

# STATES OF JERSEY



## **WORK AND RESIDENCE PERMITS: ESTABLISHMENT OF WORKING GROUP (P.109/2010) – COMMENTS**

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**Presented to the States on 22nd September 2010  
by the Chief Minister**

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**STATES GREFFE**

## COMMENTS

The development of Jersey's new Migration legislation has involved extensive research and consultation, as shown in the attached timeline, and Members have had many opportunities to contribute their views. These opportunities will continue to be available.

Having seen the draft legislation, I believe that provided it meets Human Rights compliance, which I believe it does, then it achieves the aims of the States set out in P.25/2005 – "Migration: monitoring and regulation" which was approved by the Assembly nearly unanimously.

The draft legislation is being submitted for review by the Law Officers' Department, including Human Rights Audit. Once this is completed, it is hoped the new Laws will be lodged early in the New Year for the States to debate in May 2011. The draft legislation has also been made available for scrutiny to the Corporate Services Scrutiny Sub-Panel, specifically established to review the Migration policy, with membership comprised from relevant Panels. A further working group at this stage would therefore be unnecessary and superfluous.

Migration policy has been the subject of considerable activity, and a timeline showing the key dates is included as an Appendix to these Comments, as well as additional background information.

There is no persuasive evidence to suggest that a work permit system would be the best option for Jersey and I believe that forming a Working Group would simply replicate work already carried out. Therefore I see no merit in establishing a Working Group in advance of the forthcoming debate on the draft migration legislation, and in advance of understanding the findings of the Corporate Services Scrutiny Sub-Panel, especially with a potential further cost of £50,000.

I therefore urge members to reject this proposition.

**1. Timeline**

- Nov. 2001: States reject P.107/2000, “Introduction of work permits” by 42 votes to 4.
- Oct. 2003: States approve P.102/2003, “Migration Policy” by 41 votes to 2.
- Apr. 2004: Publication of R.C.15/2004, “Migration Policy Steering Group: consultation report”.
- June 2005: States approve P.25/2005, “Migration: monitoring and regulation” by 37 votes to 5.
- Dec. 2007: Consultation on R.110/2007, “Managing Migration: New Mechanisms – Part 1, The Population Register and Jersey Names and Address Index”.
- June 2009: Consultation on R.66/2009, “Managing Migration: New Mechanisms – Part 2: Managing Access to Employment and Housing”.

Detailed policy and process development took place between 2007 and 2009, and Law Drafting between March 2008 and September 2010.

- Sep. 2010: Migration Advisory Group sign off new draft legislation, for submission for Law Officers’ Review.
- Sep. 2010: Law Officers’ Review, including Human Rights Audit, begins following which the Law will be lodged as soon as possible, likely to be early in 2011.
- Jan. 2010: Following lodging, the review of the Sub-Panel on Migration will take place.
- May 2011: States debate, depending on results on Law Officers’ Review, and Scrutiny process.

**2. Overview of Issues**

The new Draft Migration (Jersey) Law 201- and Draft Register of Names and Addresses (Jersey) Law 201- have both been signed off by the Migration Advisory Group and submitted for Human Rights Audit. These Laws will replace the current Housing and Regulation of Undertakings legislation with modern, fairer and more effective controls which recognise that Jersey must protect local housing and jobs. If approved, it will be for the States to decide how these controls are used to balance access to employment and housing, economic efficiency, house prices, and population.

This work has been developed by a succession of Members through various groups starting even before the first States decision on this matter in 2003. Numerous consultations have taken place, involving Members, community groups, legal and

business representatives, and members of the public. The findings of these consultations have been published.

The arguments for and against work permits have been well rehearsed in a number of propositions lodged from the end of the 1990's to 2005, including two lodged by Deputy P.V.F. Le Claire of St. Helier, namely P.105/1999 and P.107/2000, both entitled "Introduction of work permits". Whilst the first of these was withdrawn and the second almost unanimously rejected, the consideration given to work permits at this time helped shape the proposals that were put forward and near-unanimously approved in P.25/2005. Since then, the systems used in the Isle of Man and Guernsey have remained under review and visits have been made to both jurisdictions.

Work in this area has been complex, as it seeks to merge and improve the existing controls, while adding a Population Register and a means of sharing basic data within the States. This has meant substantial and lengthy policy development, law drafting, and process design, which will mean in respect of business:

- A licence for every business, including a cap on the number of new migrants that can be employed, with the ability to apply other conditions, including as to training, where employees may live, time limits, and to restrict permissions to named employees. Any of these elements may be varied on application.
- Improved data collection and compliance – with manpower returns being combined with Social Security and Income Tax, and enhanced enforcement powers being introduced alongside more investment in compliance. All employees will also need a registration card before they can start work.
- More certainty and less administration for business through provision of clear definitions of "undertaking" and simpler and clearer exemptions, e.g. clarity about when a business licence is required.

When it comes to population, however, it is not what type of immigration controls are in place which matters, but what policies are adopted in the face of the economic and social climate. This is why Islands with very different systems of control have experienced similar rates of population growth – over the last 30 years, Jersey's population has grown by 22%; Guernsey's by 21%; and the Isle of Man's by 24%.<sup>1</sup>

In Jersey, Work Permits would not be a cost-effective way of managing the thousands of migrants who come here each year to work, as such a system would mean issuing a permit to every newcomer, every time they changed jobs. This would mean government would need to service more applications, which could cost as much as £200,000 more per annum, if not more,<sup>2 3</sup> at a time when the States are reducing costs.

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<sup>1</sup> Figures based on 1981 – 2009 for Jersey and Guernsey, and 1981 – 2006 for Isle of Man.

<sup>2</sup> The Population Office in 2010 has budget for under 15 FTE; and £882,000 in total, of which, £332,750 is for Regulation of Undertakings (nearly the same as in 2005). This compares with £832,000 for the Guernsey system (2009) which regulates workers and housing, and £285,000 for the Isle of Man system (2008) which only regulates workers (and not housing). Jersey however, has a much bigger workforce, and the Population Office regulates undertakings; housing transactions, lodging houses, and the six monthly manpower survey.

<sup>3</sup> Jersey's workforce is 30 – 70% bigger than Guernsey and Isle of Man.

Crucially, such a proposal would burden local businesses with more administration, internal costs, fees, and delay should they need to apply every time they want to employ one of the 6,500 – 8,500 people with less than five years' residency. This will not help grow and diversify the economy, nor will it assist industries such as agriculture, tourism, retail and hospitality, who rely most on this labour.

Some form of employment protection for established residents is needed, but Jersey has experienced near full employment for many years and a system should be designed with this in mind, while also being flexible and able to respond in times of recession. In this context, the Regulation of Undertakings system is a cost-effective way of addressing the issues. The Population Office frequently refuses requests to employ non-locally qualified persons, following discussions with Social Security, or awards are made on condition that locally qualified persons be trained, so supporting local opportunities longer term. In addition, under the current system more than a third of all licences become due for renewal in any one year. In the first 6 months of 2010 this meant 164 non-locally qualified licences were removed, while hundreds more new requests were refused, reflecting the economic times.

All this work is complemented through investing in the training, education, placements, etc., of established residents, as promoted through the Skills Executive, to support the skills and opportunities of established residents.

In conclusion:

- The proposals for a new Migration Law are at an advanced stage and will be lodged as soon as the work of the Law Officers' Department is complete. Following this, the Law will be subject to Scrutiny and States debate, providing ample opportunity for Members to become involved.
- The new Law will significantly improve our migration controls, in accordance with States decisions, and following in-depth consideration of the issues.
- Work Permits would be expensive to administer, at a time when the States needs to reduce costs, and would cost businesses time and money when we are trying to grow and diversify the economy.
- In light of the above, establishing a Working Group at a cost of £50,000 is not money well spent.

### **3. Comments on the individual elements of P.109/2010**

- (a) The benefits of the new legislation should not be delayed, including –
- Increasing the ability to enforce compliance, for the reasons mentioned;
  - Introducing new security of tenure rights for non-local residents;

- Improving government efficiency by supporting a Population Register to, for example, improve health screening.

(i) **Isle of Man**

The Isle of Man requires all workers who are non-Manx to have a work permit. Exemptions for short-term workers are then applied, for example, up to 3 days in construction, and up to 48 days in an international business. There are no controls over the ability to occupy or buy property apply, or to establish a business.

**Guernsey**

Every new employee must have a 'right to work' document, with employers needing to apply for a housing licence to engage non-locals. The only exceptions are persons in open-market housing, which carries the automatic right to work, and some short-term workers, e.g. persons who work for less than 10 continuous days in any 30 day period, and less than 90 aggregated days in any 12 month period.

These 'right to work' documents govern the ability to access housing, with essentially employed licensed holders able to occupy their own unit of accommodation; and short-term workers living in lodgings or staff accommodation. No controls over the ability to buy property apply.

**Jersey**

Every business must have a licence, which caps the numbers of non-locally qualified workers. These licences are for a specified period, normally 3 years for resident undertakings or the length of a contract. Exemptions apply to specialist undertakings where they operate for less than 10 days in any 12 months. Only qualified persons can lease or purchase property, and all other persons must lodge.

- (ii) Work Permits have numerous downsides in terms of cost and time, as explained above.
- (iii) Jersey, the Isle of Man, and Guernsey all seek to control the numbers of those who can work in their respective jurisdictions. The key difference in the control systems used is that the Jersey system focuses on controlling the numbers of non-local staff a business can employ. In contrast, Guernsey and the Isle of Man deal at the level of granting the individual permission to work. As explained above, the impact of any system is dependent on how it is applied and there does not appear to be any merit, either for individuals or business, in switching to an individually-based work permit system in Jersey.

- (iv) The present Law insists that persons have a “best practice” tenancy agreement, which includes caps on rent increases, on deposits, and gives very generous notice periods, or enables appeal to a Rent Control Tribunal against rent increases which are outside market rates.
- (v) The only persons able to buy or lease freehold and flying freehold property in Jersey are persons who are locally qualified under the Housing Law,<sup>4</sup> including 1(1)(j) essential employees –
- (A) Of the 1,800 1(1)(j) employees in Jersey, 700 work in health and education, and 750 work in finance. These are essential workers, and all applications are vetted. In practice, only 20% purchase.
- (B) Jersey is a small Island, with a high demand for property from qualified persons, and a limited supply. The Minister for Housing and the Minister for Planning and Environment are well aware of the issues over affordable housing, and are developing policies in their own areas. These problems will not be solved by a Work Permit system.
- (C) The rate of population growth in Guernsey and the Isle of Man has been the same as Jersey, despite operating very different systems.
- (D) Jersey is part of the British Isles, and as such, British nationals have a right to reside in Jersey in the same way that Jersey people can reside elsewhere in the British Isles. Jersey must also apply the same rights to Community nationals as to British nationals, and cannot bar such people from living in the Island: rather, it restricts their access to housing and work.
- (E) It is right that long-established residents have preference for the limited stock of housing in the Island. However, the Migration Law does –
- Give newcomers the same tenancy rights, including security of tenure, as qualified people. This is fair, and is long overdue.
  - Reduce the housing qualification period to 10 years, compared to 15 just 5 years ago, and 20 years only 10 years ago.

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<sup>4</sup> Share Transfer properties also exist, the shares in which may be owned by non-residentially qualified persons. These properties, however, must be occupied by residentially qualified persons. In practice, 65% of these properties are owner-occupied by qualified persons, and almost 89% are owned by residents.

As to environmental factors, these are not a question of which migration control system is adopted, but its objectives.

- (b) The proposition estimates costs at £50,000. It is not sensible to spend such an amount on any alternative approaches until the Migration Law has been debated. The establishment of such a Working Group is also likely to mean a delay in the work on the Migration Law, which is unacceptable.