



Work Permit Holder Welfare Review Panel

Work Permit Holder Welfare

Witness: The Minister for Home Affairs

Wednesday, 7th June 2023

Panel:

Deputy B.B. de S.DV.M. Porée of St. Helier South (Chair)

Deputy L.V. Feltham of St. Helier Central

Deputy M. Tadier of St. Brelade

Witnesses:

Deputy H. Miles of St. Brelade, The Minister for Home Affairs

Mr. M. Cockerham, Head, Jersey Customs and Immigration Service

Mr. A. Allan, Senior Manager, Jersey Customs and Immigration Service

[15:30]

Deputy B.B. de S.DV.M. Porée of St. Helier South (Chair):

Good afternoon, everybody, and welcome to this review hearing of the Work Permit Holder Welfare Review Panel. I would like to draw everyone's attention to the following. This hearing will be filmed and streamed live. The recording and transcript will be published afterwards on the States Assembly website. We ask that all electronic devices are either turned off or put on silent. For the purpose of the recording and transcript, we would be grateful if everyone who speaks can start by saying their names and their roles. I will start. My name is Beatriz Porée and I am the chair of this panel.

Deputy M. Tadier of St. Brelade:

I am Deputy Montfort Tadier. I am a Deputy for the constituency of St. Brelade and I have been co-opted on to the panel for this review only at the moment.

Deputy L.V. Feltham of St. Helier Central:

I am Deputy Lyndsay Feltham and I am a member of this review panel.

The Minister for Home Affairs:

I am Deputy Helen Miles of the parish of St. Brelade and I am the Minister for Home Affairs.

Head, Jersey Customs and Immigration Service:

I am Mark Cockerham. I am head of the Customs and Immigration Service.

Senior Manager, Jersey Customs and Immigration Service:

Andrew Allan, J.C.I.S. senior manager, looking after immigration, nationality and passports.

Deputy B.B. de S.DV.M. Porée:

Thank you so much. Just before we start, we have got about 2 hours. Hopefully we will finish before but that is the time we have got allocated.

Research and Project Officer:

Ben Walker, research and project officer, supporting the panel.

Deputy B.B. de S.DV.M. Porée:

Thank you. We are ready to start now. The first question is for the Minister, hopefully. Minister, the panel notes that employers are required to apply for work permits and that the objectives of the work permit policy include protecting employees from modern day slavery and maintaining their welfare. How is the effectiveness of those objectives assessed?

The Minister for Home Affairs:

I think the first thing that I want to point out ... and we know that we do not have legislation in place regarding modern day slavery, so we do not have a modern day slavery Act in the way that they would have that in the U.K. (United Kingdom) but our work permit policy does put various parameters and requirements in place as well as providing guidance regarding separate legislation. All of that seeks to ensure that immigrant workers are not subject to practices that could be deemed as modern slavery and that they are aware of their rights. I have a list that I am happy to read out if you wish.

Deputy B.B. de S.DV.M. Porée:

Yes, please.

The Minister for Home Affairs:

These include as part of the work permit policy that an employer must provide a contract and it must not be a zero-hours contract, so work permit holders must be on a proper contract of employment. They must be paid the going rate and they must be paid a minimum wage of £30,000 per annum

pro rata if the work permit is for skilled employees. They must be paid for a 40-hour week. Any deductions are restricted by law. Wage slips must be provided. There must be statutory breaks during the day and there must be a day off in the week as well as 3 weeks holiday over a year. That will take on greater importance as we move to the 12-month work permits. It is also important that employers require the skills which match their employment and there is also a requirement for suitable accommodation that supports their health and wellbeing. They must be provided with a safe workplace environment and there is statutory protection from automatic or unfair dismissal. The minimum age limit is 18. We also say that there must be a robust and tested recruitment process used and the recruitment process must be fair. Also we request that permission is granted for J.C.I.S. (Jersey Customs and Immigration Service) officers to visit work premises by appointment to ensure that the work permit policy terms and conditions are being abided with. We make sure that we refer to the workers as employees and this is in line with our employment law because there are slight differences between that and U.K. law. Anybody who arrives here on a work permit has what they call day one employee rights.

Deputy M. Tadier:

Can I just jump in with a supplementary? You talked about being able to effectively inspect by appointment. Is there provision in the policy or in your rules to do unannounced visits?

The Minister for Home Affairs:

It is a good question. Some of the advice that we have had is that we cannot do spot checks but that is something that I would like to pursue because I would prefer us to be able to turn up unannounced. Evidently, if you are looking for evidence of malpractice it is unlikely to be visible if it is by appointment only.

Deputy B.B. de S.DV.M. Porée:

What are the key challenges associated with enforcing the objectives of the work permit policy at the moment? What do you think are the main challenges?

The Minister for Home Affairs:

From an immigration perspective, the challenges are largely around the administration and largely around the significant volume. We have seen an 800 per cent increase in work permits and certainly some of the figures that the panel have been presented with before ... if you look back to 2019 we were issuing something like 300 work permits. If you extrapolate that to the end of the 2023 we will probably have issued something in the region of 3,000 work permits. That is a massive increase. I think some of the other issues, we have seen a slight change in sector. We saw in 2019 the main sector was skilled work permits, a smaller seasonal hospitality. That has completely flipped. In 2022 the permits by sector in the main were seasonal hospitality workers without a doubt. Also we have

seen a significant change between 2019 and 2022 of the nationalities of people who are coming to Jersey to work on a work permit.

Deputy B.B. de S.DV.M. Porée:

The fact that you told us of the numbers differences, obviously my question to you is what impact has there been on the resources of the Immigration Department?

The Minister for Home Affairs:

It has been a significant impact. It is not so much the administration of it per se but certainly compliance. When I came into post in June one of the things that we were concerned about was the fact that we were not doing any compliance work at all. What we have done is recruited additional immigration officers to support that increased workload and to encourage compliance to the appropriate treatment of work permit employees. Those 2 officers have been recruited and their training will be completed by the end of July 2023.

Deputy M. Tadier:

Are those officers specifically doing that? Are they focusing on that only?

The Minister for Home Affairs:

Yes, they will be compliance officers around work permit compliance. Clearly, if we find that they are underused in that area, they are certainly deployable in others. They will be multiskilled customs and immigration officers. We have not specifically recruited a couple of compliance officers that are compliance trained, if you see what I mean. I just wanted to make that clear.

Deputy M. Tadier:

Of course, yes. Thank you.

Deputy B.B. de S.DV.M. Porée:

I will be asking a few questions around accommodation. How does Jersey Customs and Immigration establish the standard of accommodation that supports the health and wellbeing of the work permit workers?

The Minister for Home Affairs:

In short, we do not. We put into the work permit policy that, as I have said, accommodation must be provided, suitable accommodation that supports their health and wellbeing. Unsatisfactory accommodation over here is regulated by the Environment Department although what we will ensure is that obviously there is cross-departmental working. If we did become aware of an issue in accommodation because somebody made a complaint, the police, for example, might pay a visit for

a particular reason and they could report back to Immigration. We would then report that to Environment for suitable enforcement.

Deputy B.B. de S.DV.M. Porée:

Thank you. That was going to be my next follow-up question with regard to Immigration engagement with other departments outside the one you have just mentioned.

The Minister for Home Affairs:

Again, I have got quite a long list. Obviously the prime people that we engage with are employers, so those who are seeking permits, and those will very much fall into 2 camps. You will have people who have had people on permits for years and years or then you will get people who is the first time that they have had a work permit. Generally the first time they have had a work permit we obviously bring them in and explain in detail the work permit policy, what the rules and regulations are, what are the expectations are. The first one is employers, other areas of government, politicians, other jurisdictions, certain interest groups representing work permit holders and, of course, work permit holders themselves. Engagement is very much a feature of the immigration work. We do not do things in isolation and we are always keen to hear about the experiences that people are having on work permit and we take every approach very seriously. We have met with Friends of Africa, the Kenyan Jersey Committee, Caritas, the Salvation Army, Liberate. I have also met, with my Assistant Ministers, the equality and diversity cluster. We are quite regular visitors to that. We are always interested, but there is also the other agencies like the Jersey Chamber of Commerce, the Jersey Farmers Union, the Jersey Hospitality Association, J.A.C.S. (Jersey Advisory and Conciliatory Service), Citizens Advice. The list is endless really. Good relationships with the officers at C.L.S. (Customer and Local Services), good relationships with business licensing to the point that we are developing a seamless system for business licensing and work permits as well to reduce some administration and also to gather better data as well about our work permit employee population.

Deputy B.B. de S.DV.M. Porée:

It has got to the best way, engaging with all the different agencies and stakeholders for the best benefits of the workers.

Deputy L.V. Feltham:

Just on that, talking about the different organisations that have engaged with you, have they brought any concerns to you?

The Minister for Home Affairs:

Yes. All of those organisations frequently bring concerns. Usually from an employer's perspective it is because perhaps they cannot get the type of permit that they want or they would like to have a

conversation about the best way to approach getting the right sort of work permit. From J.A.C.S. certainly it would potentially be about poor practice. Citizens Advice would contact us for clarity around immigration law issues. Immigration is not a public advisory service but clearly we give advice about the issues that we know about and certainly anything to do with immigration law. The latest thing that we have set up is an Employee Standards Oversight Board. As you will know, we have got a ministerial group called the Population Skills Ministerial Group and right at the beginning when we were looking more broadly across the Island and workforce it was very clear that we needed a group to oversee employee standards, and that is not just for people on work permits. It is for generally all employees. They do monitor the treatment of work permit employees and they encourage compliance by employers and that includes government employers because the Government is an employer. We use work permits at the hospital, for example, potentially across education as well, so we are employers as well. Then also they would engage with business, so Jersey Business and employee support organisations, potentially the unions. The very first time that group met was 2nd May and they will continue to meet bimonthly. That is a really good flow of information. It is a really good engagement process for us to get information but also for us to debunk some of the myths that there appear to be around the work permit process and the immigration law in general.

Deputy B.B. de S.DV.M. Porée:

Thank you, Minister. Just going back again to accommodation, the general understanding is when permit workers come to work in Jersey they have accommodation which is provided by employers. Do the permit workers have an option to use accommodation provided by the employers or not? Have they got a choice to seek their own accommodation once they are employed?

The Minister for Home Affairs:

Yes.

Deputy B.B. de S.DV.M. Porée:

They do?

The Minister for Home Affairs:

Yes, they absolutely have a choice. The employer does not have to provide accommodation per se. They just need to ensure that their permit worker will be in accommodation that is meeting standards of health and welfare. The vast majority of hospitality and farming, they usually have staff accommodation. For the banks and finance it might be that they have leases for blocks of flats where people come over and you just happen to be on a work permit but you might be living alongside somebody who is not.

[15:45]

Deputy B.B. de S.DV.M. Porée:

We, as the panel, would be likely to visit some of those accommodations with the farming groups. Thank you. On that note obviously there is an option. People can have their accommodation provided by the employer or they can seek elsewhere if they are lucky enough, because we know it is not so easy in Jersey at the moment. Are you able to keep a list of where people are accommodated or is it not ...

The Minister for Home Affairs:

We do not keep a list of ... we keep a list of the employers. We do not necessarily keep a list of where that employee is working at any particular time because, as you say, they might move around. Obviously the constraints around accommodation, you would have to be in registered accommodation or lodging accommodation. The work permit does not afford you the ability to move into qualified accommodation or whatever they call it these days.

Deputy B.B. de S.DV.M. Porée:

Often the Environment Department is the department involved in checking the accommodation. Thank you. My other question in regards to accommodation is the panel notes that landscape gardening and tree surgery is now included under the agricultural work permit route and that if an employer does not provide accommodation they will need to provide evidence that the criteria are met. Are the accommodation criteria for employment in landscape gardening and tree surgery the same as the criteria for employment in all the agricultural sector roles, do you know?

The Minister for Home Affairs:

I cannot see that it would be any different. The criterion is suitable accommodation that supports health and wellbeing, so I would not expect tree surgeons and horticulturists to live in any lesser standard of accommodation than any other permit employee.

Deputy B.B. de S.DV.M. Porée:

I suppose you would not look at checking for their accommodation any different from any other permit holders.

The Minister for Home Affairs:

But again if I go back to my initial comment, because some of these employers would have been first time permit employers, extra time is spent with them to go through the policy so that they understand exactly what their responsibilities are.

Deputy B.B. de S.DV.M. Porée:

Okay, Minister. Thank you for that. I am going to pass it on to Lyndsay now.

Deputy L.V. Feltham:

The work policy states that in granting any work permit the Minister for Home Affairs does so on the expectation that all employers give due consideration to the welfare of their employees both in and outside the workplace. How does Customs and Immigration ensure that employers give due consideration to the welfare of employees with regard to working conditions?

The Minister for Home Affairs:

The first thing to say is that employers are signing a document when they apply for the permit to say that they will abide by those conditions, so you have that kind of contractual obligation at the end, at the beginning of the process. We are not, as I have explained, actively going out at the moment to check for bad practice. As soon as we hear about bad practice, however that might happen, we investigate all complaints of poor practice and I could give you examples but I am sure that you have heard of them in your previous hearing. If it is found that the employment situation is not satisfactory, the permit will be withdrawn from that employer and at that point the person who was holding the permit will be offered the opportunity to change employers and go and work elsewhere.

Deputy L.V. Feltham:

How many times have permits been withdrawn from employers?

The Minister for Home Affairs:

A handful of times, I would say. I am looking at Mark. It is not frequent but then again we are looking at this 800 per cent rise in permits over one year. How many have we done? We have done 2 that I can think of since I have been in post.

Head, Jersey Customs and Immigration Service:

It is probably a few. I think the one thing to emphasise is we are transitioning now from a reactive element, so certainly every instance that comes to our attention is looked into and investigated but, as the Minister said before, additional resources are going in very shortly. We are moving to a more proactive element in looking actively for instances and that also involves developing the intelligence around it.

Deputy L.V. Feltham:

Okay. So when you are issuing a permit, you are issuing a permit to an employer and you are issuing a permit to an employer on the basis that the employee's working conditions meet the

standards as set out in the policy. How does Customs and Immigration determine prior to the permit being issued that the policy will indeed be met?

The Minister for Home Affairs:

That is done because the employer is agreeing to those terms and conditions of the work permit policy before the permit is met. You could argue the same thing that any tenant signs a contract with a landlord. Nobody goes and inspects whether the ...

Deputy M. Tadier:

It is on trust, effectively?

The Minister for Home Affairs:

It is, yes.

Deputy M. Tadier:

Could I just jump in to ask specifically on the ... you said that if an employer has a contract withdrawn because they are not meeting their obligations for welfare that the worker, let us call them, is given the chance to find another employer. Has that ever happened?

The Minister for Home Affairs:

Yes.

Deputy M. Tadier:

Does that happen smoothly?

Head, Jersey Customs and Immigration Service:

Well, it does not happen smoothly with the employer but for the employee there is normally an alternative role so in that respect it happens very swiftly, if that is what you are asking. The point that they come to us and they provide evidence that there has been bad practice, the permission to switch will happen very quickly indeed.

Deputy M. Tadier:

Is the onus entirely on the worker to try to find different employment or are they given any assistance in any way?

The Minister for Home Affairs:

No, we would not give assistance to look for different employment. That is not what Immigration does. We would signpost if it was necessary but with the market as such it really is not an issue for people finding permit work in Jersey at this current time.

Deputy M. Tadier:

I am just wondering how empowered a worker is to be able to do that, depending on how long they have been in Jersey, but it has happened is what you are saying.

Deputy L.V. Feltham:

So, just to be absolutely crystal clear because the panel has heard from people, from employers and employees, employee representatives, that Customs and Immigration will not look at an application within the first 12 months of a permit holder being here, an application to change employer.

The Minister for Home Affairs:

Yes, that is correct. That is a different issue.

Deputy L.V. Feltham:

Okay, because the answer I just heard to the previous question ...

Deputy M. Tadier:

An exception is made where ...

The Minister for Home Affairs:

An exception is made where there is bad practice on the part of the employer; not on the employee, on the employer.

Deputy M. Tadier:

That is because it would unnecessarily demonise the worker for something they have not done wrong?

The Minister for Home Affairs:

Yes.

Deputy L.V. Feltham:

Okay. If there is no bad practice, the process is that an employee has to wait 12 months?

The Minister for Home Affairs:

Yes. That is in the work permit policy at the moment. I am reviewing that because I am not sure that 12 months is not too long to expect people to work for a particular employer. If there is clear bad practice, the decision is quite easy, but we kept it at 12 months because that is what businesses said they wanted because they are investing in the work permit, potentially the visa, potentially training, uniform, all of those sorts of things. So that is one element of it for the employer but the other thing that we do not want is to start encouraging wage spiralling. They are the employers' permits and it is the employer that is permitted to employ somebody here. If you start changing round because somebody is going to go next door and work for 50 pence an hour more and then deprive the initial employer ... it is a very difficult balance but we were only having this conversation the other day. We were saying that 12 months kind of feels maybe too long but we have not had proper consultation with the employers, because sometimes you just feel: "I do not want to work here. I do not particularly feel that I fit very well here or I might like to go and work in a different establishment, maybe to change my hours or maybe to change my days." At the moment you cannot do that for 12 months.

Deputy M. Tadier:

That helps. It is reassuring that you are looking at because it touches on the area of servitude, I think.

The Minister for Home Affairs:

It does. It is indentured labour, is it not, and absolutely you have got to think is 12 months too long. So it is about finding that balance but what I do want to make clear, if there is any bad practice on behalf of the employer towards the employee that employee can change and, as Mark said, instantly.

Deputy L.V. Feltham:

Part of the policy is around ensuring that people are getting, I think you mentioned, the going rate for the work that they are doing. You just talked about the one-year policy being around avoiding wage spiralling. What would happen in the instance that it became ... that the going rate in a certain sector went up? Would you expect then that employee to get a wage rise within that year?

The Minister for Home Affairs:

This is down to the associations, is it not? It is a really tricky situation. People will have heard me tell the story before but my very first job in the civil service in 1987 was administering work permits, believe it or not, in the Immigration Department in what we used to call Bureau des Étrangers. Back in those days, a long time ago, I appreciate that ...

Deputy B.B. de S.DV.M. Porée:

You probably issued my permit.

The Minister for Home Affairs:

Perhaps I did. Well over 35 years ago, the Jersey Hospitality Association was a recruitment agency and nearly all the hospitality permits were issued through that recruitment agency and you literally had a menu. So if you were a kitchen porter you got paid X, if you were a kitchen porter with 2 years you got X, if you were a chef you got paid X and Y. Industrywide, those were agreed by the unions every year and it made it very easy because it did not matter whether you came from Portugal or Birmingham or St. Ouen, if you were working as a chef in a particular hospitality establishment that was part of the association there was a set wage that would be paid. That does not appear to be the case now and it was something that we were talking to the employers about and I think some of the discussion was there is all sorts of different sorts of chefs and I get that. You might be a sushi chef so you expect to be paid more because you can prepare sushi, but that really is an issue for the industry to sort out around their wage levels.

Deputy L.V. Feltham:

Okay, back to the working conditions, we talked before about there being a handful of times when a permit has been revoked. How many incidents related to work permit holders working conditions, whether or not they led to a revocation of a permit, have been recorded by Customs and Immigration?

The Minister for Home Affairs:

Again, that would be a handful.

Head, Jersey Customs and Immigration Service:

A very low number.

Deputy L.V. Feltham:

We talked earlier about some of the discussions that you have with other organisations. The evidence that we have heard from some of those other organisations is that there are issues concerning working conditions. Are you also recording the evidence that is being brought by those organisations?

The Minister for Home Affairs:

Yes, absolutely. Any of those organisations that report an issue to Immigration, that particular issue is investigated, obviously constrained by whether or not the permit employee wants Immigration to take action, and that is one of the challenges that we have.

Deputy L.V. Feltham:

And of course if they cannot leave the employer within that first year ...

The Minister for Home Affairs:

They would be able to. If there was a problem with the employer, they would be able to move.

Deputy B.B. de S.DV.M. Porée:

There is a discrepancy between what employees say and what your department is saying. In terms of numbers, there is quite a big disconnect.

The Minister for Home Affairs:

Again, there is quite a lot of myths that are around that we are trying quite hard to bust them by providing information, but if your employer is not treating you well and is not looking out for your welfare and you tell the Immigration Department that and the evidence is clear, you will be allowed to change employer.

Deputy M. Tadier:

Where does the line come in, if you do not mind me asking, about what Immigration's role is and where, say, J.A.C.S. would come in?

The Minister for Home Affairs:

Employment issues, purely employment issues.

Deputy M. Tadier:

Right, but if there is bad employment practice, does that not come in in this area?

The Minister for Home Affairs:

Bad employment practice would come in through J.A.C.S. but if it was withholding money, withholding wages, evidence of any criminal activity towards the employee, that would be reported to the police and the employer would lose the permit.

Head, Jersey Customs and Immigration Service:

If I may say, just in relation to the point you made that you are hearing there is more examples than we have highlighted, obviously what we do not know is instances that have not come to our attention, so for whatever reason the employee does not feel that they want to highlight it to us. If we do not know what that is, we cannot measure it because we have been reacting to instances as opposed to being proactive.

Deputy B.B. de S.DV.M. Porée:

You are probably saying that maybe the first port of call when the issues arise from the employee's side is not necessarily Immigration, it could be other departments.

[16:00]

The Minister for Home Affairs:

That is why we have worked very hard with other departments, J.A.C.S. in particular, Citizens Advice, employee organisations, to say if there are any problems at all please come and talk to Immigration. Again, harping back to 1987, the vast majority of permanent employees were union members, so the union would take quite an active role in trying to sort out employment disputes and then they would accompany the permit worker into the office to speak to Immigration, to iron out anything that had not been sorted out. At the moment we have not almost got that kind of intermediary function. We are not an employment agency. We are in immigration; we are here to enforce the law. Although we can signpost people to different agencies to give them appropriate support, it is not our bread and butter.

Deputy B.B. de S.DV.M. Porée:

Sorry to stop you, the fact that the review panel has been set up is to look into that, to really see if Immigration is the best place to deal with some of the issues ... when you are talking about since the low numbers, when we spoke to J.A.C.S. there was that sort of narrative of very low numbers but I wonder if it is to do with how these complaints are logged, because when it comes from the victims the numbers are much more different. Hopefully within this review panel we will have to establish where is the best place to address those issues. Okay, thank you. Sorry for that.

Deputy L.V. Feltham:

It is okay. One of the things that we have discussed is that zero-hours contracts are not permitted under your rules. What definition of zero-hours contracts is used for the purpose of work permit policy?

The Minister for Home Affairs:

I do not understand the question, sorry.

Deputy L.V. Feltham:

Obviously within a zero-hours contract somebody is not guaranteed a set number of hours in a week. They could find that in some weeks they are not earning anything, in other weeks there are ...

The Minister for Home Affairs:

No, those sorts of contracts are not permitted; it has to be a full and proper contract.

Head, Jersey Customs and Immigration Service:

It is 40 hours a week.

The Minister for Home Affairs:

It has to be the 40 hours a week.

Head, Jersey Customs and Immigration Service:

That is what the contract must say, at least.

Deputy L.V. Feltham:

Payment for 40 hours each and every week.

The Minister for Home Affairs:

Payment for 40 hours each week, each and every week, yes.

Deputy L.V. Feltham:

Would it surprise you to hear that the panel has heard evidence that in some industries, some sectors, some people are not receiving their 40 hours in weeks and in some weeks some workers are not getting paid?

The Minister for Home Affairs:

That would be something that should be reported straight to the Immigration Department because they would investigate that and deal with it. You have had occasions when employers have applied for 9-month permits and then found out after 5 months that they have not got sufficient work.

Head, Jersey Customs and Immigration Service:

That has happened, yes.

The Minister for Home Affairs:

That has happened and in those circumstances we have allowed those employees to find alternative employment and the employer has been under significant scrutiny when reapplying for permits.

Deputy L.V. Feltham:

This is going back, I think, to this compliance. You have talked about additional officers and how you have been reactive so far, but how do you identify employers contravening the work permit policy because obviously you are the people that are responsible for compliance? You are the

people that are handing the permits out to employers. How would you identify if an employer does come to you for a work permit, whether they are going to ...

The Minister for Home Affairs:

I think we have got a lot of history to base ourselves on and, again, Mark talked about the intelligence around work permit employees. Again, we would be relying on our contacts from some of the employee organisations; Friends of Africa, the Kenyan Association. We do not know what we do not know. In terms of proactive compliance, we will be turning up and saying: "I want to see the contract that this employee has now." We have heard stories about people being shown one contract and when they arrive in Jersey being required to sign a different contract; again, that is a breach of the work permit policy. If Immigration were aware of that, we would deal with it robustly.

Deputy B.B. de S.DV.M. Porée:

Sometimes there is no need to sign another contract, as the initial contract is totally overruled and a new job description is given without a contract taking place.

The Minister for Home Affairs:

Yes. If you want to change, again in the policy it is quite clear. If you want an employee to change the role you have to apply for another work permit; that is in the policy.

Deputy L.V. Feltham:

In accommodation you said that employees are not bound to be living in accommodation supplied by their employers. I think my understanding - and you can correct me if I am wrong - is that Customs and Immigration see the contracts before the permit is issued. If Customs and Immigration see a contract which binds an employee to living in accommodation that is owned by the employer, what would you do in that instance?

Head, Jersey Customs and Immigration Service:

I think I would say - I will be corrected if I am wrong, Andy manages the operations - but if we were satisfied that the accommodation was being provided and it was of the required standard, then we would be content with that.

The Minister for Home Affairs:

We do not have a role to go and inspect accommodation. Just to further answer your question about the compliance issue, moving forward the compliance team would be visiting establishments and saying: "I want to see the contracts and I want to see your payslips and I want to see your passport." Then that way you get a very clear picture of whether what was agreed at the outset when the permit was applied for is being effected in practice.

Deputy M. Tadier:

I suppose one of the reasons we ask these type of questions is that, just to give an example to do with the human rights of permit workers, it may well be that having an obligation that you have to be housed by your employer for a 12-month period, so, firstly, you do not get a choice about where you live but there may be conditions that are put on that accommodation in terms of guests. You might find that the presumption of the right to private family life is then taken away from an individual because they are not allowed to have people stay round. My question would be which department does that welfare and that duty of care fall to in the Government?

Senior Manager, Jersey Customs and Immigration Service:

I think the expert on contracts is J.A.C.S. Certainly if somebody asked that question of me I would be going to J.A.C.S. and asking that question.

The Minister for Home Affairs:

It is a contractual issue ...

Deputy M. Tadier:

If we came back with a finding that says we want to stop this kind of practice happening and Government is the one who has to ensure people's human rights, I am just wondering where we then go to with that.

The Minister for Home Affairs:

If that recommendation was accepted we would say to employers: "You cannot have that contract in a contract of employment for a work permit holder."

Deputy M. Tadier:

Yes, okay.

The Minister for Home Affairs:

That is why we have done other things like put in the bit about you will be open to inspection; that is very new and that was not in there before. We have quite a lot of leeway in terms of encouraging good practice at the application stage. But, again, employers have rights as well, we cannot push it too far, there has to be a valid ...

Deputy L.V. Feltham:

You said encourage, which is an interesting word, encourage rather than ensure.

The Minister for Home Affairs:

We do not have any legal right to enforce these sorts of things when it comes to employers. We can encourage good practice and then it becomes the employer's choice whether they go ahead and make the application for the permit or not.

Deputy M. Tadier:

I will be taking over the next section, if that is all right, anyway and just to contextualise maybe some of the questions is that I think one of the things we have been pondering is that it seems to us that your department has a big job on its hands. You have got the technical aspect of ensuring the borders, ensuring that the right people are coming to work with the right paperwork; you are dealing with a lot of issues with the employer and a lot of employee welfare is falling on your shoulders. I am thinking that there is also other departments that should be involved. For example, Social Security normally deals with workplace issues, Economic Development deals with workplace issues and not to mention the Housing Department deals with accommodation issues. I see a lot of that falling to you and not to the other departments that would normally deal with those issues in areas where they are not related to work permit holders. If I have got an issue at work or with my accommodation, I do not need to come and talk to Immigration about it but the worker does.

The Minister for Home Affairs:

Exactly, but the common denominator is the work permit; that is the permission that enables them to remain in the Island. I can understand why they would gravitate to us, but that is why our role is really about signposting to the appropriate agencies who can help them because we have a fairly binary choice: the employer either gets the permit or they do not. But you are right and I think the department do go above and beyond to support people with their issues but, again, they need to know about them and this is the issue. Again, I can fully understand why some people do not raise issues because they do not feel comfortable coming to the Immigration Department, which, again, is why we are working so hard with the agencies like Citizens Advice and J.A.C.S. and the employee organisations so that they can act as intermediaries, so that they can try and sort out what can be sorted out and then only come to Immigration as a last resort.

Deputy B.B. de S.DV.M. Porée:

Reinforcement.

The Minister for Home Affairs:

Absolutely. In fact I only met with Citizens Advice earlier this week and already we are talking about some cross-training so that they can better understand the immigration law, better understand the work permit policy, particularly for their supervisors who are their permanent members of staff, so that they can give appropriate advice; they have got the numbers. The other thing that we have

done very recently, we now have a single point of contact in Customs and Immigration to liaise with the refuge. That person is a woman, she has been part of the ward work that we are doing. We are trying to make that approach to Customs and Immigration easier than it is because we do appreciate that there are barriers to that. We are a law enforcement agency at the end of the day and we get that.

Deputy B.B. de S.DV.M. Porée:

I will just very quickly say you did mention that people are fearful in different wards of complaining and that is something we have been listening to but it does not mean people have not been complaining or raising issues and often they do that with the support of other stakeholders. The issues are being raised loud and clear, maybe not as much as they could have been. But what we find is I think people disengage because they feel there is nothing being done about it. You did mention Citizens Advice Bureau and J.A.C.S. J.A.C.S. has got no structure in place at all to deal with work permit holders. Often when there is complaints, again they are faced with a closed door, which to me means that we have to look at the whole administrative way that the Government is dealing with people and make sure that there is a place that deals with the complaints outside Immigration or that ...

The Minister for Home Affairs:

What is the issue with J.A.C.S. and dealing with work permits, because it is an employment contract?

Deputy M. Tadier:

Essentially, I think they are saying that they deal with employment law, so they do not give any special regard to work permit holders. There is the issue of the 12 months where you can be fired with unfair dismissal. If they want to file a case it usually has to be done on the statutory law or the discrimination, which does not always fit the bill, so just putting that in context.

Deputy B.B. de S.DV.M. Porée:

Again, that is like, yes, much more so.

Deputy M. Tadier:

If I could carry on, Chair.

Deputy B.B. de S.DV.M. Porée:

Yes.

Deputy M. Tadier:

These next few questions will relate to, essentially, the work permit policy in terms of if there has been a contravention. There is a paragraph in the policy about a second negligent contravention, where an employer has been asked to provide a written explanation about why the policy was not followed. What timeframes do you give to an employer to rectify those kinds of issues that have been highlighted to you generally?

Senior Manager, Jersey Customs and Immigration Service:

We have not got a timeframe but it would be as soon as possible, clearly. We are dealing with one at the minute, as it happens and, yes, luckily the employer has come back very quickly. But, yes, we expect things to be changed as soon as possible.

Deputy M. Tadier:

What additional scrutiny measures are carried out by yourselves for a second negligent contravention?

Senior Manager, Jersey Customs and Immigration Service:

After the first negligent contravention we will be looking closely at the next application and seeing how they get on with that. Sometimes employers do make mistakes just through errors but sometimes not and sometimes indeed they may even make a fraudulent application and that is the most serious of the issues we look at.

[16:15]

Deputy M. Tadier:

Can I ask where employers have been found in contravention of the work permit policy, what proportion of these have been found by yourselves to being in contravention, compared to what is being reported?

Senior Manager, Jersey Customs and Immigration Service:

Sorry, say that again?

Deputy M. Tadier:

Basically what are the proportions of where you would follow through with action, so in terms of what gets reported to you and in how many of those instances would you need to take maybe more serious action, rather than just words of advice?

Senior Manager, Jersey Customs and Immigration Service:

Yes, I think the policy is 1, 2, 3 and then it is no permits and the withdrawal of permits, but it is case by case. If the contravention is particularly bad, then we would bring it further up the ladder, effectively.

Deputy M. Tadier:

Okay, that is great, thanks. The next question is the panel notes that the rules governing supplementary employment for work permits requires a work permit holder to obtain consent from their second primary employer. What we have heard quite a lot about in our evidence-gathering is that prior to what used to be the case is that a worker is not free to go to work somewhere else, which we know some of the rationale for that. But in particular, say, in the evenings or on their days off where they might have previously been able to go and do that bar work or whatever in the evening, which did not seem to be a problem for their main employer; that is expressly forbidden now under the ...

The Minister for Home Affairs:

We do not know where that has come from because it is not.

Deputy M. Tadier:

Okay, that is what we are being told.

The Minister for Home Affairs:

I know and we really cannot understand this.

Deputy M. Tadier:

Perhaps it is within the work permit policy then ...

The Minister for Home Affairs:

With the work permit policy, providing you have the permission from your employer you can work up to 20 hours a week in other employment in the same industry.

Deputy M. Tadier:

I think there are a couple of issues there, that generally it is felt that workers do not feel that they can work somewhere else but it is maybe this same industry is an issue. You could get a farm worker, for example, who is quite capable and may have experience of bar work, is not allowed to go and work in a bar, even if they have got the permission of their employer. I can understand there will be some ...

The Minister for Home Affairs:

One of the rationales around that keeping within your own industry is that you have a permit for a specific industry. If you have a 9-month agriculture permit you could work your extra 20 hours in agriculture but you could not skip into a hospitality industry and vice versa.

Deputy M. Tadier:

That is all. I think the concern about that is that we would question and some of the workers and in fact the employers have questioned whether that is rational and also whether that then borders on to the question of modern day slavery and servitude of that, effectively telling people what they can do in their own free time.

Deputy B.B. de S.DV.M. Porée:

It is also more to do with the fact that the employer has got that control and often it happens within the farming industry because it does suit the employers. If they have less work in the farm they are quite happy to loan their workers to another farm that will maybe doing it perhaps with this ...

The Minister for Home Affairs:

Within the same industry, yes.

Deputy B.B. de S.DV.M. Porée:

Yes, within the same industry and only if the employer says so and if it suits the employer.

The Minister for Home Affairs:

It has worked very well ...

Deputy B.B. de S.DV.M. Porée:

For the employer.

The Minister for Home Affairs:

... for the farming industry. What happens, they tend to apply for kind of block permits, not necessarily for one employee, they apply through the Farmers Union, do they not? Then they deploy them accordingly.

Deputy M. Tadier:

Yes, but do you have any thoughts just generally about what I said?

The Minister for Home Affairs:

I think part of the issue is to make sure that the employees have got the right skills. If you have got skills in an agricultural field you are not necessarily going to have skills to be a barista or to be a waiter or a chef.

Deputy M. Tadier:

But is that not the free market's job? If somebody wants to take you off to do bar work, surely you would not employ someone who is just ...

The Minister for Home Affairs:

You are here on a work permit for a specific role. You have a work permit to be in Jersey to do that specific role. I do not think the free market really comes into it.

Deputy M. Tadier:

But you said earlier that it is not ... for example, in terms of pay used to be set by a union negotiating with ...

The Minister for Home Affairs:

It used to be, yes, it used to be.

Deputy M. Tadier:

It is up to employers to decide whether they have got the right people for the job. Do you see the argument being put forward? I could go and work in a country as an agricultural worker but having had loads of bar work but just economic means I have to take whatever job is given to me.

The Minister for Home Affairs:

But it would depend on the permissions that you had in that particular country, would it not?

Deputy M. Tadier:

Exactly, so that is what we are talking about, the ...

The Minister for Home Affairs:

At the moment you are coming to Jersey with permission to do a specific role.

Deputy M. Tadier:

Yes. In the same way that you are reviewing other policy, would you give consideration to reviewing being more flexible to the worker and ...

The Minister for Home Affairs:

Yes, without doubt I am more than happy to review that.

Deputy M. Tadier:

I think part of the reason we ask is that some industries are quite vast, so depending on what area you work in, so if you were in hospitality you might have quite a lot of scope to move around in the Island and work for different types of organisations, whereas in agriculture you are also getting into this idea of servitude where you have got one employer who can just move you around the Island, in effect trade you to another employer in terms of your labour. Do you recognise that some of these issues can be quite complex in fact but also psychologically?

Deputy B.B. de S.DV.M. Porée:

Yes, that is exactly what I was going to ask because we did establish that it is the employers' choice to allow workers to work. In that note, on the basis of what Montfort just said, it appears that the employee has got no choice, or am I wrong to say so? Say if I wanted to loan my workers to you to do some work as the employee, will that employee have a right to say: "I am sorry, I do not want to work" or if ...

Senior Manager, Jersey Customs and Immigration Service:

No, I do not think the employee is compelled to go and work somewhere else. It is the employee's choice to have that extra ...

Deputy B.B. de S.DV.M. Porée:

But they do not have a choice because that choice belongs to the employers to allow the employee to work outside their personal contract. Once the employer has got that control, does that mean that employee still has the choice to say yes or no to the extra job elsewhere? What I am trying to say, sorry, is that extra work should be something you would want to do as a worker for whatever extra money because you have got a bit more time. But at present it does seem this is the situation with the permit workers. They do not have the freedom to seek for extra work outside their working contract, but we established within these few minutes that that choice belongs to the employer. If the employer wants to loan a worker to another employer within the same industry, does that still give the employee the choice to say yes or no or would you believe that gives the employee the choice to say yes or no to work elsewhere?

The Minister for Home Affairs:

I think we are talking about 2 separate things.

Senior Manager, Jersey Customs and Immigration Service:

I think there would probably be something in the contract because you would need ...

Head, Jersey Customs and Immigration Service:

They have the choice to say yes or no. I think the other thing to mention is that obviously prior to arriving in the Island the employee coming over has the expectation to have the 40 hours but not necessarily the work over and above that, so that is something that is available on arrival, so ...

Deputy L.V. Feltham:

Just to put a bit of context around this, if, for example, an employee is working within the farming industry, your expectation is they get paid for 40 hours a week. If there is bad weather, which meant that that employee is unable to work on that particular farm for 5 days, what would your expectation be?

The Minister for Home Affairs:

The expectation would be the employee would be paid for 40 hours.

Deputy M. Tadier:

Okay. I guess I do not want to labour this point ...

The Minister for Home Affairs:

Because you have a 40-hour contract, it is not a zero-hours contract. You have an employer saying: "I will pay you for 40 hours a week" and that is what they should get paid.

Deputy M. Tadier:

I do not want to labour the point but let us give you a scenario, let us say you have Randalls need a kitchen porter, they need a pot washer, okay, which they do not have. The Jersey potato company has somebody who has now got 2 days off a week because the season is coming to an end, so they are still doing 40 hours. In fact what they sometimes do when they are not picking or sorting potatoes is that they will wash the dishes in the canteen for the staff and so that that worker becomes aware of a job at Randalls. The Randalls person reads the C.V. (curriculum vitae) and says: "I know you have had 2 years working in Dubai in hospitality, would you like to come and work for me in the evenings from 6.00 until 10.00?" The other employer says: "That is fine, I am quite happy to do it." All 3 consent; the only one thing that stops them doing that is the work permit. Would you consider changing that?

The Minister for Home Affairs:

Like I said before, we would consider reviewing that. We have got a labour shortage. One thing, back in 1987 we put work permit policies in to keep people out. Now we need to be flexing those policies in order to make the most of our workforce. We have got a labour shortage but the point is

the work permit policy at the moment is quite specific that there is no inter-industry exchange and that is down to skills really.

Head, Jersey Customs and Immigration Service:

Yes, as the Minister said, she has to look at it, but the reason it was introduced was to protect the employer and the employee, not to expose the employee to a job that they were not qualified for and also for the employer to make sure the primary employment was protected.

Deputy M. Tadier:

Yes, indeed. We do not want any unintended consequences. I understand that. We will move on to a different section. I think we did touch on this in your initial question, Chair. If it has been answered, then feel free to say so but it is continuing on the idea of modern day slavery. The panel notes that one of the functions of the work permit is to protect employers from modern day slavery. It is noted already that we do not have a definition to employees, yes?

Head, Jersey Customs and Immigration Service:

That is right.

Deputy M. Tadier:

What definition of modern day slavery do you have in your head in terms of that definition?

The Minister for Home Affairs:

That is a very good question, is it not? In terms of my view of modern slavery in my head would be somebody that had been trafficked to a particular place who was being required to work a considerable amount of hours for very poor pay in very poor conditions and that there would be a significant element of coercion. Certainly the Modern Day Slavery Act in the United Kingdom was enacted for those reasons, to protect vulnerable people from exploitation.

Deputy M. Tadier:

It is not necessarily on my question list but in terms of the process that takes place out of Jersey; that is clearly something which is very difficult for us or for you to have any control or knowledge about, but is it something that you would give consideration to?

The Minister for Home Affairs:

I have been quite concerned about ethical recruitment practices because, again, you do hear stories, do you not? I am sure stories have been presented to you as a panel. Getting to the evidence and the truth around those are quite difficult. What we have done is certainly our External Relations Department are quite intrinsic in forming relationships with other governments to ensure that those

governments are happy that people who are coming to Jersey from their countries have been recruited in an ethical way. Antigua and Barbuda is probably a good example of that. We have some relationships with Kenya. We have some relationships with Rwanda. You are quite right when you say it is very difficult to control what is going on. But, once again, we would wish to protect vulnerable people from those sorts of practices.

Deputy M. Tadier:

Okay, thank you. In the absence of any legislation in this area, how does Jersey Customs and Immigration determine whether cases of modern day slavery are not taking place?

Senior Manager, Jersey Customs and Immigration Service:

It is very much case by case. The Minister has outlined the kind of things we would be looking at: coercion, what is the rate of pay, what are the hours, what are the working conditions? All of that would need to be taken into the mix as to whether we thought a particular case brought to us would fit within something that we would describe as modern slavery.

Head, Jersey Customs and Immigration Service:

I suppose, in essence, it is adherence to the work permit policy as it stands at the moment.

Deputy L.V. Feltham:

Is it a consideration when you are giving a permit? Is it a question that is asked?

Head, Jersey Customs and Immigration Service:

It is not the employee who applies for the work permit, it is just the employer.

Deputy L.V. Feltham:

Yes, absolutely.

Head, Jersey Customs and Immigration Service:

If there is activity taking place - and use an example in the Philippines - and it does not involve the employer, it is happening remotely, it is obviously very difficult to determine it because the employee is not applying for the work permit directly. We do not have that direct engagement at that stage; it is the employer. But obviously once it is granted, then the visa is applied for. It is not really until the employee arrives that that takes place. One thing we are looking to do is improve that engagement directly with the employee, because the work permit is granted through the employer and things like the email address, the correspondence goes to that. We are looking to get the email from the employee to inform them from day one their rights while they are out of the country sort of thing.

[16:30]

Deputy B.B. de S.DV.M. Porée:

So sorry, I feel we really do need to establish a very robust definition of what modern day slavery is, because I know you did mention it a few areas but there are other areas, other layers of what really constitutes modern day slavery. I think we, as the Government, not myself as the Government but yourself as the Government, you have that responsibility. We can look into it and really understand if those particular issues stem from that definition or not. But without a solid definition we do not know, we are guessing, so that is another thing that, hopefully, we will look into to establish. Sorry about that.

Deputy M. Tadier:

No, that is okay. I think that really follows on to the question of whether you would consider either the need or consider the need for an equivalent Jersey legislation.

The Minister for Home Affairs:

Yes, absolutely, because we have got no teeth at the moment. In the U.K. employers can be fined up to £10,000 per employee when there is evidence of modern slavery. As you will know, we have got a rather intense legislative programme but it is most definitely something that I will be considering before the end of my term.

Deputy L.V. Feltham:

Obviously the teeth that you do have is the ability to give a permit or withhold a permit or take a permit away.

The Minister for Home Affairs:

Absolutely and we are exercising those powers as well as we can.

Deputy M. Tadier:

I am glad that you talked about the country, and I will not reiterate the country or the industry, but we were made aware of some of the fees that a worker has to pay in their own home country before engaging in this whole process. They can be quite eye-watering and they are completely disproportionate to the administration that needs to take place. They are already saddled with debt before they get here. That brings me on to the area of servitude, which is slightly different and let us call it a lower bar to modern day slavery but it is, nonetheless, worrying because it may be all the more common. Is that an area that you are aware of, Minister?

The Minister for Home Affairs:

Yes. One of the things that we are concerned about is employees arriving and not knowing that they will then have their airfare, their visa fare, their permit fee taken out of their wages. Again, that is something that we discussed that would need necessarily to go into the contract, so that contractually you know what you are signing. Again, once the new system is up and running we will be able to advise the employee in advance of getting their permit because we will have their access to email addresses and the like. But I think it is critical because we have got people who may not have ... they may need to go home, they may fail their probation or they may be dismissed from their role but do not have access to sufficient funds to pay a return airfare, for example, or they may come here and find that not only are they having the legal deduction for lodging and board but the cost of the airfare, the permit and the visa has been taken out of their wages, which leaves them a very low amount of money to send home or to live on while they are in Jersey.

Deputy B.B. de S.DV.M. Porée:

One of the areas that identifies modern day slavery is that debt that you were just talking about, so we need to be aware.

The Minister for Home Affairs:

Absolutely, yes. Without doubt we need to get to grips with that. Again, we have got some really good employers here and some employers that I have spoken to have been really shocked that other employers do that. They see it as a cost of doing business, that if we are going to bring a work permit employee here we will take the cost of the visa and the permit and, potentially, the airfare. But the employee has to really have a very good understanding of what they are liable for before they arrive so it is not a shock when they do arrive.

Deputy M. Tadier:

Thank you. We are just going to move on to the work permit policy. It was last updated in April this year. For the benefit of everyone here, can you summarise the changes that were made to the work permit policy?

The Minister for Home Affairs:

I am going to ask Andy to do that. I think it was the French ...

Senior Manager, Jersey Customs and Immigration Service:

I think there was the terminology ... well, I have got a whole list of things here. Let me just check this. Yes, it is coming up 24th March, I think, the email I have got here. Terminology, there was terminology amendments. There was expansion of 9-month temporary agricultural route to incorporate tree surgery and landscape gardening. Employers must notify J.C.I.S. if they make any changes to the contract that was provided in support of the work permit application; that is from all

work permit routes. Employers agree to grant J.C.I.S. officers access to work premises. There is about 20 things on there, so I can ...

Deputy M. Tadier:

Okay. Are there any fundamental ones in terms of the ...

Deputy B.B. de S.DV.M. Porée:

You can always send it to us.

Senior Manager, Jersey Customs and Immigration Service:

The one, yes, temporary route, the construction route was amended to a maximum of 3 years, plus a one-year extension. There was flexibility added in the 9-month temporary hospitality route to allow those - that was quite complex - on valid work permits issued prior to 1st April 2023 to switching to one-year temporary. The students on U.K. tier 4, in the U.K. were allowed to come and work without the need of a work permit.

Deputy M. Tadier:

Is that people who have already got a work permit to work in the U.K.?

The Minister for Home Affairs:

Yes.

Deputy M. Tadier:

We know about that.

The Minister for Home Affairs:

We have this very unusual situation where, I think, it was an American who was able to work in the U.K. but if she came to Jersey with her boyfriend for the summer she could not work and that just does not make sense, does it? We just aligned that one.

Senior Manager, Jersey Customs and Immigration Service:

Yes, a very small cohort.

The Minister for Home Affairs:

Yes.

Deputy M. Tadier:

That is good, that is reassuring. One of the areas is around the length of the permits and I think we are reassured that you are looking at it already because that has come up a few times. Can I just talk about what stakeholder consultation you needed in those that led to those changes?

The Minister for Home Affairs:

I think the people that we mentioned at the beginning, employee oversight being done in Jersey hospitality ...

Deputy M. Tadier:

Did you get any feedback from that?

The Minister for Home Affairs:

Yes, absolutely. I think the French students came about by a local educational institution that has French students and suddenly discovered they were not going to be able to work here in the summer.

Deputy M. Tadier:

I am guessing it would take a little while for the overall impact of any of those changes to be assessed. Have you been able to do it yet or ...

Senior Manager, Jersey Customs and Immigration Service:

Yes, rolling into how many people are on the 12 months I could not tell you at the moment. What we can give you is the broad work permit statistics. I can give you that by year by year, month by month.

Deputy M. Tadier:

I think specifically, is there any indication of how that impacts, potentially, on the workers' welfare? Does it have an impact? Some of it ...

Senior Manager, Jersey Customs and Immigration Service:

It is probably a little bit early to tell. What is fair to say is that, as you would expect, in line with 300 work permits a couple of years ago to 3,000, then obviously the issues that we run across have increased at the same rate, but the actual impact of any changes in April is pretty early to tell.

Deputy M. Tadier:

I think a lot of these changes are presumably beneficial to all parties anyway.

Head, Jersey Customs and Immigration Service:

I think it provides more choice. Certainly from the employee's point of view there is the option of the 9-month but also there is not the compulsion to go back and have that period of absence. They could stay for 3 years if they are in hospitality and certainly more choice.

Deputy B.B. de S.DV.M. Porée:

That is some of the feedback we have been getting as well.

Head, Jersey Customs and Immigration Service:

Yes.

Deputy M. Tadier:

In terms of just the workload of all this, has it been manageable? Have you already felt the ...

Senior Manager, Jersey Customs and Immigration Service:

It has been challenging.

The Minister for Home Affairs:

Stressful.

Head, Jersey Customs and Immigration Service:

Yes. I think the other thing is obviously as a merged service, Customs and Immigration, we obviously had all the impacts of Brexit, not only on the people, the Immigration side but also on the goods side as well. But we have just gone through a recruitment campaign and in terms of resources we are in a much better position and moving forward we will be in a much better position to deal with the workload. But it is significant, it is.

Deputy B.B. de S.DV.M. Porée:

We appreciate that.

Deputy L.V. Feltham:

Can I just say you will have the resources in place to be able to deal with the numbers of work permits and obviously dealing with adherence to the policy by employers as well?

Senior Manager, Jersey Customs and Immigration Service:

Yes, yes.

Deputy B.B. de S.DV.M. Porée:

There will be money in the budget to deal with those issues is a priority.

The Minister for Home Affairs:

Yes, very much a priority, yes.

Deputy B.B. de S.DV.M. Porée:

That is really reassuring.

Deputy M. Tadier:

This is not strictly a question, it is not on the list but I think it is relevant to your department. Do you get the impression because we had a census in 2021 which many people think just happened at the wrong time, it happened during COVID and it happened when the full effects of Brexit had not been realised ... do you get any sense about what the population is doing in terms of going up or down? Are we losing people and, therefore, that is why there are more work permits or is it just simply that the changes, people who were not on a work permit ...

The Minister for Home Affairs:

We have lost people who were able to work here without a permit as a result. Brexit is only one factor in all of this. Global employment trends have changed, notwithstanding Brexit, but it certainly meant that people who did not need a permit who went home have not come back. The Europeans are now treated as third-country nationals and we have got anecdotal evidence that a lot of the Polish people that came here have now gone to Germany because the wages are better. As a result, we seem to have been looking further afield for people to provide our labour.

Head, Jersey Customs and Immigration Service:

If I may say, I think that transition from reliance on new workers to going further afield is stark and you can see the statistics that show that. One of the reasons that has been provided is that is because of Brexit and I think that is true to a certain extent. I think it is quite complex because of the drive from COVID, changing migration patterns, cost of living, wages. There is all sorts of considerations which have presented quite a complex picture but it has resulted in quite a change in demographic definitely.

The Minister for Home Affairs:

If you think in 2019 we had probably about 150 people from Portugal and Poland who were working for us and we had probably about 75 Kenyans; that has now gone up to probably 550. Filipinos, we had maybe 50; that has now gone up to 450. There has been a significant shift, an increase in Brazilian, Antigua and Barbuda; there has been quite a significant shift.

Deputy L.V. Feltham:

Just before we move on from that point, I think I heard you say that the reason why some people have not come back is because the pay is ... are you suggesting that the terms and conditions are better in other countries than they are ...

The Minister for Home Affairs:

Anecdotally that is what we have heard but of course it is easier to work in Europe now, is it not? If you are Polish, Germany is closer to Poland than, for example, Jersey.

Senior Manager, Jersey Customs and Immigration Service:

These economies have developed quite significantly over the last few years as well, so wages have risen in Poland and Portugal.

Deputy M. Tadier:

I will hand back over to the Chair. I hope I have not stolen some of your questions and ...

Deputy B.B. de S.DV.M. Porée:

Yes, okay, but it is all good anyway. Minister, the panel has been made aware of the establishment of an Employee Standards Oversight Board to look at the work permit or the welfare. Does your department have responsibility for these boards?

The Minister for Home Affairs:

I am the lead Minister for that but I share that responsibility with the Minister for Economic Development, Tourism, Sport and Culture, the Minister for Social Security and the Minister for External Relations and Financial Services. It is a cross-departmental group, if you like, to make sure that all of us are moving forward and pulling in the same direction, rather than the opposite direction.

Deputy B.B. de S.DV.M. Porée:

I was going to ask just to make sure for everyone to be aware, why was the board set up in the first place?

The Minister for Home Affairs:

Because we did not have one and it was recognised fairly early on that we needed a way of engaging with employers, understanding in detail what their challenges were and understanding how we could rise to those challenges and improve circumstances.

Deputy B.B. de S.DV.M. Porée:

Okay. Does the Employee Standards Oversight Board have a formal terms of reference and, if so, what are the objectives?

The Minister for Home Affairs:

I will say it will have a terms of reference but I do not have them ...

Deputy B.B. de S.DV.M. Porée:

Not at the moment.

Head, Jersey Customs and Immigration Service:

Yes, there are some terms of reference. We can forward those to you if you would like.

Deputy B.B. de S.DV.M. Porée:

Would you?

The Minister for Home Affairs:

We can forward them to you.

Deputy B.B. de S.DV.M. Porée:

Thank you. Could you provide us information about the composition and membership of the Employee Standards Oversight Board, please?

The Minister for Home Affairs:

Do you want to do that because you sit on it, do you not?

Head, Jersey Customs and Immigration Service:

I do, yes, yes. J.C.I.S. was very keen on this because we were engaging with various industry leads - the Chamber of Commerce, J.H.A. (Jersey Hospitality Association), J.A.C.S., et cetera - but it was an idea obviously to get us all in the same room and talk about the common themes, not specific cases. There is representatives from J.A.C.S., Jersey Business, the Chamber of Commerce, Jersey Hospitality, External Relations and S.P.P.P. (Strategic Policy, Planning and Performance) policy as well. It is obviously not just governmental, it is across the board.

Deputy B.B. de S.DV.M. Porée:

Thank you.

Head, Jersey Customs and Immigration Service:

I should add we have only met once, it is bimonthly; we have only had the first meeting, so a relatively new group.

Deputy B.B. de S.DV.M. Porée:

Okay. What consultation has been carried out with stakeholders about the establishment of such boards? You felt a necessity, where did the necessity come from? Was it something that Immigration spotted? How did it come about to make the decision to set up this particular board at this particular time?

[16:45]

Head, Jersey Customs and Immigration Service:

I think it emanated from the Population and Skills Ministerial Group. The Minister might want to talk about it.

The Minister for Home Affairs:

Yes, the Chief Minister established a Population and Skills Ministerial Group at the outset of her term, which does what it says on the tin really, make sure that cross-governmentally we are looking at doing the right things in this area. Certainly it was something that we particularly wanted in Home Affairs, due to the rise in work permits.

Deputy B.B. de S.DV.M. Porée:

Thank you. Do you want to come in?

Deputy M. Tadier:

I was just going to ask about who the stakeholders are, who would you identify as the stakeholders that you engage with or your businesses that you will engage with? Trade unions, for example, do you speak to them?

Head, Jersey Customs and Immigration Service:

At the moment the stakeholders that I mentioned are the only ones. That is not to say, because there has only been one meeting, that it is not going to develop. I think it depends on the kind of issues that emerge moving forward.

The Minister for Home Affairs:

Who chairs that group, remind me?

Head, Jersey Customs and Immigration Service:

It is Paul Wylie, S.P.P.P.

Deputy M. Tadier:

It is established at ministerial level between the 4 ministries, is that right?

The Minister for Home Affairs:

That is not a ministerial group. It is a stakeholder group. It is chaired by Paul Wylie, who is the Director of Policy within S.P.P.P.

Deputy M. Tadier:

Okay.

The Minister for Home Affairs:

Then he convenes the stakeholders that Mark has said in order to focus on specific areas ...

Deputy M. Tadier:

When you spoke about yourself and the other 3 Ministers, what was that in relation to?

The Minister for Home Affairs:

Population and Skills Ministerial Group.

Deputy M. Tadier:

Okay. Sorry, I misunderstood.

Head, Jersey Customs and Immigration Service:

It might be helpful as well, so there is the Population and Skills Ministerial Group, the Employee Standards Oversight Group, which is focused on work permit issues in particular and there is also the Labour Shortage Taskforce, which is looking at the shortage of labour, including British nationals as well.

Deputy M. Tadier:

Yes, and there will be an overlap between some of ...

Head, Jersey Customs and Immigration Service:

Absolutely, yes.

The Minister for Home Affairs:

But I think what I would say is that there is an awful lot going on in that space but, potentially, it was not happening before.

Deputy B.B. de S.DV.M. Porée:

This question you may feel you have already answered, which is what engagements does Justice and Home Affairs have with regard to the Government in relation to the welfare of work permits? Would you say that this oversight board that has been established is part of that engagement with other stakeholders or there is other engagement with different government departments?

The Minister for Home Affairs:

There is certainly different engagement with other government departments but that is probably on an issue-by-issue basis.

The Minister for Home Affairs:

Also, other countries, networking through things like Commonwealth Parliamentary Associations: what do you do about work permits? Guernsey is another; they have quite a high reliance on work permits as well and in fact I think they have something explicit around work permits in their population management law, which we have used as a benchmark for ourselves.

Deputy L.V. Feltham:

We are moving on to talk a bit more about the information and advice and support for work permit holders now. In the evidence that we have collected we have been made aware of a new information pack that has been created by Jersey Customs and Immigration Service, which is now available to work permit holders through their employer. Please can you provide some information about how that pack was developed?

Senior Manager, Jersey Customs and Immigration Service:

It is my colleague, Warwick, that dealt with that but it was in liaison with the relevant areas that could provide the expert advice on that. For example, there is information in here from J.A.C.S. around the contractual requirements, the legislation around that. There is information in there on driving, so that is in liaison with the D.V.S. (Driver and Vehicle Standards) around that. There is information on healthcare in Jersey and so most frequently on its questions, as well as independent organisations which can offer help and advice. It is a combination of factors really, liaising with a lot of them and trying to hook it together in one document, that this is then shared with the employee at the point the work permit is issued. We have just updated our work permit system recently. It was previously the case that this would only go to the employer and then we asked the employer to send it on. We are now asking for 2 email addresses on the work permit application, so it goes out independently as well to the employee. They will see those words, Your Rights as an Employee Working in Jersey is the title of the document.

The Minister for Home Affairs:

It is published on gov.je as well.

Senior Manager, Jersey Customs and Immigration Service:

Yes.

Deputy L.V. Feltham:

Okay.

The Minister for Home Affairs:

We took a lot of the information out of the work permit policy to put it into an information sheet to make it more easily accessible for permit workers.

Deputy L.V. Feltham:

Okay. I was going to ask you about accessibility, how accessible do you think that information is to work permit holders, particularly given that they are going to be coming from very different countries?

The Minister for Home Affairs:

The plans are to translate that into the relevant languages and to signpost on to gov.je where that link will be. Also, we would expect Citizens Advice, we would expect J.A.C.S., we would expect other people to have that information as well; Jersey Online Directory, for example, should have that.

Deputy M. Tadier:

We were reassured that you are looking at translation but something that came up in our meeting with, I think, the Kenyan representatives was that, for example, it is probably not necessary to translate the documents into Swahili. There are a couple of reasons for that, but largely they all speak English and they usually use English first for that kind of information. They would find it bizarre to try and read it in Swahili, so you may be aware of that issue.

Head, Jersey Customs and Immigration Service:

No, but that is reassuring because obviously what we have to do is every time there is a change to the policy we would have to reissue and retranslate.

The Minister for Home Affairs:

The Kenyan High Commissioner did offer to quality-check some of that work as well.

Deputy M. Tadier:

Yes. I think it is worth ... I am sure you will but engage with those groups first just to make sure that is what they want, yes.

Deputy L.V. Feltham:

Kind of related to that point, what discussions did you have, if any, with work permit holders about the type of information that would be useful to them?

Senior Manager, Jersey Customs and Immigration Service:

The work permit groups that we have engaged with are the likes of Friends of Africa, the Kenya Committee, so it would be feedback from them. We had a meeting between ourselves, External Relations and these groups about formulating the information that would be required. This is several months ago, I think well before these groups were started. I think that is fed into eventually what has turned out to be this document.

Deputy L.V. Feltham:

Okay, because I think the panel has heard evidence from other groups that they were unaware that this pack existed.

Senior Manager, Jersey Customs and Immigration Service:

They were right there at the start. Certainly I sat in the room with Friends of Africa. We had an initial discussion about leading on to better information on gov.je or wherever, so how we could improve the communication in that area. So they were there at the start and it kind of went on from there.

The Minister for Home Affairs:

Yes, and it has certainly been raised with the equality and diversity cluster as well.

Deputy L.V. Feltham:

Maybe they have not seen the final version.

Senior Manager, Jersey Customs and Immigration Service:

Yes, it is possible and that is very easy for us to rectify.

Deputy L.V. Feltham:

Okay. Then work permit holders themselves, did you speak with any work permit holders about the information directly?

Senior Manager, Jersey Customs and Immigration Service:

I think probably not, no.

Head, Jersey Customs and Immigration Service:

No, I do not think so, no.

Senior Manager, Jersey Customs and Immigration Service:

No.

Deputy M. Tadier:

I was just going to ask about the status of the document, so is it complete now? Has it been issued?

Senior Manager, Jersey Customs and Immigration Service:

Yes. The employee day one rights is going out now.

Deputy M. Tadier:

Okay, good. Will you send us a copy of that?

Senior Manager, Jersey Customs and Immigration Service:

Yes, you can have that, it is no problem.

Deputy M. Tadier:

Obviously I have not seen it, so I am sorry if the questions are silly, but is it purely a rights documents or is there a softer element to it in terms of maybe what other services there are, say, for example, if they want to access community groups, church groups, et cetera?

Senior Manager, Jersey Customs and Immigration Service:

Yes, there is a bit at the back basically highlighting some other areas that might be helpful to them. It highlights J.A.C.S., Citizens Advice, Friends of Africa, Portuguese Consulate, Polish Consulate, trade unions, mentioned Unite the Union, the Jersey Employment and Discrimination Tribunal. We can add more to it obviously.

The Minister for Home Affairs:

There is also a piece of work going on through Customer and Local Services around the Welcome to Jersey pack for anybody that arrives and clearly the links in there around particularly community-focused kind of church groups and community groups they like and I think they are calling it Community Compass, are they not, or the International Cultural Centre, one of the 2? They are supporting us and vice versa in that.

Deputy M. Tadier:

Thank you.

Deputy L.V. Feltham:

Okay. We have got here that the work permit policy includes your rights as an employee working in Jersey. Is this the same thing as the new information pack or is that something separate?

Senior Manager, Jersey Customs and Immigration Service:

Sorry, say again, sorry?

Deputy L.V. Feltham:

The work permit policy includes a section entitled Your Rights as an Employee Working in Jersey. Is that now superseded by that document or is it ...

Senior Manager, Jersey Customs and Immigration Service:

I think I would need to see.

The Minister for Home Affairs:

That is what that document is.

Deputy L.V. Feltham:

Okay.

Senior Manager, Jersey Customs and Immigration Service:

Yes.

Deputy L.V. Feltham:

All right then. We have already ascertained that that is now being sent directly to the employees.

Senior Manager, Jersey Customs and Immigration Service:

Yes.

Deputy L.V. Feltham:

We touched earlier on clarity around contracts and people understanding what they might have in their pocket at the end of the week once they have paid everything that they owe. Is that kind of information and other information about living and working in Jersey? What would you expect employers to provide employees maybe even prior to signing that work contract?

The Minister for Home Affairs:

I think you would expect them to have provided the contract and quite specifically in the contract, including what the rates of pay would be, what the non-statutory deductions would be so that people are making an informed choice as to whether they will be signing that contract.

Deputy L.V. Feltham:

Okay. What about information such as what it is like to live in Jersey, cost of living and that type of information?

The Minister for Home Affairs:

I do not think that will be part of any contractual relationship between the employer and the employee; that is going to be over employment matters. But, again, I think this is where the Community Compass and International Cultural Centre are going to come in. We have certainly done a piece of work around cost of living, as you will know, for social workers and teachers coming to Jersey. Again, that sort of information is available on the website.

Deputy L.V. Feltham:

Of course, going back to some of the discussion that we have had before and acknowledging that within your policy work permit holders cannot change employers within a year unless there is malpractice by the employer, sometimes anecdotally what we are hearing is that when work permit holders are arriving in the Island they may well realise that what they thought was a good wage is not a good wage. In those kind of instances it would be very useful for work permit holders to understand what the cost of living means in the Island.

The Minister for Home Affairs:

That is no different to whether you come from Birmingham or anywhere else if you are coming to work in Jersey. There is a cost of living issue.

Deputy B.B. de S.DV.M. Porée:

But that is, yes, much bigger. If you come from Birmingham, it is maybe more like to like but if you come from Africa or the Caribbean that difference in the cost of living is totally probably difficult for people to make sense of it until they arrive in Jersey, so that is much wider gaps.

The Minister for Home Affairs:

Of course I think it is important to know that if you come from Birmingham you can move from job to job here because you do not need a work permit.

Deputy L.V. Feltham:

The panel understands that work permit holders are provided guidance on how to apply for a visa but are not provided guidance on the work permit policy. Is that correct?

Head, Jersey Customs and Immigration Service:

They are not provided advice on how to apply for the work permit because they do not apply for the work permit but they do apply for the visa. It is the employer who ...

Deputy L.V. Feltham:

Are they provided with information about the work permit policy and what they should be expecting from their employer on the basis of that policy?

Head, Jersey Customs and Immigration Service:

I am sorry, just say the last bit again?

Deputy L.V. Feltham:

We have identified that it is the employer that applies for the work permit policy, so therefore you said the employee does not receive the information about the work permit policy. I think just to make this, I suppose, clearer, you have previously said to us that it is incumbent on ... you are reactive, so it is incumbent really on the employee to highlight where there might be any discrepancies with what the employer is doing in relation to the work permit policy.

Senior Manager, Jersey Customs and Immigration Service:

Yes. In answer to your question, the answer is yes.

Deputy L.V. Feltham:

Okay.

Senior Manager, Jersey Customs and Immigration Service:

There is a notice to employees that goes out as well as your rights as an employee and that that basically summarises the work permit concerning your particular section. For example, this is an example of a 9-month temporary work permit, which says what you can do and what you cannot do, so there is some guidance there,

[17:00]

Although obviously it is not the full work permit policy, but there is some guidance around the main important parts about it. Switching employers, extending your work permit, bringing dependants with you; these kind of elements are covered in that document that goes out to the employees.

Deputy L.V. Feltham:

That information, is that in an accessible language?

Senior Manager, Jersey Customs and Immigration Service:

At the moment it is only in English.

Deputy L.V. Feltham:

But is it plain English? Is it legal English?

The Minister for Home Affairs:

It is not legal English.

Head, Jersey Customs and Immigration Service:

I think that is the thing, it is in plain English because the work permit policy is extremely long, so it would be too much ...

Deputy B.B. de S.DV.M. Porée:

The work permit policy is published. It is not a secret. If anybody does want to have a look at it, they are able to have a look at it.

Deputy L.V. Feltham:

Can work permit holders make arrangements to report any concerns that they might have to Jersey Customs and Immigration in person?

The Minister for Home Affairs:

Yes.

Head, Jersey Customs and Immigration Service:

Also via freephone as well, confidentially obviously.

Deputy B.B. de S.DV.M. Porée:

Can I just ask on that note, when you ask in person, are they able to walk to the Immigration building and there will be people there to receive them?

Head, Jersey Customs and Immigration Service:

We do not have a public office. But having said that, people do turn up and there is somebody on reception and there have been quite a few instances, not necessarily highlighting issues, but we do get people turning up to Maritime House with queries and obviously we deal with them, yes.

Deputy B.B. de S.DV.M. Porée:

Thank you.

Deputy L.V. Feltham:

We have talked that there has been recent changes to the work permit policy. Where there are changes to the work permit policy, how does Customs and Immigration communicate information about those changes to key stakeholders, including employers who will need to meet the terms of that policy, and also the work permit holders themselves?

Senior Manager, Jersey Customs and Immigration Service:

Historically, we have gone out to employee groups to try to disseminate that information. Around the construction group, then we would go out to the Construction Council and ask them to disseminate the information to their members.

Deputy L.V. Feltham:

But you do not do it to individual employers that you know have work permits?

Senior Manager, Jersey Customs and Immigration Service:

No, only if those particular employers are particularly large and dominating a sector, perhaps then rather than the group overseeing it we might go out to them as well to try to get that information out as wide as we can.

Deputy L.V. Feltham:

There could be a risk that an employer who has a work permit, people on work permits, is not aware of changes to the policy?

Senior Manager, Jersey Customs and Immigration Service:

That is a possibility.

Deputy L.V. Feltham:

Thank you.

Head, Jersey Customs and Immigration Service:

The recent changes, which have been quite significant, the changes to the 3-year from just having the 9-month one, there was a lot of engagement with the Chamber of Commerce, Jersey Business, Jersey Hospitality, quite a few meetings over that period. So we would be expecting reliance on those industry leaders to communicate that as well.

Deputy B.B. de S.DV.M. Porée:

It is left up to the employer to share that information with the employees, so they are not checked to see if they passed on this information to the employees or not, the employers?

Head, Jersey Customs and Immigration Service:

No.

Deputy B.B. de S.DV.M. Porée:

Okay, thank you.

Deputy L.V. Feltham:

Have you noted any key challenges associated with communicating information about the work permit policy and Island life to the work permit holder community?

The Minister for Home Affairs:

It is not something that we do on a run of the mill basis. Our primary focus is really with employers because it is their permits.

Deputy L.V. Feltham:

Thank you. Monty.

Deputy M. Tadier:

So the next section is about work permit policy and immigration rules. So just to give context from the policy, it says that temporary employment groups are an exception to the Common Travel Area standards, which are justified to the United Kingdom by setting stringent rules on those who would not otherwise be allowed a visa to work elsewhere in the Common Travel Area. So the panel notes that work permit holders are subject to the requirements of the Common Travel Area and that the temporary employment routes are an exception. In addition to the temporary employment routes, what other exceptions, if any, does Jersey have to the Common Travel Area requirements?

The Minister for Home Affairs:

The main one we have got is the carte d'identité for day trippers.

Deputy M. Tadier:

Can you explain how the exceptions to the Common Travel Area requirements are justified to the United Kingdom, so any exceptions that we apply here in terms of the work permit policy?

The Minister for Home Affairs:

We have quite a few categories that they do not have in the United Kingdom and we have negotiated those. The construction route is a good example. We have agriculture, hospitality, construction and fishing. I think they only have agriculture in the United Kingdom and that is only for 6 months. So the way that we have justified that to the United Kingdom is to point out the challenges to our economy. Again, one of the reasons that we are so strict about work permits is that we need to maintain the integrity of the border, so we need to know where people are and there need to know that they are here on a specific permission for a specific amount of time.

Head, Jersey Customs and Immigration Service:

In terms of communicating that, we have regular engagement with a team called the Home Office C.T.A. (Common Travel Area) Policy Team. So we engage with them on all C.T.A. policy matters and if there were significant changes we would advise them, not asking permission, but advise them. Obviously, we would want to satisfy them that what we were doing did not compromise the integrity of the C.T.A. So those meetings take place probably every 3 weeks or so.

Deputy M. Tadier:

So the next question is ... I may need to slightly rephrase it, I will read it as it is written and tell you what I think it means. Do you know whether U.K. visa holders living and working in the U.K. receive any grace or exemptions with regard to Common Travel Area requirements? I am guessing that is to do with maybe the time periods where they are required to leave. Obviously, we have at the moment 9-month work permits and you are given a period of time to leave at the end of your contract but also if that is terminated. Does that marry up with what your knowledge is of the U.K. system?

The Minister for Home Affairs:

There are 2 questions there. It is the time they have to leave at the end of their permit or the time they have to be away before they can have another permit?

Deputy M. Tadier:

It is the former really, but you can answer whichever ones you like as long as you answer that one.

Senior Manager, Jersey Customs and Immigration Service:

I think if your immigration permission runs out or is curtailed, then it is the same rules in the U.K. as it is here, that you must leave at the earliest opportunity. I think the immigration rules say that any

overstaying beyond 28 days, or less than 28 days, can be discounted but you should leave straight away.

Deputy M. Tadier:

So just to clarify, we can set our own policy in terms of those grace periods, but you would also try to mirror and follow that kind of practice.

Senior Manager, Jersey Customs and Immigration Service:

Yes, our legislation is derived from the Immigration Act 1971, so it feeds down from U.K. legislation into our own immigration rules. So, yes, fundamentally they are extremely similar.

Deputy M. Tadier:

Do you know what appeals processes, if any, there are in place with regarding the Common Travel Area requirements?

Senior Manager, Jersey Customs and Immigration Service:

Yes, an immigration decision can be appealed if that decision means that the person needs to leave the country. There is a process in Jersey that the appeal is sent through to Mark, as head of service, who will delegate it out to another senior manager to be looked at. There is a further process above that where it can be escalated to the Minister and ultimately up to judicial review if required.

Deputy M. Tadier:

So the 9-month temporary work permit group requires work permit holders to leave the Common Travel Area for a period of at least 3 months. This is the area you pre-empted, Minister, I think, before permission to return is granted. How is the requirement to leave the Common Travel Area for a minimum of 3 months determined?

The Minister for Home Affairs:

Simply for the 9 months and the 3 months?

Deputy M. Tadier:

Yes.

The Minister for Home Affairs:

The 9 months is a temporary route and it is considered that people need to be outside of the Common Travel Area so that they are not able to establish residence or anything that would contribute to a period of indefinite leave to remain.

Deputy M. Tadier:

I am aware you are already reviewing that so that these questions will be in that context. What feedback have you had from the industry about this requirement, but also from work permit holders?

The Minister for Home Affairs:

It is fair to say we have had some mixed feedback from the industry. This was to do with the 12-year rolling up to 3 years with an absence period of 3 years. We had some employers that were very much in favour of it and some employers that very much were not. The rationale for being away for a period of time is just what I have said before, so people cannot build up. These are temporary permits. They are not skilled permits. If you came via the skilled visa, that does allow you to build up residence that would give you indefinite leave to remain and then potentially go on to apply to be a British citizen. But these are temporary permits, so it is reasonable that people leave the Common Travel Area for a significant period of time. The way that has been benchmarked, the absence period of the 12 months in hospitality and construction, mirrors the population management law in Guernsey, which states that the recognised break is defined as a period to equal or greater than a period of continuous residence. We do not have an equivalent in our Control of Housing and Work Law. It has never been put in before because it is what we have done before, but we are going to be reviewing the regulations around that law next year, so it is possible that we would potentially look at doing something different. The rationale, it is a temporary route, it has to be recognised as such. We need to manage the expectations of the employees as well. They need to know how long they are here for, how long they have to leave for. Currently we do not have a fixed population policy in Jersey. We will be issuing a statement of common population policy next year and hopefully over the next couple of years will be developing that policy so that absence period may change. But the other rationale behind increasing this 12-month to a 3-year rationale was picking up on employees and employers who wanted to be able to undertake greater training and development in their roles. So one of the rationales is that it would get you off a temporary permit on to a skilled visa and then that opens up the possibility for you to bring your dependants and gives you an opportunity for settlement. Some of the feedback that we had was that if you are on a 9-month permit some of the training opportunities are not available to you because they know that you will be going for 3 months, et cetera.

Deputy M. Tadier:

I have 2 questions. I know there is a lot to ask and to say, but does the Department or do you as Minister recognise that, while the jobs may be very technically defined as skilled or unskilled, et cetera, and those are perhaps blunt definitions, one can become very experienced, even on a 9-month contract if you are doing that 9-month contract for a period of years.

The Minister for Home Affairs:

Yes, we do not use the term “unskilled” in the work permit policy now. We have taken that out. It might be inferred by we have a temporary route or a skilled route, but that does not mean the people who are here on temporary permits are unskilled. It is really important that I make that distinction.

Deputy M. Tadier:

I was tempted to ask earlier about what the change in terminology was and maybe that was one of them.

The Minister for Home Affairs:

Work permit employees was one and taking out “unskilled” was another one, because people are clearly not unskilled at all. It was just a hangover from terminology that was used in the U.K. and what we would really like is for employers and employees to be given that opportunity to have training and development. Also the other thing, if you are on a skilled visa, you have to be earning a certain amount of money. At the moment I think it is pegged at £30,000. We are probably considering that is a little bit low. We are reviewing that threshold as well so that more employees can opt for that skilled route, which enables them to stay in Jersey, as I said.

Deputy M. Tadier:

I am glad you mentioned that because we heard from an example in the finance sector where somebody would be employed and there was a minimum expectation of pay but there was a suggestion that had a slightly perverse effect of capping their pay. So in fact you will be very familiar with the concept of the pay gap between men and women; we have identified that there might be an ethnic pay gap in the Island. That is not helped by the work permit scenario sometimes.

The Minister for Home Affairs:

I would agree with that and certainly some of the reports that we have seen published in the last few months would indicate that there is an ethnic pay gap and we need to reduce that gap significantly.

[17:15]

Deputy M. Tadier:

So basically an equivalence, if you are doing the same job as someone else, there is a presumption that you should be paid the same.

The Minister for Home Affairs:

The £30,000 should not be a target. It is the minimum that somebody should be paid to be considered skilled. That is why we are reviewing that. I do not know if, Mark or Andy, you want to add to that.

Deputy M. Tadier:

Thank you. Just one question about this: do you think the fact that we are in a different situation with the population now, arguably we are in a depopulation scenario rather than an increasing population, does that therefore change the maybe underlying assumptions that there were in the past?

The Minister for Home Affairs:

Yes, absolutely. It definitely changes our thinking around it and one thing that we would say, the Population Skills Ministerial Group, we have had policies that keep people out before and work permits were there to protect the local population and to make sure that the local population had sufficient employment. That is done in every other country, but of course clearly we are in a very different position now. But again some of these things, to avoid unintended consequences, we just have to think quite carefully. To be fair, over the last year we have moved quickly and we have pushed our head above the parapet, particularly in light of the U.K. making some decisions that are for routes that are not applicable in the U.K. so that we have responded to the needs of industry and we have done it fairly quickly.

Deputy B.B. de S.DV.M. Porée:

Can I just take this opportunity to remind everyone we have about 15 minutes from 2 hours.

The Minister for Home Affairs:

I will talk faster.

Deputy B.B. de S.DV.M. Porée:

No, no, it is not your fault. I think we are asking quite a few supplementaries, so if we can streamline that would be good.

Deputy M. Tadier:

This is my last, so we will skip that question. The panel notes that in exceptional circumstances temporary worker permits may be switched to another temporary employment in the same sector in the first 12 months. Could you outline what those circumstances might be?

Senior Manager, Jersey Customs and Immigration Service:

I think we done some of that earlier. It was around, for example, an employer not paying.

Deputy M. Tadier:

Is that the only real reason you would ...

Senior Manager, Jersey Customs and Immigration Service:

No, it is a case-by-case and we just have to look at it, but that is certainly one we came across where an employer was not paying the wages and we had several work permit employees come to us and we permitted them to switch.

The Minister for Home Affairs:

A business might go out of business, for example, unexpectedly, and that is not the fault of the work permit employee so we allow them to change.

Deputy M. Tadier:

So the case could be made by the worker or the employer.

Deputy B.B. de S.DV.M. Porée:

You have supported me in one case.

Deputy L.V. Feltham:

I will move on to talking about if there was a dispute between employers and employees and if a work permit holder is dismissed, meaning that effectively the terms of their visa is broken. We understand that in that situation the employee would be required to leave the Common Travel Area. Can you confirm what notice period is provided to work permit holders to leave the Common Travel Area if they are in that situation?

Senior Manager, Jersey Customs and Immigration Service:

We will normally give them sufficient time to put their affairs in order. That can be a week, it can be a few days, it depends on their circumstances.

Deputy L.V. Feltham:

So, if the employee disputed the reason that the employer was dismissing them, what would happen in that instance?

Senior Manager, Jersey Customs and Immigration Service:

Disputes for dismissal are normally taken up through J.A.C.S. and it can be taken up from abroad and I think we have had cases where they have been taken up from abroad.

Deputy L.V. Feltham:

As we have already ascertained, unfair dismissal does not apply to people who have worked for less than 12 months with an employer. Discrimination would have to be proven. So is that taken into consideration with regard to the timing that they need to leave the Island?

Head, Jersey Customs and Immigration Service:

One thing, I can think of 2 particular cases, so what there is in instances like that is very early engagement with J.A.C.S. We would want to be sure that by the person leaving the Island it would not undermine their case if they were to take it to tribunal, for example, so we would take that advice from J.A.C.S. specifically.

Deputy L.V. Feltham:

So, in those situations, would the person then be able to go and look for another employer and find another job?

The Minister for Home Affairs:

No.

Deputy M. Tadier:

Can I just jump in? What is the maximum time you could legitimately and reasonably give to someone in that situation to leave?

Senior Manager, Jersey Customs and Immigration Service:

There is no particular cut-off around that. It is a decision as to what is appropriate for each case and, for example, some circumstances we have given a little bit of extra time because the period they might be looking to travel might be really expensive, so we have given a day or 2 extra to allow the prices of flights to come down, stuff like that. It just depends on the case.

Deputy M. Tadier:

You spoke about a 28-day period earlier.

Senior Manager, Jersey Customs and Immigration Service:

No, that is getting into immigration legislation and what is the definition of overstaying.

Deputy M. Tadier:

Would you ever if someone said: "Can I have 3 weeks here to get my stuff in order?" maybe to do a bit of sightseeing?

The Minister for Home Affairs:

No.

Senior Manager, Jersey Customs and Immigration Service:

No, because one of the things is that what you do not want to end up in a situation is that somebody might be destitute, so obviously no access to be able to get a job, no income, and potentially no accommodation. Then often the best solution is to go back to where the support mechanism is in place. So what we want to avoid is people being destitute in Jersey.

Deputy L.V. Feltham:

We have discussed the permit is applied for by the employer on the basis that the employer will be a good employer. In that instance that there is a dispute between employee and employer, what procedure does Jersey Customs and Immigration follow once notification of a dispute is received?

Senior Manager, Jersey Customs and Immigration Service:

It is information gathering, as Mark has alluded to. We speak to J.A.C.S. and we take the information from both sides to see where the balance is. Obviously sometimes, within the work permit policy, if you dismiss the employee, you are meant to tell us of that. So we might look at the circumstances of the dismissal and the reasons around it. We will obviously look at any representations made by the employee and make a decision around that.

Deputy L.V. Feltham:

If it was found that the employer had acted in contravention of the work permit policy, what would happen then?

Senior Manager, Jersey Customs and Immigration Service:

We would be looking to ... as the Deputy alluded to, within the work permit policy there is a stepped approach to it in relation to contraventions and we would look at where it came in that, whether it was a first contravention, second contravention, or a fraudulent ...

Deputy L.V. Feltham:

Then in relation to the employee, would they be able to stay on the Island and seek alternative work?

Head, Jersey Customs and Immigration Service:

At that point the assumption would be that they would have left the Island for the reasons that Andy has described. But certainly if was proven that it was the employer at fault, if they were to make a subsequent ... if they wanted to come back, then obviously they would be welcome to do so.

Deputy L.V. Feltham:

Obviously it would be a shame to lose good employees that are needed by the Island because of bad employers.

The Minister for Home Affairs:

It is fair to say that the dismissal, hence the reason for negotiating and for speaking to J.A.C.S., would have had to have been handled properly. So you would have expected the employer to give the first written warning, the second written warning. We would be looking for evidence that the dismissal process has been handled, not just a case of: "Do not come back, I do not want to employ you anymore."

Deputy L.V. Feltham:

But we have already ascertained that within that first 12 months of employment the unfair dismissal clause does not come into play, so that is the advice that J.A.C.S. would be giving, is it not?

Deputy B.B. de S.DV.M. Porée:

Yes, I was just going to say that when we asked about how are those issues addressed you did say there is a process. But that is one thing that is consistent with every single work permit narrative is as soon as they come to the Immigration and the Immigration takes, as you said so many times, looks at the view of the employer, because they are the ones in receipt of that visa, all workers are exactly the same when they say they are given by Immigration 7 days to leave the Island. There is no case-by-case situation, there is no time to stay within the Island to deal with these issues. They are issued with a visa stamped to leave the Island and that 7 days includes weekends, bank holidays; is that true?

Head, Jersey Customs and Immigration Service:

I think there was probably 2 parts to that. It would be right to say that time is not given depending on the advice from J.A.C.S. to resolve the employment issue, but I can certainly think of instances where we have allowed more than 7 days because of specific circumstances. Andrew has mentioned one there in terms of the price of flights. It is unrealistic for somebody to pay 2 or 3 times the cost, so there are things taken into consideration. I can think of instances where we have gone beyond the 7 days.

Deputy M. Tadier:

Can I just ask, I know we are running out of time, but there is clearly a potential tension here on the one hand that the permit that you have issued to the employer, to the business, there is a presumption that they will give a term of employment to the worker, so a 9-month or a year, or whatever it is, but let us say it is 9 months. If they then say: "We only have 6 months' work so I am

going to have to fire you” that is considered a legitimate grounds for firing them because they do not need to give a reason.

The Minister for Home Affairs:

No, that is not a legitimate reason. They have signed up to give 9 months of 40 hours a week.

Deputy M. Tadier:

But they do not need to give a reason to dismiss someone, so they can just say: “I am dismissing you.”

The Minister for Home Affairs:

But that would have an impact on future permits. I am just trying to think whether we have ever had those particular situations.

Deputy M. Tadier:

So let us follow through, so because of that then the employer is likely to have to make up a reason because they do not want to have to tell you that they are firing them for no reason. So they will say: “I notice you have been coming to work and you left a few dirty dishes lying around, so I am afraid I have to terminate your contract”, but the real reason might be there is no work there. Is that a consideration that you have ever had?

Head, Jersey Customs and Immigration Service:

We have had an instance where people have been on 9-month permits - and I trying to think of how to avoid the specific sector - but for reasons beyond the control of the employer the work was not available. So in that instance to say to that particular sector, because it was quite small: “You cannot have any more work permits” would decimate the sector. So I was trying to think of the outcome. You probably know what I am talking about.

Senior Manager, Jersey Customs and Immigration Service:

They were switched.

Head, Jersey Customs and Immigration Service:

Okay, so in that instance they were allowed to switch employment, again a specific case.

Deputy M. Tadier:

One of the things we are grappling with as a panel is that there was clearly a political decision at some point in time with different views about extending unfair dismissal from 6 months to 12 months but in the case of if you are on a 9-month contract, you can never ever contest that you have been

dismissed unfairly. We are just wondering if that is a problem in the scenario that we have highlighted. So you are caught in the middle of that as the Immigration Department potentially.

The Minister for Home Affairs:

It is very black and white, is it not? You do not have a job, therefore your permission has run out, therefore you must leave.

Deputy M. Tadier:

But you would not want the policy to inadvertently encourage employers to make up reasons for dismissing employees.

The Minister for Home Affairs:

Absolutely not, but we do not see any clear evidence of that.

Senior Manager, Jersey Customs and Immigration Service:

I have not seen a scenario like that one, unless you have something from the panel, but I am not aware of one like that.

Deputy M. Tadier:

But you did say you have experienced that.

The Minister for Home Affairs:

Slightly different. It was not ...

Head, Jersey Customs and Immigration Service:

No, so this was the work was not available, beyond the control of the employer and for the full 9-month period, but in that instance the employees were allowed to switch.

Senior Manager, Jersey Customs and Immigration Service:

The employer came to us to raise the issue: "What are we going to do?"

Deputy L.V. Feltham:

I am just going to ask one quick question. Can you tell us who signed off on the work permit policy?

The Minister for Home Affairs:

What do you mean by signed off on it?

Deputy L.V. Feltham:

Who authorised it? Who signed off on it?

The Minister for Home Affairs:

Me. It goes through the States as an R.

Senior Manager, Jersey Customs and Immigration Service:

So the Act comes down to the rules and ...

Deputy L.V. Feltham:

That is the rules. It is the rules that have changed not the policy.

Senior Manager, Jersey Customs and Immigration Service:

The work on the policy is linked to the work permit rules and it effectively says how the work permit rules should be put into policy.

Deputy L.V. Feltham:

So who signs off on the policy?

Senior Manager, Jersey Customs and Immigration Service:

Ultimately it is up to the Minister for Home Affairs who signs off on all immigration matters.

Deputy L.V. Feltham:

So we will see a ministerial decision in relation to that?

The Minister for Home Affairs:

You see a Ministerial Decision, yes.

Deputy L.V. Feltham:

Thank you.

Deputy B.B. de S.DV.M. Porée:

I think that is it for today. We have done very well. We went through the full 2 hours, so I would just like to thank you for coming in today and for answering our questions. Thank you for the public listening and anybody who is watching this hearing also.

Deputy M. Tadier:

Sorry, one thing to add, Chair, is that we did not get through all of our questions, because we had lots, and you also gave full answers, which were appreciated. If we sent you the rest of our questions, would you be able to answer them in writing?

The Minister for Home Affairs:

Of course, yes.

Deputy B.B. de S.DV.M. Porée:

You have already said.

Deputy M. Tadier:

Thank you. Just so the public know there are some other questions, thank you.

Deputy B.B. de S.DV.M. Porée:

Thank you so much for your time. Thank you.

[17:29]