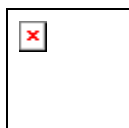


INTRODUCTION OF WORK PERMITS (P.107/2000): COMMENTS

**Presented to the States on 9th October 2001
by the Policy and Resources Committee**



STATES OF JERSEY

STATES GREFFE

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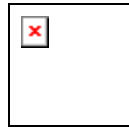
Comments

1. Since Senator Le Claire lodged his Report and Proposition in July 2000, the Committee has given considerable thought to the question of work permits and related issues in the context of its work on 'population policy' generally. The subject was touched on at some length in the Committee's 1999 Report on Population Policy (P.175/99). It was also addressed further in the Committee's further Interim Report (R.C. 21/2001) published last June. The Committee also submitted a report on the subject to the States on 14th September 1999 (P.105/99 Rpt.- attached as Appendix A for ease of reference) in response to an earlier Report and Proposition lodged earlier that year by the then Deputy Le Claire. Despite all this, the Committee regrets, however, it has not until now prepared its report in response to Senator Le Claire's proposition.
2. This report has been prepared with the benefit of useful discussions having been held between Senator Le Claire and the Policy and Resources Department. The Committee is not out of sympathy in principle for Senator Le Claire's declared aim of eliminating social divisions caused by the current housing rules and can certainly follow the logic of what one might term the 'managed frontier' concept that lies behind his proposal as a means of seeking to achieve the ending of those divisions. But, for a range of reasons, the Committee repeats the view it has set out in earlier reports that work permits cannot be seen as a realistic means of seeking to limit population growth and would be counter-productive in the situation of full employment and labour shortages with which the Island is confronted.
3. For the sake of clarity, it is worth noting that the discussions held with Senator Le Claire have enabled the Committee to understand that his intention was not that any scheme such as he was proposing would be retrospective. This is important, particularly from the human rights perspective, as noted by the Attorney General in his letter of 1st June 2000 to the Senator circulated on 12th July 2000 by the latter to all States members, for the first part of the Proposition could be seen as being a little ambiguous on the score.
4. The Committee is advised that the essence of the legal position surrounding work permits is as follows -
 - there are no powers to inhibit from entering Jersey those who have right of abode in the United Kingdom under the Immigration Act 1971 and later enactments. Broadly this includes all European Union and European Economic Area citizens (the EU15 plus Iceland, Liechtenstein and Norway), and certain Commonwealth citizens. This list will be extended when European Union enlargement to the east eventually takes place, after any transitional period, to include countries such as Poland; and when the Overseas Territories Bill, currently before Parliament, comes into force. This, *inter alia*, extends British citizenship to all citizens of the Overseas Territories. So if one were contemplating work permits as a means of 'immigration policy' it is important to be clear that there is a very large group entitled to come to and live in Jersey, other things being equal. Work permits *per se* are not a means of keeping people out; they are, or rather could be, an economic instrument in place of, say, the Regulation of Undertakings and Development Law, whose effect would be to inhibit people in practice from coming to live and work in the Island (if, that is, permits were rationed to a number below indicative job formation - otherwise they would simply encourage entry). Residence itself, save for economic constraints such as housing or employment rules, is not subject to control in respect of the large group with right of abode;
 - under the Immigration Act 1971, as extended to Jersey by the Immigration (Jersey) Order 1993, those without right of abode in the United Kingdom (or, therefore, Jersey) may live, work and settle "by permission and subject to such regulation and control of their entry into, stay and in and departure from" the Island as imposed by the Act. This is the basis for the work permit regime currently operated by the Immigration Department in respect of non-European Economic Area nationals such as, for example, those groups of workers recruited lately from places like Poland for the tourism and agriculture industries, and for dealing with one-off applications in, say, the finance or entertainment sectors;
 - under Article 4 of Protocol 3 to the Act of Accession annexed to the 1972 Treaty concerning the accession of Denmark, Ireland and the United Kingdom to the European Economic Community, Jersey must apply the same treatment to all natural and legal persons of the Community. There is jurisprudence of the European Court (Case C-355/89, judgment delivered on 2nd July 1991), in respect of an Isle of Man case, to the effect that a requirement upon nationals of the European Union Member States who wish to take up employment in one of the Islands to which Protocol 3 applies to hold work permits is permissible provided the requirement is applied to such nationals without discrimination. It is on this legal basis that the Isle of Man operates a work permit scheme. The legal basis holds even though Isle of Man legislation provides for derogations from work permit requirements in the case of certain types of employment (e.g. doctors and police) which could in certain cases give rise in practice to discrimination in favour of nationals of certain Member States as regarding certain types of employment (for example because of language requirements).

5. Clarity about what may or may not be permitted under law is obviously very important. But the main arguments against a work permit scheme in Jersey are economic, coupled with uncertainty as to whether the concept as defined, regard being held to all the circumstances, could actually attain the objectives expected of it. These arguments were well set out in the 1996 Report of the Population Working Group, a copy of Chapter 7 of which is attached as Appendix B for ease of reference.
6. Work permit schemes are normally associated with seeking to protect local employment. This was the object of the Protection of Employment Opportunities (Jersey) Law 1988, which has never been implemented, notwithstanding all the debate about population over the last many years - because with full employment - indeed, with demand for labour well ahead of supply in all sectors of the Island's economy - it would be nugatory. Protecting local employment is equally the object of the Isle of Man's Control of Employment Acts. In the Isle of Man, as in Jersey, there are no restrictions on entry pursuant to the Immigration Act 1971. Nor are there any housing restrictions. But the ability of newcomers to take up work is governed by those Acts. They require anyone who is not an 'Isle of Man worker' to have a permit before starting employment or self-employment in the Isle, except in respect of certain occupations. The Isle of Man Government's stated policy is that "broadly speaking permits are issued where there are no suitable local workers available for the job and where there is no good reason to doubt the good character of the person for whom the application is made". The view one has from Isle of Man officials is that, because there is relative labour scarcity, the obtaining of a work permit is a hurdle but not a constraint. But the process is felt able to serve to protect local jobs in areas such as, for example, agriculture and manufacturing. The key point for Jersey's purposes is that the Isle of Man system is not in any sense a 'population policy' or seen as a means of limiting numbers or growth in numbers. It is in fact rather akin to Regulation of Undertakings and Development Law except that it is operated at the level of the individual not the firm.
7. If the reason for the introduction in Jersey of a similar scheme was indeed population 'control', then work permits would fail (a) because they have no fully causal relationship with residence (and in any case the Jersey residentially-qualified diaspora is clearly very large); and (b) because their main effect would be to impose a bureaucratic burden on business and government in a situation where the current economic pressures were unchanged. The arguments against work permits remain as they were, but with one crucial difference. The world outlook is now far more difficult than was perceived in the great boom of the late 1990s when this aspect of policy was last assessed. The risk factors affecting Jersey's economy, which is very heavily dependent on exports, whether finance, tourism or agriculture, have heightened considerably even in the last month. To embark now upon a policy process that signalled 'closed for business' would be very unwise and do the Island great harm in the long run. There would probably be no better way of not achieving what Senator Le Claire seeks, viz. a good and full range of employment for local people, including young people.
8. So the Committee, while understanding and appreciating Senator Le Claire's aim of ending social divisions brought about by the housing rules, judges that a work permit scheme along the lines he suggests would not represent a credible way forward for Jersey. Indeed, it would be perceived as backward-looking and, apart from imposing new burdens on both the public and private sectors, would damage the Island's economy.

INTRODUCTION OF WORK PERMITS (P.105/99): REPORT

**Presented to the States on 14th September 1999
by the Policy and Resources Committee**



STATES OF JERSEY

STATES GREFFE

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Report

The Policy and Resources Committee believes that Deputy Le Claire's report and proposition on the introduction of work permits should not be debated ahead of a comprehensive debate on Immigration and Population Policy. We are confident that the House will agree it would be unwise to debate such a fundamental issue as work permits separate from the full debate on population and all associated issues. The Committee believe that the House will wish to have a fully informed debate covering all the issues involved. The Committee has met with States Members and Chief Officers, and with private sector organisations, and is in the process of completing a report and proposition on Immigration and Population Policy, which it is hoped the States will debate in the current Session, together with the separate propositions of Deputy Johns (P.110/99) and Deputy Le Claire (P.105/99). If, notwithstanding the Committee's advice, the States should decide to debate Deputy Le Claire's proposition in advance of the proposed general debate, then the Committee would wish to make the following additional comments on the Deputy's report and proposition.

The Deputy, in proposing the introduction of a work permit scheme, states that "Work permits are seen as a means of protecting employment opportunities for local workers and as a means of controlling overpopulation. They are not intended to act as a restraint of trade." While work permits are used as a means of protecting employment opportunities for local workers in many countries - and this is provided for, if ever needed, by enabling legislation on the statute book in the form of the Protection of Employment Opportunities (Jersey) Law 1988 - the Committee has not seen the relevance for work permits in the circumstances that exist in Jersey, where, with over full employment, there is no shortage of employment opportunities for local residents. The Committee also does not consider that in the absence of effective control over the creation of additional jobs in conditions of over full employment of Island residents, work permits are an effective means of controlling overpopulation and of achieving the States' population policy objective.

The Deputy is also proposing that those already living in the Island who do not have residential qualifications would need to obtain a permit. The proposal, therefore, is that it should be retrospective in its application, and the Law Officers' Department has indicated that this is likely to be in contravention of the European Human Rights Convention. The Committee considers that any such doubt must be removed before the States can consider the matter and vote upon it.

The main advantage advanced by the Deputy for his proposals over the present controls is that they would enable the authorities to check on the background of immigrant labour, would allow controls to be exercised over the extent to which immigrant employees bring members of their family to the Island, and would place a limit on each individual immigrant worker's period of residence. What is proposed in this respect would apply only to those taking up employment. If the States wish to exercise control over such matters they would be better to consider the option of residence permits or occupancy control rather than work permits. Residence permits or occupancy control would be all-embracing and would cover both active and non-active immigrants. Relevant to these measures is the work the Committee is currently engaged on regarding the introduction of a Smart Card.

The main disadvantage of the Deputy's proposals by comparison with the present controls is that it is not at all clear from his report how the introduction of work permits would control overpopulation. The Committee's understanding of the Deputy's report is that the Regulation of Undertakings and Development Law would no longer be used to control job growth in respect of existing firms - notwithstanding that this law is proving effective in reducing the rate of job growth, as is evident from the most recent quarterly manpower statistics - and would be used solely to restrict Jersey residents from setting up new businesses that did not satisfy certain criteria. Under these arrangements, those firms able to obtain the local labour available, through having the greatest ability to pay, would be able to expand without restriction. Other local firms would then find that they would only be able to stay in business if they were able to obtain immigrant labour, and would have to apply for a work permit in respect of that labour. If such a work permit was refused, they would be put out of business. However, the criteria identified by the Deputy in his report for considering whether a work permit should be issued would suggest that if local labour is not available, and the immigrant labour on offer is of a satisfactory nature, a work permit would be granted and the population increased accordingly. This arrangement would seem to be in accord with those who have made representations to the Committee that the population of the Island should be allowed to grow, providing that the growth in numbers takes the form of persons on limited period contracts. The Committee's view is that an additional number of immigrant employees on limited period contract will still represent a growth in the Island's resident population, and the environmental and other pressures that come from that growth will still be experienced.

The Finance and Economics Committee, in applying the Regulation of Undertakings and Development Law, has experience of the difficulties that arise when refusing to grant permissions for the employment of non-local labour when that labour is required by small local businesses. The difference between the present controls and those proposed by the Deputy is that, under the present controls, action is being taken by the Finance and Economics Committee to limit the number of new jobs being created by existing firms. This would not be the case with the controls being proposed by the Deputy, which, in addition to not tackling the problem of population growth, would be extremely labour-intensive in their application.

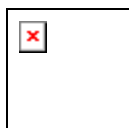
When work permits have been considered previously, particular difficulties have been highlighted in respect of seasonal workers and those employed by the construction industry. The advertising criteria referred to by the Deputy in his report would not easily fit in with the circumstances when firms recruit either category of employee.

The Deputy has referred in discussion with the Committee to the position of the Isle of Man on work permits. The Isle of Man provides evidence, if it is needed, that a non-discriminatory work permit can be applied to protect job opportunities for local persons. What the Isle of Man work permit arrangements are not being used for, however, is to control the Isle of Man's resident population, which is expected to continue to grow. The Isle of Man Government has included in its legislative programme a Residence Bill, which will provide powers to limit excessive immigration, but, to quote from that Government's Policy Review 1998 "it is not intended that the Bill should be brought into effect unless and until circumstances arise which make that necessary. Such circumstances do not exist at present, nor are they seen as likely to develop in the short to medium term."

The Committee will be developing further its thoughts on the best approach to population control in its shortly-to-be-presented report and proposition.

**A POPULATION POLICY FOR JERSEY:
WORKING PARTY REPORT**

**Presented to the States on 30th July 1996
by the Policy and Resources Committee**



STATES OF JERSEY

STATES GREFFE

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CHAPTER 7

7. Work permits

Introduction

- 7.1 Work permits are used in a number of countries. The basic objective of a work permit system is not to control the size of the population but rather to give preference to local people over immigrant labour. A work permit system would operate through an employer demonstrating that he could not obtain someone locally for a particular job (generally it would have to be advertised locally for a certain period of time). A permit would then be given in respect of a particular job. Alternatively or additionally people who met defined qualifications could obtain a permit which would enable them to apply for any vacant position. The system can be used, for example, by a rich country to obtain skilled people, such as doctors, without the expense of training people.

History

- 7.2 The question of the introduction of work permits has been considered on a number of occasions over the past 25 years. In 1973, the Immigration Committee recommended that legislation should be enacted but held in reserve for establishing measures for the introduction of work permits for EEC nationals should circumstances render such a course necessary. Following a report of the Policy Advisory Committee, the States, in October 1979, agreed that enabling legislation be prepared providing for the implementation of regulations for a work permit procedure at a future date should the States decide that the introduction of such a procedure was justified.
- 7.3 In 1988, the Protection of Employment Opportunities (Jersey) law was enacted enabling the States, through subordinate legislation, to bring in work permits. In July 1992, the States adopted a proposition of the Policy and Resources Committee which charged the Defence Committee to prepare the necessary regulations to enable work permits to be introduced where necessary. A working group of the Chief Officers' policy group found that the 1988 law was seriously flawed in that, for example, it could not provide for exemption of seasonal workers or part-time workers and would also be very bureaucratic. The Defence Committee duly proposed that the law be revised to make it more practical. The proposition has never been debated by the States.

Work permits in the Jersey context

- 7.4 The case for operating work permits in Jersey can be considered both from the perspective of protecting local people and the potential impact on population policy. The working party is concerned with the second aspect but this cannot be considered in isolation from the first. By any standards, Jersey has a low level of unemployment. In itself, this makes the concept of work permits almost unworkable. If the intention is to deny work permits to people seeking to work in the Island, then local businesses will not have the labour they need. Tourism, agriculture and banking, and the economy of the Island in general, would be adversely affected, perhaps in a very serious way. If work permits are to be granted to employers who can demonstrate that local labour is not available, which in itself would not be difficult, then they would serve little useful purpose other than enabling the employment position to be better monitored. However, it is a legitimate argument that Jersey does not use its labour force efficiently and that therefore there is some 'hidden unemployment'. The question is whether Jersey people are willing to do much of the work, particularly in agriculture and tourism, that is currently done by immigrant labour.
- 7.5 The working party has also noted a number of responses to its consultation document which, while recognising the need to give some protection to local labour, argued that it was important not to give too much protection. If Jersey school leavers know that regardless of their attitude, skills and competence they will get a well-paid job, then there will be far less incentive on them to train and to be productive members of the labour force. A little competition never hurt anyone and this applies to Jersey people as to anyone else in the world. It is also necessary to recognise that there are specialist positions which can be filled only from outside Jersey. Indeed, there are British companies that, from time to time, will conduct a worldwide search for the right person rather than relying on what is seen to be the relatively small British labour market. Jersey makes much of its living by being an international centre for finance, tourism and agriculture. An international centre cannot afford to take an insular approach to employment. Jersey institutions must employ top-quality staff if they are to continue to be successful. While the vast majority of those staff will come from within the Island, helped by the education and training systems in Jersey, a small proportion will always be needed from outside, and the Island must do nothing to dry up this source of supply.
- 7.6 This view echoes that in the 1995 Strategic Policy Review -

"Many of those consulted sought more protection for the position of native Jerseymen and women in the

labour market. However, there was also an acceptance of the need to appreciate the value to the community of the many immigrants engaged both in providing essential services, and in the wealth creation from which all Island residents benefit. At a time of change, and with keen competition from other producers of the goods and services the Island must sell if it is to secure the desired continued economic well being of the resident population, it was also recognised that unduly restricting access to immigrant skills and experience through an over rigorous immigration control policy would be to the Island's long term disadvantage."

7.7 Even if Jersey did have a position of significant unemployment, such that work permits could give a measure of protection to local labour, the consequential effect on population would be muted. This is because, by definition, work permits control only people who wish to work in the Island. 43 per cent of people living in the Island are not in the labour force. This group largely comprises married women, children and retired people. There is evidence from the Guernsey experience that the introduction of a 'right to work' document led to some people not eligible for such a document to withdraw from the labour market but to stay in the Island. To this extent, there was an upward pressure on population as new labour had to be attracted from outside the Island to replace people who had left the labour force.

7.8 It is also the case that a work permit system would inevitably be bureaucratic and would lead to anomalies and hard cases. If the intention would be to give work permits automatically to "local people" then it would be necessary to define local in the same way as has to be done for the Housing Regulations. However, there would be scope for more serious adverse consequences for population policy. If, for example, children of local residents who were university students but who did not themselves have residential qualifications, were denied work permits on the grounds that they were not "local", the effect might be that they would continue to live in the Island when not studying, but not work, implying a need to import additional labour. In short, the effect of work permits can be to increase the resident population, by increasing the number of non-employed residents.

Short-term contracts

7.9 It is appropriate in this chapter to consider, from the population point of view, the question of short-term contracts. It must be stressed that the population aspect is not the only or the most important justification for short-term contracts. They are used frequently in the United Kingdom, for example by local government. However, regardless of the purpose, the short-term contract system inevitably has an effect on the population. What this effect will be depends on a variety of circumstances. The working party is aware of no research on this matter.

7.10 On the one hand it may seem fair that if someone without residential qualifications is employed on a short-term contract, then, at the end of that contract, they will have to leave the Island and will not have been able to obtain residential qualifications. There are many cases where this has applied. On the other hand, one can envisage a whole series of circumstances where the effect is rather different. For example, a person may be employed in a States position on a five year contract without residential qualifications who then, by marriage, acquires those qualifications. At the end of the five year period he or she is forced to leave his job and another person is then employed from the United Kingdom on a five year contract. The person leaving the job may well remain in the Island, employed in another sector or not working. Taking another example, someone may be employed from the United Kingdom on a short-term contract with a partner also working in the Island as, say, a teacher. At the end of the five year period, they leave the Island and, as a result, two people with families may be employed from the United Kingdom to replace them. In these cases, the effect is to increase the population.

7.11 Although this does not properly come within the working party's terms of reference, it noted with interest the views that have been expressed that rigid application of the short-term contract system, particularly in the public sector, may not only have these effects, but can also adversely affect the quality of public services. The Parents' Association of Hautlieu School told the working party -

"Though we are fully aware of the strong population control arguments in favour of short-term contracts for lower grade teaching staff recruited from the United Kingdom, we have grave doubts as to whether such policy should be applied in areas such as teaching and nursing. In both these fields, continuity of teaching or care is vital for the effective delivery of the service."

"In any case, in our experience, a considerable number of teachers on short-term contracts seem to continue living and working in the Island (sometimes even within the education service) when their contracts are finished. If the original jobs are reallocated, then, are we not effectively replacing one new resident with two?"

7.12 Similarly, the Headmaster of Victoria College told us -

“I can tell from the number of boys who go to university from Victoria College with the intention of becoming teachers that the most popular choices are for primary education and PE teaching. It is very rare that we have a boy going to university with the intention of becoming a teacher in one of the 24 A-level subjects we have to offer. Thus the notion of developing our own talent to fill secondary teaching posts in Jersey is a non-starter. Even those boys who aspire to teaching careers do not necessarily return to teach in Jersey, at least not in the first instance. Some of them will never return. As you can see, we could never meet the demand for secondary school subject specialists except by bringing in people from the United Kingdom. There have been candidates who have been put off applying by the five year contract. To make it worse, I have some outstanding teachers at present who are shortly to give up teaching at Victoria College because they are on five year contracts.

The application rate for teaching posts at the College is disappointingly small - eight applicants applied for our last Head of Department post. I cannot see how Jersey can provide the quality of service which we do need for the benefit of our own youngsters unless we can go realistically into the market place of teacher recruitment. The cost of housing is in itself a considerable disincentive to candidates without setting additional obstacles.”

7.13 The Amos Group of Christians Together in Jersey told the working party -

“The [associated] five year contract system is in urgent need of review. It should surely have some option system built in so that good teachers and nurses could be offered a further contract rather than going to all the trouble of interviewing and inducting a new person every five years. The problem is particularly acute in nursing where, apparently, nurses are sent on a number of mainland courses, and then released just when they are fully qualified. The process is then repeated for the next five years.”

7.14 The secretary of the Jersey branch of the Royal College of Nursing pointed out that the management of the hospital group always try to appoint local staff if they meet the required standard. However, the natural turnover within the nursing profession is such that it is often necessary to recruit from outside the Island. The college wished to see an end to the five year restriction, pointing out that it costs £4,000 to replace a nurse.

Conclusion

7.15 The working party is certain that the introduction of work permits in Jersey would have undesirable side effects in terms of restrictions on businesses and individuals. Given very low unemployment, it is difficult to see what useful purpose work permits would serve. There would certainly be no reason to expect that on their own they would have any desirable effect in reducing population pressures, and, indeed, in some respects, would work in the opposite direction. A work permit system as a population control instrument is feasible only if combined with a residence policy as discussed in the following chapter.

7.16 The working party also considers it is necessary to review policy in respect of short-term contracts. There is a case for such fixed-term contracts, purely from the employment point of view. Five year fixed-term contracts are common in the United Kingdom for senior executive positions where it is felt that a five year term is sufficiently long. They are not generally used for more junior positions. If the rationale for short-term contracts is that they prevent people gaining residential qualifications, then this proposition needs to be thoroughly tested. If this is one of the motives, then the short-term contract would really need to be accompanied by a requirement to leave the Island at the end of the short-term contract. Such a stipulation would probably be legally unworkable. The working party has no information on the number of people who, at the end of a short-term contract period, have remained in the Island, and is not able to come to a reasonable assessment as to the overall impact on the population. This is an issue which should be pursued in a review of the policy. The working party has noted the slight relaxation to the present rules, announced by the President of the Establishment Committee on 30th April; it welcomes this as a move in the right direction, although it is unclear at this stage what the practical implications will be.