

STATES OF JERSEY



DRAFT CONTROL OF HOUSING AND WORK (AMENDMENT)(JERSEY) LAW 202- (P.13/2022): COMMENTS

**Presented to the States on 22nd March 2022
by the Migration and Population Review Panel**

STATES GREFFE

COMMENTS

The Chief Minister lodged the [Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- \[P.13/2022\]](#) (the amendment) on 21st January 2022.

The proposed amendment makes a number of changes to the primary legislation governing the rights of individuals to housing and work in Jersey and will establish a framework within which secondary legislation, through Regulations, as well as guidelines issued by the Chief Minister, will provide the means to control Jersey's migration.

The secondary legislation which will introduce the time permits and the associated guidelines has not been drafted and will not be brought forward for debate until late in 2022 – if it remains a priority for the next Council of Ministers.

Over the course of its review of P.13/2022 and in its discussions with officers and following public hearings, the Migration and Population Policy Review Panel (hereafter 'the Panel') has accepted the premise provided that P.13/2022 lays the foundation for a more transparent and flexible system of migration control. Notwithstanding that acceptance, the Panel remains disappointed that the current States Assembly will not have the opportunity to debate a fully developed migration control system.

The Panel is also mindful of the risk that this presents to the future of this piece of legislation. While approving P.13/2022 does provide a framework, the current system of controls remains in place until such time as the (yet to be drafted) Regulations are approved and enacted. Not only does this further delay definitive action on migration control, but progress will now also be dependent on the priorities of a future Council of Ministers and the will of a future States Assembly.

In the absence of the Regulations and the guidelines which will dictate the course of decision-making on the allocation of permits, the Migration and Population Review Panel made the decision not to undertake a full formal review. This decision was based both on its broad acceptance of the principles of the amendment and the difficulty posed in conducting robust scrutiny on the foundation for a system, rather than the system itself. However, it has questioned the Assistant Chief Minister about the progress of the legislation on a number of occasions, most recently during a public hearing held on 28th February 2022.

The Panel strongly recommends that the future Regulations and guidelines are considered for scrutiny by a future Panel.

It is also crucial, given rapidly changing global and local circumstances, that as and when the Regulations for the time-limited permits are drafted, further meaningful consultation takes place with businesses. Businesses need to be fully engaged to ensure that the time limited permits will still create an appropriate and fair environment and ensure Jersey welcomes workers and answers the needs of the existing community.

It is also the Panel's view that this ongoing conversation with businesses and community stakeholders will be crucial to the future success of the permit system so that the reality of living and working in Jersey is always at the forefront of any

changes to the Regulations, and that sufficient notice is given of any adjustment which could impact on business planning.

Purpose and structure of the Control of Housing and Work Law amendment

The Panel agrees that P.13/2022 sets the framework for the primary purpose of removing the automatic graduation of individuals from one level of status to another through the existing migration control system.¹ It further recognises that this was the will of the States Assembly following its approval of [P.137/2020 – Migration Control Policy](#) in March 2021.

The Panel also acknowledges the change which this legislation makes to:

- the decision-making process
- where the authority will lie for those decisions, and
- the need for the process to have a greater level of transparency and consistency.²

The Panel's views on the decision-making process will be outlined in a later section of this paper.

Through its discussions with officers and its public hearings with the Assistant Chief Minister, the Panel has also gained a fuller understanding of the rationale for separating the permit structure from the primary legislation and introducing them as regulations - which can then be adjusted without the requirement to alter the underlying legislation. The intention being to provide future governments greater flexibility in their reaction to changing circumstances.³

However, as was the case during its recent review of [P.116/2021 – Common Population Policy](#)⁴, the Panel questioned to what extent the changes to the Control of Housing and Work Law met the expectations of the Assembly, particularly as agreed through its adoption of P.137/2020 – Migration Control Policy. The Panel maintains that - whether as one piece of legislation or as primary and secondary legislation - the foremost expectation of the Assembly was that a fully developed new migration control system would be debated prior to the end of this Government's term of office. The Assistant Chief Minister has also acknowledged that he had anticipated that this would happen during this term of office.⁵

The Panel does accept that, while it strongly believes that a fully drafted migration control system should have been brought before the current States Assembly, this has been an extraordinary election cycle during which Government officers have

¹ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P2 and P4](#)

² [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.4](#)

³ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.6 and 29](#)

⁴ [S.R.2/2022 – Common Population Policy Review](#)

⁵ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.7](#)

dealt with unprecedented and unanticipated change and workload associated with the Covid-19 pandemic.

Furthermore, the Panel accepts that the amendment to the Control of Housing and Work Law is an important first step. However, it is conscious that there will be a sense of disappointment and resignation in the wider community that a firm answer to migration control has not been provided by this Government and will now be delayed further.

The Panel does acknowledge that, importantly, the amendment makes provision for a Housing and Work Control Panel and for a Population Advisory Council both of which were constituent parts of P.137/2020.⁶ It is hopeful that, as and when these bodies are formally established that the recommendations made in the Panel's review S.R.6/2021 – P.137/2020 Migration Control Policy (Phase 1)⁷ will be given due consideration.

Guidelines and the decision-making process

The Panel's understanding is that the proposed decision-making process will be more clearly delineated⁸ and will be based on the use of clear guidelines, issued by the Chief Minister⁹, which will be published to give better understanding of the basis for decision-making and greater consistency and transparency.¹⁰ The Panel is supportive of this goal.

The Panel is keen that the guidelines and the application process are clear for businesses to understand to allow them to plan with a greater level of certainty about the guidance and the policy which will be applied. It welcomes the indication that this will be the case and that IT systems which facilitate this will be in place.¹¹ It is the hope of this Panel that the momentum on the associated IT projects will not be lost and that the progress will be monitored by future Scrutiny Panels.

It is further accepted that the guidelines can and should be reviewed in the light of decisions made by the newly created Housing and Work Control Panel and to adapt to changing circumstances.

The Panel looks forward to the publication of the guidelines and the clarity and transparency of decision-making which it has been assured will result from this more structured system. The intention expressed to the Panel is that a clear system, based on published guidelines will reduce the number of appeals which are brought as the application criteria should be clearer and the rationale for decisions more readily available.¹²

⁶ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.6](#)

⁷ [S.R.6/2021 – P.137/2020 Migration Control Policy \(Phase 1\)](#)

⁸ [P.13/2022 – Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- p21](#)

⁹ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.21](#)

¹⁰ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.18](#)

¹¹ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.18](#)

¹² [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.21](#)

As recommended above in relation to the Regulations, the Panel would again strongly encourage further open dialogue with States Members, Scrutiny and the community on the draft guidelines.

The amendment will establish a new role of determining officer (to be undertaken primarily by existing Government officers). Under the current regime, decisions are made by the Chief Minister, or on his behalf. Under the amendment, a determining officer will make decisions based on the guidelines established by the Chief Minister.¹³

The Panel has voiced reservations – including at the Public Hearing held on 28th February – about the level of power that the new law provides to determining officers but does accept that the new structure provides a clear line of authority and escalation for both officers and applicants and separates the Chief Minister from the original decision made in order that they can determine appeals with a clear mind. The Panel was also informed that officers can only operate within the guidelines and policies provided by the Chief Minister.

A major role in the structure for application decisions and the appeals process will be played by the Housing and Work Control Panel (the Control Panel) which will be established under the amended Law. It has been explained that the Control Panel acts as a replacement for the current Housing and Work Advisory Group (often referred to as HAWAG) but with a more structured role defined under the law.

The Control Panel will provide direction to the determining officers on cases which fall outside the guidelines. It will also provide a recommendation to the Chief Minister in the event of an applicant challenging a decision of a determining officer.¹⁴ The final decision on internal reviews will lie with the Chief Minister. Once the internal process has been exhausted, the option remains for the applicant to appeal to the Royal Court.¹⁵

The Panel would recommend, as indicated during the Public Hearing held on 28th February, that regular reports should be provided to the Chief Minister, not only to help refine guidelines as necessary but also to provide oversight of the decisions being made by determining officers, which are ultimately the responsibility of the Chief Minister.¹⁶

Membership of the Housing and Work Control Panel

The outline for membership established by the amendment is for a panel comprising of at least three elected States Members who will be nominated by the Chief

¹³ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.16](#)

¹⁴ [P.13/2022, P.7](#)

¹⁵ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.21](#)

¹⁶ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.20](#)

Minister. One of the nominated members will chair the Panel and hold a casting vote.¹⁷

The Panel is cognisant of the need for a consistent approach to the application of guidelines and of decision-making by the proposed panel and has brought its members' individual experience of HAWAG to its discussions on the membership structure.

The Panel noted that, while the lower limit of three members is a sensible approach, there is no maximum limit to the number of members. The nomination of individuals and the number of members will be a matter for the Chief Minister.

Secondly, during its discussions with officers and the Assistant Chief Minister, the Panel voiced its concerns that the law does not stipulate the inclusion of non-executive States Members, allowing this decision on membership to sit with the Chief Minister rather than setting it out in legislation.

During its deliberations, the Panel considered an amendment to P.13/2022 to both fix the upper limit on membership numbers at specific level and further to make it a requirement that the membership included non-executive States Members.

In bringing such an amendment the Panel would have been seeking to ensure the broadest range of views were represented within the membership while also acknowledging that an unwieldy number of members could hamper clear decision-making.

On balance, the Panel's decision not to lodge an amendment rested on the evidence provided by officers and the Assistant Chief Minister that in not being prescriptive on these points, the intention was to provide a membership structure which was flexible and more adaptable to changing political circumstances.¹⁸ This in turn would be a matter for scrutiny of the Chief Minister's decisions by both States Members and the public at any given time.

In accepting this rationale, the Panel maintains the view that future Chief Ministers should strongly consider the longer-term advantages afforded by ensuring that the Panel provides broad representation of executive and non-executive members' views to create the greatest level of objectivity in decision-making. The balance which the Chief Minister will necessarily need to strike is between the breadth of membership and the need to keep numbers low enough to ensure a collegiate and consistent approach to applications and appeals.

As will be repeated below in relation to the Population Advisory Council, this Panel's review of the Migration Control Policy¹⁹ made clear recommendations to the Chief Minister in relation to the establishment of the Housing and Work Control Panel. In particular, the Panel would again recommend that the terms of reference are presented to the States Assembly and to the relevant Scrutiny Panel.

¹⁷ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.10](#)

¹⁸ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.11](#)

¹⁹ [S.R.6/2021 – P.137/2020 Migration Control Policy \(Phase 1\) P.12](#)

Population Advisory Council

The amendment will also establish a Population Advisory Council, which was one of the elements agreed by the States Assembly following its approval of P.137/2020. The Council was to be established to provide independent research and advice on population matters and it was specified that members would be actively sought from across the globe with at least one member with proven expertise in a small country²⁰. When questioning how P.13/2022 would ensure this, the Panel was informed that the primary legislation merely enables the creation of the Council and outlines how it interacts with the Chief Minister.²¹

As highlighted earlier in this document, this Panel's review of the Migration Control Policy²² made clear recommendations to the Chief Minister in relation to the establishment of the body now called the Population Advisory Council. In particular, the Panel would again recommend that the terms of reference for the Advisory Council are presented to the States Assembly.

As is the case with the inevitable delay to other aspects of this amendment, it is disappointing to note that there will necessarily be a vacuum of time before the Population Advisory Council is established and able to provide the advice which will assist the Council of Ministers in forming future population policies.

Housing

A repeated theme of the discussions with officers and the Assistant Chief Minister since the lodging of P.13/2022, has been that the amendment represents the first step in providing the migration controls agreed by the States Assembly. The Panel has heard that, in producing the amendment, the focus has been on the removal of the automatic graduation between statuses. It would also appear to the Panel that, to some degree, officers have taken a pragmatic approach to what was achievable within the timeframe left available and by the lack of information available in some areas.

As described in relation to the permits for work, it has been outlined to the Panel that the amendment moves aspects of housing entitlement out of the primary legislation and replaces it with references to the secondary legislation which is yet to be drafted. Again, part of the rationale given was the 'concept of flexibility' to ensure that the way in which people occupy property, as linked to their employment status, was able to adjust to change.²³

It is also clear to the Panel, however, that there are associated projects which would help inform the changes, now to be included in the secondary legislation, which have yet to be completed. Not least of these, would be an updated register of housing. The Panel heard that work is ongoing to improve registers of known addresses and housing which would improve the knowledge base available over the next year.²⁴

²⁰ [P.137 Amd.\(2\)/Amd – Migration Control Policy](#)

²¹ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.24](#)

²² [S.R.6/2021 – P.137/2020 Migration Control Policy \(Phase 1\) P.12](#)

²³ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.25](#)

²⁴ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.26](#)

The significance of access to housing and its impact on the rights and wellbeing of individuals has not been lost on the Panel but, once again, it finds itself in the position of having little actual change on which it can focus worthwhile scrutiny at this stage.

As stated earlier in relation to the Regulations as they pertain to permits and guidelines, the Panel looks forward to seeing detailed work on the secondary legislation in relation to housing and hopes that future detailed scrutiny will be focused on those which determines how and what property can be accessed by those who choose to live and work in Jersey.

Compliance

The amendment proposes the introduction of Civil Penalties for non-compliance which, the Panel agrees, will provide a more manageable and immediate means of dealing with breaches than undertaking lengthy and expensive criminal court action.²⁵ The Panel did, however, question the level of penalty which could be still be imposed in the event of a criminal prosecution.²⁶ The Panel's understanding is that the penalty levels are established by the Law Officers rather than as a matter of policy, however, it does seem to the Panel that the potential penalty of a two year period of imprisonment and a fine is a hefty one. It accepts that this penalty has not been amended from the current law.

The Panel has also established that while it was not anticipated that additional manpower would be required for the administration of the new structure – as it was hoped that a more streamlined process based on clear guidelines would provide for quicker decision-making and fewer unsuccessful applications²⁷ - it could be that enforcement of the permit regime could see a need to increase the compliance function.²⁸

Access to Healthcare

While it is not strictly related to the amendment itself, the Panel would like to highlight that it would welcome the results of related reviews and projects, ongoing and yet to start, which will have a direct impact on the rights of individuals working in Jersey and their equity within our community. Not least of these is the review of healthcare provision. The Panel notes the view of the Assistant Chief Minister, as expressed at the Public Hearing held on 28th February that employers should be supported in an insurance-based system or that Health and Community Services need to be able to deliver that service.²⁹

Panel Conclusion

In reviewing P.13/2022 it has been impossible to escape the disappointing conclusion that we have reached the end of a term of another Government without meaningful controls in place. We do have some progress and the amendment provides a framework,

²⁵ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.35](#)

²⁶ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.36](#)

²⁷ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.19](#)

²⁸ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.20](#)

²⁹ [Transcript - P.13/2022 Draft Control of Housing and Work \(Amendment\) \(Jersey\) Law 202- - Assistant Chief Minister - 28 February 2022, P.37](#)

but any further progress is now dependent on the priorities of the next Government. This conclusion is in keeping with that presented by Panel in its report on the Common Population Policy.³⁰

If the amendment is agreed by the States Assembly it still means that the current situation continues until such time as secondary legislation is agreed and an Appointed Day Act is, similarly, approved.

The work of Scrutiny is necessarily dictated by the policy and legislation that is presented to it and, in this respect, the work on the substance of migration control and population has yet to come.

It is this Panel's sincere hope and recommendation that the next Council of Ministers acts quickly and decisively to bring the secondary legislation forward for debate and that this work is accompanied by meaningful engagement with the States assembly, businesses and wider public.

³⁰ [S.R.2/2022 – Common Population Policy Review p39](#)