family to leave, go abroad and apply again after a year. That is one example of where we would say that is a violation of the E.C.H.R.

[15:30]

Senator S.W. Pallett:

Thank you, that is really useful. I have finished the section of opening questions, I am going to hand over to Deputy Ahier now who is going to look at some of the Control of Housing and Work recommendations.

Deputy G.J. Truscott:

Sorry, Chair, I have a question, I put it in the chat. Commissioner, thank you very much for that. It is most useful and quite enlightening. It is really more of an observation that certainly on a 9-month contract the practicality of bringing over a family, i.e. the cost of rents, the cost of living in Jersey, would probably be prohibitive. Do you think the Government could do anything to alleviate that or do you really feel that it is down to economics at the end of the day, and it is a 9-month contract for somebody to earn money in Jersey?

Commissioner for Children and Young People:

We will all be familiar with seasonal workers. It has happened in Jersey since we started toiling the land. That in itself is not really the issue. Those choosing to come here on the 9-month proposal

however should be given the option to bring their families if they wish to do so. There are a number of reasons to consider there. One is the right to enjoy family life, and that is under both of those international treaties. It is a right and therefore the migrants must be allowed to have those rights protected and respected. But secondly, we know that post-Brexit it is increasingly difficult to get migrants to come here from particularly E.U. (European Union) countries. We have seen how, particularly in the agricultural industry, migrants are being brought here from a long way away. From areas such as the Philippines. It could be argued that those families left behind are perhaps left behind in situations of risk. We have all seen where children have been exploited because the father, the primary caregiver, is away from home and that is something that surely we have a moral duty to consider.

Deputy S.M. Ahier:

To move on to your recommendations concerning control of housing and work. Commissioner, you note that you have sourced independent legal advice from leading counsel regarding Migration Policy Development Board proposals, which are largely replicated in the proposition's proposed amendments. Do you believe that there will need to be a strengthening of employees' rights, in Jersey in one form or another, to prevent employers from having too much influence and control over migrants and if so, what form should this take?

Commissioner for Children and Young People:

Yes, absolutely. Just to talk back about leading counsel. I have received legal advice from Manjit Singh Gill Q.C. (Queen's Counsel), who is a barrister based in London at No. 5 Chambers. Manjit is one of the foremost immigration practitioners in the U.K. (United Kingdom), having conducted cases in the Court of Justice and the European Court of Human Rights cases. He is the chair of the expert panel of the strategic legal fund. He has worked closely with the Immigration Law Practitioners Society and he has argued many of the most important cases on children's rights at the highest levels. He is the leading authority on the best interests of children in immigration cases. The advice that he has given to us has been reflected in my formal advice, not just to you but also to the Migration Policy Development Board. It would be wise for this Government to take that advice seriously. You talked about what could be put in place and you talked quite correctly around this imbalance between employer and employee. It is something I think we have to really consider, as I said before. Particularly under the 9-month and maybe to an extent the 4-year proposals the employer has a huge amount of influence and control over migrants. We need to make sure that those migrants are receiving the minimum wage, if not the living wage. We need to make sure that that is not being top-sliced heavily for the provision of healthcare and somewhere to live or being given a lift into town on a Saturday afternoon. We need to make sure that there are some sort of minimum levels so that our employers are acting fairly and they are complying with those adults and any potential children's human rights. I think it can be done. These proposals can be strengthened

but, as I said earlier, it is just not explicit enough at this stage. We would be more than happy to work with the Government to make sure that those checks and balances are put back in as additional protections.

Deputy S.M. Ahier:

Does the potential increase in use of zero hours contracts for migrant workers carry any risk within the proposed amendments?

Commissioner for Children and Young People:

I think they do, and again through our case work, we have seen this become an increasing problem. The issue here is around those zero hours contracts where particularly for female migrants if they become pregnant and need to stop working or if they become poorly and need to stop working, then they have no protections. I would also like to just draw you to a document that we published and submitted to the Government back in December, and that is the legislative gap analysis where, on behalf of the Minister for Children and Housing, I reviewed all legislation in Jersey to check out its compliance with the U.N.C.R.C. What I have reported in that document is that the statutory tests applied to determine adult eligibility for income support may well result in children being denied the right to benefit from social security - that is not compliant with the U.N.C.R.C. - but also what we said that not just access to social security benefit but access to housing is also governed by legislation that discriminates between children as it is based on the status of their caregiver or their parent. As you can see, if you are on a zero hours contract there are many situations where you are going to find yourself out of work and not being able to access benefits which would benefit your children. That, we would say, falls far short of expectations of the U.N.C.R.C.

Deputy S.M. Ahier:

What jurisdictions and official bodies were you recommending considering when you referred to independent monitors of employers to ensure that migrant workers are treated fairly?

Commissioner for Children and Young People:

I think that this could be an on-Island system. For example, the Commissioner for Children and Young People Law does allow me to enter premises where there are children except that it does not allow me to enter a private home. While I was really pleased to be invited by a farmer to come and have a look at and speak to those families that he employed, I do not have an automatic right to turn up at a farm and ask to see their homes. At the moment, it falls out of the scope of any particular statute. So I would like to see some sort of process set up that gives legal powers, should it be needed, but also some way of appointing independent visitors to go and check. Now that might be something from Malcolm Ferey, Citizens' Advice Bureau, because they could be able to give some

legal advice. It might be some other system but I am sure that if we have guidance and then somebody who can monitor and check then they are going to be helpful additional protections.'

Deputy S.M. Ahier:

Should membership of workers representative bodies, such as trade unions, be more clearly communicated and offered to migrant workers?

Commissioner for Children and Young People:

I think so. I do know that Caritas has produced a booklet in a variety of languages that they give to people when they arrive in Jersey that explains access to all of these different things. That is one of the ways in which we can make sure that they are aware of their rights, no matter what language that they speak. It may well be that that document needs to be refreshed and updated and now translated into other languages. But certainly there must be a mechanism to make sure that the migrant workers know that they do have rights and know who they can go to if their rights are not being respected.

Deputy S.M. Ahier:

In paragraph 4 of your comments on the Control of Housing and Work provisions, what do you refer to by "any other rights"?

Commissioner for Children and Young People:

So periods of residency should accumulate towards any other rights. So what I was trying to explain there was at the moment your right to social security is dependent on living in the Island for a certain period of time. Another example is your right to access adequate housing also depends on how long you have lived in the Island. Equally you have to have lived here for 6 months before you can access healthcare. That is what I meant there, is that any period of residence, whether that is 9 months or 4 years, should accumulate towards any other rights. Even for the 4-year one, if you have to leave the Island for a year and then come back, it should be cumulative rather than a stop/start. The reasons for that, as I have said many times during this short conversation, is because it is about inclusivity. It is making sure that migrants do not feel that they are second-class citizens because at the end of the day they are just people, like me, who have come here to work and to do a job and want to contribute to society and to the whole Island.

Deputy S.M. Ahier:

You mentioned earlier you would like to have a tribunal. How would it function in relation to the proposed independent body and States committee?

Commissioner for Children and Young People:

Again, I am not familiar with any tribunal system here in Jersey so law officers would be able to talk to you about how that might work. But something like that where there is a right of appeal with support, with access to free legal advice, so that when a migrant feels that there has been a breach in fairness by their employer they have somewhere they can go, who can get advice but then can take it to the next stage and be able to have a right of redress and an outcome for that migrant.

Deputy S.M. Ahier:

Hypothetically that legal advice for alleging of breach of fairness, do you believe that should be supplied pro bono by the Law Society, for example?

Commissioner for Children and Young People:

You understand the legal aid rules here are quite complicated and in fact in some situations legal aid is not available to everybody, particularly children. So we would need to connect it up with any reform of the legal aid system. But I think at the end of the day, migrants who may well come here with limited English and limited understanding must be able to access some very simple free legal advice when they feel that they might be being exploited.

Deputy S.M. Ahier:

I have just seen that Deputy Truscott has his hand up. Graham, did you have a question.

Deputy G.J. Truscott:

Commissioner, just to really touch on the cumulative idea, and it is something that perhaps the Government should look at, and we note social security payments, and obviously you are accruing pensionable rights under that scheme. I presume this what you are referring to when you come back this should be an ongoing thing that obviously plainly will benefit the individual in the long term.

Commissioner for Children and Young People:

Yes, because what we see is migrants in all 4 of the categories will be regarded as ordinarily resident while they are here. In fact, Manjit Gill Q.C. has provided, and I have provided to you, some case law around that. If they are ordinarily resident you will be expecting them to pay local taxes and surely it makes sense, in order of fairness... it should be clear what those migrants can expect in return in the way of access to local benefits. I appreciate that there needs to be a minimum period of which you pay in before you can withdraw but I do not feel that at the moment anybody has given particular consideration to that for all of the categories.

[15:45]

Senator S.W. Pallett:

I have a brief question. Obviously you mentioned the tribunal function and the fact that many of the migrant workers that do come here obviously do not always speak good English. Do you think that the current system is letting them down? I am thinking some of the services that we currently have, like J.A.C.S. (Jersey Advisory and Conciliation Service), they find that too difficult to be able to navigate?

Commissioner for Children and Young People:

I absolutely agree. Of course for those migrants that are here who have brought children with them, what we see is some of those complexities in education, in schools. We know that the English as an Additional Language Team has faced significant cuts in recent years to the point where they have had to reduce their team and are not able to give the support that not just the children need but the family need as well because if we are expecting migrant workers to stay here and encourage their children to value and make the best of their education, then they need to be able to speak English as well, so they can help the children with their homework but also to communicate with teachers as well. I feel that there is an area there that needs strengthening.

Senator S.W. Pallett:

Deputy Ahier, I am not sure if that is the end of your questions.

Deputy S.M. Ahier:

There was just one more, Chair. Commissioner, could you please expand on paragraph 6 and provide an example of the potential contraventions of binding obligations of international law and potential court scrutiny?

Commissioner for Children and Young People:

The 9-month proposal in itself, so a migrant worker can come here for 9 months but they are not allowed to bring family members or children and then they must leave. That in itself is unlikely to contravene nationally binding obligations of international law. So what I am saying is, as a scheme for the entry of workers in that category, it probably would withstand scrutiny in a court. It probably would be seen as compliant with the U.N.C.R.C. and the E.C.H.R. but there is a however. The however is while the scheme itself is probably compliant, the application of the conditions for the grant of that permission may well give a rise to a breach, especially to the E.C.H.R. and that is because of Article 8. Article 8 is the right to a private and family life. The European Court of Human Rights may well say that the conditions of that particular scheme is not allowing those families to have that right. So in that way it could violate Article 8 of the E.C.H.R., and of course E.C.H.R. has been incorporated into Jersey domestic law through the Human Rights Law, and therefore adults will have a sense of redress.

Deputy G.J. Truscott:

Commissioner, we would just like to touch on the contents of your submission. You outline that the proposed policy should give consideration and reference the following, and please forgive me, you have covered some of this already but I think it is good for the public record to get as much as we can on record. Reference the following, the United Nations Convention on the Rights of the Child, the European Convention on Human Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, how should the Council of Ministers seek to achieve this when it comes to the proposed housing and work legislation amendments? Are there specific policies that they should adopt that would demonstrate their consideration?

Commissioner for Children and Young People:

Yes, certainly. Because the current proposals are not explicit enough in terms of setting out how they are going to protect the children's and family's right to a private and family life. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, just let us be clear, has not been ratified by Jersey, so you do not have to, you are not obliged, to comply with it. Nevertheless, it is a really important international convention and in fact it is a function under the Commissioner for Children and Young People Law to encourage Jersey to ratify those conventions that it has not yet ratified. So we will continue to encourage the Government to ratify it. But in the meantime, we will also make sure that they are cognisant of its content and that is why I pointed out earlier that particular concern of that convention, which is around the scattering of the family, the leaving behind of children in positions of instability and possibly at risk. That is why it may be recommended that migrants are permitted to bring their family and children with them, particularly in those conditions. The U.N.C.R.C. is absolutely clear. Children have 42 rights and children who come here with their migrant parents, it does not matter how long their parents are here for, the minute their feet touch the soil they are entitled to the realisation of all their rights. Even though their parents might not have lived here for long enough to access income support or housing or health, nevertheless the children have the right, in their own respect, to access an adequate standards of health and housing and to be supported through income support. That is why I pointed out earlier that access to benefits and housing is, at the moment, governed by legislation that is discriminatory. So therefore is not compliant with children's rights. We would like to see that absolutely addressed in these proposals. I hope that answers your questions, Deputy.

Deputy G.J. Truscott:

Yes, it does, which is quite useful. Regarding scattering of the family, how is this risk reflected in the proposed amendments? Did you feel there is not enough robustness covering this particular aspect?

Commissioner for Children and Young People:

No, I think the amendments did improve that particular aspect but it still, certainly for the 9-month category, remains a concern because they are far less likely to bring their children and might be tempted by the money on offer but we have a moral duty, whether it is an international law-abiding treaty or not. We do have a moral obligation to make sure that children are not left in circumstances where they could be harmed.

Senator S.W. Pallett:

Could I ask a very quick question before you move on? In terms of the migrant workers convention, which is not ratified, do you think there is any reputational risk for Jersey or for the Island if we do not ratify this convention as soon as possible?

Commissioner for Children and Young People:

One of the issues and complexities of all of this, is that Jersey can only ratify a treaty if the United Kingdom has done. So if the United Kingdom has not ratified a treaty then we cannot either. However, that does not stop us from being guided by the spirit of what is included in that treaty even though we cannot ratify it. There are a number of treaties that the U.K. has ratified that we have chosen not to and we will continue to make sure that they are. But, unfortunately, we are bound by U.K. decisions on that.

Deputy G.T. Truscott:

You have covered (b) and (c) for me, so I will move on to question 9. You note that Jersey should consider responsibly how it attracts migrants but also to assist migrants to have their families in Jersey with them. What recommendations would you make to the Council of Ministers to implement this assistance?

Commissioner for Children and Young People:

I think there are a number of ways in which we can assist migrant workers to have their families with them. Of course, one is obviously a change to the proposals, so they have got the choice. But the second is making sure that if they do bring their families and children, should I say, with them, that the children are able to access the entirety of all of their rights. We put no barriers in place for children being able to access education; the day they arrive they are allocated a school. But we do put barriers in place in terms of where they can live and whether or not they can have income support to support them. These are areas where we would need to think about it, particularly in the example that I gave you, where a family might be subject to domestic abuse or sickness and then find themselves in a position where they have no other option than to return to their home country and that might put themselves or certainly their children in danger.

Deputy G.T. Truscott:

Just following on from that, and as part of the Corporate Services Scrutiny Panel's Population and Migration Review in 2019, it was recommended that English language classes should be provided to children arriving in Jersey as part of progress integration. Would you support this?

Commissioner for Children and Young People:

Absolutely. If you speak to our head teachers they will tell you that throughout the year children just arrive in school, having no English and it is really difficult for them, particularly at secondary school, to be able to access the curriculum when they are only having a few hours a week support through the English as an Additional Language Team. Teachers have said that it would make far more sense for those children to have intensive language learning, along with their family, so they can support them with their learning, before they are able to access the rest of the curriculum. Because it must be incredibly frightening for a child to be brought here and then plunged into a classroom where you just do not understand what is being said and may not be able to ask for very basic things that you need; it must be quite a difficult position. I do agree with that proposition.

Deputy G.T. Truscott:

Chair, you have got a question.

Senator S.W. Pallett:

Yes, very quickly. I do not know if I heard you wrongly before, Commissioner, but did you say there are pressures on the English as a Second Language Team and, if so, what are your thoughts on that?

Commissioner for Children and Young People:

Yes, we were approached by the English as an Additional Language Team to explain that the money that they were given had been cut and, therefore, they had to reduce the number of staff working for them. They are based at Rouge Bouillon School. They do a magnificent job. It was a concern to hear that the number of hours that they can offer to support children have been reduced. What I did at the time was speak to the Director of Education to see what else might be put in place to help. I see that there are some projects in the Government Plan and I see that the Youth Service have been commissioned to carry out scoping for a project. But in the meantime we do still have children in our schools whose ability to learn is affected because they still do not have English that is good enough.

Deputy G.T. Truscott:

Thank you, Chair. Commissioner, in your submission you note that Brexit may mean fewer migrants from within Europe and that attracting third-country nationals will become essential. What other areas should the Council of Ministers consider when considering this possibility?

Commissioner for Children and Young People:

I think we have seen this happen already in that, for example, the number of Romanian and Polish migrants coming to Jersey has reduced. I have read in the news that the agricultural industry here has approached countries such as Nepal and the Philippines to bring migrant workers here. I guess the problem there is the sheer distance and the difficulties in maintaining connection with families that you may have left behind and also the instability of some of those third-nation countries. You could say that the children left behind could be at more risk than those left behind in other countries. I think it is something that we do have to keep an eye on and make sure that whatever we do it does not lead to a fracture in family life because that is avoidable.

Deputy G.T. Truscott:

Your letter also states that if migrants have their partners and/or children with them in Jersey, it will promote good community relations. Should there be new ways to improve community relations in Jersey and, if so, what should they be?

Commissioner for Children and Young People:

I think what I see is an absence of any integration strategy. As a newcomer to Jersey myself just 3 years ago, it really is interesting to look at the polarisation of the community and how there is very little integration, and diversity is limited as well.

[16:00]

What we know about vibrant economies and countries where people want to come and work and live is that they are inclusive and that they are diverse and they are integrated. I think some sort of integration strategy would really help to bring the whole community together. Because while we are freely using the term “migrants”, we are just talking about people, people who we desperately need to come to Jersey to do whatever the jobs are that we need them to do, whether it is somebody like me, as a migrant, coming here to do this job or whether I would be coming here to work in hospitality or agriculture; we are people. We all have rights, human rights, and if you want good quality people to come and live and work here, then you do need that sense of inclusion.

Deputy G.T. Truscott:

Yes, very much so. How would you approach cases where migrants who are in the Island for less than a year, who would prefer to keep their partner and children in their original jurisdiction perhaps for purposes relating to the stability of schooling, social life or other reasons?

Commissioner for Children and Young People:

I think that is fine. If somebody wants to come and work here and they would prefer for their children to stay behind, then that is a choice. But, of course, the original proposal, especially for a 9-month one, was that they would not have that choice. That might be a difficulty for them to choose between coming and earning money to send back to keep their children there, as against the risk of leaving them there, subject, potentially, to exploitation, trafficking and perhaps criminality. But of course it must be that personal choice. We, as a country, cannot check on families left behind but what we can do is make sure that those workers, while they are here, do have their rights protected, for example, if they were to become sick or have an injury or some other reason why they cannot continue with their contract.

Deputy G.T. Truscott:

You use the term “underclass” when describing how migrant children may feel if integration efforts are not handled well; is there a risk that the current amendments on their own could exacerbate this?

Commissioner for Children and Young People:

I think this is a cultural issue, which is deeply ingrained. My office have not undertaken any specific pieces of work looking at the feelings of children in this respect. But what we have noted through our case work and through our visits to schools is some children do feel this. They do feel that they are the underclass and they do feel that they are not seen as equal citizens. It is something we would like to do more of and maybe once we are out of the particular difficulties we are in, we might do that. But of course that is not what we would want, as a community. We would want everybody to be treated equally and for families to feel welcomed here.

Deputy G.T. Truscott:

Thank you. Finally, you make the argument that the 5-year period before migrants can buy housing should be considered to improve their sense of ownership and allow them to commit to contributing to Jersey’s economy. How do you envisage this policy working?

Commissioner for Children and Young People:

Yes, as I said, taking you back to one of my early statements, of course a country must put in place reasonable schemes to control population. However, those migrant workers that they do allow to come in, if you are paying taxes then you must be able to accrue certain rights. There is an opportunity to welcome migrants and to want them to stay because of the contribution that they are making to our society and, therefore, perhaps should be given the opportunity to purchase houses, which may in some circumstances be cheaper than renting. But certainly at the moment the 2-tier system that we have, particularly for rental, does make it very difficult for those adults coming here without, in current language, those qualifications to rent or purchase.

Deputy G.T. Truscott:

Thank you very much, Commissioner. I will hand you over to the chair now who has some more questions for you.

Senator S.W. Pallett:

I will move on to some different areas. We know that the proposed changes to access to healthcare also contravenes the findings and recommendations of the Migration Policy Development Board, who recommended that: "A worker's valid housing and work card should give a right to free subsidised healthcare from day one in Jersey and that this is extended to civil or married partners and dependent children living in Jersey." Is this policy area, particularly the Chief Minister's dissent from this recommendation, of a particular concern to you?

Commissioner for Children and Young People:

Yes. We would say that with regards to children, obviously their ability to access healthcare depends on the status of the parent, the caregiver. We would recommend that access to healthcare does begin on day one of entering the Island. Because all children have the right to the highest attainable standard of health and in order to do that they need to be able to see the general practitioner, they need to be able to go to the hospital, they need to be able to see a dentist and have that primary care without their being a barrier, whether that is a financial barrier or some other barrier to do with their migration status.

Senator S.W. Pallett:

Thank you. I am just going to move on to some questions around the panels that are in the proposed law. What are your views on the creation of an independent statutory expert panel to research and advise on population matters and what do you believe its remit should be?

Commissioner for Children and Young People:

I think the establishment of a panel would be wise. I feel what would also be wise would be the opportunity to involve a human rights lawyer in that panel, to make sure that the European Convention on Human Rights is held at centre stage, as well as the U.N.C.R.C. I think that would be a very useful move forward. Certainly, as the only human rights institution on the Island, which is what my office is, we would be more than happy to be involved to advise on rights issues. But as for the makeup of it, I think it should be made up of a broad range of Islanders. I have previously expressed concern about the makeup of the members of the Migration Policy Board because I did not feel that it was broad enough and diverse enough. Equally, there is of course 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.

Senator S.W. Pallett:

Just briefly on that, do you think the lack of diversity on the Migration Policy Board is restricted or damaged, potentially the policy that is being put forward?

Commissioner for Children and Young People:

Senator, I will say that my meeting with the Migration Policy Board was lively, as you can imagine. It is a shame that the minutes do not set out the length and breadth of the discussion because they would be quite interesting. No, I do believe that there needs to be more diversification in these boards. We need to make sure that they are truly representative of the whole Island community.

Senator S.W. Pallett:

You sort of answered my question around how the panel should be composed. You mentioned the human rights lawyer and I know your office would like to be involved as well. I will maybe move on to the next question which is: who should be consulted when this panel is assembled? What input would you like key stakeholders to have on the panel's composition?

Commissioner for Children and Young People:

I think the panel should have a very clear terms of reference and those terms of reference should be rights-based. Let me give you an example of how we go about this type of work. Children and young people are centre stage of my work, so if I am going to carry out a project the first thing I do is set up a C.A.G. (Children's Advice Group). We pull together children and young people from a diverse background and we ask them about the project. They advise on how we go about it, how we involve children and young people and the sorts of questions that we ask. We then go ahead and carry out the project and make sure that that participation, whether it be by adults or children, is meaningful and relevant. Then we take the findings back to the C.A.G., to the Children's Advice Group and we test it out. For example, we will say when we spoke to these children they told us that they cannot go to the doctor because they cannot afford it. Is this something that you see and you recognise? Then from that we draw out our recommendations and proposals that we have put before the States Assembly and the Government. I think that, as a model, is ethically sound. It is based on good participation standards and it is certainly a model, even though that is for talking to children, that you could do in order to set up this panel.

Senator S.W. Pallett:

To ensure that young people are represented on this panel, that is the advice you would give, is through a Children's Advice Group?

Commissioner for Children and Young People:

Absolutely, yes.

Senator S.W. Pallett:

Okay, excellent. What are your views on the proposed committee of States Members; this is in terms of deliberating on decisions?

Commissioner for Children and Young People:

Yes. I have already talked about diversity and as long as the Members of States Members, you would have to have some sort of fair mechanism for choosing who they are but any mechanism as part of monitoring the scheme has to be welcomed.

Senator S.W. Pallett:

I think, again, you have answered that, I think, to some degree. My next question was in terms of the balance of Executive and non-Executive States Members; you want to see a broad base of States Members taking part in this particular board.

Commissioner for Children and Young People:

Yes, because as I saw with the Migration Policy Development Board, I do not know how the selection was. But it is clear that the States Assembly Members who attended were all very like-minded and that did not allow for the debate and the sharing of different views. It is going to be a very difficult thing to do but there must be a way of making sure that there is diversity on that group and a range of different views held, so that they could be shared and debated.

Senator S.W. Pallett:

Have you got any thoughts about that particular committee, who they should seek advice from?

Commissioner for Children and Young People:

I think any committee should have access to legal advice but I would also suggest access to independent legal advice. Law Officers' Department, of course, are there, they have a fundamental role in protecting the Government. But one of the benefits of my office being able to seek independent legal advice, particularly from Manjit Gill Q.C., is that we have got access to, as Manjit is, the leading authority on the best interests of children in these sorts of cases. I think we should not be concerned about looking outside of the Island if we do need that expert legal input; I think that should be part of it.

Senator S.W. Pallett:

Thank you, that is really fascinating. Again, it is time to go to one of the other members. I am going to ask Deputy Ahier if he can move on to the next section in the question plan.

Deputy S.M. Ahier:

Thank you, Chair. Commissioner, what engagement have you had with the Chief Minister and his department during the development of P.137 and do you believe that this engagement was enough?

Commissioner for Children and Young People:

The engagement is none. The only engagement that my team have had with this is that we were invited to make a submission in writing to the Migration Policy Development Board. I asked then to appear in person before the board but that is the only engagement that we have had to date.

Deputy S.M. Ahier:

Were you contacted at all by the Government Council of Ministers regarding stakeholder input into the creation of the proposed current policy on population?

Commissioner for Children and Young People:

No. But what I would like to just make you clear of is the Commissioner for Children and Young People (Jersey) Law does have a section in it. There is a section that says: "The Minister must consult the Children's Commissioner for the preparation of any enactment or proposal where it directly concerns children." The key words there are "directly concern" and the Chief Minister and I, as well as Law Officers' Department, have had a little debate around what does "directly concern" mean? As far as I am concerned, any proposals around migration, population control, housing, et cetera, all directly concerns children and, therefore, it is my consideration and deliberation that the Government ought to make sure that the Minister is consulting with us on those proposals.

[16:15]

Deputy S.M. Ahier:

What is your understanding of the consultation that was undertaken with children and young people, if there was any, in the development of this proposition?

Commissioner for Children and Young People:

I do not believe that there has been.

Deputy S.M. Ahier:

None whatsoever.

Commissioner for Children and Young People:

Unless I have missed it.

Deputy S.M. Ahier:

You expressed concerns during your hearing with the Corporate Services Scrutiny Panel in 2019 about the adoption of a tokenistic approach to involving children and young people in policy development. Is this concern still present in regard to this proposition?

Commissioner for Children and Young People:

One of the things that I have been asking the Government to do for the last 3 years is to put in place a participation strategy with a set of ethical standards that lie alongside it; 3 years on there is still no national participation strategy. The reason why that is important is because it sets out the principles for enabling children and young people to take part and to be properly consulted. Children have a right to be consulted under Article 12 of the U.N.C.R.C but it is not as simple as take part in this survey and send that in and we will not take any note of what you say. We have seen lots of times when children have been asked for their views and their views have been totally discounted by adults. In fact we have asked questions about this in our survey work and we have seen that generally children say that they are rarely asked and then when they are asked adults do not take any notice of what they have said; that is not meaningful participation. What we would still ask is that Government do quickly and promptly publish a participation strategy, that they do also publish ethical standards, so that children are not used in a tokenistic way, that they are not brought to a presentation of a Government document and they sing a song and read out a poem and that is it, or a document is produced with some children's pictures in it and then we are told that that is child-friendly. We have got lots of advice that we can give to the Government and we have been doing so about how you make participation meaningful. But you are right, a tokenistic approach is not the right way.

Deputy S.M. Ahier:

Thank you, Commissioner. I will pass back to the chair.

Senator S.W. Pallett:

I have just got a short follow-on question from that. Do you believe that the lack of engagement one with young people is affecting young people's interest in local politics and do you think that is going to have a knock-on effect or consequences?

Commissioner for Children and Young People:

I think it does because of course we see so few teenagers voting when they can do. In fact many youngsters that we talk to still do not know that they can vote. Those that do know say that even though they can vote they do not want to because they do not have that connection. Equally, I have spoken to a number of Connétables who say they really struggle to connect with children and in fact

they struggle to connect with schools on their patch. These are all ways in which we can make sure that children feel better connected to their Parish and also to the whole Island. One of my flagship projects is the Rights Respecting Schools programme, it is a U.N.I.C.E.F. (United Nations International Children's Emergency Fund) programme that we fully fund. All of our schools, bar 3 private schools, are now engaged in the award. One of the benefits of taking part in that is children do learn about voting, they do learn about democracy and they do learn about community and why it is important to be involved and in fact progress through the scheme. We require the children and the school to work with their local community on local projects. I think we do have an awful long way to go. I know that there are projects underway but it is children's rights to have a voice and it would be wonderful to see them more engaged.

Senator S.W. Pallett:

Thank you. Again, that is really interesting. I know it is a little bit off topic but I think it is important that we understand your view on that. The next question I am going to hand over to Deputy Truscott.

Deputy G.T. Truscott:

Thank you, Chair. My final question, you will be relieved to hear, Commissioner: do you believe that Jersey currently possesses adequate protections for the human and working rights low-skilled migrants? I think I know the answer to that one but how should it be improved?

Commissioner for Children and Young People:

Yes, I am sure you can guess my answer to that one. The 9-month proposal is deemed low skilled, low paid and we feel that this is the one that we should all have more serious concerns over. These are the jobs that we need. We need migrant workers to come here and work in our fields and to work in our homes and to work in hospitality and a number of other places. They will be entitled or should be entitled to access all of their rights and they need to feel welcomed. I agree that it is particularly the proposals that we are most concerned about because it places those migrants in a different group to the others and it will leave them with a sense of difference and isolation.

Senator S.W. Pallett:

Thank you. It is back to me again. We are getting towards the close. The next question from me is: I have got no doubt you have read Deputy Perchard's amendment. It covers various areas and it talks about the statutory expert panel and making sure it is representative but what are your views on that amendment?

Commissioner for Children and Young People:

No, I think the amendment is good. I am really pleased to see that States Assembly Members have taken the time to read it. The proposals are very technical. But the suggestions that she has made

in terms of ... it does not matter whether you call it a panel or whatever the name of this body is but there must be some sort of body in place that is diverse and representative, that has a voice, that has access to legal advice, who can make sure that proposals are ongoing because they are going to continue to change and evolve. But to make sure that those proposals acknowledge how we, as an Island, want to welcome families. I will give you an example, when Sam Mézec was the Minister for Children and Housing, he and I went to Norway and we spoke to his equivalent in Norway and said: "Why are your laws to do with children just a couple of pages long?" She looked at us a bit strange and said: "It is because it is in our D.N.A. (deoxyribonucleic acid)." She went on to explain: "It is because in our country we value children, childhood and families." Do you know that stuck with Senator Mézec and I because it really resonated? That is what we want in Jersey. The Government have made those promises, not just by signing the U.N.C.R.C. but in their own plans they have made a commitment to putting children first. That does mean that we must value children, childhood and families and that means the children of migrant workers, as well as Islanders.

Senator S.W. Pallett:

I have got one final follow-up question but just following on from that and very much around Deputy Perchard's amendment. Do you believe it is right that any common policy on population is reviewed and updated annually to provide it for the necessary data we need?

Commissioner for Children and Young People:

One of the things we have problems with in Jersey is data. Data is not easily accessible and where it is accessible it is quite difficult to interpret. But data is important because it enables us to look at the story behind the data; those hidden stories, those families growing up in poverty because their migration status does not allow them to access support. Of course I would support any better provision of data to States Assembly Members and to any board. I think a regular review of these policies is absolutely necessary because it changes so frequently. Some of it is driven by the needs of our economy. The world is globally changing very quickly, as we have seen by the nature of migrants that are coming. I think a regular review, whether that is yearly or twice yearly, is to be welcomed.

Senator S.W. Pallett:

Just a final one on migrant workers. The world has changed, I think the pandemic is changing that and Brexit is changing that well. I suppose following on from your answer there, do you think we are going to have to change our approach to the way we look at migrant workers? That may have to change even more when we consider where those migrant workers may come from in the future.

Commissioner for Children and Young People:

Yes, because I do feel that there will be a global shortage in migrant workers. What we want is to get the best and the most committed migrants, the most committed people. Therefore, in order to do that, it is absolutely vital that we respect and we promote and we protect the private and family lives of those migrants. As I said before, it is not just a matter of who can we get in to come and work for us, do their work and then they have to leave? We should be setting a good example. We could be making sure that we attract the very best migrants and that they want to come and live here and be part of our inclusive, diverse community.

Senator S.W. Pallett:

I have got one concluding question but if I could ask my panel colleagues if they have got any other questions that they want to put to the Commissioner before I put the final question.

Deputy S.M. Ahier:

Nothing further, Chair.

Deputy G.T. Truscott:

Likewise.

Senator S.W. Pallett:

Thank you. I suppose my final question would be: have you got any closing thoughts on the proposition?

Commissioner for Children and Young People:

I think what we would like is the opportunity to make sure that the proposition moving forward is rights-based. I would be happy to go through the legal advice that I have received and make sure that it is used in a meaningful way to support the proposition. I would also advise, even though you do not have to, is that a Child Rights Impact Assessment is carried out on the proposition. You will know that it is in the Government Plan and the Council of Ministers have made a commitment to bring in a due-regard model and that is to be debated later this year and that will put in place a legal obligation for a Child Rights Impact Assessment. But because these decisions are really important to the future lives of children and young people, I would suggest that a C.R.I.A. (Child Rights Impact Assessment) is completed on these to make sure that all of the rights issues are highlighted and addressed.

Senator S.W. Pallett:

Thank you very much. I am just looking at the time and we have done pretty well. I think we were almost on our time. I think we will all be pleased with that. I have not got any further questions. For me, it is really a case of thanking you, Commissioner, for coming in today and talking to us. You

have given us an awful lot of food for thought, an awful lot to go back and think about in regards to our report and whether we consider a potential amendment or what we are going to do in regards to reporting on our evidence. Can I thank you for coming today? Can I thank my fellow panel members for taking part in today's briefing? I thank the officers behind the scenes because sometimes we forget that they are there but the amount of work they do is quite incredible. If there are any members of the public watching, can I thank them for watching? It is a really important subject and one that we will return to because this is only the start of a review that will carry on throughout the year when other policy comes forward. Can I thank everybody for their participation and I am sure we will be in touch again at some point in the future? Thank you.

Commissioner for Children and Young People:

Thank you, Deputies, and thank you, Senator Pallett.

Senator S.W. Pallett:

Thank you.

Deputy S.M. Ahier:

Thank you, Commissioner.

[16:28]