



Migration and Population Review Panel

Public Hearing

Witness: Assistant Chief Minister

Monday, 28th February 2022

Panel:

Deputy S.M. Ahier of St. Helier (Chair)

Deputy G.J. Truscott of St. Brelade

Witnesses:

Deputy R.E. Huelin of St. Peter, Assistant Chief Minister

Ms. S. Duhamel, Head of Policy, Strategic Policy, Planning and Performance Department

Mr. N. Stocks, Senior Policy Officer 1

Ms. M. Clark, Senior Policy Officer 2

[16:30]

Deputy S.M. Ahier of St. Helier (Chair):

Good afternoon, everybody, and welcome to the Migration and Population Review Panel's public hearing with the Assistant Chief Minister. Good afternoon to you, Assistant Chief Minister.

Assistant Chief Minister:

Good afternoon.

Deputy S.M. Ahier:

First of all, I would just like to send apologies from the Chair, Senator Pallett, who unfortunately has a hospital appointment and he is at the airport right now going to England. So, we wish him well.

Assistant Chief Minister:

We are sorry, we did try to accommodate that and everybody, the officers, put a lot of effort to try and find an alternative time so he could be with us, but we just could not do it logistically, we worked out. But we are still here and thank you for proceeding.

Deputy S.M. Ahier:

No problem. Thank you. So, normal hearing standards apply. The hearing will be recorded and transcribed. If we run out of time and we have any additional questions, I hope we can send them on to you and you will respond to them. All speakers will need to introduce themselves in the usual way for the transcript to start, so my name is Deputy Steve Ahier. I am Chair for today's hearing.

Deputy G.J. Truscott of St. Brelade:

Yes, good afternoon, everyone, Deputy Graham Truscott, Deputy of St. Brelade and panel member.

Assistant Chief Minister:

Deputy of St. Peter, Rowland Huelin, and Assistant Chief Minister.

Head of Policy, Strategic Policy, Planning and Performance Department:

Sue Duhamel, Head of Policy, Strategic Policy, Planning and Performance.

Senior Policy Officer 1:

Hello, I am Neil Stocks, senior policy officer.

Senior Policy Officer 2:

Michelle Clark, also senior policy officer.

Deputy S.M. Ahier:

Thanks very much, all. Assistant Chief Minister, for the benefit of the public who may not be familiar with the Control of Housing and Work Law and the amendments which have been brought to the States, please could you briefly summarise the purpose of the amendments and how this fits with the recently agreed population policy?

Assistant Chief Minister:

Okay. The purpose of this amendment is fundamentally to take out what has been the automatic graduation of people who have worked their way through the system - there has been no end to a licence - and that has been the struggle with the uncontrolled population that we have. So that is the primary purpose of it. The primary legislation is there to enable the flexibility going forward within the secondary legislation, which will come to the Assembly in the autumn, beyond our control now because it is going to be a new Government. That is the purpose of this. How does it fit in with the

population policy? Well, all this is the mechanism to turn on the taps and turn off the taps to fit the needs of the population policy, if that makes sense. So that drives the decisions. The Control of Housing and Work Law enables those decisions to be acted on.

Deputy S.M. Ahier:

Just for clarity again, can you explain the various stages to these amendments? What is currently before the States Assembly will not introduce the permit system itself and it is important that people understand the steps that will need to be taken.

Assistant Chief Minister:

Okay. I think what I will do ... I am aware that you had quite detailed briefing on the detail of this, but as I understand it, the steps are to do 3 things. I am going to look to guidance but I am going to do it and then you will take over, Sue. One is the high-level primary legislation to enable the controls to come in with the secondary legislation. So the P.137 went 9 month, 4 year, 10 year, okay? Those will come back in the new year, the actual detail of the 9 month, 4 year or 10 year. The purpose of this primary legislation is to have the flexibility in order to change those going forwards depending on ... the world has changed a lot. A lot has happened, always happening, so we need to have that flexibility to change those according to the needs of the Island, employment on the Island, the population of the Island.

Deputy S.M. Ahier:

Sorry, just to pick on your wording there, you said "in the new year". Do you mean ...

Assistant Chief Minister:

Sorry, in the new term, you are absolutely right. I am sorry, Chair.

Deputy S.M. Ahier:

Just checking for the public to ...

Assistant Chief Minister:

Absolutely right, that is in, I believe, the autumn but that is the next Government. That is the timescale for that.

Deputy S.M. Ahier:

Thank you. As was the case with the population policy, is it fair to characterise the amendments to the Control of Housing and Work Law contained in P.13 as a framework on which to build future changes?

Assistant Chief Minister:

It is changes but it is also for decision-making. There are articles within it that tighten up the decision-making process. So it is the determining of ... Sue, do you want to explain that?

Head of Policy, Strategic Policy, Planning and Performance Department:

Okay. So, you are right, the primary law is a framework upon which a lot of detailed ... and you asked before about what the stages were. So the primary legislation is the first stage which we need, of course, to do first, but then after that there will be both secondary legislation and also policy guidelines. So there are 3 parts altogether and you need all of them to make the whole thing work. In terms of the primary legislation, we are doing a few really important things. First of all, we stripped out all of the little rules that were in the primary legislation at the minute because we need the flexibility, as the Assistant Chief Minister said, to be able to respond to situations in the future. So all those little rules will be in the secondary legislation going forward. It will be much easier to update them and keep them up to date. But there is also, as Deputy Huelin has explained, some fundamental changes that the primary law is making. So one change is around the ability for statuses to stop, to cease. The current law does not really have that concept in it because at the minute if you have a registered permission, then after a period of time you just become entitled to work and after another period of time you just become entitled. The law does not really explain how that works, it just happens. Therefore, the law never stops you being registered. You are still also registered, you just get a better permission, you get a better status. So the law does not think about how things get taken away from people, so we needed to introduce the concept of removing a status. So the 9-month permission stops after 9 months and you cannot ... if you are in month 10, you do not have permission to carry on doing the same job. You cannot just hang on and just carry on doing it, you have to stop. On the 4-year one, same thing: after 4 years you have to stop and go away, because we are trying to break residency so people are not building up long periods of residency and become permanent residents. So that was the main issue around P.137 was to ensure that when people got permanent residency they were people who were very specifically here for a purpose. They were chosen because they had a skill or they contributed to the Island and the Government was taking a positive decision for them to stay as opposed to just letting people remain here and build up residency in any way they liked. But as Deputy Huelin has also said, the other thing that is really important about the law is the way in which decisions are made. That is completely different to the current law. So under the current law, the Chief Minister makes all the decisions, and that is delegated to officers for most of the time because that is the way most laws work, but that has led to serious issues with the way that H.A.W.A.G. (Housing and Work Advisory Group) works because there is no other person to make a decision because the Chief Minister is making all the decisions, the first decision and also review decisions. So the new law introduces a first decision-making process by an officer, called a determining officer, which is the same person, the same person that currently has delegated authority under the current law. So they are not new people,

they are the same people but they will have a different legal status. Then it also creates a much clearer role for the Chief Minister to make decisions upon review, and in the middle it puts a new or a different structure, similar to the H.A.W.A.G. but a new one with a broader ability for membership. That Housing and Work Control Panel supports both the determining officer and the Chief Minister in coming to decisions where guidelines do not exist. So that is very different to the current law. There are fundamental differences. Although it is quite hard to see because of the way the law is written where those differences are, those are really important changes from the current law. Without making those changes, we would not be able to implement the population policy. We would not be able to move on with P.137, so this is an absolutely fundamental first step in that process.

Deputy S.M. Ahier:

You mentioned the ability of removing a status. Are you implying that somebody who has been here for 10 years would have their status removed?

Head of Policy, Strategic Policy, Planning and Performance Department:

Sorry, no, I just meant that statuses will expire. To have a 9-month status, obviously after you have been here 9 months it has a stop. A 4-year status has a stop. So I do not mean taking it away from people, I mean to say ... there will be very unusual circumstances in which status can be taken away, and that again is a power that is in the law. If somebody has been convicted of a very serious criminal offence, the law does allow a status to be removed, but in general terms the 9-month ones will just expire, the 4-year ones would expire, the 10-year ones will in almost all cases just become permanent statuses. But if there was some serious criminal record the Minister has the authority not to allow the person to become a long-term resident. It is having the power to do it ...

Deputy S.M. Ahier:

So in all cases you mean serious criminal offence or the Minister ...

Head of Policy, Strategic Policy, Planning and Performance Department:

No, no, no, in ... sorry, in the event of a serious criminal offence the Minister can choose not to grant a status. It is that way around, not all, it is "and".

Assistant Chief Minister:

That is the 10-year aspect.

Head of Policy, Strategic Policy, Planning and Performance Department:

Well, it is any status in actual fact. It is just a general power that in the event of a serious criminal conviction a status can be removed, yes. It is that way round.

Deputy S.M. Ahier:

Thank you, that is fine. Does the Minister agree that it is difficult for Members to understand how the draft law will operate without sight of the regulations and guidance?

Assistant Chief Minister:

I think that is a reasonable observation but there are reasons for that. I do not know, Neil, do you want to ...

Senior Policy Officer 1:

Yes, thank you, Assistant Chief Minister. The primary legislation brings in some parts of P.137. So P.137 was approved by the Assembly back in March of last year and this brings forward some parts of that proposition, particularly the ability to have a time-limited status, the ability to have the Housing and Work Control Panel, and the Population Advisory Committee are all parts of P.137. There are other parts of P.137 which will come forward within the secondary legislation and Sue explained the reasons for that. That is to maintain that flexibility. If things like the statuses, the 9 month, the 4 year, 10 year, et cetera, were to be within the primary legislation, then that removes that ability to be flexible, which was the point of the population policy which was also approved a few weeks back. So, that secondary legislation will cover many of the details, but to some extent the primary legislation needs to have an approval in order to go on and do some of the secondary legislation because another main part of P.137 was agreement by the Assembly to amend the current Control of Housing and Work Law as opposed to start afresh with another piece of legislation. So, as Sue has said, we have removed many of the rules from the primary legislation with the intention absolutely of putting them into the secondary legislation to have that flexibility.

Deputy S.M. Ahier:

Do you believe, Assistant Chief Minister, that that was the right approach to take by not rewriting the whole legislation but updating it and amending it?

Assistant Chief Minister:

No, the outcome is what we need and the outcome is that the reason we have the 2 stages is, as I think I said in my introduction, we have to have a dynamic, flexible way going forward. I will be getting, and whoever takes over from me, calls from business, from hospitality and whatever to say, for the sake of argument: "9 months is not working, we need X". We have to be able to listen to that and respond to that because if we have learnt anything in the last 2 years, the world is going mad, is it not? But we need to respond and adapt to that. That is why having the primary legislation gives the flexibility to bring it in in the secondary legislation, which can be very easily amended, whether that is by the Assembly or ministerial order. I think it is most likely by the Assembly; I need some help there.

Head of Policy, Strategic Policy, Planning and Performance Department:

Well, it will be both.

Assistant Chief Minister:

Okay. Then that is the right way forward.

Deputy S.M. Ahier:

Thank you. One of the criticisms made by this panel of the population policy was that it did not meet the expectations of the States Assembly and of the wider community. What was your understanding of the expectation of States Members for the Control of Housing and Work Law amendments when they approved P.137, the Migration Control Policy?

Assistant Chief Minister:

It was rather a long time ago, was it not?

Deputy S.M. Ahier:

It was.

Assistant Chief Minister:

The understanding was quite clearly that we would bring legislation in order to remove the automatic migration graduation of these permissions because that is the root cause - one of the root causes - of why we have uncontrolled population at the moment. So we have delivered on that with this legislation.

[16:45]

Deputy S.M. Ahier:

The panel understands ...

Assistant Chief Minister:

Sorry, we will do if the Assembly agrees with it in April.

Deputy S.M. Ahier:

Of course. The panel understands the principle of bringing the controls in separately as regulations to increase future flexibility. However, at the time that P.137 was debated, had you anticipated that the introduction of migration controls outlined then would happen during this term of office, either as primary or secondary legislation?

Assistant Chief Minister:

We anticipated it would happen during this term of office.

Head of Policy, Strategic Policy, Planning and Performance Department:

Shall I make a point about timing?

Assistant Chief Minister:

Yes.

Head of Policy, Strategic Policy, Planning and Performance Department:

P.137 was quite delayed in being debated so I think - Neil, remind me - that it was lodged in October.

Senior Policy Officer 1:

20th October, yes.

Head of Policy, Strategic Policy, Planning and Performance Department:

Yes, 2020 and was not debated until March 2021. So I think it is fair to say that there has been a timetable in P.137 which we were unable to adhere to because of the delay in debating it. I think towards the end of 2020 people thought that COVID would be finished sooner and I think 2021 has been a difficult year. There have been lots of pressures during 2021 across States departments and I think almost everybody would be running behind where they would like to be. So we are behind where we originally hoped we would be, but we could not control the pandemic and the resurgence of issues over the summer of last year. So, we are working as fast as we can but it will take some time before we are able to implement the actual controls.

Deputy S.M. Ahier:

Thank you. In your recent letter, Assistant Chief Minister, on 24th February, you indicated that an Appointed Day Act is likely to be brought forward towards the end of 2022 to bring into force the amendments should they be adopted. If the next Government continues to progress the controls agreed by the States Assembly, when is the earliest that it is anticipated that migration controls will be introduced, bearing in mind that the regulations and secondary legislation accompanying today's amendments are not due to be brought forward until the final quarter of this year?

Assistant Chief Minister:

Well, that will be the next Government but what is the ... Sue, help me with ... the Appointed Day Act will be debated on the same day?

Head of Policy, Strategic Policy, Planning and Performance Department:

No, no. The full process of everything is we have primary legislation coming to be debated in March. Then we will work over the summer on secondary legislation, assuming that the next Council of Ministers has a similar policy view to the current one. Then we will bring back ... the person in charge of it will bring back regulations in the autumn, that is the plan, but nothing will come into force until the States also approve an Appointed Day Act. So that is a separate piece of legislation. The law that we have here today tells you that it will come into force on such day as the States will agree. So the States has another ... a final kind of approval process to agree. So you asked about why we were putting the primary legislation forward before the regulations. We are doing it because it is a big piece of work and it is good to give States Members the ability to reflect on this part first. But nothing will actually come into force until everybody is happy with everything and the States has agreed an Appointed Day Act. But when that will be I think it is impossible for this team to tell you that today because it will depend on the priorities of the next Council of Ministers.

Deputy S.M. Ahier:

Fair enough. Thank you. I will pass over to Deputy Truscott now.

Deputy G.J. Truscott:

This particular section is "Housing and Work Control Panel". The panel's understanding is that the Housing and Work Control Panel will fulfil the role currently undertaken by the Housing and Work Advisory Group, known as H.A.W.A.G., and that the amendments give greater structure and transparency to the role of this group. Can you confirm that this is the case?

Assistant Chief Minister:

The question was the new Housing and Work Control Panel will take over from H.A.W.A.G. but will have more, better controls, different controls? What was the question?

Deputy G.J. Truscott:

Greater structure and transparency.

Assistant Chief Minister:

Yes, absolutely, that is the intent, yes.

Deputy G.J. Truscott:

Okay, so you can confirm that is the case. So can you please describe how under the amendments it is intended that the membership will be chosen for the panel and how many members it will have?

Assistant Chief Minister:

The panel will consist of at least 3 elected Members of the States Assembly, who will be nominated by the Chief Minister and one of whom will be again nominated by the Chief Minister to chair the panel and have a casting vote.

Deputy G.J. Truscott:

So what was the reasoning behind not limiting the number of Members who would sit on the panel?

Assistant Chief Minister:

Not limiting?

Deputy G.J. Truscott:

Not limiting.

Assistant Chief Minister:

Well, it is at least 3.

Deputy G.J. Truscott:

At least 3?

Assistant Chief Minister:

Yes, it is at least 3.

Deputy G.J. Truscott:

I think there is a maximum of 9, is there not, on most panels? Would that be the case in ...?

Assistant Chief Minister:

Not according to the amendment.

Head of Policy, Strategic Policy, Planning and Performance Department:

Yes, the law ...

Assistant Chief Minister:

Unless there is another law.

Head of Policy, Strategic Policy, Planning and Performance Department:

No, there is not another law. No, this panel is set up under this law. It is keeping it simple I think is the answer to this part of the change, that it is important that there is a political panel and it should have at least 3 people on it. I think a panel of less than 3 people probably would not be very sensible.

But it is also important that with other parts of the law there is flexibility. So, for example, it does not say it will include a housing Minister or an economic Minister, which it does say in the current law, because we do not know what the pressures are going to be in the future. We do not know the names of Ministers in the future, so it is just leaving it available to the Chief Minister at the time to choose an appropriate panel. Obviously, the Chief Minister is subject to public scrutiny, from fellow States Members, and the decision that he or she makes as to who is on that panel will be a matter for public discussion. So, the law is trying not to create additional rules and regulations where it does not need to. This will be a matter of public discourse as to who is on that panel and how they work.

Deputy G.J. Truscott:

Okay, which kind of leads into my next question, which was a political rather than an operational decision has been made to word the amendment so that there is no obligation on the Chief Minister to include non-executive members on the panel. What was your and the Council of Ministers' reasoning for allowing for a situation in the future in which a future Chief Minister will be able to constitute the panel with the executive members only?

Assistant Chief Minister:

Sorry, the question is what is preventing ... so do you want ...

Head of Policy, Strategic Policy, Planning and Performance Department:

The current H.A.W.A.G. panel is made up of the executive members, yes. This is broader than that. This allows for non-executive members to be there. As I said before, it will be a matter of public discussion and the Chief Minister will be held to account for the decisions that he or she makes as to who is on that panel. I think some Ministers will be very keen to put non-executive members on, some perhaps will not feel it is appropriate. I think it would have to be a political decision at the time. So, again, the law does not tell the politicians what to do, it allows the politicians to take choices as they deem fit at the time.

Deputy G.J. Truscott:

Because as you say there is a degree of flexibility.

Assistant Chief Minister:

There is a lot of flexibility there.

Head of Policy, Strategic Policy, Planning and Performance Department:

There is a lot of flexibility in it, yes. That is the idea ...

Assistant Chief Minister:

That is why I was trying to understand the question.

Deputy G.J. Truscott:

The broader church on H.A.W.A.G., which would be a good thing, or the panel.

Assistant Chief Minister:

Yes, absolutely.

Deputy G.J. Truscott:

So, in practice, how is it envisaged that the panel will work and make its decisions?

Assistant Chief Minister:

I think I will ask Neil to go through this in detail, but if you look at the appendices at the back of the lodged ... I have to say that when it was explained to me I did struggle so I said: "Can we please have a flowchart so we can understand it absolutely clearly?" We like a flowchart because it means I can understand it and it is far easier to explain. I think it is fair that ... Neil has been working on this. Do you want to explain that process, Neil? Do you have copies of these with you? I know it is not very fair for those online or watching but ...

Deputy G.J. Truscott:

Thanks very much.

Assistant Chief Minister:

It is a 2-stage process, so that one first and then this will follow after.

Head of Policy, Strategic Policy, Planning and Performance Department:

So one is called the first decision ... what is the first one called?

Senior Policy Officer 1:

Thank you, Minister. The first one is the initial application process flowchart. So, within that, an application is made to the determining officer. The determining officer makes a decision based within the policy and guidelines that are given to the determining officer by the Chief Minister, and that determining officer will make a decision where that guidance is in place. But if the determining officer finds themselves in a position where there is not any current guidance because it is something out of the ordinary or the policy has not been written for that, then they are required to refer that application to the Housing and Work Control Panel. The panel will look at that situation and they will offer guidance back to the determining officer of what they think should happen. The determining

officer is duty bound within the law to follow that recommendation unless for any reason they cannot do that. That would be something like the applicant has withdrawn their application in the interim period and, therefore, there is no longer an application to authorise. But the panel will also give direction to the Chief Minister around the determination that they have come to and the Chief Minister will then have the opportunity to update his or her policy and guidance so that the next time that situation occurs the determining officer will be able to make a decision within the new guidance that has come from the Chief Minister. The important part there for the Housing and Work Control Panel is when it does its determination of the application that is passed to it, it needs to utilise the same guidance or policy that is in place as much as possible in order to come to its new recommendation. So, that is the initial application and that is where the Housing and Work Control Panel comes into that initial application. The second area that they come into is in the second flowchart there, which is around the review process. So, as Sue has said, a major part of having determining officers is to keep the Chief Minister free to be able to carry out a review process in the future and, if you like, they are not marking their own homework, which is in the situation we have at the moment; the Chief Minister makes the initial decision and later on has a review role within that. So, in the proposed review process if an applicant wishes to ask for a review of their decision, it might be that the decision has been refused or they have had a condition added or something that they want to review, they can do that. The determining officer passes on that review to the Housing and Work Control Panel. The panel considers the referral that has been sent to them and then in this case the panel again needs to operate within the guidance that the determining officer was having to work within. Then they make a recommendation to the Chief Minister this time to either uphold or revoke in whole or in part the application that they were looking at. It then rests with the Chief Minister to decide whether they wish to follow the recommendation from the Housing and Work Control Panel or whether they wish to come to a different decision. If they do come to a different decision, then they need to put into writing why it is that they have come to that different determination. So the role of the panel is twofold: one, for the determining officer to pass an application to where they are unable to make a decision because they have no guidance, and it is also to act as an independent review body of an application where an applicant has asked for a review to take place. There is just one more step which is outside of the panel itself. So once the Chief Minister has made that determination, if the applicant does not like that decision, then they appeal the Chief Minister's decision to the Royal Court. So it becomes an appeal at that point and not a review.

Deputy G.J. Truscott:

Okay, that is fine. Thank you for the explanation. So it is still the intention that the final decisions will still be determined by the Chief Minister, who can override the decisions of the panel. What consideration was given affording more authority to the panel in the amendment, if any?

Assistant Chief Minister:

What consideration giving more authorisation? I think the panel has a reasonable amount of discretion because what they sit on is when there is a grey area within the policy, which can happen. I think the example we use, let us say we go into, I do not know, mosquito farming or something - I am being trivial, essentially - then we would not have a guideline to go to which the panel can then review and determine on.

[17:00]

So that is a lot of decision-making power and that obviously determines and makes the recommendation to the Chief Minister, who will then alter the policy accordingly and approve or not as the panel recommends. That was an awful example, I apologise to anybody listening. **[Laughter]**

Deputy G.J. Truscott:

Mosquito farming, it is a good one, I have to say.

Head of Policy, Strategic Policy, Planning and Performance Department:

It was insect farming, it was insect protein that ...

Assistant Chief Minister:

That is a good one.

Head of Policy, Strategic Policy, Planning and Performance Department:

You are absolutely correct that you could create a panel that had more legal powers and statuses, but I return to the concept of keeping things simple and keeping things flexible. The current panel is set up in a very simple, clear and easy way and it avoids some of the complexities that you would face if you tried to create the panel as a separate legal entity. It would have to have a much more complicated constitution. You would have to be much more prescriptive about who it was and where it was and what happened during an election period and things like that. So this is a pragmatic approach to maintaining a political input in decision-making processes, the ability for the Chief Minister to stay away from initial decisions but to have a clear head when it comes to a review decision, and that is really important because if we are giving people the right to have a review of their decision it needs to be a review by somebody else who was not involved in the first decision. The Chief Minister is never involved in the first decision. That is quite important. The Chief Minister does write the guidelines under which the decisions are made but does not himself or herself ever actually take part in that first decision and is not aware of those individual cases. It is a choice and there are other choices that could be made. I think the Ministers feel that this is an appropriate way forward.

Assistant Chief Minister:

It is important that the Chief Minister gets a regular review of the decisions that have been made.

Head of Policy, Strategic Policy, Planning and Performance Department:

That is actually on the diagrams.

Assistant Chief Minister:

Which is in the diagram.

Deputy G.J. Truscott:

I think we have covered this but I will ask question 14 anyway. What was your reasoning for the level of decision-making capability that the amendments provide for each of the following: (a) firstly, the determining officer; (b) secondly, for the Housing and Work Control Panel; and thirdly, for the Chief Minister?

Assistant Chief Minister:

What was the reasoning behind the decision-making?

Deputy G.J. Truscott:

The level of decision-making capability?

Assistant Chief Minister:

The rationale is as Sue said, the acronym, keep it simple, and therefore to have clear policies to the determining officer is absolutely clear, which is set by the Chief Minister, to be able to execute on those in a timely way, because anybody wishing to receive a licence, both the employer and employee, needs to know those decisions fast. We have a competitive world out there, so that must be done. If there is a grey area that the policy does not meet, then the decision-making process is there within the advisory group ... not the advisory group, get my nomenclature right. They can determine that very quickly and policy can be changed or decisions can be made. Then it keeps the Chief Minister away in case reviews are required at a later stage. I think it is as fast and streamlined a process as we could conjure because that is what is demanded of us, asked of us by employers and employees alike.

Deputy G.J. Truscott:

Thank you. Back to the Chair.

Deputy S.M. Ahier:

We will move on to determining officers. The amendments strengthen the role of officers to make decisions regarding an individual's status, business licences and other matters. What is the reason for this?

Assistant Chief Minister:

I think I have covered that previously. It is for streamlining the process, but have I missed something, Sue?

Head of Policy, Strategic Policy, Planning and Performance Department:

No, as I think we have explained, it was very important that the law created a clear decision-making process because the current law has a single layer of decision-making which is not as good as it should be. So the determining officers always make the first decision, so that is what they are there for, which allows the Chief Minister always to make the second decision, the review decision. That is really why we created a 2-stage process, the determining officers and the Chief Minister.

Senior Policy Officer 1:

Sorry, if I could just chip in as well, the determining officer may be perceived to have more power within this law. However, they are immediately constrained that they can only operate within the guidance and policies that are given them by the Chief Minister. If you like, the valve there is, it is not that they cannot make the decision, they are not allowed to make the decision unless it is within those guidelines. If they cannot do that, then they must refer it to the panel.

Deputy S.M. Ahier:

Could you please outline the process for the appointment of determining officers?

Head of Policy, Strategic Policy, Planning and Performance Department:

That is a technical question.

Assistant Chief Minister:

It is very technical.

Head of Policy, Strategic Policy, Planning and Performance Department:

The Minister responsible for the law is the Minister responsible for appointing determining officers. This happens in other laws. It is just a fairly administrative process whereby either individual people can be named as determining officers or a job title can be identified as a determining officer job title.

Deputy S.M. Ahier:

You mentioned that it happens in other laws, but where is it specifically mentioned in this law?

Head of Policy, Strategic Policy, Planning and Performance Department:

That is a good question I do not know the answer to.

Assistant Chief Minister:

I believe it is. I will need to come back to you once I find it.

Deputy S.M. Ahier:

Because this is rather an important point.

Assistant Chief Minister:

No, I ...

Deputy S.M. Ahier:

It must be in the law.

Head of Policy, Strategic Policy, Planning and Performance Department:

Well, it is in the definition of determining officer. Determining officer means a person who is appointed by the Minister to carry out determinations of applications, so the Minister would appoint people under Article 1 of the Control of Housing and Work Law.

Assistant Chief Minister:

We often miss the things that are in front of us and you are looking ... **[Laughter]**.

Deputy S.M. Ahier:

Exactly.

Assistant Chief Minister:

No, I have fallen for that one before, rest assured.

Deputy S.M. Ahier:

What practical difference in implementation of the Control of Housing and Work Law are anticipated by these changes?

Assistant Chief Minister:

What practical difference?

Deputy S.M. Ahier:

Are there any?

Head of Policy, Strategic Policy, Planning and Performance Department:

The practical difference is that we will work towards having a much more transparent decision-making process with a much greater publication of policy guidelines. So at the minute there are some guidelines but they are quite limited. There are some guidelines around temporary residents and I think something to do with the ownership of businesses, but there are many areas where it is not at all clear if you make an application for some gardening staff or something, whether the current policy is that you should be allowed to have gardening staff or not. In the future we will work towards, and it will take some time to get there, a situation in which employers have a much better knowledge upfront of what Government policy is at that time and, therefore, can plan their businesses better, do not waste time putting in applications that are bound to fail. So we would hope to see that there will be more time spent supporting the Chief Minister in producing guidelines, a few more guidelines being created, but there will be less time needed by individual businesses and individual determining officers in looking at individual cases because there will be a streamlined process whereby they would be going through. Nothing to do with the law, but from a practical point of view there is a new I.T. (information technology) system, which will allow employers to put all their details in through a portal, so that will be quicker for them to be able to put all their information in electronically. The determining officer will just pick that up at the other end, check it through and push it back through the portal. So there will be a quicker in and out process, they will not have to be sending letters to people and stuff like that. So it should be that emphasis will be different and it will be up to the next Council of Ministers as to how strictly they want to impose controls to start with, but our current role is to create the framework within which rules can be stricter or less strict in different areas and to give the framework both in terms of the I.T. and in terms of the law and in terms of the policy guidelines going forward as to how you will be able to do that.

Assistant Chief Minister:

Speed, clarity, transparency.

Deputy S.M. Ahier:

Assistant Chief Minister, are there additional resource implications, such as additional staffing or changes in officer grades?

Assistant Chief Minister:

The answer to that I believe is no, but who would like to explain that?

Senior Policy Officer 1:

I can. Thank you, Minister. So the roles of the determining officers will be similar if not exactly the same as the officers that are making determinations now. To some extent there will be some streamlining because they will be working within those strict guidelines so decision-making will be easier for them because they will be working in a clear framework. By having that published guidance available to all there will be less applications made where people are making applications because they do not know whether it will be accepted or not. Some of that streamlining will mean that those same officers can concentrate on those areas where their skills and knowledge and experience is required to make decisions and the simpler decisions will be able to be made more simply. So we do not envisage that we would require more officers to carry out that role or for that to be a different grade.

Deputy S.M. Ahier:

So no additional costs?

Head of Policy, Strategic Policy, Planning and Performance Department:

Compliance.

Deputy S.M. Ahier:

There is a but?

Senior Policy Officer 1:

No. So the area and the fundamental change of this law is that we now have time-limited statuses. There may be a requirement on the compliance side so we will have systems through the portal of making the Control of Housing and Work Law applications for licences and tallying that up with the information that comes in through the combined employer reporting will allow those statuses that have expired to be known more easily. Because there is a lot more stopping of statuses in the future, there may well be a requirement to have a greater compliance capability to ensure that people are not working when their status expires and living in accommodation that their status has expired.

Assistant Chief Minister:

I would say clearer data, clearer policy guidelines means far easier for the job to be done by the determining officer than it currently stands. So while we are saying no, there is no more, it would hopefully be more efficient.

Deputy G.J. Truscott:

Hopefully, it gets to the point where at the end of the month you just press a button and you can see whose 9-month period has expired, and hopefully that will happen.

Assistant Chief Minister:

Control, clarity.

Head of Policy, Strategic Policy, Planning and Performance Department:

That bit will happen. The point that Neil is making is that if, again, a future Government chooses to hold quite a strong policy line on checking people up, you have to have people walking around, talking to employers and finding out where people are. That is absolutely a decision for the future, but the law again allows that to happen. It does not force it to happen, but if that was the choice to be taken by a future Council of Ministers, then you might see an increase in the compliance team, whereas the core administrator teams might be smaller than it is today or certainly no bigger than it is today.

Assistant Chief Minister:

Planning, trends, all the things you would get from having data.

Deputy S.M. Ahier:

Thank you. What oversight will be given to decisions being made by determining officers to ensure they remain within the established guidelines?

Assistant Chief Minister:

The way I would answer that is the fact that the Chief Minister gets sight of a regular report of the decisions that have been made as part of helping him with his future guidelines.

Deputy S.M. Ahier:

So it is the Chief Minister's responsibility?

Assistant Chief Minister:

It is the Chief Minister's responsibility.

Deputy S.M. Ahier:

What safeguards are there for individuals to appeal decisions made by determining officers rather than going to the Royal Court?

Assistant Chief Minister:

Do you want to go back to your flowchart?

Senior Policy Officer 1:

I am sure it is probably not in everyone's interests to go through the flowchart again but ... **[Laughter]**

Assistant Chief Minister:

No, we spent a lot of time on it.

Senior Policy Officer 1:

The process for reviews separately from appeals is covered within the amendments. There is a clear review process to the panel and a clear appeal process to the Royal Court if that review process has been exhausted. So there is a legal basis within the amendments that allow that review and appeal process to take place as per the flowchart that we have talked through.

Deputy S.M. Ahier:

Thank you. I will move on to Deputy Truscott.

Deputy G.J. Truscott:

We are just going to go over a bit of ground covered already but, just for clarity, what role will the Chief Minister have under the proposed changes to the Control of Housing and Work Law?

Assistant Chief Minister:

Well, one, sets the guidelines against which the determining officer makes the decisions, and secondly, further down the process there is the ultimate review.

[17:15]

Head of Policy, Strategic Policy, Planning and Performance Department:

The Chief Minister sets the policy guidelines and also takes the decision on every internal review. So any decision that is appealed to the Royal Court would be appealed against a decision of the Chief Minister, but the whole point of the internal review is to try to minimise the number of people who need to go to the Royal Court. We have introduced an extra review process in the law itself, which will be cheap and hopefully easier for people to do so people can immediately go back to the determining officer to say: "Hang on, I do not agree with this. This does not seem right to me." That immediately triggers an internal review. The panel looks at it and the Chief Minister then says yes or no. Only at that stage if the decision still looks wrong to the applicant would they then go to the Royal Court. They absolutely still have the right to go to the Royal Court. We are trying to create a better process internally so that there is 2 people looking at every ... so the determining officer takes the first decision under guidelines. The Chief Minister takes the second decision as needed. Only if you are unhappy with both of those would you have to go to the Royal Court. At the minute there is basically only one person legally making the decisions, which is the Chief Minister all the time under the current law.

Assistant Chief Minister:

The process introduces the flexibility to respond to the needs of the Island, does it not, quite clearly?

Head of Policy, Strategic Policy, Planning and Performance Department:

The Chief Minister through the guidelines will amend, strengthen, tighten, loosen, whatever it might be, guidelines against different sectors, against different types of skills, whatever it might be at the time, yes. We have no idea what it is going to be at the end.

Deputy S.M. Ahier:

Thank you. Is it anticipated that responsibilities will be delegated to an Assistant Minister?

Assistant Chief Minister:

I think that is for the Chief Minister of the day to determine, but he will appoint ... it is recommended that he will appoint a chair of the panel, the Minister will appoint a chair of the panel. Whether that is an Assistant Minister or not that is not the call of this Law. The flexibility is there for the Chief Minister to make that determination, make that decision.

Deputy S.M. Ahier:

Yes. What safeguards are there for individuals to appeal decisions made by the Chief Minister? But I think again ...

Assistant Chief Minister:

We have covered that.

Deputy S.M. Ahier:

Yes, we have covered it, yes. There are some changes to the information that can be shared with or by the Chief Minister. Can you explain the necessity of this?

Head of Policy, Strategic Policy, Planning and Performance Department:

It is really just to acknowledge the fact that data sharing is something that happens more and more these days. It is subject to very strict controls. The fact that this law says you can share data in no way diminishes the requirements to apply the data protection laws themselves. So this is just saying that with the right permissions it is acknowledged that sometimes the population policy or the Control of Housing and Work Law will share data with other States bodies or with the parishes and vice versa. Again, we are talking about flexibility, keeping the law simple and flexible, and this again is just creating a little bit more flexibility but also keeping it simple as to saying the kind of things you might want to exchange data on in the future. There is no particular motive for thinking we are going

to be able to check up on such and such information. It is not that at all. It is just literally to make sure that we do not bind the hands of future Councils of Ministers who want to do something that would be very useful to do and we are stuck with just known address, which was pretty much all that was in the old law.

Deputy G.J. Truscott:

So what protection of an individual's data will be incorporated?

Head of Policy, Strategic Policy, Planning and Performance Department:

The data protection laws, the data protection principles, are absolutely still there, all there, all the time.

Deputy G.J. Truscott:

Still there, protecting as we go.

Assistant Chief Minister:

But we have to free up the use of data within the data protection laws to make informed decision-making in this Island.

Deputy G.J. Truscott:

Yes. The next heading is "Population Advisory Council" and the amendment will allow the Minister to form a population advisory council. P.137 required that a panel be established to provide independent research and advice on population matters. With this being appointed, subject to the oversight of the Jersey Appointments Commission, the members of which will be actively sought from across the globe with at least one member that has proven expertise in a small country, how does P.13 ensure that this will take place?

Assistant Chief Minister:

I am trying to find the words here but it is in there somewhere because it was accepted, an amendment that was accepted as part of ...

Head of Policy, Strategic Policy, Planning and Performance Department:

But we do not know that the ...

Assistant Chief Minister:

It is the will of the Assembly.

Head of Policy, Strategic Policy, Planning and Performance Department:

The detail that you have just described does not need to be in the law. That is not a level of detail that you would normally put into primary legislation. So the primary legislation is just there to say there will be a population advisory council and it explains how it interacts with the Chief Minister. As I talked about before in terms of the control panel, the Chief Minister will be held to public account. The population advisory council will be a publicly known body. We will know who is on it and what they have been asked to do. If the Chief Minister was to flagrantly ignore the things that the States had asked him to do before, the Chief Minister would be held responsible for those actions at that time. We are not suggesting that at all, but that is the kind of level of detail that it would normally be inappropriate to put into primary legislation. So you do not need to put it in. The Chief Minister will still absolutely ... obviously it will be a different Chief Minister, but there is no intention other than to fully fulfil the commitments of the States Assembly decision.

Deputy G.J. Truscott:

Thank you. The amendment states that the Minister may - instead of must - establish the population advisory panel. Does this risk that council never being constituted?

Assistant Chief Minister:

I think Sue answered the question there. It is the wish of the Assembly that there will be a population advisory council. I cannot use the proper terminology, but he would incur the wrath of the Assembly if he did not honour that request, which the Assembly wanted.

Deputy G.J. Truscott:

Plainly, there is a big difference between “may” and “must”, but yes. So wrath is the answer to the question.

Assistant Chief Minister:

Yes.

Deputy G.J. Truscott:

Finally, in your letter of 24th February you may indicate that it is likely that the Chief Minister may only appoint a population advisory council once the amendment comes into force towards the end of 2022. Will this allow enough time for them to provide advice for the Council of Ministers to form a population policy?

Assistant Chief Minister:

This amendment on the population policy is coming through from existing information and existing research. The purpose of an advisory council is to give advice going forward from that. So, yes, there clearly will be a vacuum of time but the purpose is to get that advisory council in ... all I can

say is as quickly as possible and up to speed as quickly as possible to start giving that necessary advice to the Chief Minister.

Deputy G.J. Truscott:

Thank you. Over to you, Chair.

Deputy S.M. Ahier:

We will move on to housing aspects of the law. Minimal changes have been made to the sections on current housing categories or land transactions concerning the requirement for registration cards or entitled and licensed status to be evidenced. Can you indicate why further changes are not included at this time?

Assistant Chief Minister:

I am going to go straight to Sue because this is a technical one.

Head of Policy, Strategic Policy, Planning and Performance Department:

What this amendment has done is it has removed the detailed rules that are in the primary legislation at the minute. At the minute the law describes who can buy various things, who can live in various things, yes. That is all in the primary legislation. Those bits have been removed. For example, on page 20, if you have that the same as me, Article 17, the second half of the page we have crossed out that you cannot occupy a dwelling unless you are entitled to ... there is a long list of what you can and cannot do. So what we have replaced it with is just a reference to the secondary legislation. We have removed the ... so in the same way that we have removed the concept of entitled to work, registered and licensed and we said we will put statuses in the regulations, we have also removed the rules around who can live in what house, out of the primary law, and they will be in the regulations. So when you see the regulations you will see here is a 9-month status and here is the kind of housing you can live in, here is the 4-year status and here is the kind of housing. So all the rules are going to be in secondary legislation, which you will be debating ... the next set somebody will be debating at the end of the year. It looks like a lot of the housing part has not changed, but in actual fact the essence or the importance of the bit of how does the law control who lives where has all been removed to allow it to be kept more flexible for the future. We are back to that concept of flexibility again. We do not want to be putting rules in primary legislation because the statuses might change over time and also the way in which people occupy property might change over time. That will be in regulations subject to States debate from time to time.

Deputy S.M. Ahier:

Thank you. The Control of Housing and Work Law requires under Article 16 that the Minister keep a register of all units of dwelling accommodation. Can you please indicate when the register of housing will be completed and why this has not been carried out?

Assistant Chief Minister:

Why it has not been carried out is a very good question. The Chief Minister signed a ministerial decision within the last 2 to 3 weeks to ensure that we do have a unit of all commercial and residential property in the Island. That work is starting now.

Deputy S.M. Ahier:

Then how long do you envisage it will take?

Assistant Chief Minister:

It is a meaty piece of work, as I know ... I can tell you accept that. I cannot comment on that because the initial work is a 3-month ... I am going to call it a scoping exercise in order to confirm exactly what needs to be done, how long it is going to take, how much it is going to cost and what the outcome will be.

Deputy S.M. Ahier:

So we will wait and see.

Assistant Chief Minister:

It is not the easiest piece of work, but yes.

Deputy S.M. Ahier:

Thank you. Was this Article 16 considered for amendment through P.13 because of that problem?

Assistant Chief Minister:

What did the Law Officers say on that? What were the comments on that one, please?

Head of Policy, Strategic Policy, Planning and Performance Department:

I think the current law contains a range of places where it expects information to be kept and it is fair to say that not all that information has been able to be kept in the way that I am sure the Ministers who set this law up in the first place hoped would happen. I think there were significant aspirations back in 2012 and it has not been possible to implement all those things. The concept of having registers of people is a good one and there is no particular reason to ... if we had removed it, I think there would have been perhaps ... we should be keeping a register because I think there is a decision to have a register, so I think it is right that it stays in the law. We have to acknowledge the fact that

the register does not exist in the form it should do. There are registers. There are population registers, there are known address registers, but they are not as full and as up to date as they should be. That is true. Hopefully, a range of different projects will significantly improve that situation within the next year or so.

Deputy G.J. Truscott:

I remember having a discussion when we were at Social Security together and there was a criticism that the Island has never had an exit policy. Is that something that will be drawn into ...?

Head of Policy, Strategic Policy, Planning and Performance Department:

So we do try ... there is an online form to tell people that you have left the Island. Something that we will work on really hard over the next year or so is the improved use of administrative data. This is pulling together ... there is a little bit of work being done as part of COVID recovery and I think this will extend out after that to bring together lots of different data sources to really make an intelligent use of government sources. Even if somebody does not tell you that they have left the Island, you can see that they are no longer on the combined employer return, you can see they have not been to the G.P. (general practitioner) in the last 6 months, you can see that they are not on some other register. I think people are very, very keen to make progress on this. The new head of the stats unit is very keen to do this and understands how this work should be done. I think we are all just very pleased that this issue has been tackled, but it will take a little bit of time to get it right.

Assistant Chief Minister:

Every single time we meet we discuss the culture of the Government of Jersey. Loosely, big picture, it has not had a culture around data and the importance of data. We have, I have, the drum is being banged from this day forward but it is a bit of a ship that is going to take some moving. But momentum and energy by this particular Government to achieve that is essential. We cannot continue to be making decisions without definitive data. It is not acceptable.

Deputy S.M. Ahier:

I agree. I will pass on to Deputy Truscott to continue.

Deputy G.J. Truscott:

Thank you so kindly, Chair. The heading is "Future Regulations and Guidance". Can you outline what will be included in the first regulations under the amended Control of Housing and Work Law should P.13 be adopted?

[17:30]

Assistant Chief Minister:

It is 9, 4, 10, is it not? Unless ...

Head of Policy, Strategic Policy, Planning and Performance Department:

Well, I think some of the things we have been talking about, so there will be a list of the statuses, the processes, which is 9 month, 4 year, 10 year, the list of who will price for the type of property and there will be things around kind of records checks. It is quite a lot. I think perhaps this is a question you should ask us in writing and we can give you a bit more of an answer. It is where the primary law is providing flexibility to build on, that flexibility needs to be pinned down in secondary legislation. It will be the statuses, in regulation the statuses, the housing occupation, in orders probably more stuff around types of exemptions for particular types of businesses and things where we get some very ... there are international rules which we need to cut. They are not really politically sensitive, they are things that we adhere to, so those will be covered by the orders. Fees will be in orders. I think regulations will talk about civil penalties? Question mark, my voice.

Deputy G.J. Truscott:

Yes.

Head of Policy, Strategic Policy, Planning and Performance Department:

I think we could give you a longer list.

Deputy G.J. Truscott:

Okay.

Head of Policy, Strategic Policy, Planning and Performance Department:

But it will need to cover ... and then guidelines, as we talked about before, we want to build up over time guidelines that really help businesses understand this is the policy of the Government at the time; we are very interested in, let us say, digital workers but we are not looking to give any licences for gardeners, let us say for the sake of argument, or whatever it might be. That will take time to build up.

Deputy G.J. Truscott:

That is fine, so we will forward that question and if you could get some more on it, that would be great.

Senior Policy Officer 1:

The only other thing I can think of is transitional arrangements.

Head of Policy, Strategic Policy, Planning and Performance Department:

Yes, that is a good point, yes.

Deputy G.J. Truscott:

Fine, okay. How often is it envisaged that regulations will be updated or introduced?

Assistant Chief Minister:

Do you want my view?

Deputy G.J. Truscott:

Yes, please.

Assistant Chief Minister:

It is a view, it is pure opinion.

Deputy G.J. Truscott:

That is why you are here.

Assistant Chief Minister:

It is not legislation, it is a view. I am going to go back to say that we, as a Government, have to be far more nimble in our decision-making processes, by ensuring that we are understanding the needs of our community. If there is a stage when there is something comes to the fore that must be addressed, say 9 months does not work, it has to be a year, whatever that may be, we must be able to respond to that and that is why it is being set up in the secondary legislation, to be able to effect that very, very quickly. I do not see the need ... so it is going to be done every year but I do ensure that it is listened to every year. Because do not forget when we go back to the population policy, the population policy will be front and centre of Council of Ministers' thinking on an annual basis. If anything comes out of that I would suggest the opportunity from that to amend the regulations can take place.

Deputy G.J. Truscott:

Thank you. With what warning can the Assembly, Islanders, businesses and the wider community expect to be informed of potential changes through regulations?

Head of Policy, Strategic Policy, Planning and Performance Department:

The Assistant Minister does not know about this because it was discussed in an operational meeting just a couple of days ago.

Assistant Chief Minister:

Thank you very much. I am all ears. [Laughter]

Head of Policy, Strategic Policy, Planning and Performance Department:

We are very aware that businesses need to be able to plan against a framework which they understand and it is not pulled out from under their feet quickly. We were thinking about, for example, that when new policies are implemented that would impact on the businesses, there would be considerable lead-in times. Policies will be published and there will be then a period of months or maybe a year before businesses were subject to that new policy. The other thing to think about is that businesses will be given licences for a period of time and obviously those licences will be allowed to endure and they will carry on doing that. Even if a policy changed early on in your licence you have the licence for that number of years and it would not change until the end of the next period of licence. Here we have to balance 2 competing demands, one is the flexibility, which is really important. The second one is for the need for sensible business planning. Businesses need to know that if they invest in something in the next year or so that they are going to have the staff or the resources or whatever they need to be able to put it through. Again, we are going to say the same thing many, many times over: the next Council of Ministers will need to decide where that balance lies. But we absolutely do not want to have a situation where businesses are opening the newspaper and seeing a new rule that is going to have a significant impact on their business. That would not be a good thing to do, would it?

Deputy S.M. Ahier:

I agree.

Assistant Chief Minister:

I think it is important to mention the difference between migration and immigration, and notwithstanding anybody coming from outside the Common Travel Area there are rules that we have to adhere to. That complicates the factor but also makes it in some ways easier because we have our hands tied because of the immigration laws into the Common Travel Area.

Senior Policy Officer 1:

Just to highlight, we have the population advisory council, so where there was going to be a fundamental change in policy the Chief Minister would be able to request that council to look into that area, what the impacts of it might be. One might expect that they were liaising with local businesses or community groups or whichever sector is going to be impacted by that. So in that way there would be a lead-in time and a discussion well ahead of that policy coming into place.

Deputy G.J. Truscott:

Yes. Finally from me, will guidance for determining officers be issued at the same time as the first regulations and on any subsequent updates?

Assistant Chief Minister:

Would guidance for determining officers be issued at the same time as the regulations? I would think, yes, the process is the Chief Minister issues the guidance to the determining officers.

Senior Policy Officer 1:

Yes, a fundamental part of having the ... we will be working as officers, not just on the secondary legislation but also on the policy and guidance, internal and external, and on public websites, et cetera, so that when it is rolled out all of the information is available.

Deputy G.J. Truscott:

Presumably, it is anticipated the guidance will be updated separately to regulations, yes.

Head of Policy, Strategic Policy, Planning and Performance Department:

You would expect the guidance to be issued more regularly than regulations probably, yes.

Deputy G.J. Truscott:

That is fine. Thank you very much. Over to you, Chair.

Assistant Chief Minister:

Well, the guidance can be updated by the Chief Minister. When we have our mosquito farm is determined as a future business, then he can put those guidance into policy, so yes, that could happen.

Deputy G.J. Truscott:

Thank you.

Senior Policy Officer 1:

Maybe a business we could start up next.

Assistant Chief Minister:

I do not think I will get many investors.

Deputy S.M. Ahier:

Can you please confirm what rights will be retained for those already in the Island at the time regulations are introduced, for example, access to entitled status, and how will those rights be ensured legally?

Assistant Chief Minister:

We know the answer to that.

Head of Policy, Strategic Policy, Planning and Performance Department:

That is what Neil talked about just before.

Senior Policy Officer 1:

That will be within the transitional arrangements that we are committed that all rights that people have up until the day this law comes in will be carried forward for that full timescale. Essentially, I would imagine from the day the new law comes in place for the next 10 years, potentially, we will have people within the old system, if you want to call that the existing system.

Deputy S.M. Ahier:

Thank you. It appears that the amendments will require employers to be more proactive in checking that their staff have an appropriate status throughout their period of work. Can you please explain this?

Head of Policy, Strategic Policy, Planning and Performance Department:

Yes, that is where we talked about time ...

Assistant Chief Minister:

One would hope so but the ... carry on, Sue.

Head of Policy, Strategic Policy, Planning and Performance Department:

You are absolutely right, so with the time-limited status, like I am saying, so today if somebody is registered and you say I have registered permission and they can work for you, it would just carry on as long as you like really. But in the future somebody will come with a 9-month status or with a 4-year status and we do expect the employer to be aware of that. But we will also have an employer portal, so they will be able to see all of their details of all of their staff, they will be able to see their expiry dates. We will be sending them reminders and things will flash red or whatever. There will be lots of information for the employer to use. But, yes, the employer does need to be more proactive. I think one of the messages of the population policy is that we all need to be more proactive. The population policy as a whole is only going to work if everybody, if Government,

businesses and individual people, all do positive things to help address the problem. Yes, there will be some extra work for employers but there will also be tools to help them do it.

Deputy S.M. Ahier:

There will not be any great additional burden on businesses?

Assistant Chief Minister:

If they use the portal properly the answer is no.

Deputy S.M. Ahier:

Thank you. You highlight in your letter of 24th February that the range in levels of fees for permits will be set at a level that achieves full cost recovery. How will you ensure that this does not financially impact businesses and migrants?

Assistant Chief Minister:

I can only talk about the intent ...

Head of Policy, Strategic Policy, Planning and Performance Department:

We are not quite at the stage yet where we can give you a clear estimate of cost. But the intention is just exactly that, that the system would meet its own costs, no more, no less. Again, the Government and the States Assembly have decided to have a migration policy and there is a cost to it and that cost will be borne as far and as fairly as possible across different types of businesses. There is a cost there today and, yes, fees are used in a particular way today that may or may not change for the future. But, as I say, that will come out in the work during the rest of this year, a much more detailed examination of how fees should be used in the future.

Assistant Chief Minister:

If we can streamline the process and make it more efficient, logic says that the fees could come down.

Deputy S.M. Ahier:

But at the moment it is wait and see.

Assistant Chief Minister:

Yes.

Head of Policy, Strategic Policy, Planning and Performance Department:

It is an area where we cannot give you much more information.

Deputy G.J. Truscott:

No, but politically one has to argue that should that policy have a detrimental effect on people coming here and the impact on businesses that would have to be addressed at a political level to make sure that the cost is not prohibitive and has a negative drag on the economy.

Assistant Chief Minister:

As I have said absolutely consistently, we have gone from a buyer's to a seller's market. We have to make sure we make it attractive for employers and employees to want to come here to provide the service that we ask of them in a mutually beneficial way.

Deputy G.J. Truscott:

Yes, thank you.

Deputy S.M. Ahier:

You indicate in your letter that you will maintain an open dialogue with businesses and business organisations, noting that there will be a change in Government prior to regulations being brought forward. Will any formal consultation take place prior to the presentation of the regulations?

Assistant Chief Minister:

The answer is we have not put anything formal in place at the moment. There has been a lot of consultation going on recently and we thank the Island for their contribution. It has been many thousands of people who have helped with this. Ongoing things, I have been invited to attend something with the Chamber of Commerce recently, the podcasts. I am available at all times to listen and talk. The email address is open for us and the answer is no, nothing about this Government but I would recommend anybody who takes over from me puts a period of consultation in going forward for the next year. Because after the election when we have got ... when do we get a new Council of Ministers? July, something like that, and they are going to have to put their strategic plan in place very soon. I would hope they are going to take the consideration required for this subject seriously, yes, but not for us to determine today.

Deputy S.M. Ahier:

Article 44 will be expanded to allow for civil financial penalties to be established by regulation. Can you please outline the necessity for this?

Head of Policy, Strategic Policy, Planning and Performance Department:

I think that is a Neil one.

Assistant Chief Minister:

A Neil one.

Senior Policy Officer 1:

As we have discussed, there is going to be a lot more statuses expiring, need to notify different people of different things happening at different times. In order to make sure that notification takes place, it is a bit of stick and carrot of if you do not make your return on a certain date or give us the information that we require or pay your fee by a certain time that is required, then there is the ability to introduce a penalty to cover the fact that you have not made that return or payment. In a similar way, for instance, if you do not make your income tax return by a certain date then you receive a penalty.

Head of Policy, Strategic Policy, Planning and Performance Department:

If I could just add a little bit to that, at the minute the law has lots and lots of offences in it and lots and lots of criminal prosecutions, which are never used because it is an awfully big stick to prosecute a company for working without a business licence or something like that, so in reality they are not used. The civil penalties is a halfway house. It is a way of saying to a business: "Hang on a minute, we told you that you should not be doing that, you should not be employing those staff and you should not be operating that type of business." There is £100 a day or whatever fine while you continue to do it.

[17:45]

In reality, the offences under the Control of Housing and Work Law are never going to justify very expensive court time in the way that more serious criminal offences might do. Civil penalties is a very useful tool for a Government to use to encourage good behaviour without creating a very expensive and cumbersome court case.

Senior Policy Officer 1:

We also introduce there the ability to refund or repay the company if possible in the law.

Assistant Chief Minister:

I think this is, as I said, a big stick but the idea is to provide the tools to enable businesses to be totally in control of this and with the various notifications if they have a licence that is expiring, et cetera, will be part of the system.

Deputy S.M. Ahier:

But under: "Providing false or misleading information, those guilty of an offence are liable to imprisonment for a term of 2 years and to a fine." Is that not a bit excessive and rather unusual?

Head of Policy, Strategic Policy, Planning and Performance Department:

We have not added any offences; no offence has been added to the law at all. These are existing offences.

Deputy S.M. Ahier:

So the penalties specifically.

Head of Policy, Strategic Policy, Planning and Performance Department:

It is same for penalties as now, yes.

Senior Policy Officer 1:

Yes. Further to Sue's point, so that is not amended, that is within the current Control of Housing and Work Law is carried forward. There is lots of similar penalties throughout the current Control of Housing and Work Law, so the introduction of these civil penalties allows a lesser penalty to be brought forward, rather than jumping straight to the very big stick, which is, as you say, a very hefty potential 2 years' imprisonment and a fine.

Deputy S.M. Ahier:

Assistant Chief Minister, did you consider amending that regulation for the imprisonment of 2 years and to a fine as being too excessive?

Assistant Chief Minister:

No, I did not pick up on it and I did not get any advice accordingly.

Head of Policy, Strategic Policy, Planning and Performance Department:

The Law Officers do a full penalty review of all laws, it is an important part of the drafting primary legislation. The penalties that are in here are probably checked by Law Officers. But, as I say, the fact that we have not changed the law, other than to do things which we needed to do to create a bit of structure. For example, on the register and on the offences we have not sought to fiddle around with the existing law. Although we have lots of changes, all the changes are changes that we need in order to make a more flexible and responsive operating control framework. That is perhaps a point about the law itself, which was quite a robust law, so we have maintained that.

Senior Policy Officer 1:

Sue, I was just going to add that because this is the main piece of legislation for controlling the population density of the Island through the control of access to work and housing, there potentially does need to be some very heavy penalties in order to ensure compliance with that if you do have a business or people that are just refusing to take any of the law there. Potentially, there does need to be a heavy penalty in order to ensure that compliance.

Assistant Chief Minister:

That is the existing law, yes.

Head of Policy, Strategic Policy, Planning and Performance Department:

That is the existing law, yes, and that is sort of about taking services away.

Deputy S.M. Ahier:

Please can you outline when confirmation of healthcare coverage will be given to those entering the Island, for example, on the potential 9-month permits?

Assistant Chief Minister:

This is something I have been consistent on and you are asking the question when. We have a reasonable amount of time to do that because obviously it has come into effect after the Appointed Day Act, which we have already discussed. I will take that as a note that either we have to change one of 2 things, we either have to ensure that employers are supported in an insurance-based system, so those workers are covered, health insurance from day one, or we have to ensure that H.C.S. (Health and Community Services) deliver that service from day one, instead of just the emergency cover that they are obliged to deliver today. I will take that on board and go to the next stage of that one because I firmly believe it is unacceptable to invite people on our Island to risk any form of injury or illness when they are here and not give them full health cover.

Deputy S.M. Ahier:

Okay, so I was going to ask if they come back on their second term of 9 months whether you will be able to let them qualify then, but you are saying that you would like them to qualify from day one.

Assistant Chief Minister:

This is my personal view and I will fight for it. I think normally if they are here for 9 months and they have to wait 6 months until they get it, that is just not acceptable.

Deputy S.M. Ahier:

Okay, thank you. Your officers have helpfully provided a copy of a comparison document between the existing Control of Housing and Work Law and how it will be amended. It is the panel's

understanding that this document would also be provided to States Members to assist their understanding of the changes. Please could you confirm that this is the case and when the document will be made available to them?

Assistant Chief Minister:

Absolutely no reason not. As you have worked out, it is quite a complicated piece of legislation because I believe you had an extensive briefing with Sue and so and so, and we understand that. Another thing we have to do is to ... what did I say wrong there? Did I say it wrong?

Head of Policy, Strategic Policy, Planning and Performance Department:

You said the briefing with Sue and so and so.

Assistant Chief Minister:

Neil Stocks, so and so. It is also intention to take some time out and we are discussing it this afternoon during the Island Plan to have Sue and so and so in one of the rooms in the States building in order so Members can come and ask questions on this very complicated piece of legislation. Yes, full access will be given and that document will be released.

Deputy S.M. Ahier:

Thank you very much. That brings us to the end of our questions. Is there anything else you would like to add, Assistant Chief Minister, before we close?

Assistant Chief Minister:

No, I just thank you for your support. There is an enormous amount of work that has gone into this. We do not necessarily see it but Neil, not so and so, has been involved in this in a huge detail for the last 6 months. I appreciate your time and also if any of the other States Members are listening to take the extra time to meet with them when available. We can, hopefully, get this through in April and move on to the next stage of the regulations. The Island wants this, there is great support for this, so we must ensure that we do not delay any further and get it through.

Deputy S.M. Ahier:

Thank you very much, Assistant Chief Minister, for attending today and I would also like to make a special thank you for the officers for staying late at this extended hearing. Thanks very much to all for attending this hearing.

Assistant Chief Minister:

My thanks for that as well, thank you very much.

[17:52]