

States of Jersey  
States Assembly



États de Jersey  
Assemblée des États

# Corporate Services Scrutiny Panel



States  
of Jersey

## Migration: Control of Housing and Work

Presented to the States on 1st July 2011

S.R.9/2011



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## **CHAIRMAN'S FOREWORD**

This legislation is not a complete solution to the problem of migration. As the Migration Advisory Group told us, it will assist us in assessing the size and profile of both the working population and resident population of the Island. This does not, however address the root problem. We live in a small Island and currently we have no physical means of limiting the ingress into the Island.

We have been told that we can install border controls but only if we apply them to all incomers. Otherwise we are bound by the free travel area, arising from our links with the UK, and the common travel area, arising from our agreement under Protocol 3. When the concept of the J Category was first envisaged, it was intended that these off Island employees would come over for a short time, train up successors and then move on. This has not happened and many of the "J Cats" have, understandably, remained in the Island.

Whilst the public concern has concentrated on the J Category incomers, we were told during the hearings that there may be a problem with the levels of unskilled and semi skilled labour arriving. These are the people who, in due course and through no fault of their own, may require income support and social housing.

It was not clear, from the evidence presented to us, as to how immigration can be limited in order to comply with the goals of the Strategic Plan. We were told that if immigration levels were too high then steps could be taken.

The problem is that the only means of stopping immigration quickly is the cessation of issuing registration cards. This raises the spectre that Jersey is "closed for business". What is more, we might need more specialised professionals from a variety of fields. Does it make sense to tell them to come back later or to tell them they are on a waiting list? Do we operate on a quota or on a drawbridge system? Other countries deal with this problem by the use of quotas or strict criteria related to skills and finances. We are bound by arrangements whereby all UK Nationals and overseas nationals admitted into the UK and all citizens of EU countries are allowed free access into the Island.

If business is to achieve the growth required to grow the economy then it must have access to a work force with the appropriate skills. It follows that there is a balance to be achieved between the economic growth plan, the housing requirements and the benefit system. This

law is a first step but more work needs to be done if we are to retain the quality of Island life for all residents whilst maintaining our prosperity.

This law is a first step and is a long term policy not a “short term fix”. The information gathered will provide the basis for an informed population policy. We are therefore recommending that, as part of our legacy report to the next Corporate Services Panel, the subject of population policy should be revisited on a regular basis, ideally by a Sub-Panel incorporating Members from all of the other Scrutiny Panels.



Senator S.C. Ferguson  
Chairman, Migration and Population Sub-Panel

## 1. Executive Summary

- 1.1 The new legislation, the draft *Control of Housing and Work (Jersey) Law* and draft *The Names and Address Register (Jersey) Law*, will replace the existing Housing (Jersey) Law 1949 (Housing Law) and the Regulation of Undertakings and Development (Jersey) Law 1973 (RUD Law) with a less complicated system of control over access to housing and employment. The legislation does not itself address or establish policy on population size. It aims to provide the States with a much improved depth and range of information, which in turn should lead to decisions relating to migration and population policy being made on a much more informed basis, and the Sub Panel believes that it will indeed deliver on those aims. Additionally to the benefit to the States of better information, businesses will benefit from decreased bureaucracy as manpower, I.T.I.S. (Income Tax Instalment Scheme) and Social Security will be completed as one rather than three different returns.
- 1.2 The Sub-Panel found that the criteria of the J-Category licence will effectively remain, under the new guise of the 'Licensed' status. This raises some concern, not least because the concept of the J-Category licence as a short term appointment to train a locally qualified person to undertake that job has not been adequately applied in the determination of licence applications. This has been tightened up under the current Minister for Housing, but we recommend that there needs to be a more concerted and transparent approach to ensuring that J-Category equivalent licences are issued for the purpose of training up locally qualified people to permanently undertake that role.
- 1.3 This will be helped if the Control of Housing and Work Law is amended to give responsibility for the determination of 'Licensed' post applications to the Minister for Housing, in line with the current system for J-Category licence applications, rather than the Chief Minister as is currently proposed. This is because the Sub-Panel believes that there is a potential conflict of interest in transferring responsibility for the determination of 'Licensed' post applications to the Chief Minister, given the Chief Minister's central role in the development of population policy and the relatively high number of such posts (currently J-Category) within that Department.
- 1.4 The Sub-Panel has also been concerned by the location of the Population Office within the Chief Minister's Department for related reasons. In order to allay such fears and to help emphasise the focus of its work on the control of housing and work, the Office should be

located elsewhere. In the context of the possible restructuring of the Housing Department, the Sub Panel recommends that the Population Office should be located within the Social Security Department.

- 1.5 Whilst J-Category licences have recently been more tightly controlled by the current Housing Minister, the pressures from net inward migration have arisen predominantly from the numbers of unskilled and semi skilled workers. This trend may compound future problems in the Island as it is this cadre of workers who may be most likely eventually to require income support and social rented housing. We have concluded that there must be an inherently cautious approach applied to the allocation of unqualified licences, and the *Business Assessment and Licensing Section General Policy Statement 2009* should be re-drafted with greater clarity and precision on the criteria it contains regarding licence applications.
- 1.6 The Sub-Panel believes that closer working between relevant parts of Departments in the area of compliance, most notably the Population Office with Social Security, Customs and Immigration and Income Tax, will make best use of available resources. Combined with improved sharing of information this will lead to a more efficient and effective compliance operation. Nevertheless, despite the new legislation and an improved system of compliance, it appears inevitable that a 'black economy' will continue to exist. Indeed, further work needs to be undertaken to ensure that there can be certainty in the ability of the authorities to align the number of net inward migrants with those levels established by States decisions.
- 1.7 Ultimately, this legislation may prove to be only a partial solution to addressing a complex long term problem. The existing pressures facing Jersey to balance economic needs with the inherent infrastructure and social pressures resulting from immigration and increasing population size do not go away. In keeping with many countries around the world, Jersey will also be forced to face the additional pressures arising from worldwide increases in the numbers of economic migrants. Given our size, location and distinctly finite resources, we will be required to seriously revisit the longer term cases for the introduction of a stricter work permit system, and/or tighter border controls.

## **2. Key Findings and Recommendations**

### **2.1 FINDINGS**

2.1.1 The Control of Housing and Work Law will improve rights relating to obtaining and retaining residential status for non Jersey-born Islanders. **(4.3.5)**

2.1.2 There is potential conflict of interest in transferring responsibility for the determination of 'Licensed' post applications to the Chief Minister, given the Chief Minister's central role in the development of population policy and the relatively high number of such posts (currently J-Category) within that Department. **(4.3.11)**

2.1.3 The Sub-Panel welcomes the formation of a formal advisory group on the Control of Housing and Work Law and associated licence applications, which will contain the Minister for Economic Development, the Minister for Housing and other ad-hoc Ministers. It is important in helping to maintain a balanced approach to the determination of licence applications and associated matters. **(4.3.15)**

2.1.4 The Social Security Department would be in a unique position to correlate the numbers of people arriving with the number and nature of jobs available that cannot be filled by locally qualified persons. **(4.3.19)**

2.1.5 The criteria of the J-Category licence will effectively remain under the new guise of the 'Licensed' status. **(4.3.24)**

2.1.6 The concept of the J-Category licence as a short term appointment to train a locally qualified person to undertake that job has not been adequately applied in the determination of licence applications. **(4.3.25)**

2.1.7 Whilst J-Category licences have recently been more tightly controlled by the current Housing Minister, the pressures from net inward migration have arisen predominantly from the numbers of unskilled and semi skilled workers. This may compound future problems in the Island as it is this cadre of workers who may be most likely eventually to require income support and social rented housing. **(4.3.30)**



- 2.1.8 Policy documents relating to the issue of migration should come forward together in a cohesive manner. Such documents would include Economic Growth Strategy, Strategic Plan, Population and Housing policy. **(4.3.40)**
- 2.1.9 The Sub-Panel welcomes the provision of the Control of Housing and Work Law enabling a licence for unqualified staff to be varied at any point. **(4.3.46)**
- 2.1.10 The new legislation will provide the States with a much improved depth and range of information, which in turn should lead to decisions related to migration and population policy being made on a much more informed basis. **(4.4.8)**
- 2.1.11 Benefits of the new legislation to businesses will include decreased bureaucracy as manpower, I.T.I.S. (Income Tax Instalment Scheme) and Social Security will be done as one rather than three different returns. **(4.4.13)**
- 2.1.12 The introduction of the new Control of Housing and Work Law will lead to noticeably improved rights for unqualified (Registered) residents who will be able to lease in future and therefore have security of tenure, which they do not currently enjoy. This may, however, lead to additional pressure on housing stock. **(4.4.18)**
- 2.1.13 Work is underway on the Citizens' Online Services Programme aimed at trying to provide easier electronic access across States services, including electronic payments, for Islanders. **(4.5.4)**
- 2.1.14 Closer working between relevant parts of Departments in the area of compliance, most notably the Population Office with Social Security, Customs and Immigration and Income Tax will make best use of available resources. Combined with improved sharing of information this will lead to a more efficient and effective compliance operation. **(5.2.8)**
- 2.1.15 Despite an improved system of compliance it is inevitable that a 'black market' of some size will continue to exist. **(5.2.12)**

- 2.1.16 Many States Departments already successfully handle a lot of sensitive information, and no reason was found to lead the Sub-Panel to believe that this situation will not continue with the introduction of the Name and Address Register. It is of additional reassurance that the Data Protection Commissioner will undertake an independent oversight role of the management of the data on the Register. **(5.3.6)**
- 2.1.17 There is an overall projected saving of £33,000 to the annual cost of administering the new legislation, compared to the current system. **(5.4.4)**
- 2.1.18 A process of public engagement will take place on fees, including outline proposals to achieve full cost recovery for the administration of the Law. **(5.4.8)**
- 2.1.19 The Sub-Panel has not been convinced that sufficient work has been carried out in examination of all of the alternatives to the proposed system of migration controls. **(6.1.11)**
- 2.1.20 The use of photographs on registration cards as a means to help prevent fraud has not been given adequate consideration. **(7.3.5)**
- 2.1.21 The relevant authorities are confident that the provisions of the new legislation give them the ability to prevent untoward increases in inward migration levels outside States approved policy, but the Sub-Panel does not necessarily fully share this confidence. There is an implicit assumption that unqualified immigrants who cannot find jobs will leave the Island, but it remains the case that they might merely sink into the black economy. **(8.1.7)**

## **2.2 RECOMMENDATIONS**

2.2.1 The Sub-Panel agrees with the improvement of rights relating to obtaining and retaining residential status for new Islanders, but recommends that due attention is given to ensuring that the legitimate expectations and rights of existing Islanders are not overlooked. **(4.3.6)**

2.2.2 The Control of Housing and Work Law should be amended to give responsibility for the determination of 'Licensed' post applications to the Minister for Housing, in line with the current system for J-Category licence applications. **(4.3.12)**

2.2.3 The Sub Panel recommends that the Population Office should be located within the Social Security Department. **(4.3.20)**

2.2.4 There needs to be a more concerted and transparent approach to ensuring that J-Category equivalent licences are issued, wherever possible, for the purpose of training up locally qualified people to permanently undertake the temporarily licensed role. **(4.3.26)**

2.2.5 There must be an inherently cautious approach applied to the allocation of unqualified licences. **(4.3.31)**

2.2.6 Consideration should be given to addressing the following points:

- wording in the Policy Statement for giving unqualified people work is ambiguous and should be made absolutely clear;
- headcount should not be applied or count to young and old people thus giving incentives to firms to train the young and employ the older generation. They should however be residentially qualified.
- evidence of jobs being widely advertised locally should be demonstrated before any unqualified licences are given.
- temporary contracts should not be renewed in a continuous manner. The time worked on temporary contract should not count towards the 5 year licence. **(4.3.41)**

- 2.27 The annual *Jersey In Figures* should include publication of an industry sector breakdown of the numbers of unqualified and J-Category (and equivalent) licences. **(4.3.42)**
- 2.2.8 The Business Assessment and Licensing Section General Policy Statement 2009 should be re-drafted with greater clarity and precision on the criteria it contains regarding licence applications. **(4.3.43)**
- 2.2.9 All efforts should be made to achieve the savings being examined by Information Services regarding the new IT system for the Population Office. **(5.4.5)**
- 2.2.10 Further research should be carried out on the areas of work permits, border controls and Protocol 3, and reported accordingly. Decisions should then be made at a political level as to their worth. **(6.1.12)**
- 2.2.11 More work should be undertaken on the benefits of the inclusion of photographs on registration cards. **(7.3.6)**
- 2.2.12 There should be an examination of the levying of a charge for the registration card to help cover costs and act as an incentive to hand the card back, which in turn will lead to a more efficient way of knowing who has left the Island. **(7.4.3)**
- 2.2.13 Further work needs to be undertaken to ensure that there can be certainty in the ability of the authorities to align the number of net inward migrants with those levels established by States decisions. **(8.1.8)**

### 3. Introduction

- 3.1 In October 2003, the States approved the *Migration Policy P.102/2003*, as amended. This put in place an agreement that systems should be developed to monitor inward migration to Jersey, and that a review should be undertaken of the existing policy and regulatory systems with a view to proposing new arrangements.<sup>1</sup> Based on that direction, in 2005 the Policy and Resources Committee successfully proposed *P.25/2005 Migration: Monitoring and Regulation*.<sup>2</sup> These proposals stated that provision was made for the first time for:

*...a means by which the States can effectively implement their policies on migration in future. They will considerably increase the States ability to govern migration, either to reduce the overall level or allow it to increase within set limits. However, they do not themselves prescribe a set level of net inward or outward migration or determine the total population number.*

- 3.2 The Migration Advisory Group (MAG) was formed in December 2005 and has taken the lead role in the development of new mechanisms and legislation to replace the existing Housing (Jersey) Law 1949 (Housing Law) and the Regulation of Undertakings and Development (Jersey) Law 1973 (RUD Law). It is chaired by the Assistant Minister, Chief Minister's Department. Other members include the Minister for Economic Development (presently represented by one of the Department's Assistant Ministers) and the Minister for Housing.
- 3.3 The Corporate Services Scrutiny Panel agreed in 2009 that the matter of migration merited review, in conjunction with the Population Policy, and established a Sub-Panel in February 2009 to undertake that work. Work began with a review focused on Population, with the subsequent report, *S.R.3/2009 Population Policy*, presented in June that year. It had been anticipated that the new draft migration legislation would be presented to the States around the middle of 2010 with the documentation provided to Scrutiny in advance for our Review. In fact we were only finally presented with complete final drafts in March 2011, and informed that the intention of MAG was for States debate on 7th June. This would have provided us with an entirely unrealistic timeframe within which to carry out our work, and whilst the Chairman of MAG agreed to delay debate until 5th July, it has imposed an extremely tight time frame within which to work.

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<sup>1</sup> P.25/2005 Migration: Monitoring and Regulation

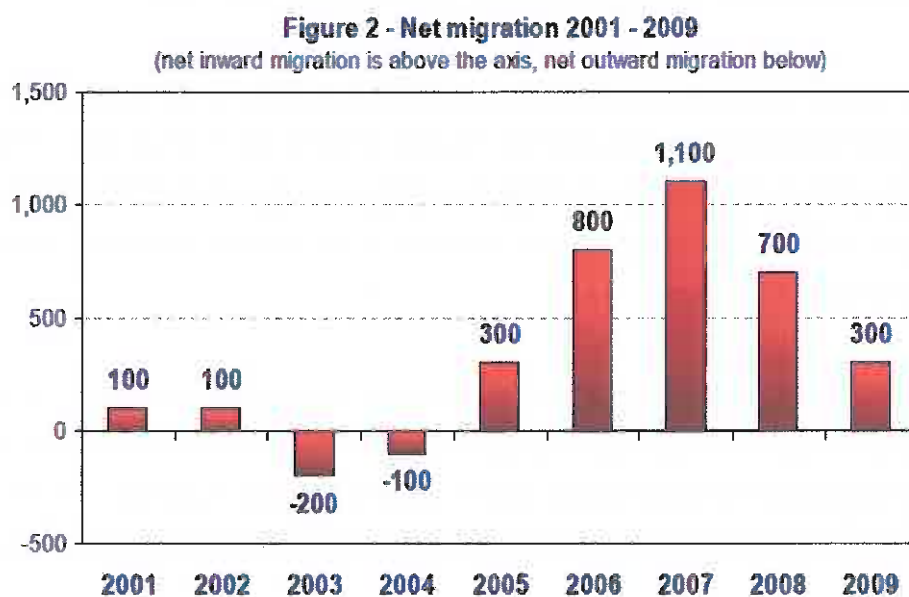
<sup>2</sup> P.25/2005

- 3.4 However, we have endeavoured to undertake as complete a Review as possible in the short time permitted, focusing our attention on undertaking a 'fit for purpose?' examination of the proposed laws and ensuring that due consideration has been given to alternative methods of controlling migration. In that context, our findings and recommendations based on the evidence gathered are presented here.

## 4. The Aims and Intended Benefits of the Draft Legislation

### 4.1 Context: Migration Statistics

4.1.1 *Jersey's Resident Population Report 2009* contains the latest published figures on the levels of inward migration to Jersey, with trends shown from 2001 to 2009:



4.1.2 The table shows that the period from 2001 to 2004 was characterised by small levels of net migration, inward for the first two but outward for the two following. Between 2005 and 2007 there were rising levels of net inward migration, whilst 2008 saw a slightly reduced level of net inward migration compared with the previous two years. The various levels were explained as being reflective of the Island's economic performance in those years.<sup>3</sup>

4.1.3 It can also be seen that in 2009 the level of net inward migration was similar to the level seen in 2005, and below that of each of the preceding three years. The report also explained that adults were estimated to account for more than three-fifths of the net inward migration in 2009, with J-category households (employees and dependants) estimated to have accounted for less than 20% of the net inward migration.<sup>4</sup>

4.1.4 Looking at the J-category figures in greater detail, as at December 2010 the total number in the private sector had more than doubled since December 2001. The number of private sector J-category employees in December 2001 stood at 540, compared to 1,120 in 2010. In

<sup>3</sup> Jersey's Resident Population Report 2009

<sup>4</sup> Jersey's Resident Population Report 2009

December 2010, a decrease of 30 J-category employees was recorded between December 2009 and December 2010.<sup>5</sup>

4.1.5 Prior to 2009 the States of Jersey Strategic Plan 2005 to 2010 stated that:

*“Like most small and prosperous jurisdictions, Jersey has a relatively high population density, although less than neighbouring Guernsey...*

*The aim is to manage population changes over the next five years in order to promote economic growth and the creation of jobs for local people. The strategy would ensure that growth in inward migration is only supported where it creates wealth to fund the Island’s public services or to support industries which employ local people.”<sup>6</sup>*

4.1.6 One of its stated aims was “to create a strong and competitive economy”, in real terms meaning economic growth of at least 2% per annum in order to fund the Island’s services and provide employment for local people. As P.25/2005 reported however, the strategic aim to create a strong and competitive economy did not, however, imply massive immigration. It continues:

*As stated previously, it is intended the working population should be allowed to grow by no more than one per cent per annum over the next 5 years, and the majority of this increase should create employment opportunities for the existing population.<sup>7</sup>*

4.1.7 The States policy on net migration levels, as contained in the approved Strategic Plan 2009 - 2014, should perhaps also be noted here as part of the statistical context to the migration debate. The States approved Strategic Plan commits Ministers to set population policy which:

- *maintains the level of the working age population in the Island;*
- *ensures the total population does not exceed 100,000;*
- *ensures population levels do not increase continuously in the longer term;*
- *protects the countryside and green fields;*

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<sup>5</sup> Labour Market report December 2010

<sup>6</sup> States of Jersey Strategic Plan 2005 to 2010

<sup>7</sup> P.25/2005



- *maintains inward migration within a range between 150 and 200 heads of household per annum in the long term;*
- *in the short term, allows maximum inward migration at a rolling five-year average of no more than 150 heads of household per annum (an overall increase of circa 325 people per annum). This would be reviewed and reset every three years.<sup>8</sup>*

4.1.8 It also states that new mechanisms to control the population through Migration policy will be implemented, the results of which - the draft *Control of Housing and Work (Jersey) Law* and draft *The Names and Address Register (Jersey) Law* - are the focus of the Sub-Panel's Review and report .

## **4.2 The New Legislation**

### **4.2.1 Background**

4.2.2 Over recent decades, immigration has primarily been managed through the Housing (Jersey) Law 1949 (Housing Law) and the Regulation of Undertakings and Development (Jersey) Law 1973 (RUD Law). The new legislation will replace those Laws and also the Hawkers and Non-Resident Traders (Jersey) Law 1965. The Chief Minister will be responsible for the Law, with the support of an Advisory Group of relevant Ministers. The Law will be administered by the Population Office, as part of the Chief Minister's Department, in partnership with the Social Security Department.<sup>9</sup>

4.2.3 In 2003 by adopting *Migration Policy P.102/2003*, the States agreed essentially that these Laws were out of date and needed to be updated and made more effective. In 2005, *P.25/2005: Migration: Monitoring and Regulation*, which put forward a number of proposals with a view to revising the existing legislative framework, was adopted by the States. It set out the following aims that have been the basis for the development of the draft Control of Housing and Work (Jersey) Law 201- (CHW Law) CHW Law and draft The Names and Address Register (Jersey) Law:

- *Create a mechanism by which the States can effectively manage the factors affecting net migration, either inward or outward, according to their agreed policies (for example, the strategic plan for 2005-2010);*

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<sup>8</sup> States Strategic Plan 2009-2014

<sup>9</sup> P.37/2011, Draft Control of Housing and Work (Jersey) Law 201-

- *Provide improved information on the total population, including the number of inhabitants and their residential status;*
- *Enable the States to monitor effectively and manage the demand on accommodation, the environment and infrastructure of the Island;*
- *Develop closer alignment between migration policy and economic, social and environmental policies of the Island;*
- *Allow the States over time to reduce the unacceptable disparity between those who have housing rights and those who are not 'qualified';*
- *Promote a business environment that is flexible and efficient, which is attractive to business and fairer to their employees;*
- *Preserve the rights and opportunities of existing residents, whilst recognising the benefits of and duties towards newcomers to the Island;*
- *Reduce bureaucracy affecting individuals and businesses, minimise complexity and streamline the existing systems for housing consent, regulation of undertakings and manpower control;*

4.2.4 Importantly it also set out clearly what any new policy would **not** be expected to do:

- *Determine the total numbers of residents that are appropriate for Jersey;*
- *Lead to immediate transformation of the housing or employment markets – any changes will be gradual and carefully managed over a period of years;*
- *Fuel an unmanaged influx or exit of people to or from Jersey;*
- *Promote uncontrolled development or exploitation of the housing market;*
- *Disadvantage any existing inhabitants, with regard to either their housing or employment rights*

- *Harm the civil liberties, human rights, privacy or data protection rights of any individuals.*

4.2.5 When they came to speak to the Sub-Panel, all Members of MAG made the point that the draft CHW Law was, in line with the previous decisions outlined above, intended primarily to provide greater information to better inform future migration and population level policy and be an effective mechanism to implement States migration policy, but not in itself to set migration levels. The Minister for Housing summed up the position, saying:

*'I think ..... this migration law is a great improvement on what we have got. It will not give greater controls, but it does give greater information, we will have a much clearer understanding of where we are, and then we need to look at it again.'*<sup>10</sup>

4.2.6 A two-phase consultation process followed on from the 2005 States agreement, with the first Consultation Paper presenting proposals to establish a Names and Address Register of all Jersey residents and to introduce a Registration Card (*"the Part One paper"*: R.110/2007). The second Consultation Paper set out proposals to replace the existing Housing and RUD Laws (*"the Part Two paper"*: R.66/2009). Detailed Findings Reports were issued, which demonstrated overall support for the proposals and outlined changes to be made as a result of the consultation (see P37/2011 Appendix 1).<sup>11</sup>

4.2.7 One such change resulting from the consultation related to the proposed extension of the current '5 year rule' i.e. being restricted for the first 5 years of residency to undertake licensed 'unqualified' work positions, to a 10-year qualifying period. It was recognised however that this extension would be difficult to achieve and potentially undesirable on a number of levels around loss of rights for existing residents and complexity, and the existing 5-year figure was therefore re-instated as a better option to go forward with.<sup>12</sup> This resulted in the creation of a fourth category 'Entitled for Work'. Other changes were made to areas such as recognition of the period allowed for people to be on maternity leave etc before they needed to apply for a licence.<sup>13</sup>

4.2.8 Another change made during the development of the Law has been to its name. When the Sub-Panel was first established in 2009 and this legislation was in development, the Law was being referred to as the *Migration Law*. The lodged Law carries a new title, the *Control*

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<sup>10</sup> Public Hearing, Minister for Housing

<sup>11</sup> P.37/2011

<sup>12</sup> Public Hearing, Chairman MAG

<sup>13</sup> Public Hearing, Chairman MAG

of Housing and Work (Jersey) Law 201-, a change that was simply made to better reflect its aims and provisions, as explained to us by the Director of the Population Office:

*'.... (the Project Officer) and I were sat at that meeting with the law draftsman and with the law officers ... We sat around, we discussed it and we said: "What does this law actually do?" It controls housing and work. We went to the Ministers and within a day the draftsman had just changed his drafting.'*<sup>14</sup>

4.2.9 The lead-in period between adoption and implementation of the law is estimated at 12 months to allow for systems development. This also gives time for discussion and debate on the draft **Regulations and Orders** supporting the CHW Law with the necessary level of detail that will be required at that implementation stage, and which are already sufficiently drafted to be attached to the lodged draft CHW Law for information and guidance on the practical detail of how the CHW Law will operate. The Sub-Panel sought clarification on any outstanding work to be done on the Regulations, with the Chairman of MAG telling us that:

*'There is some consultation to be carried out on the fees, which will come into place. There are various fees for various parts, various licences, so we have got to consult with the community about that...*

**Director, Population Office:**

*Yes. I mean the plan was to publish the orders and regs in order to be transparent about what the intentions were. So the group gave quite a lot of thought to the details of the orders and regs. Obviously they can change before they are lodged.*

**Assistant Chief Minister/Chairman Migration Advisory Group:**

*We are quite satisfied with the orders and regs, which are attached within the proposition, that that is how we would like them to be, but the only thing is the level of fees really that needs to be the only piece of work that needs to happen after that.'*<sup>15</sup>

**4.2.10 Human Rights Review:**

4.2.11 Given the nature of the legislation as a means of applying control over individuals' ability and rights to access work and housing, the Sub- Panel was keen to ascertain how the draft

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<sup>14</sup> Public Hearing, Chairman MAG

<sup>15</sup> Public Hearing, Chairman MAG

legislation was tested for its Human Rights compliance, and asked what process what was followed. The Chairman of MAG told us that the Law Officers had in fact engaged a senior human rights lawyer from London in acknowledgement of the work required, and that there had been no major amendments to the legislation resulting from that review.<sup>16</sup>

#### 4.3 What the Legislation Does

##### 4.3.1 New categories for residential status, accommodation and employment:

4.3.2 It is stated in the report accompanying the draft CHW Law, P.37/2011, that the primary aims of the Law are:

*...to preserve and maximise the benefits of Jersey's resources, to manage population density and to control work and housing, for the benefit of those with strong connections with Jersey, and generally, in the best interests of the community. It follows that the ability of a migrant to work and obtain housing is managed by this Law.<sup>17</sup>*

4.3.3 At the heart of the Law is the establishment of four new categories for residential status, accommodation and employment for all Islanders: **Registered; Entitled for Work; Entitled for Housing; Licensed**

- **Registered:**

*All newcomers to the Island will be given Registered status on arrival (unless they are already "entitled" or "licensed"). A Registered person can only work in a Registered job (the same as the current "non-local" jobs) and can only live in Registered accommodation such as a lodging house or private lodgings (the same as the current "non-qualified" property).*

- **Licensed:**

*Anyone who is not locally qualified for employment but who gets appointed to a job for which an employer has received a special licence to appoint a non-local person because of their specific skills for the job will be given Licensed status. This will be similar to the current "j" category status and will enable the post-holder to buy or rent property.*

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<sup>16</sup> Public Hearing, Chairman MAG

<sup>17</sup> P.37/2011

- **Entitled for work:**

*Anyone who has lived continuously in the Island for 5 years will be able to apply for a locally qualified job, as now.*

- **Entitled For Housing:**

*Anyone who is Jersey-born and has lived here for a total of 10 years, **or** who is not Jersey-born but who has lived here **continuously** for 10 years, will be given Entitled status.<sup>18</sup>*

4.3.4 In many ways these categories are similar to those which exist now, but with improved rights relating to obtaining and retaining residential status for non Jersey-born Islanders. In addition to the new categories for individuals, all new residential units and all existing units currently controlled by the Housing Law will become **Qualified**, available to be leased or owned, and occupied, by any Entitled or Licensed person. All existing unqualified units, such as lodging houses, will be classified as **Registered**.<sup>19</sup>

4.3.5 In addition, the draft *Register of Names and Addresses (Jersey) Law 201- P.38/2011* requires the Chief Minister to establish a Names and Address Register. It will enable the basic name and address information collected under the Control of Housing and Work Law to be shared in controlled circumstances between public authorities for statutory purposes.<sup>20</sup>

#### 4.3.5 KEY FINDING

The Control of Housing and Work Law will improve rights relating to obtaining and retaining residential status for non Jersey-born Islanders.

#### 4.3.6 RECOMMENDATION

The Sub-Panel agrees with the improvement of rights relating to obtaining and retaining residential status for new Islanders, but recommends that due attention is given to ensuring that the legitimate expectations and rights of existing Islanders are not overlooked.

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<sup>18</sup> P.37/2011

<sup>19</sup> P.37/2011

<sup>20</sup> P.38/2011, Register of Names and Addresses (Jersey) Law 201-

#### 4.3.7 Ministerial Responsibilities:

4.3.8 Under the present legislative framework, the Minister for Economic Development is responsible for the Regulation of Undertakings and Development Law, which will be repealed if the draft CHW Law is adopted. Under the new framework, the Minister for Economic Development will therefore have significantly reduced responsibility, as the legislation will be incorporated within the remit of the Chief Minister. The Minister for Economic Development will, however, sit on a formal board, created under the law, which will act as an advisory group to the Chief Minister who will be responsible for making those decisions.<sup>21</sup>

4.3.9 Perhaps the most significant change in Ministerial responsibility, however, is the transfer of responsibility for the determination of what are currently J-Category licence applications, which will become 'Licensed' status under the new Law. At present the Minister for Housing has final say on deciding those applications, but under the new Law, it would be the Chief Minister's responsibility to decide who will and who will not receive a licence. The Minister for Housing told us that this was not a change that he was in favour of, explaining:

*'I just feel that if you look at the public sector, the number of Js that are used in the public sector, the majority of those Js are used in the Chief Minister's office or around that area, and so there will be no questioning, or little questioning, I would suggest. Certainly in the short time I have been the Minister for Housing - and I cannot say for the others - for the Js going out, it is quite a robust process that is followed, and I would expect to see a very good case, a very strong case made for why this post cannot be held locally, and I would suggest it would perhaps be a little bit more relaxed.'*<sup>22</sup>

4.3.10 He also told us that he may try to reverse this change in responsibility:

*'I have made my opinion known. The law has not been changed, but there may well be a change later on, if I can put it that way, yes. I am hoping to convince my colleagues that it needs to change.'*<sup>23</sup>

#### 4.3.11 KEY FINDING

<sup>21</sup> Public Hearing, Assistant Minister Economic Development

<sup>22</sup> Public Hearing, Minister for Housing

<sup>23</sup> Public Hearing, Minister for Housing

There is potential conflict of interest in transferring responsibility for the determination of 'Licensed' post applications to the Chief Minister, given the Chief Minister's central role in the development of population policy and the relatively high number of such posts (currently J-Category) within that Department.

#### 4.3.12 RECOMMENDATION

The Control of Housing and Work Law should be amended to give responsibility for the determination of 'Licensed' post applications to the Minister for Housing, in line with the current system for J-Category licence applications.

4.3.13 The Assistant Minister for Economic Development was also questioned about this concern.

He was asked who would have their hands on the 'political levers', as this could set the policy direction when it came to determining licences, the hypothesis being that the Minister for Economic Development and Chief Minister may be more lenient with the economy their key focus, but the Minister for Housing less so with the Housing situation his key thought. In response the Assistant Minister, along with the Director of the Population, explained how those concerns were addressed under the new framework:

*'The administration of this law falls under the Chief Minister who will have behind him an advisory group but it will be a formal advisory group created under the law, the Minister for Economic Development and the Minister for Housing...*

**Director, Population Office:**

*... those 2, plus other members as determined by the Assistant Minister or Minister. The only thing I would add, the Population Office and the Ministers are very clear we have got a target of 150 heads of household and that target is between 2009 onwards, from when it was approved. We will achieve it over those years, that is what the Chief Minister said in the States yesterday.'*<sup>24</sup>

4.3.14 He continued:

*'...this law is designed to achieve whatever population targets are agreed by the States and we are under an obligation to achieve that.'*<sup>25</sup>

#### 4.3.15 KEY FINDING

<sup>24</sup> Public Hearing, Assistant Minister Economic Development

<sup>25</sup> Public Hearing, Assistant Minister Economic Development



The Sub-Panel welcomes the formation of a formal advisory group on the Control of Housing and Work Law and associated licence applications, which will contain the Minister for Economic Development, the Minister for Housing and other ad-hoc Ministers. It is important in helping to maintain a balanced approach to the determination of licence applications and associated matters.

4.3.16 The Sub-Panel also had concerns about the connected issue of what the most suitable location would be for the Population Office itself (i.e. what Department should it be part of?). It currently resides in the Chief Minister's Department, but there is an argument that, in order to allay fears outlined above and emphasise the focus of its work on the control of housing and work, the Office should be located elsewhere, perhaps most obviously the Housing Department. This was a view shared by the Minister for Housing:

*'Well, I shared that view. I do not have too many concerns about regulatory undertakings. I think that is a different activity, but in terms of controlling population, that is quite a contradiction, really, because we do not control the population, and in terms of giving out licences, looking at who should be living in Jersey, I think it should be under the Minister for Housing, personally.'*<sup>26</sup>

4.3.17 The Minister for Social Security also agreed that aspects of the Population Office could ideally reside elsewhere than Chief Minister's Department, not least his Department:

*'Perhaps some of these issues should rest with the Social Security Department who is responsible for making sure that, for those people who are out of work, there are jobs for them to go into and perhaps Social Security should have a larger input into the delivery and approval of these licences.'*

4.3.18 On whether the whole of the Population Office should relocate to Social Security, he did concede:

*'It was a nice idea but I think we have got enough to do.'*<sup>27</sup>

#### 4.3.19 KEY FINDING

<sup>26</sup> Public Hearing, Minister for Housing

<sup>27</sup> Public Hearing, Minister for Social Security

The Social Security Department would be in a unique position to correlate the numbers of people arriving with the number and nature of jobs available that cannot be filled by locally qualified persons.

#### **4.3.20 RECOMMENDATION**

The Sub Panel recommends that the Population Office should be located within the Social Security Department.

#### **4.3.21 J-Category Licences:**

4.3.22 Despite the changes that would be made under the new CHW Law, the J-Category licence will effectively remain under the new guise of the 'Licensed' status, albeit as outlined above, under different lines of Ministerial responsibility. There has been some concern that there has been too little control over the allocation of J-Category licences under the current system. The Chairman of MAG explained to the Sub-Panel how under the new system the licence would no longer be allocated to a person but to a business for specific job areas only as part of a quota system. This would also be a much tighter system than first envisaged during the initial development of the new Law:

*'The way the new legislation will work is that it was felt when it was first thought about that a business would be given just a number of (j)s, and they would be able to do what they wanted with that (j) number. But the way we intend the new legislation to work is that it will be specific to particular types of jobs, for instance, if a large legal firm wanted to take 5 auditors, or something like that, we would say specifically it would be for auditors and they could not use those 5 (j)s or 5 licensed posts for some other function within the business...originally when it was first talked about there was concern it was too loose.'*

#### **Director, Population Office:**

*The (j) cats now are always granted to a specific individual for a specific job always. There is no quota system, there is nothing. P.25 proposed a quota system. It was felt that was too loose, the employer could then just use that for anything...under the law...It has to be described to be auditors or accountants or*

*lawyers, whatever it is, and the employer has to accord with that, otherwise they are in breach of the law.*<sup>28</sup>

4.3.23 The Sub-Panel also raised the issue that, historically, J-categories have been granted on condition that the licensed person with his/her employer would train a locally qualified person up to be able to take that job at the end of the licence period, but that enforcement of this had lapsed. The Minister for Housing responded:

*'Yes, you are right, but time and time again, we have seen a reapplication in the past - since I have been there - for the post to be filled and no person having been trained, and that is the sort of thing we need to get control of.*

***The Deputy of Grouville:***

*So how do you envisage getting control of this?*

***The Minister for Housing:***

*Well, I think one thing we need to do, and it is allowed for in the new law, whether it be the Minister for Housing or whether it be the Chief Minister's department, tied in with what is allowed for in the current law, one of the things we need to look at when you give a licence or give a J that you look at how the person is going to be housed, so using more and more the fact they have to lease rather than purchase, and I think that sends the message very clearly: "We are here for a short time to do a job and then we are going home."*<sup>29</sup>

#### **4.3.24 KEY FINDING**

The criteria of the J-Category licence will effectively remain under the new guise of the 'Licensed' status.

#### **4.3.25 KEY FINDING**

The concept of the J-Category licence as a short term appointment to train a locally qualified person to undertake that job has not been adequately applied in the determination of licence applications.

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<sup>28</sup> Public Hearing, Chairman MAG

<sup>29</sup> Public Hearing, Minister for Housing

#### **4.3.26 RECOMMENDATION**

There needs to be a more concerted and transparent approach to ensuring that J-Category equivalent licences are issued for the purpose of training up locally qualified people to permanently undertake the temporarily licensed role.

#### **4.3.27 The five year rule and allocation of unqualified licences:**

4.3.28 As with the J-Category licences, the five year rule will be another aspect of the old system that would continue in the new one, and rather like the allocation of J-category licences there are existing concerns with the control provided by this mechanism. Currently, a person is restricted for the first 5 years of residency in the Island to undertake licensed 'unqualified' work positions, unless of course they arrive via other restricted criteria such as a J-Category licence.

4.3.29 It could be argued that the application of the five year rule has not been overwhelmingly successful in controlling inward migration, with the balance too much in favour of granting licences and the sheer number of licences being of concern, perhaps particularly highlighted in the current economic climate with over 1000 locally qualified people registered unemployed. The Minister for Housing, for example, told us:

*'.....the problem is not the Js. The problem is that at the moment, anybody else who lives in E.C. (European Commonwealth) who is prepared to live in unqualified accommodation, and struggle along and maybe get a not qualified job within the quota for different companies can come here.*

#### ***The Deputy of Grouville:***

*So is there a problem with the amount of unqualified quota that is being given out?*

#### ***The Minister for Housing:***

*I have no evidence to say that there is ... and it is a very difficult one, and I understand the reason for the question, and I have some concerns around that area myself...for the businesses to continue their economic activity, clearly they do not take on staff as a welfare case, they take on staff they*



*need. It is getting that balance right, and I am a little bit concerned about the lower end more than I am the J-Cats, if I was to be entirely honest.<sup>30</sup>*

#### **4.3.30 KEY FINDING**

Whilst J-Category licences have recently been more tightly controlled by the current Housing Minister, the pressures from net inward migration have arisen predominantly from the numbers of unskilled and semi skilled workers. This may compound future problems in the Island as it is this cadre of workers who may be most likely eventually to require income support and social rented housing.

#### **4.3.31 RECOMMENDATION**

There must be an inherently cautious approach applied to the allocation of unqualified licences.

4.3.32 Unqualified licences are currently granted to businesses on a 3 year basis and, in order to give businesses a degree of mid term certainty, cannot be varied by the authorities during that time. These licences are allocated across all sectors of the Island's economy and can be granted as part of a ratio based agreement that will set out an agreement for a firm to employ X amount of locals for every X amount of non-locals, or simply a fixed, maximum number of non-locals. The Sub-Panel sought to clarify how exactly the decision over whether to approve such a licence was determined, and the Chairman of MAG explained that a business makes an application and then the Population Office, if it is a relatively straightforward case, will make a judgment. If it is a contentious case it is referred to MAG.<sup>31</sup>

4.3.33 The Chairman of MAG was pushed however on what criteria were being worked from when determining the applications. It was confirmed that there was a published policy statement used for that purpose (see Appendix 3), but the Sub-Panel challenged the effectiveness of that policy statement, suggesting for example that it is not prescriptive enough (whilst acknowledging that it must not be overly so), is ambiguous and essentially too 'woolly'. It also wondered whether because of its importance, the policy statement should in fact be subject to States approval. Those concerns were responded to by the Chairman of MAG who said:

<sup>30</sup> Public Hearing, Minister for Housing

<sup>31</sup> Public Hearing, Chairman MAG

*'...other than what is in those statements in the policy, although you are saying they are ambiguous, it is very difficult to go much further than that.'*<sup>32</sup>

4.3.34 The Director, Population Office, did acknowledge that there is a degree of interpretation inherent in the process of determining applications, but said that there are clear criteria set out that guide his Office's work. For instance, when the policy statement says: "Have enough efforts been made to train local people?" the Population Office clearly knows that it needs to make a judgment as to whether that employer is doing that.<sup>33</sup> He explained how the Population Office checked whether employers are fulfilling the terms of their licence:

*'It says that our decisions have to be made with regard to the need to recruit and train local people. So we check that that is happening. Decisions are made with regard to the economy and the profitability of the business, so we check whether this is a business which is contributing to Jersey. The policy statement talks about services to customers so we have regard to whether this is an important service to a customer. Then if it is a decision within precedent and below 5 we can make it as the published delegations, if is above 5 non-locals it has to go to Ministers, and if it is outside precedent it has to go to Ministers.'*<sup>34</sup>

4.3.35 He provided further details and examples of the work carried out to ensure that criteria set out in policy are adhered to, such as local advertising of positions:

*'Take accountancy firms - it is a scenario I know well - we know, because they provide us with a copy of the advertisements, we meet with them, they tell us all the things they have done, we can see it in the papers. They show us what they have done in terms of going to the U.K., they support conferences, they might promote students. They list all the efforts they make in their submission.'*

**Senator S.C. Ferguson:**

*What about the banks? What about the trust companies?*

**Director, Population Office:**

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<sup>32</sup> Public Hearing, Chairman MAG

<sup>33</sup> Public Hearing, Chairman MAG

<sup>34</sup> Public Hearing, Chairman MAG

*The banks do the same, the trust companies do the same. All the finance companies make very detailed submissions around all the efforts they have made.*<sup>35</sup>

4.3.36 The Chairman of MAG told us that in addition to the work carried out by the Population Office, the political attitude had also recently been tightened up, reflecting the economic situation. He provided an example to illustrate the point:

*'...I can recall an application for a large restaurant which was opening and they wanted a lot of non-locals and at that stage, because of the state of the economy at that stage and there was no unemployment and no local people wanting ... very few local people wanting to work in a restaurant, they were allowed, I think, 70 per cent non-local and 30 per cent local. But we have been looking...in this last few weeks, a restaurant opening, (and) we are saying 50/50...it has been tightening up all the way as the economy has been changing and the unemployment situation. In hospitality, I suppose, at the present time, realistically are you going to get 100 per cent local people to go and work in a restaurant? Realistically. I do not think you are. We are struggling with this business, we are saying 50/50 and they are having difficulty with that decision.'*<sup>36</sup>

4.3.37 The Minister for Housing also illustrated to us this stricter approach being pursued in relation to unqualified licence applications:

*'...one of the things we have been looking at recently is - and I make the figures up...if a hotel asked for 10 unqualified and 10 qualified, we will say, broadly speaking, that for every unqualified new employee, you must employ a qualified, or the other way round. We are beginning to do that a bit more, because we had some suspicions that the unqualified people were employed and not so many of the qualified. So we are linking it, and on one case recently, they took an apprentice as well, so it was a very big application, which I hope will be successful, because it would be good for Jersey.'*<sup>37</sup>

4.3.38 The Chairman of MAG was asked whether in the future he would be looking to make the judgment calls made during the process less discretionary, and tighten up on the criteria. He

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<sup>35</sup> Public Hearing, Chairman MAG

<sup>36</sup> Public Hearing, Chairman MAG

<sup>37</sup> Public Hearing, Minister for Housing

replied that ultimately such things came down to a Minister's decision, but that he or she will have to react to what the States policy is:

*'If the States policy is to say that the Island is closed for business, the Minister will have to follow that decision. If the States decision is to have 1 per cent growth, the Minister will have to work to that. This law will achieve any of those options.*

**Director, Population Office:**

*There are 2 sets of criteria. There is one, the high level objective at 150 or whatever it might be, and then there is the detailed criteria around the individual decisions. The detailed criteria have evolved over time so, yes, they can be more specific or slightly less depending on what different Ministers and, I suppose, civil servants think. If they can be improved I do not see why we would not improve them.<sup>38</sup>*

4.3.39 The Population Office Director did explain to the Sub-Panel that, looking to the future, the criteria within the policy document are in fact broadly reflected in the new CHW Law:

*'...what we have done is we have taken them out of policy and put them in legislation, and the reason we have done that is we feel it is important there is a legislative basis, but equally, there was a decision...that it was important to have discretion, because every business case is different, and economic circumstances change. The regulation of undertakings law has been in place since 1973, so it has got to serve for 30, 40 years, we would hope.<sup>39</sup>*

**4.3.40 KEY FINDING**

Policy documents relating to the issue of migration should come forward together in a cohesive manner. Such documents would include Economic Growth Strategy, Strategic Plan, Population and Housing policy

**4.3.41 RECOMMENDATION**

Consideration should be given to addressing the following points:

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<sup>38</sup> Public Hearing, Chairman MAG

<sup>39</sup> Public Hearing, Minister for Housing



- wording in the Policy Statement for giving unqualified people work is ambiguous and should be made absolutely clear;
- headcount should not be applied or count to young and old people thus giving incentives to firms to train the young and employ the older generation. They should however be residentially qualified.
- evidence of jobs being widely advertised locally should be demonstrated before any unqualified licences are given.
- Temporary contracts should not be renewed in a continuous manner. The time worked on temporary contract should not count towards the 5 year licence.

#### **4.3.42 RECOMMENDATION**

The annual Jersey In Figures should include publication of an industry sector breakdown of the numbers of unqualified and J-Category (and equivalent) licences.

#### **4.3.43 RECOMMENDATION**

The Business Assessment and Licensing Section General Policy Statement 2009 should be re-drafted with greater clarity and precision on the criteria it contains regarding licence applications.

4.3.44 During our evidence gathering, we heard that MAG has also significantly modified the way licences would be allocated under the new system, in giving the authorities improved ability to adjust licences as the situation demanded. The Director, Population Office explained how that would work:

*'Under the current Regulation of Undertakings Law it is a 3 year licence; we cannot vary that licence during the 3 year period. The new law enables us to vary the licence at any point so we do not have to wait for 3 years to expire in future, we would be able to vary the licence to remove capacity out of a licence. So as the economy changes we could take action immediately under the new law.'*

***The Deputy of Grouville:***

*Or you could give them 5 year licences if it is not renewed in the 5 years. They could have a licence for 5 years in which those employees then have qualifications.*

***Director, Population Office:***

*We could. We could perfectly well give a 5 year licence but if 12 months later the economy deteriorates considerably the new law enables us to intervene and say: "We are going to remove that capacity."*<sup>40</sup>

4.3.45 The Minister for Social Security explained that from the point of view of his Department, the ability to revisit licences during the course of the licensed period would be a very welcome development. He explained:

*'...Currently there are 3-year licences, as I understand it it would be proposed that those 3 years are rolled on, so we will start off and everybody will have 3-year licences, but the Minister will under this legislation be able to review that licence and perhaps make a change, and that is something that I know politically from Social Security we will be very keen to see. Okay, I recognise that you cannot make people who are non-locals on a non-local licence unemployed, that would not be appropriate, but you certainly can tighten up if there is capacity on the licence for non locals and remove that to ensure that when they are looking for future employment they have to look for locals.*

***The Deputy of Grouville:***

*Would you say that is happening at the moment?*

***The Minister:***

*At the moment, as I understand it ... it might be there but I am not aware if they are doing it. The Minister does not have the power to revisit the licence and reduce it down in the 3-year period. So I think that is a good, a very positive change from my perspective of this new law.*<sup>41</sup>

**4.3.46 KEY FINDING**

The Sub-Panel welcomes the provision of the Control of Housing and Work Law enabling a licence for unqualified staff to be varied at any point.

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<sup>40</sup> Public Hearing, Assistant Minister Economic Development

<sup>41</sup> Public Hearing, Minister for Social Security

#### **4.4 The Proposed Benefits of the New CHW Law and Register of Names and Addresses (Jersey) Law 201-**

- 4.4.1 A comprehensive list detailing the intended benefits of introducing these new Laws is included within *P.37/2011* and to a lesser extent *P.38/2011*. MAG is clear that this legislation is a considerable improvement on the existing framework, although its Chairman did acknowledge that it is invariably the case that some things could be done a little bit differently and that maybe amendments would need to be made in future years as the system matured.<sup>42</sup> Nevertheless, he outlined how he envisaged the benefits of adopting this legislation extending to the States, to businesses and to individuals:

*'...This new legislation...is far better than what we currently have. There are benefits not only for our administration, it is going to be easier for administration within the department. There are also going to be some benefits for the business community as well with the joint returns and also, for instance, there will not be a need for a business to apply to us if they want to employ a new local person. They can just go ahead and do that, they do not need to make that application, whereas currently if they want to increase their workforce, they have to make an application to us and we have always got to say yes to them wanting to employ a local person, but that will be done away with in the future. They will just employ a local person and get on with it.'*<sup>43</sup>

#### **4.4.2 Benefits to the States:**

- 4.4.3 The key benefit to the States that was repeatedly raised with us is that the new legislation will provide the States with a much improved depth and range of information, and that in turn should lead to decisions related to migration and population policy being made on a much more informed basis. We asked the Chairman of MAG to outline to us his thoughts on what the key benefits that would be, and he told us:

*'I think it will. It gives us the right tools to control it a lot better than what we currently are doing. Because all the information that will be available to whoever is making the decisions, it will be far better informed decisions being made for people*

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<sup>42</sup> Public Hearing, Chairman MAG

<sup>43</sup> Public Hearing, Chairman MAG

*wanting to come to the Island and businesses who want to establish, I think it is a lot stronger than what it currently is. I am very confident of that.*<sup>44</sup>

4.4.4 We also understand that not only would the available information be better, but it is intended that it would be used more efficiently and effectively by the relevant States Departments for compliance purposes. The Chairman of MAG explained how the information would be better used across Departments:

*'I think what we are going to find is the combining of what the information from the various ... compliance is going to be a lot better than what we currently have because of the sharing of only names and address information between departments, between Income Tax, Social Security and the Population Office, and if there is any other departments that do share data. But because all that sharing of data, names and addresses, we are going to find it is going to be a lot more robust in the information that we get to make decisions about future licence applications.'*<sup>45</sup>

4.4.5 The Minister for Housing was very clear on what he thought of this benefit to the States, saying:

*'...for the first time there is much more intelligent sharing. We will know who is working and therefore we will want to know...where they are living. If we do not have both, then there will be checks.'*<sup>46</sup>

4.4.6 The Assistant Minister for Economic Development also explained the administrative benefits that would be seen by the States through the simplification of the Housing categories:

*'In Housing, for example, there is 15 different categories of classification. This law will reduce that down to 5 or 6 so administratively it is going to be a lot easier. Of course there will be some misunderstandings, we are all used to the (a) to (h) and (j)s and everything but we will very quickly, I think, get used to the new system as well and recognise it is administratively easier...The main reason behind the whole thing is to give the States, the various departments of the States, more information,*

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<sup>44</sup> Public Hearing, Chairman MAG

<sup>45</sup> Public Hearing, Chairman MAG

<sup>46</sup> Public Hearing, Minister for Housing

*more accurate information, more up to date information so that policies on migration, economic growth and so on can be more defined and more focused.*<sup>47</sup>

4.4.7 He further illustrated another key change and benefit envisaged for administrative purposes, this time in relation to the reduction that would be made in the number of returns made by businesses to the States, with a single return replacing three separate ones made under the existing system for ITIS, Social Security and manpower. He explained:

*'There will be a similar level of control but much more ease of administration because the returns that businesses currently have to produce, the manpower returns, the I.T.I.S. (Income Tax Instalment Scheme) returns, the social security returns for example, that will be done as one rather than 3 different returns. So there will be ease of administrative burden but also greater clarity of information for the Population Office, and therefore for the States to be able to make decisions on various policies regarding immigration, population and economic development.'*<sup>48</sup>

#### **4.4.8 KEY FINDING**

The new legislation will provide the States with a much improved depth and range of information, which in turn should lead to decisions related to migration and population policy being made on a much more informed basis.

#### **4.4.9 Benefits to Business**

4.4.10 A number of the benefits to business mirror those envisaged to the States. Amongst those that would be welcomed, we were told, would be the reduction in the number of returns to made that would help to reduce the administrative burden on businesses. As mentioned previously, the returns that businesses currently have to produce for the manpower, I.T.I.S. (Income Tax Instalment Scheme) and Social Security will be done as one rather than three different returns

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<sup>47</sup> Public Hearing, Assistant Minister Economic Development

<sup>48</sup> Public Hearing, Assistant Minister Economic Development



4.4.11 In addition, we heard that the employers' current 'burden' to prove the legitimate residential status of their employees would be considerably eased by the introduction of the proposed new registration card. The Director of the Population Office explained this point to us:

*'...the registration cards will clearly show residential status and at the moment the employers have to prove whether somebody has got 5 years or not. The employers have made the point, well that is an unnecessary burden on them and our view is we are better qualified to confirm if somebody has been in Jersey 5 years rather than somebody who has taken somebody on.'*

4.4.12 Despite the benefits that are envisaged, as outlined above, by those developing the Laws, there has been some caution raised by elements of the business community. Perhaps most notable was the sentiment expressed by the Jersey Chamber of Commerce during the consultation on the CHW Law that essentially, the States has no real business trying to directly control employment. Rather, population and immigration should be managed through Housing controls.<sup>49</sup> When asked what his view was on that principle, the Assistant Minister for Economic Development replied:

*'The States view is that employment is, and has been since the regulations were introduced, the real way to control population and immigration because if the economy is doing well and jobs are not available to people who have not resided here for a certain length of time then they are not going to come. If we do what the Chamber of Commerce would like to do in an ideal world, is that businesses could employ as many people as they like for whatever they like then the population is going to grow and there will be a greater pressure on housing stock. I think that is the view that I hold,(and) the States have held since the Regulation of Undertakings law was introduced...'<sup>50</sup>*

#### **4.4.13 KEY FINDING**

Benefits of the new legislation to businesses will include decreased bureaucracy as manpower, I.T.I.S. (Income Tax Instalment Scheme) and Social Security will be done as one rather than three different returns.

#### **4.4.14 Benefits to Individuals:**

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<sup>49</sup> White Paper on Migration Policy, Summary of Responses, 2009

<sup>50</sup> Public Hearing, Assistant Minister Economic Development

4.4.15 In addition to benefits to the States and to businesses, a number of benefits to individuals under the proposed legislation were identified to us. We heard that the current requirement for individuals to prove their residential status when accessing work or housing, would, like is similarly intended for employers in this area, be considerably eased by the introduction of the proposed new registration card. The Assistant Minister for Economic Development explained to us:

*'...I have been around for a long time and in one incarnation I was President of the Housing Committee and one of the biggest moans we used to get from people was when they had to prove that they were residentially qualified to buy a house, even though they were born over here and lived here all of their lives. Not only did they have to do that but of course it was also a burden on the department and currently is a burden on the Population Office. What we are trying to do is to reduce the amount of work, the amount of administration and make it easier for individuals in business to comply with what is now the Housing Law and the Regulation of Undertakings Law.'*<sup>51</sup>

4.4.16 It was also put to the Sub-Panel that the simplification of the Housing Category system would also prove to be of benefit to individuals, as it would become inherently less confusing or prone to misunderstanding. It would become less administratively daunting for individuals using this system.<sup>52</sup>

4.4.17 It is proposed that Entitled and Licensed people will be able to live in any property, be that Qualified or Registered. Registered people will only be able to live in Registered property or alternatively they would be able to share living accommodation in Qualified property with the consent of an Entitled or Licensed person who occupies the whole or a substantial portion of the property as their principal residence, i.e. on a genuine lodging basis.<sup>53</sup> However, and very significantly, introduction of the new CHW Law would lead to noticeably improved rights for unqualified (Registered) residents. The Director, Population Office explained that:

*'...unqualified people will be able to lease in future and therefore they will have security of tenure. They have no security of tenure whatsoever now.'*<sup>54</sup>

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<sup>51</sup> Public Hearing, Assistant Minister Economic Development

<sup>52</sup> Public Hearing, Assistant Minister Economic Development

<sup>53</sup> P.37/2011

<sup>54</sup> Public Hearing, Chairman MAG

#### 4.4.18 KEY FINDING

The introduction of the new Control of Housing and Work Law will lead to noticeably improved rights for unqualified (Registered) residents who will be able to lease in future and therefore have security of tenure, which they do not currently enjoy. This may, however, lead to additional pressure on housing stock.

### 4.5 Missed Opportunities?

4.5.1 Hearing about the many benefits that MAG believe are to be had if the new legislation is approved, the Sub-Panel was conscious that one significant area in particular appeared to have, perhaps, been overlooked as an opportunity to make further beneficial changes – the States payment mechanisms. There will of course continue to be payments to be made under the new system, and whilst multiple returns would be amalgamated into a single return in future return, the Sub-Panel wanted to know what steps had been taken to make it easier for people to pay? The Director, Population Office told us:

*'Just quite a short answer, we have worked closely with income tax and their I.T. (information technology) people and social security and their I.T. on streamlining the returns. As part of that we have not had a conversation with them about either speeding or slowing down the payment mechanisms. Their payment mechanisms should not be affected by our return process. This is more about getting our data into their returns and us then securing that name and address data, written in data.'*<sup>55</sup>

4.5.2 At the Public Hearing with the Minister for Social Security, the Business Support Group Manager confirmed that currently there are different financial systems in operation in as far as Social Security and the tax authorities were concerned. The Chairman asked:

*'It just seemed to me that if you are going to be looking at all the software after the legislation has passed, is this not perhaps something you should be looking at with a view to using existing systems that are out in the market place and are working, obviously profitably, for the banks because otherwise they would not be doing them?'*

<sup>55</sup> Public Hearing, Assistant Minister Economic Development



***The Business Support Group Manager:***

*We try, certainly as far as Social Security is concerned, to automate if possible using BACS for instance, the banking system. We are already looking at developing that now to do that with direct debits exactly the same way but in reverse with money coming in, so we are using existing banking systems. We work very closely with HSBC, who are our bank, to try and automate as much as possible, so we are using current banking systems.<sup>56</sup>*

4.5.3 The Business Support Group Manager also informed the Sub-Panel about a large programme of work under a banner called the Citizens' Online Services Programme that was being worked on, aimed at trying to provide easier electronic access across States services, including in this area, for Islanders.<sup>57</sup>

**4.5.4 KEY FINDING**

Work is underway on the Citizens' Online Services Programme aimed at trying to provide easier electronic access across States services, including electronic payments, for Islanders.

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<sup>56</sup> Public Hearing, Minister for Social Security

<sup>57</sup> Public Hearing, Minister for Social Security

## 4.6 1984

4.6.1 Taking an overview of both pieces of draft legislation, a case could be made that there are elements of '1984' about the envisaged system, with the controls jarring somewhat against broad liberal and free market principles that many believe in. There is proposed to be a significant level of States control over an individual's ability to access work and housing. This sentiment can be extended to the States control over business in terms of the significant restrictions placed on who they are and are not able to employ. At the Public Hearing with the Minister for Housing, the Sub-Panel Chairman asked:

*'...does it perhaps feel that (as) you have got to get permission, you have to register when you move house or when you move jobs? Does this get a feel of 1984 creeping in?*

**The Minister for Housing:**

*That is an interesting question, because just now we were talking about not having enough controls and not knowing enough about where people are.*

**Deputy S.C. Ferguson:**

*Well, coming from a different direction, you know?*

**The Minister for Housing:**

*Yes. I think that is part of modern society, part of living in Jersey and part of knowing the true nature of the population and who we have got here. It is secure.<sup>58</sup>*

4.6.2 Indeed the Minister for Social Security told us of some of his underlying discomfort with the levels of regulation and control, but recognised what he saw as its necessity:

*'I suppose the difficulty I have is when I look at the existing law, and even when I look at this law, I feel uncomfortable with the amount of regulation that is involved but we recognise that in Jersey we have got to find some way of regulating migration and immigration because we know we have got a scarce resource. So I feel just as uncomfortable about that but I recognise it is necessary and ... politicians...cannot just shirk our responsibilities in that respect, we have to get involved and sometimes there will be unintended consequences...<sup>59</sup>*

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<sup>58</sup> Public Hearing, Minister for Housing

<sup>59</sup> Public Hearing, Minister for Social Security

## **5. Implementation and Administration**

### **5.1 Introduction**

5.1.1 If adopted, both pieces of legislation would be the responsibility of the Chief Minister, in the case of the CHW Law with the support of an Advisory Group of relevant Ministers. That Law would be administered by the Population Office in close partnership with the Social Security Department. In the case of the Register, as it is a tool that would to be used by all Departments it has been deemed appropriate that the Chief Minister should be responsible for its management.

5.1.2 It is envisaged that the new legislation will require and encourage even closer co-operation between a number of Departments for the purpose of effective compliance, such as the Population Office with Social Security and the Customs and Immigration service. Consequently this closer working would also help to further break down the often criticised 'silo mentality' that can be witnessed across the States, with much closer working between a number of Departments.

5.1.3 The Population Office will also be receiving the benefits of a new IT system, something that would be happening irrespective of the new legislation as the current system is outdated and. It had originally been proposed that a direct link in would be made with Social Security's N.E.S.S.I.E. (New Employment Social Security Information Exchange) system. However, it has been decided in discussions with States Information Services that it would be a better proposition to have a standalone system which still links to the N.E.S.S.I.E. to gather the relevant information.<sup>60</sup>

### **5.2 Compliance**

5.2.1 No area perhaps better demonstrates the need for and encouragement of closer working between relevant parts of Departments than the area of compliance, most notably the Population Office with Social Security but also the Population Office with others such as Customs and Immigration and Income Tax. It is envisaged that pooling resources and improved sharing of information will lead to a more efficient and effective compliance operation.

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<sup>60</sup> Public Hearing, Chairman MAG

5.2.2 The Population Office currently has 1.6 full time equivalent positions (2 people) specifically for compliance. The Sub-Panel was told that there are no immediate plans to increase that resource, although it was acknowledged that if, once the system is up and running, it became clear that there may be a need for more compliance officers, a judgement would have to be made as to whether to seek to increase the numbers.<sup>61</sup>

5.2.3 There are concerns about the assessment that 1.6 F.T.E. will be sufficient to carry out the compliance, in conjunction with closer working relationships and better information sharing with the likes of Social Security, a new IT system, and also reliance in part upon the inherent honesty of employers, landlords and people in general. With no additional 'boots on the ground' and indeed an overall saving of £33,000 over administering the current legislation, the Director of the Population Office explained how with the new information, with the new powers the law gives, his Office will be able to undertake more compliance activity than it can now within existing resources:

*'In terms of the boots on the ground, we will have the same level of resource. I think there is a business case to be made at the law's end and if that is not enough then we will make that. But even reviewing the exception reports, you know, you can call employers, you can call landlords, you can do quite a lot of compliance over the phone. So the officers who are currently doing paperwork will be reviewing exception reports and chasing up. If there is not then compliance then it goes to the genuine compliance officers, boots on the ground people to prepare the prosecution cases. That will stay the same. The only other thing I would say is, the boots on the ground at Social Security will also be able to help us in future. At the moment when they find an employer who is not making a return for every employee and they fix their own compliance, that does not help us at all.'*<sup>62</sup>

5.2.4 He further explained:

*'They (Social Security) are a bit like us...they have a small core of boots on the ground and then they have a wider compliance team that calls people and chases people in different ways. So, yes, it is limited but it certainly is a lot bigger than what we have got now. The same applies to income tax. If income tax find an employer who is not making an I.T.I.S. (Income Tax Instalment Scheme) return for their employees and they force that person to do that, we will have that information*

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<sup>61</sup> Public Hearing, Chairman MAG

<sup>62</sup> Public Hearing, Chairman MAG

*also. So we can get benefits out of other people's compliance work. There is still a question of whether that is enough but it is more than we have now.*<sup>63</sup>

5.2.5 The Director of the Population Office explained how his Department's link to Customs and Immigration is already established and works well, something that it proposed to continue under the new system:

*'...we work closely with them with a view to picking a day or picking the boats where we know there is going to be lots of vans, they assist us with inspections so we work well with them.'*<sup>64</sup>

5.2.6 The Minister for Social Security told us about how he saw the joint working for compliance purposes with the Population Office not impacting on the resources of his Department, whilst still being of real benefit to the Population Office:

***Deputy J.M. Maçon:***

*'...we have been told in hearings that one of the benefits from Population's view is that they will gain access to your compliance officers; they have been referred to as "boots on the ground." The implication there for your department with the new system, there is a training aspect which needs to be updated and talked upon; I do not know if that has been factored into the resources or if that has been thought about. Then, ongoing, whether there has been any discussion on compliance with your department and whether there will be enough compliance officers.*

***The Minister:***

*Can we say you never have enough compliance officers ... no, this is an area that we have strengthened and I cannot say what is in the budget with respect to this particular area, but there are reviews, visits that we undertake which should feed into helping the Population Office know when people are employed by an employer and what their status is. So in our normal field visits of review, they will be able to go away and cross-match that data, I think, is what really they are talking about and the help that they will be able to leverage off our officers.*<sup>65</sup>

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<sup>63</sup> Public Hearing, Chairman MAG

<sup>64</sup> Public Hearing, Assistant Minister Economic Development

<sup>65</sup> Public Hearing, Minister for Social Security

5.2.7 The Chief Officer, Social Security, confirmed to the Sub-Panel that the closer working relationship with the Population Office would not be a drain on his Department's resources:

*'Many of the tasks that we are talking about will not produce a great deal of extra work, it will just get done once as opposed to getting done by different teams, so when we go to look at employers' books we are looking to see if the return is in accordance with what the books are showing, whether they have got other employees and such like. So that work will be of interest to the Population Office as much as it is for us but at the moment we do it for Social Security purposes only so there will be a great deal of work that can be done once as opposed to being done by different teams.'*<sup>66</sup>

#### 5.2.8 KEY FINDING

Closer working between relevant parts of Departments in the area of compliance, most notably the Population Office with Social Security, Customs and Immigration and Income Tax will make best use of available resources. Combined with improved sharing of information this will lead to a more efficient and effective compliance operation.

5.2.9 The Chairman of MAG highlighted to us how the IT system was going to be an important part of the compliance process and how resources should not need to increase:

*'The combination of having the access to sharing information across the various departments is going to create the ... there is going to be no additional costs other than what I have mentioned. So there is no real need for additional funding. Our existing staff within the Population Office will be monitoring the information from on the database and obviously Social Security, when they are having their returns done, if they identify that they have a name that we do not have, that sort of thing will highlight if there is any gaps and vice versa. So I think the mechanism we are putting in place technically is going to help the compliance quite considerably.'*<sup>67</sup>

5.2.10 Another point raised to us by a number of witnesses was the inherent honesty of most employers, landlords and individuals in general, which helps to give context to the scale of

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<sup>66</sup> Public Hearing, Minister for Social Security

<sup>67</sup> Public Hearing, Chairman MAG

the compliance work required. The point that most people were not going to break the Law was summed up by the Assistant Minister for Economic Development when talking to us about employers:

*'No, I think what ... the vast majority of employers, and particularly the major ones are responsible people and have got no interest in employing people illegally because the impact and the repercussions if they are found out so doing are not worth considering. The reputational risks are not worth doing. It does not matter what controls you put in place, you might always find the odd ones who abuse it, try and get away with it and probably some do. It does not matter what law you have, the question you have to ask yourself is how significant and how important are these. If you think about (Customs and Immigration), I think they found 3 illegals last year...'*<sup>68</sup>

5.2.11 Despite the system of compliance that will be in place, as outlined above, the Population Office Director and Minister for Housing did caution that it was almost inevitable that a 'black market' of one size or other would always exist:

***'Population Office Director***

*We will have significantly more information that we have now, and we will have departments able to share that information. Will there still be a black market? Yes. Will it be small? I think so, yes.*

***Minister for Housing:***

*What we will not know - as Paul called it, the black market - is about the few that do not pay Social Security, do sleep in the back room, and that is something that needs to be sorted out as they are coming in the docks. There are a few.*

***Population Office Director:***

*I mean, they will be linked up by D.V.S. (Driver and Vehicle Standards); if they have got a car, we will know about them, will be linked up in terms of the subsidies given to G.P. (General Practitioner) payments, so if they go to the G.P. we will know about them. Anybody who is interacting with the public sector at any level,*

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<sup>68</sup> Public Hearing, Assistant Minister Economic Development

*we will know. If they stop doing that, we will mark them as a leaver, we will investigate. Social Security currently do that in isolation.*<sup>69</sup>

#### **5.2.12 KEY FINDING**

Despite an improved system of compliance it is inevitable that a 'black market' of some size will continue to exist.

### **5.3 Data Protection: Names and Addresses Register**

5.3.1 The Register would be, if approved by the States, a basic set of name and address information available for use by all Departments, with the aim of assisting the improvement of public administration and public service. However, there have been concerns raised during its development about how the data will be managed from a security and data protection point of view. MAG has therefore engaged with the Data Protection Commissioner during consultation process in the development of the proposals and the Law has also been subject to a human rights compliance check. It has been deemed compliant with both data protection and human rights principles.<sup>70</sup>

5.3.2 We asked a number of witnesses at our Public Hearings about this important issue. Responding to how he saw the use of the names and addresses register being managed and the quality of the confidentiality between data is assured, the Chairman of MAG told us:

*'The experience we have had with the N.E.S.S.I.E., Social Security system, it is very robust and I cannot recall, having been there for a few years myself, having a problem with the confidentiality of the information at the Social Security Department... So I ...have got no reason to believe that there will be anything different with regards to confidentiality. The use of that information across departments is going to be of great benefit but we know it is just limited for the purposes that we are wanting currently for our legislation but there will be an opportunity by regulation if the Health Department wanted to send screening or something for some sort of health condition, for some health screening. If by then taking a regulation and asking the States to approve the use of the information for that sort thing will that can be done as separate thing. But I think that the names*

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<sup>69</sup> Public Hearing, Minister for Housing

<sup>70</sup> P.38/2011



*and address register is going to have so many spin off benefits to not only help us with our work but for the rest of the States as well.*<sup>71</sup>

5.3.3 The Director, Population Office told us that:

*'...as an organisation and as civil servants we have obviously ... it is our job to be professional. We work closely with the Information Security Department, they have done a risk assessment on this to adjudge what level of resource and security control should be put around the system and the system will be designed accordingly.'*<sup>72</sup>

5.3.4 He also went on to explain the involvement of the Data Protection Commissioner in an independent oversight capacity:

*'...we have specifically, and obviously on purpose, created an independent role within the law, which is required to report to the Minister and the Minister is required to place that report before the States and they report annually on the confidentiality and integrity of the data on any compliant they receive. Our understanding is the Data Protection Commissioner is going to take that on as an additional role at no extra cost. So there is independent oversight and obviously we have our own procedures.'*<sup>73</sup>

5.3.5 The Minister for Housing echoed the sentiments expressed by some others that Departments already successfully handle a lot of sensitive information, and that there should be no change to that situation with the introduction of the Register, although it was raised by the Sub-Panel Chairman that a report by the Comptroller and Auditor General had raised some criticism about States data security:

*'Well, given that all the departments currently handle confidential information, Social Security, the D.V.S., ourselves, I cannot see that that is any different.'*

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<sup>71</sup> Public Hearing, Chairman MAG

<sup>72</sup> Public Hearing, Assistant Minister Economic Development

<sup>73</sup> Public Hearing, Assistant Minister Economic Development

**Deputy S.C. Ferguson:**

*I believe that there was a report by the Auditor General on data security with a certain amount of criticism of the way the States handled it, which you may wish to revisit.*

**The Minister for Housing:**

*Or visit.<sup>74</sup>*

**5.3.6 KEY FINDING**

Many States Departments already successfully handle a lot of sensitive information, and no reason was found to lead the Sub-Panel to believe that this situation will not continue with the introduction of the Name and Address Register. It is of additional reassurance that the Data Protection Commissioner will undertake an independent oversight role of the management of the data on the Register.

**5.4 Cost**

5.4.1 Based on the 2011 budget, the administration of the RUD Law currently costs £337,000, with the remaining £440,000 cost of the Population Office being attributable to the administration of the Housing Law. At present the projected cost of administering the new controls is £781,000. The overall net effect of the changes is a projected saving of £33,000.<sup>75</sup>

5.4.2 It is proposed that a capital investment of £565,000 is also required, predominantly for the new IT systems, which could have an expected life of 8 – 10 years.<sup>76</sup> The Sub-Panel had learnt that the existing systems of the Population Office are already over 12 years old, and in need of replacement, irrespective of whether this Law is approved. The proposed IT system costs are presently under review, and may result in increased savings, as explained by the Chairman of MAG:

*'It is projected that we will have a saving of £33,000 to the annual costs of administering, compared to our existing controls, but the caps on investments which we are all anticipating for the new system is £565,000. We would be incurring costs anyhow because our existing system is 12 years old and it needs*

<sup>74</sup> Public Hearing, Minister for Housing

<sup>75</sup> P.37/2011

<sup>76</sup> P.37/2011

*replacing anyhow. But the new system ... but there is a possibility that that cost may come down because the I.T. people are looking at doing ... that was the original estimate for linking in with the Social Security N.E.S.S.I.E. (New Employment Social Security Information Exchange) system, to use that. But the I.T. people are looking at now is having a standalone system which still links to the N.E.S.S.I.E. system to get the information but it is a separate system. So that may be a cheaper way of doing it.'*<sup>77</sup>

5.4.3 The Director of the Population Office added at our Hearing with the Minister for Social Security that:

*'One of the reasons I.S.T. (Information Systems Technology) are reviewing the solution at the moment is with a view to making sure that technology is future-proofed to enable that so, from my understanding, that is very high on the agenda of this work group and that is why the decision is being reviewed, to make sure it can achieve that.'*<sup>78</sup>

#### 5.4.4 KEY FINDING

There is an overall projected saving of £33,000 to the annual cost of administering the new legislation, compared to the current system.

#### 5.4.5 RECOMMENDATION

All efforts should be made to achieve the savings being examined by Information Services regarding the new IT system for the Population Office.

5.4.6 By way of context, the planned cost compares with Guernsey at £832,000 (2009) and the Isle of Man £292,000, (2008 and without any controls over housing) when these jurisdictions have workforces that are 20% – 40% smaller than Jersey's, and when they do not operate a Population Register as Jersey intends to.<sup>79</sup>

5.4.7 A process of public engagement will also take place on fees, including outline proposals to achieve full cost recovery for the administration of the Law. In doing this, the aim will be to

<sup>77</sup> Public Hearing, Chairman MAG

<sup>78</sup> Public Hearing, Minister for Social Security

<sup>79</sup> P.37/2011

introduce fees which are modest and fair, and which do not harm entrepreneurial activity or economic diversity.<sup>80</sup> The Chairman of MAG told us:

*'There is some consultation to be carried out on the fees, which will come into place. There are various fees for various parts, various licences, so we have got to consult with the community about that. Is that the main consultation?'*

**Director, Population Office:**

*Yes. I mean the plan was to publish the orders and regs in order to be transparent about what the intentions were. So the group gave quite a lot of thought to the details of the orders and regs. Obviously they can change before they are lodged.<sup>81</sup>*

**5.4.8 KEY FINDING**

A process of public engagement will take place on fees, including outline proposals to achieve full cost recovery for the administration of the Law.

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<sup>80</sup> P.37/2011

<sup>81</sup> Public Hearing, Chairman MAG

## 6. Examination of Alternative Controls

### 6.1 Border Controls and Work Permits

6.1.2 Looking out to countries such as Australia with its immigration points system and the United States of America with its Green Cards and Visas, it is possible to see alternative methods of control over inward migration. Within the existing legal framework applicable to Jersey, British and European Union nationals have the right of abode here, and the Island does not have the ability therefore to apply border controls over those nationals. The Common Travel Area (CTA), which began as a purely administrative arrangement dating back to the 1920s, allows free travel between the United Kingdom, Ireland, the Channel Islands and the Isle of Man. It was put on a full statutory basis in the UK by the Immigration Act 1971. The 1971 Act has been extended to Jersey, latterly by the Immigration (Jersey) Order 1993 and this duly regulates the control of entry and right of abode in Jersey for as long as the Island is bound by it.<sup>82</sup>

6.1.3 Movement between the participating jurisdictions does not require the presentation of a passport or the imposition of border controls, which would allow persons to be refused entry at the border. Section 1(3) of the 1971 Act, as extended, states:

*"Arrival in and departure from the [Bailiwick of Jersey] on a local journey from or to [the United Kingdom, the Bailiwick of Guernsey, the Isle of Man] or the Republic of Ireland shall not be subject to control under this Act, nor shall a person require leave to enter the [Bailiwick of Jersey] on so arriving, except insofar as any of those places is for any purpose excluded from this subsection under the powers conferred by this Act; and in this Act the [Bailiwick of Jersey] and those places, or such of them as are not so excluded, are collectively referred to as "the common travel area".<sup>83</sup>*

6.1.4 As a result of Jersey's participation in the CTA, only a person who is not a British citizen, a Commonwealth citizen to whom the Act refers or a national of a European Economic Area (EEA) Member State (European Union Member States plus Iceland, Norway and Liechtenstein), is not entitled to enter Jersey unless he or she has been given permission to do so.<sup>84</sup>

<sup>82</sup> HM Revenue and Customs Report, February 2008

<sup>83</sup> Immigration Act 1971

<sup>84</sup> SR14.2008, Education and Home Affairs Scrutiny Panel Customs and Immigration Report

- 6.1.5 Furthermore, all nationals of other EEA Member States do not need leave to enter or remain in Jersey provided that they would be entitled to enter or remain in the United Kingdom. These rules arise as a result of the terms of the Immigration Order coupled with the provisions in Protocol 3 to the Treaty of Rome.<sup>85</sup>
- 6.1.6 Entry into and stay in Jersey by those individuals not having the right of abode is regulated in accordance with the 'Directions' given by the Lieutenant-Governor under section 1(4A) of the Immigration Act 1971 of the United Kingdom as extended to Jersey by the Immigration (Jersey) Order 1993.<sup>86</sup>
- 6.1.7 It is within this context that it would appear that border controls would not be a means by which the number of people living and working in Jersey can be controlled. It is also why direct controls over access to housing and work have been developed, as they can be proportionately used.<sup>87</sup> Nevertheless, is the area of border controls and permits one that should in fact be investigated further to see if it might be possible and desirable to make the required legal changes in order to develop a potentially simpler alternative to the proposed legislative framework for our control over immigration? In response the Chairman of MAG told the Sub-Panel:

*'I think even if we have border controls we would still want to have some sort of control over the housing and access to work. You mean, if that is all we had, if we just had border control?*

**Senator S.C. Ferguson:**

*If you had border controls and people had not got the necessary visas or something, you could just send them back, as the Americans, the Australians and all these other people do, as the Danes are doing now because they have just put their border controls up again. The French and the Germans, I think, are insisting on a renegotiation of the Schengen agreement, which is the free travel within the E.U. (European Union) area. Is that not going to be easier than this rather complicated system of looking at a housing/work system?*

**Assistant Chief Minister/Chairman Migration Advisory Group:**

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<sup>85</sup> SR14.2008

<sup>86</sup> SR14.2008

<sup>87</sup> P.37/2011

*I think constitutionally...If we want to renegotiate that and perhaps if Jersey had its own border controls, we would end up having to show our passports to go to the U.K. and all those sorts of things. That would all have to be renegotiated. I think even if we had that, we would still want to have some control over who could live in what house and who could work where. I think you would still want that, even if you had the passport control, the immigration control...I think that might be a separate piece of work that somebody else looks at. But as far as this legislation is concerned I think it would still have a function.<sup>88</sup>*

6.1.8 The Minister for Housing was asked about the question of whether Jersey could strengthen its ability to control entry at the borders. In response he indicated that he had some sympathy with the idea:

*'I have asked that question, and it is very difficult because of this commitment with the E.C.*

***The Deputy of Grouville:***

*But do you feel that the Chief Minister's office have taken a certain position on this, based on certain legal advice which could be challenged or interpreted differently, and do you think we should revisit that?*

***The Minister for Housing:***

*I have challenged it and been told very clearly that this is based on the legal advice.*

***The Deputy of Grouville:***

*Well, yes, it is, but should somebody be looking at the legal advice, because...*

***The Minister for Housing:***

*Well, to be honest, I think what we need to do is this migration law is a great improvement on what we have got. It will not give greater controls, but it does give greater information, we will have a much clearer understanding of where we are, and then we need to look at it again...<sup>89</sup>*

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<sup>88</sup> Public Hearing, Chairman MAG

<sup>89</sup> Public Hearing, Minister for Housing

6.1.9 Moves being made to revisit border controls by countries within the border control free Schengen zone within the European Union were raised by the Chairman of the Sub-Panel with the Minister for Housing, who again demonstrated his interest in what may be possible in this area:

*'...there have been calls in the E.U. (European Union) to revisit the Schengen Agreement, which is the agreement on the free travel area within the E.U., given that countries within the E.U. are in fact reinstituting border controls - I believe the Danes have got theirs up already - is this an area you aware of?*

***The Minister for Housing:***

*I was not aware of it, but that is of interest to me, certainly.*

***...Deputy D.J. De Sousa:***

*It is also a well-known fact that Australia, for a long, long time, has had a control on who goes there and who stays there.*

***The Minister for Housing:***

*That is the sort of comment I make as well, in America, because they are not in the E.C., and the advice that I have been given is that because we are in the E.C., although other E.C. countries are beginning to look at borders, that may well be to our advantage.<sup>90</sup>*

6.1.10 The Sub-Panel spoke to the Population Office Director on the issue of border controls, and he outlined the fundamental position Jersey had to begin from when considering such policies:

*'...Jersey is part of the British Isles and therefore British people have free movement into Jersey.*

***Senator S.C. Ferguson:***

*But given the appalling performance of the U.K. Immigration Office, which we have seen a lot about in the last few weeks...*

***Population Office Director:***

*The U.K. does have border controls.*

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<sup>90</sup> Public Hearing, Minister for Housing



**Senator S.C. Ferguson:**

*Yes, but given that the U.K. border controls are not really working, or are working very poorly, we could have a problem....*

**Population Office Director:**

*...The only other thing I would say is even if we did have border controls, referring to what to what the Minister said before about the needs of business, we would still have the same level of applications, and probably we would have more, because they would be on an individual basis, and we still have the Minister making decisions whether to let those people in or not...<sup>91</sup>*

**6.1.11 KEY FINDING**

The Sub-Panel has not been convinced that sufficient work has been carried out in examination of all of the alternatives to the proposed system of migration controls.

**6.1.12 RECOMMENDATION**

Further research on the matters of work permits, border controls and Protocol 3 should be researched and reported accordingly. Decisions should then be made at a political level as to their worth.

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<sup>91</sup> Public Hearing, Minister for Housing

## 7. Registration Cards

### 7.1 Introduction

7.1.1 The draft CHW Law sets out the framework for the introduction of a new Registration Card that it is envisaged will be required to be used by individuals to prove their residential status when accessing work or engaging in a new purchase/lease of housing. It is intended that the use of the card will make those processes less burdensome than the current systems for the individuals, landlords, employers etc involved, as a person's entitlement will be clear without additional checks having to be made, whilst also feeding into the broader purpose of the new Register. It is also anticipated by MAG that it will assist with compliance in particular in the area of accessing work, as it will mean that employers will not have to be relied upon to undertake the task of confirming their new employees' residential status.<sup>92</sup>

7.1.2 The Registration card is designed to be basic, recording the holder's name, social security number, issue date (and if required expiry date), and residential status. The cards are due to be combined with the existing Social Security card, and the Social Security Department is proposed to be the location from where cards will be issued.<sup>93</sup> The expiry period for a card will match the ability to lose the relevant residential status, meaning, for example, that permanent cards will be issued to Island born 'Entitled' individuals.

7.1.3 During the development of the legislation, it had been envisaged that all residents of Jersey would have to obtain a card within a fixed period after it had come into force. However, this requirement was amended in order to reduce the bureaucracy involved in issuing so many cards, and particularly to established residents and who have no obvious need for one, for example a retired person who continues to live in their home. Under the lodged proposals, unless exempted by the Minister:

*...a 3 month period of continuous ordinary residence for (new) arrivals, or the taking-up of employment, or the purchasing or leasing property are the 3 trigger points upon which Islanders will be required to register.<sup>94</sup>*

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<sup>92</sup> P.37/2011

<sup>93</sup> P.37/2011

<sup>94</sup> P.37/2011

## 7.2 Should the Card Have a Photograph?

7.2.1 As outlined previously, the Registration cards are designed to be basic, recording the holder's name, social security number, issue date (and if required expiry date), and residential status. The card will be used in conjunction with photographic identity as proof ID. The Report accompanying *P37/2011* outlines that the Minister is able to require other information on the card concerning any conditions of the residential and employment status of the card-holder, and by Regulation the States may also specify other information to be included on the card concerning the card-holder, including making provision for a registration card to include a photograph of the card-holder.<sup>95</sup>

7.2.2 The Sub-Panel wanted to know what consideration had been given to this issue of including a photograph on the card. It was apparent from the consultation that took place on it that respondents were divided between those in favour of including a photograph, mainly for ease and administrative reasons, and those who did not, mainly because of privacy reasons and concerns about identity theft.<sup>96</sup>

7.2.3 The Chairman of MAG told the Sub-Panel that whilst on personal level he did not have an issue with the inclusion of a photograph it was not required for the purpose for which the card was intended.<sup>97</sup> This stance was also taken by the Minister for Housing who told us:

*'...I do not have a problem whether - and I will answer your question in a second - there is a photograph or there is not, but in the short time certainly that I have been Minister, we do not need a photograph for the purposes that we are working on. Some people would like to have it there because they would like to use it for other things...'*

***The Deputy of Grouville:***

*But why not, if we are devising ...*

***The Minister for Housing:***

*Because we do not need it for the purposes for which we are using the registration card.'*

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<sup>95</sup> P37/2011

<sup>96</sup> P37/2011

<sup>97</sup> Public Hearing, Chairman MAG

***The Deputy of Grouville:***

*But it just means people have to identify themselves at some point, so they have to come along with their passport and the card.*

***The Minister for Housing:***

*You only do that if you want to move house or flat or you are applying for a different job.<sup>98</sup>*

7.2.4 The Assistant Minister for Economic Development explained his thoughts on the matter to us, which further indicated that MAG had taken a pragmatic approach and not included a photograph because it was not required for the job intended, and consequently to perhaps avoid what could therefore be seen as an unnecessary and potentially awkward political debate. It was not a decision taken because they were ideologically opposed to its inclusion:

*'...The Migration Advisory Group do not mind whether there is a photograph on it or not. We have consulted quite a lot on this and it seems to me on the consultation it is probably about 50/50 people do not want photographs on cards and people that do. We have gone down the current route which we do not have photographs on social security cards, for example, so we have left it like that. If someone brings an amendment to the law that there should be photographs on, they are not going to find us fighting them very hard. In some ways it would make life easier because it would be an identity card as well for the purpose of the law, but because it could then be construed as an identity card you will get the other side of things, the Big Brother people who would not want it.*

***Senator S.C. Ferguson:***

*There is a sort of visceral objection to it, an identity card.*

***The Assistant Minister for Economic Development:***

*Yes. The reality is the bulk majority of us already carry cards with photographs on them, my driving licence, my bus pass. [Laughter] It is true.<sup>99</sup>*

7.2.5 The Minister for Social Security, however, did hold a personal view that a photograph should not be put on the card:

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<sup>98</sup> Public Hearing, Minister for Housing

<sup>99</sup> Public Hearing, Assistant Minister Economic Development

*'I am personally of the view that I do not want a photograph on it ... I do not want to see a photograph on it because of the civil liberty issue. But...that is a personal view.'*<sup>100</sup>

7.2.6 The Sub-Panel sought to ascertain the costs that had been worked out for the possible introduction of a photograph on the card, and the Chairman of MAG told us that a card without a photograph would cost 10p to produce, and £3 with one. He outlined the problems this posed:

*'...if you multiply that up, what are you going to do, are you going to charge everybody to have a card or are we going fund it and it will add to the cost of doing the system? So there is quite a difference between 10p and £3.*

**Deputy D.J. De Sousa:**

*...all the parishes must have facilities because our driving licences now are like credit cards with a photograph on. So the facilities are there...*

**Director, Population Office:**

*That costing is a standalone costing, what it costs us. If the States brought forward a regulation or anybody brought forward a regulation, we would obviously look at alternative solutions to paying £2 or £3. But I imagine they would have their own complications in terms of merging it with the driving licence.*

**The Deputy of Grouville:**

*Why could you not charge the customer £3?*

**Assistant Chief Minister/Chairman Migration Advisory Group:**

*We have tried not to introduce those sorts of charges for this sort of thing, but that is ...*

**Deputy D.J. De Sousa:**

*Because to charge is going to discourage people from getting a card?*

**Director, Population Office:**

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<sup>100</sup> Public Hearing, Minister for Social Security

*Yes, but if somebody said put a photograph on the card or the States did, we would go through those sort of processes.<sup>101</sup>*

### **7.3 Fraud**

7.3.1 In the context of minimising identity fraud the Sub-Panel wanted to establish what thought had been given by MAG to whether a photograph on the card would be useful. The Chairman of MAG told us that :

*'The way we are proposing it is that the passport or photographic I.D. (identity) alongside the card will do what we need it to do...*

**Senator S.C. Ferguson:**

*...are you going to make provision in the rules for the local people who do not have passports?*

**...Director, Population Office:**

*We will have to design procedures, we fully expect to have people who do not have passports. We have talked to immigration and the passport office, they have their own procedures to prove who somebody is who does not have any identification when they first give a passport so we would use those sort of procedures.<sup>102</sup>*

7.3.2 The Minister for Social Security, whilst acknowledging that the matter had not been specifically considered by his Department, expressed the view to the Sub-Panel that his initial thought would be that the inclusion of a photograph was unlikely to lead to any obvious additional benefits to its compliance work:

*'I am just trying to think about our compliance work, whether it would be helpful in that respect. It may be but, equally, it may not be because we look at the cards that the employer would have and their records as well.*

**The Deputy of Grouville:**

*And if I drop my card in the middle of the Royal Square by mistake, and it has got no photograph ...?*

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<sup>101</sup> Public Hearing, Chairman MAG

<sup>102</sup> Public Hearing, Chairman MAG

**The Minister:**

*Then you would bring it to the department and hand it in, or whoever found it would. It would not have a photograph on it so ...*

**The Deputy of Grouville:**

*Exactly, that is my point, so anyone could pick it up and use it.*

**The Minister:**

*Well, no. I do not think they could because you would still need, if you are transacting with someone, be it employer or landlord et cetera, then you still could have another primary source of identity that you would show alongside the card.<sup>103</sup>*

7.3.3 Further scenarios of possible fraud were raised by the Sub-Panel, and whilst the Director of the Population Office conceded that it was always difficult to design fraud out of such a system, he outlined in detail how there were layers of safeguards in place:

*'There is a question of designing out fraud from any system and it is not easy at all. There is an obligation on the employer to check the person is who they say they are. Therefore if somebody got hold of somebody else's card, they would have to have the same name, for example, so it is not that easy. Then they would have to prove who they are, then we get a return in relation to that person.*

**The Deputy of Grouville:**

*Well, they might just borrow that person's identity.*

**Director, Population Office:**

*In which case we would have 2 people working paying Social Security contributions living in different addresses with the same name and same Social Security number. You can quite readily pick up that sort of duplication. We just have to design systems, procedures and reports that we can pick up duplication in particular. We would also have to physically police the employers. We would have to go down there and see that they were doing what they are supposed to be doing...*

**Project Officer, Population Office:**

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<sup>103</sup> Public Hearing, Minister for Social Security

*I think it is likely as well that the number on the card is going to be related to the Social Security system so whoever is forging a card is going to have to come up with a number which might well show up in any reporting system as just not one that fits.*<sup>104</sup>

#### 7.3.4 The Director of the Population Office continued:

*'Then they might be registered at Health and they would have to have the same age and same place of birth as well as the same name. It gets quite hard to walk around Jersey with somebody else's card and not to be tripped up at some stage. So we would have to have the right exception reports and the right inspections of employers...*

**Deputy D.J. De Sousa:**

*What would happen in the case ... that somebody adopts the identity of a deceased person because often deaths are printed in the paper? How would you flag that up if it were to happen?*

**Director, Population Office:**

*It is a very good question. I think identity fraud is very difficult to design out of any system. I suppose the first point I would make is at the moment it would be tremendously difficult to design out of the system because we are one small department and if somebody comes to us and somehow proves they are a person who is qualified and applies for the consent, frankly we might issue that consent. At least in future we will have the links of other departments so we will have a means of corroborating data so I would imagine we would find out they were dead...Social Security might have given a death grant, the hospital might have something registered on them so I am confident we can design procedures to design out fraud in most cases most of the time. Will we design it all out? No.*<sup>105</sup>

#### 7.3.5 KEY FINDING

The use of photographs on registration cards as a means to help prevent fraud has not been given adequate consideration.

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<sup>104</sup> Public Hearing, Chairman MAG

<sup>105</sup> Public Hearing, Chairman MAG



#### 7.3.6 RECOMMENDATION

More work should be undertaken on the benefits of the inclusion of photographs on registration cards.

### 7.4 What Happens to the Card When a Person Leaves Jersey?

7.4.1 It is presently envisaged that anyone leaving the Island must notify the authorities and hand in their card. Policies and procedures are due to follow to support compliance efforts in general and to take people who have left off the Register, for example to ensure up to date data, and address precisely the issue of what will happen to the cards. The matter was raised with the Assistant Minister for Economic Development who echoed the sentiments of other MAG members that we heard from during our Public Hearings that the system would soon indicate discrepancies that would indicate that somebody had left:

***'Deputy D.J. De Sousa:***

*...People are not going to necessarily just hand their cards back in so where have you come with that? Are you going to look at making a charge...?*

***The Assistant Minister for Economic Development:***

*Certainly at this stage we have not thought about making a charge. The reality is, of course, that, you know, some will leave the Island and will not return their cards; some will leave the Island with the intention of returning but do not return. But we will very soon pick them up when they do not appear on our housing record, social security record or tax record or manpower return after a few months we will be able to pick up very quickly that they have gone.'*<sup>106</sup>

7.4.2 The matter of how to deal with people leaving was also addressed by the Minister for Social Security. He acknowledged that there were challenges to be overcome:

*'We do have some controls now about people exiting the system but I think it would be naive for us to think an enhanced system, whereby there will be an obligation to*

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<sup>106</sup> Public Hearing, Assistant Minister Economic Development

*deregister, is going to be straightforward. In actual fact, potentially it needs thought about how it will work in practice.*

***...The Population Office Director:***

*What has been important to us is that example whereby somebody goes away with a card that says they are entitled, and somehow they then lose that status and therefore the cards will reflect any conditions around it. So if somebody is capable of losing their status within 3 years, the card will make that clear. Most cards will have a 5-year expiry date because most people are not capable of losing their status within 5 years. So the operation of the card has been matched precisely to the regulations as to how you become and retain entitlement. To take another example, if you are permanently entitled by virtue of being Jersey-born, for example, if you are not permanently entitled, your card will say: "5 years." <sup>107</sup>*

#### **7.4.3 RECOMMENDATION**

There should be an examination of the levying of a charge for the registration card to help cover costs and act as an incentive to hand the card back, which in turn will lead to a more efficient way of knowing who has left the Island.

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<sup>107</sup> Public Hearing, Minister for Social Security

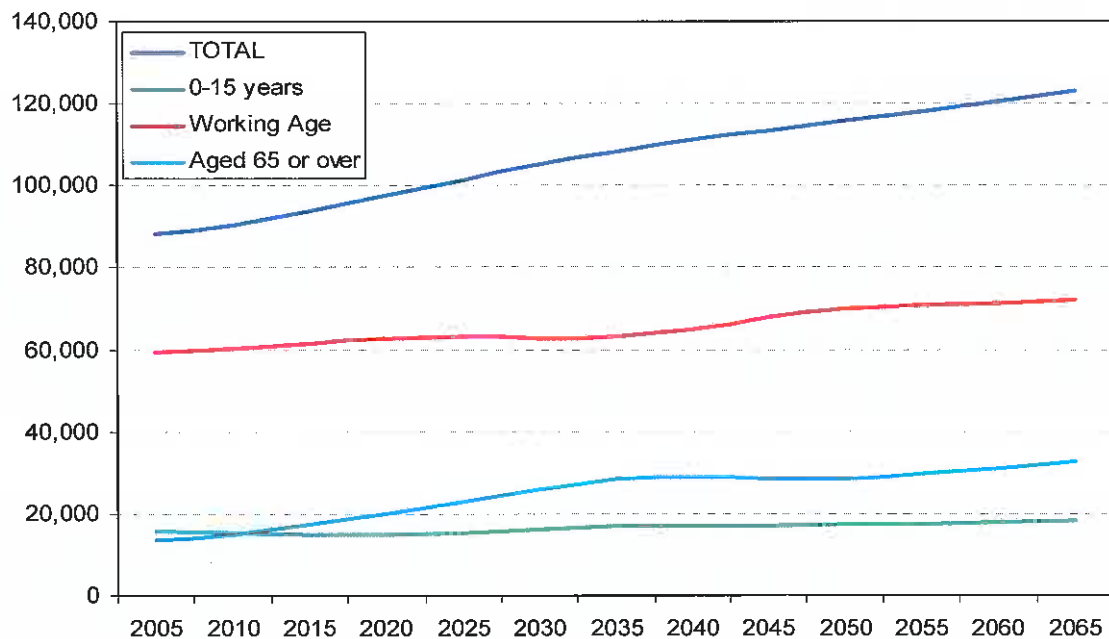
## 8. Population

8.1.1 Whilst this report focuses primarily on our 'fit for purpose?' examination of the proposed laws, the core strategic matter of the size of Jersey's population is intrinsically linked to migration controls. We comment here as context to the issues under review, and remind all concerned about our report focused on population, *S.R.3/2009 Population Policy*, presented in June 2009.

8.1.2 We have previously outlined that within the Strategic Plan 2009-2014 the States adopted a policy allowing no more than 150 heads of household maximum per year of net inward migration, which is an overall increase of about 325 people per year maximum, as a rolling 5 year average. The context of previous years is, however, an area that raises significant concern. Average net inward migration 2005-2009 was 640 people per year, which corresponded to approximately 290 heads of household per year. Between 2007 and 2009 the net inward migration figure was 700 people per year, corresponding to about 325 heads of household per year.<sup>108</sup>

8.1.3 The impact on the Island's population of such increases in numbers is graphically illustrated as follows:

Population projections for net +325 households per annum.



Total population is more than 108,000 by 2035 and increases to 123,000 by 2065; working age population is some 6% higher in 2035 than in 2005.<sup>109</sup>

<sup>108</sup> Statistics Unit report: Jersey's Resident Population 2009

<sup>109</sup> The Jersey Population Model, Statistics Unit, April 2009

8.1.4 These figures demonstrate that the current controls under Regulations of Undertakings are not effective. It would seem from the evidence that we have received that the J Category licences are being controlled quite tightly but, as the Housing Minister intimated (see 4.3.20), problems have arisen with the numbers of unskilled and semi skilled workers. This situation would appear to have the potential to compound future problems in the Island, as it is this cadre of workers who are most likely eventually to require income support and social rented housing.

8.1.5 During our Public Hearings, the Director of the Population Office was confident about his Office's ability under the new Law to prevent untoward increases in population outside States approved policy on net inward migration levels, but the Sub-Panel does not necessarily share this confidence. The new Law merely requires new arrivals to obtain registration cards and, at the same time, limits the number of unqualified employees who can be taken on by Island businesses. There is an implicit assumption that unqualified immigrants who cannot find jobs will leave the Island.

8.1.6 This raises a number of questions. For instance, if there is an influx of immigrants who arrive with no prearranged job, will the Population Office refuse to grant cards? Is there, alternatively, a prospect that there will be quotas imposed for Registered (the equivalent of J-Cats) and Unqualified persons? It seems to the Sub-Panel that further work needs to be done on these issues.

#### **8.1.7 KEY FINDING**

The relevant authorities are confident that the provisions of the new legislation give them the ability to prevent untoward increases in inward migration levels outside States approved policy, but the Sub-Panel does not necessarily fully share this confidence. There is an implicit assumption that unqualified immigrants who cannot find jobs will leave the Island, but it remains the case that they might merely sink into the black economy.

#### **8.1.8 RECOMMENDATION**

Further work needs to be undertaken to ensure that there can be certainty in the ability of the authorities to align the number of net inward migrants with those levels established by States decisions.

## 9. Conclusion

- 9.1 The new legislation, the draft *Control of Housing and Work (Jersey) Law* and draft *The Names and Address Register (Jersey) Law*, will deliver on its aim to provide improved information on matters such as population size and residential status that will enable the States to more effectively monitor and manage the demands on the Island's accommodation stock, environment and infrastructure. Theoretically, it will also provide the Island's authorities with the mechanisms by which they will implement current and future population policy set by the States, through controls on access to housing and employment.
- 9.2 However, this legislation may prove to be only a partial solution to addressing a complex long term problem. The existing pressures facing Jersey to balance economic needs with the inherent infrastructure and social pressures resulting from immigration and increasing population size do not go away. The Island will, along with many countries around the world, also be forced to face the additional pressures arising from the worldwide increases in the numbers of economic migrants. The problem of how to deal with these matters is not a problem restricted to Jersey, but perhaps given our size, location and distinctly finite resources we will be required to seriously revisit the longer term cases for the introduction of a stricter work permit system, or tighter border controls.



## **10. Appendix 1 – Panel Membership and Terms of Reference**

- 10.1 For the purposes of this review, the Corporate Services Scrutiny Panel established the following Sub-Panel:

Senator S.C. Ferguson, Chairman

Deputy C.F. Labey, Vice-Chairman

Deputy P.V.F. Le Claire

Deputy D.J. De Sousa

Deputy J.M. Maçon

- 10.2 The Corporate Services Scrutiny Panel itself comprises the following members:

Senator S.C. Ferguson, Chairman

Deputy J.A.N. Le Fondré, Vice-Chairman

Senator J.L. Perchard

Deputy D.J. De Sousa

- 10.3 The following Terms of Reference were established for the review:

1. To review the draft *Control of Housing and Work (Jersey) Law* and draft *The Names and Address Register (Jersey) Law*, and examine their correlation to relevant States decisions made from 2003 to present;
2. To examine any further issues relating to the topic that may arise in the course of the Scrutiny Review and which the Panel considers relevant.

## **11. Appendix 2 – Evidence Considered**

- 11.1 All of the documents considered during the Review will be available to read on the Scrutiny website ([www.scrutiny.gov.je](http://www.scrutiny.gov.je)) unless received under a confidential agreement:

### **Public Hearings**

- |    |   |                |
|----|---|----------------|
| 1. | Assistant Minister Economic Development | 8th June 2011  |
| 2. | Minister for Housing                    | 10th June 2011 |
| 3. | Chairman MAG                            | 10th June 2011 |
| 4. | Minister for Social Security            | 13th June 2011 |



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**BUSINESS ASSESSMENT & LICENSING SECTION**

**General Statement of Policy (2009)**

in relation to :

**Regulation of Undertakings and Developments (Jersey) Law, 1973 as  
amended  
(hereinafter referred to as the 'Regulation of Undertakings & Development  
Law')**

and

**Housing (Jersey) Law 1949  
(hereinafter referred to as the 'Housing Law')  
in relation to (j) category licences ('(j)')**

Any trade, business or profession, whether or not carried on for profit, and wherever carried out in the Island, requires a licence before commencing or engaging additional staff.

Under the Housing Law, consent must be obtained before a property can be purchased or leased - consent will be issued in limited cases for essential employees ("(j) category employees").

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## Section 1

### 1. Introduction

Decisions under the RUDL and Housing Law will be made in a fair and transparent manner and on a basis consistent with previous decisions and prevailing policy.

**The Economic Development Minister is accountable for the Regulation of Undertakings & Development Law decisions, and the Housing Minister for the (j) category decisions.**

The Economic Development Minister and Housing Minister consider applications in a co-ordinated manner, consulting each other, and the Assistant Minister, Chief Minister's Department. They do this at the Migration Advisory Group, which sits approximately every 2 weeks, and which is also responsible for the direction of migration policies in Jersey.

**The Population Office administers these Laws on behalf of the Ministers, with all applications processed by the same small business licensing team. Applications will be dealt with in 15 working days, under normal conditions.**

Businesses are encouraged to approach Jersey Enterprise, which offers advice and guidance on a range of matters. For more information visit [www.jersey.com/enterprise](http://www.jersey.com/enterprise) , or email : [enterprise@gov.je](mailto:enterprise@gov.je) .

For specific advice on the Regulation of Undertakings and Development Law and Housing Law, email the Population Office on [populationoffice@gov.je](mailto:populationoffice@gov.je) , or call us on 448930, or visit us on the 3<sup>rd</sup> Floor, Jubilee Wharf.

In addition to this General Statement of Policy (2009) more specific guidance on the Regulation of Undertakings and Development Law and the Housing Law as it relates to business, may be issued from time to time in the form of Practice Notes.

## **2. The Objectives of the Regulation of Undertakings and Development Law**

Article 2 of the Regulation of Undertakings and Development Law requires that any person (or a body corporate) "**commencing a new undertaking**" or "**increasing the number of persons engaged in an undertaking**", must firstly obtain a licence so to do.

The definition of an undertaking is "**any trade, business or profession whether or not carried on for profit**". Application forms are available from Jubilee Wharf, 24 Esplanade, or at: [www.gov.je/ChiefMinister/PopulationOffice/Regulation+of+Undertakings](http://www.gov.je/ChiefMinister/PopulationOffice/Regulation+of+Undertakings)

In making decisions, regard will be had to the **need to regulate and manage demand on the Island's resources**. This is generally taken to mean that the needs of economic growth are balanced against the additional demand that migration places on the Island's limited resources, including its environment.

### **The criteria against which business applications are assessed:**

- The pressure to be placed on the Island's resources;
- The need to maintain a balanced and prosperous economy;
- The need to maintain a range of job and training opportunities for locally qualified persons and school leavers, including apprentices, those over normal working age, and people in supported and special employment schemes;
- The importance of the service rendered to locally qualified persons;
- The track record of the undertaking in terms of profitability, and its contribution to tax revenues.

Decisions are also made having regard to the need to **protect the financial and commercial integrity of the Island**. The Minister shall also have regard to the provisions of the **Competition (Jersey) Law 2005** and the decisions and directions of the Jersey Competition Regulatory Authority, and as far as possible, to wider objectives, with a particular emphasis on encouraging environmental responsibility as a key element of managing demand on resources.

## **3. The Regulation of Undertakings Licence**

A licence may be granted for the commencement of an undertaking or the engagement of additional staff with reference to the above criteria.

A licence to engage staff will usually be issued for three years, and will detail the total number of staff that may be engaged, in particular, those who are not locally qualified.

### **Persons are deemed locally qualified if they are –**

- (i) Residentially qualified for housing purposes, including being a (j) category essential employee;
- (ii) Have been resident **for the whole** of the past consecutive 5 years;
- (iii) A spouse of (i) or (ii) above;
- (iv) A child under 18 years (or if students under 25 years) of those in (i) (ii) or (iii) above.

The policy of the Economic Development Minister as reflected in the Regulation of Undertakings & Development (Jersey) Regulations 1978 as amended, is normally to grant commencement and/or staffing licences in respect of persons who are locally qualified. However, with non-qualified persons, the Minister's policy is to grant commencement and/or staffing licences provided that it is clearly in the Island's best interests, as assessed against the above licensing criteria.

Once granted a staffing licence, an undertaking may manage staff numbers within the terms of that licence. An undertaking may apply for additional staff at any time. Prior to the expiry of a staffing licence, staffing requirements will be reviewed and a new staffing licence may be issued.

In making licence decisions, business plans and financial details may be requested, as may evidence of investing in training locally qualified persons, and having made appropriate efforts to identify suitable local candidates. Applications will be processed more quickly if this information is submitted with the application form.

Reference will also be had to previous relevant decisions, in particular, those taken in relation to similar businesses. This will be done to ensure decisions are fair and consistent, and that businesses operate, as a general principle, on **a level playing field** with their competitors. In doing this, the Minister will nevertheless be mindful that each case presents its own unique range of facts and matters to consider.

Conditions may also be placed on a licence. Conditions are likely to be applied to maximise the use of the local workforce and may focus on the training and recruitment of local school leavers and apprentices, those over normal working age, or those on supported employment schemes.

**Exemptions:** An undertaking does not need a licence to engage persons deemed **locally qualified** if those persons are -

- (i) Engaged on supported employment schemes operated by the Social Security Department, or the Jersey Employment Trust, or any other public body;
- (ii) School pupils and students in full time education;
- (iii) 65 or over.

**Failure to comply with licence conditions may result in prosecution** - albeit the Population Office aims to work with businesses as far as possible in resolving issues.

#### **4. Manpower Returns**

Every six months, all undertakings are required to complete and provide a manpower return detailing their actual manpower, and vacancies.

This information enables the Population Office to confirm compliance with the licence conditions imposed, and provides valuable employment information for the Island. This information also forms the basis for the annual population estimate for Jersey.

**Failure to submit manpower returns may result in prosecution.**

## **5. 1(1)(j) category essential employees**

The **Housing Law** controls the ability to purchase or lease accommodation.

**A 1(1)(j) category consent enables an employee to purchase a property through their own specially established company, or to lease accommodation in their employer's name.**

A 1(1)(j) employee is only entitled to remain in occupation in that accommodation so long as they continue to hold a position to which a 1(1)(j) category permission has been granted. Without 1(1)(j) consent, an employee can only enter into lodging arrangements, unless they have their own 'housing qualifications'.

A 1(1)(j) housing consent will only be granted where it can be demonstrated that a person is essentially employed and housing consent can be justified in the "**best interest of the community**" given the duty of the Housing Minister to "**prevent further aggravation of the housing shortage**". In particular, the following criteria will be relevant:

### **The criteria against which j applications are assessed:**

- The pressure to be placed on the Island's resources, in particular, its housing stock;
- The need to maintain a balanced and prosperous economy;
- The need to maintain a range of job and training opportunities for locally qualified persons and school leavers, including apprentices, those over normal working age, and people in supported and special employment schemes;
- The importance of the service rendered to locally qualified persons;
- The track record of the undertaking in terms of profitability, and its contribution to tax revenues.

In addition, the Minister may also take into account any other general benefits which the Island may obtain, for example, in relation to past cultural, sporting, or charitable activities, or the potential effects for Jersey's reputation and interests, including the nature of any actual or potential media coverage.

In making decisions, business plans and financial details may be requested, as may evidence of investing in training locally qualified persons, and having made appropriate efforts to identify suitable local candidates. Applications will be processed more quickly if this information is submitted.

Reference will also be had to previous relevant decisions, in particular, those taken in relation to similar businesses. This will be done to ensure decisions are fair and consistent, and that businesses operate, as a general principle, on **a level playing field** with their competitors. In doing this, the Minister will nevertheless be mindful that each case presents its own unique range of facts and matters to consider.

**(j) category consents are strictly limited, and form a very small proportion of the workforce.**

The (j) provision is a **recruitment tool**, designed to assist employers with recruitment where no satisfactory local person is available. It is not a retention tool, nor an entitlement for having

gained a certain professional position. As such, **existing employees will not be granted (j) consent**, except where some small discretion is exercised as follows:-

- where an employee has been part of an extensive training programme and it would be unfair to point to some distant and different recruitment decision; and/or
- where retention of a specific skill would have disproportionate effect on the business, which for these purposes is taken to include:-
  - where a business has a sizeably lower number of js as a proportion of total employees than a comparable business and is in danger of losing some existing key personnel;
  - where a business has a significantly disproportionately low number of ('js') vis-à-vis its overall size and contribution to the Island;
  - very senior posts

The Housing Minister may also **restrict consent to the ability to only lease property** (and *not* to purchase property). He will issue these lease only consents having regard to a combination of factors, including the length of the work to be undertaken, and its perceived benefits to Jersey, for example, a short term contract which perhaps has more limited benefits may only justify consent to lease property.

This lease only limitation assists the Minister in supporting business while also managing the impact on the housing market by restricting the ability to purchase property and promoting home ownership for locally qualified persons.

#### **6. The length of a (i) category consent**

The following policies are adopted in relation to the length of a consent:-

- Posts which meet the (j) category consent criteria, where the employer is well established, and which require extensive knowledge and experience, will be granted an unlimited (j) category consent on commencement.
- Posts which meet the (j) category consent criteria, and are required for a specific purpose or time limited period, or where the employer is a new start up, may be granted a time limited (j) category consent.

#### **7. Requests for re-consideration**

Should an applicant consider a decision unreasonable, or have additional relevant evidence to support his/her application, the Ministers will normally be prepared to reconsider a decision as set out in the published appeal statement.

#### **8. Confidentiality**

Information supplied to the Population Office is subject to the Data Protection (Jersey) Law 2005. Information may be sought from States Departments and organisations for the processing of applications and to verify information provided. Applications will be supplied to Jersey Enterprise, which is tasked by the States of Jersey Economic Development Department to grow the economy by assisting Jersey businesses to succeed and encouraging new investment into the Island.

## Section 2

### 1. Practice Note: Delegated Decisions - Regulation of Undertakings and Development Law

This guidance sets out the criteria that enable the Population Office to determine applications without recourse to the **Minister for Economic Development**.

The delegated functions as approved by the Minister for Economic Development provide the Population Office with authority to grant a licence either unconditionally or subject to such conditions as considered appropriate or, to refuse to grant a licence, except where the application relates to more than 5 permanent non locally qualified staff, and/or more than 15 permanent locally qualified staff (the purpose of this provision being to reserve for the Minister all sizeable staffing decisions). In addition, as a matter of normal practice, those applications that are considered to fall within the below (i) – (iv) parameters will also be referred to the Minister for determination.

- (i) The application is a request for reconsideration in accordance with the published “decision making and appeals process” document;
- (ii) The application is for the commencement of an undertaking wholly or partly owned by non-locally qualified persons - excluding those businesses regulated by the Jersey Financial Services Commission that will pay 10% tax -- where the impact and prominence is more than minor. Proposed changes to the beneficial ownership of an existing undertaking will be considered under the same criteria as an application for the commencement of an undertaking.
- (iii) Applications without precedent and / or those that may be of concern in relation to the Island’s financial and commercial integrity and reputation;
- (iv) The application is requesting non locally qualified staff, and is deemed by officers as a marginal decision in that the request is not significantly outside of industry norms, or some strong business case has been made as to why the application requires staffing significantly outside of industry norms;

Where applications are referred to the Minister under the above parameters, the Minister will make decisions having considered the advice of officers, and as a matter of normal practice, having considered the advice of the Migration Advisory Group, being the Minister for Housing, and the Assistant Minister, Chief Minister’s Department.

Each application and case is different – as such, some judgement will be applied when having reference to the above criteria, nor should the above criteria be considered an exhaustive list of those instances where referral to the Minister may take place.

A full list of all decisions taken including those under delegated powers will be presented to Ministers for information on a monthly basis.

Should an applicant consider a decision unreasonable, or have additional relevant evidence to support their application, the Minister will normally be prepared to reconsider a decision, as set out in the published “decision making and appeals process”.



## **2. Practice Note: Delegated Decisions – Housing Law in relation to (j) category applications**

This guidance sets out the criteria that enable the Population Office to determine an ‘in principle’ application for (j) consent under the Housing Law without recourse to the **Minister for Housing**.

The delegated functions as approved by the Minister for Housing provide the Officers with full authority to grant a consent either unconditionally or subject to such conditions as considered appropriate or, refuse to a consent. The following applications will be referred to the Minister for Housing:-

- (i) The application is a request for reconsideration in accordance with the published “decision making and appeal statement”;
- (ii) Applications that may be of concern in relation to the Island’s financial and commercial integrity and reputation;
- (iii) The application has limited precedent.

Where applications are referred to the Minister under the above parameters, the Minister will make decisions having considered the advice of officers, and as a matter of normal practice, having considered the advice of the Migration Advisory Group, being the Minister for Economic Development, and the Assistant Minister, Chief Minister’s Department.

Each application and case is different, so some judgement will be applied when having reference to the above criteria, nor can they be considered an exhaustive list of those instances where referral to the Minister takes place.

A full list of all decisions taken, including those under delegated powers, will be presented to Ministers for information on a monthly basis.

Should an applicant consider a decision unreasonable, or have additional relevant evidence to support their application, the Minister will normally be prepared to reconsider a decision, as set out in the published “decision making and appeals process”.

## **Section 3**

### **1. Practice Note: Temporary Workers**

Temporary staff should be covered within an undertaking's staffing licence. The only exceptions to this relate to –

- (a) The engagement of a temporary worker to cover for existing staff who are sick, on holiday, on maternity leave, etc. In these cases, a vacancy will not be considered to have been created, and as such, the temporary member of staff does not count towards the overall staffing licence allocation.
- (b) The engagement of a temporary worker above the licenced quota to enable training of a new staff member in the event of staff turnover, for a period of 15 days or less, does not count towards the overall staffing licence allocation.

In all other circumstances, the engagement of temporary staff, whether supplied by a recruitment agency or otherwise, requires a licence, and should capacity not exist within the current staffing licence, application is required.

### **2. Practice Note: Seasonal Staff**

Where seasonal staff are engaged for only a specific period in any one year, a staffing licence is required, and specific provision in the staffing licence may be included for the required period.

This provision historically has operated to mainly assist the Agricultural and Tourism industries, but is available for other undertakings which have seasonal requirements.

### **3. Practice Note: Working From Home**

The exemption from the requirement to hold a licence which had prior to June 1998 applied to undertakings carried on by a person with residential qualifications from his/her principal place of residence, on his/her own account and without any employees, no longer applies in respect of new undertakings.

**As such, a licence is required for the commencement of an undertaking, whether operated from home or otherwise.**

Persons who have carried on an undertaking pursuant to this exemption prior to June 1998 will not be required to obtain a licence for the commencement of the undertaking and will be able to continue to benefit from the previous exemption provision provided the circumstances relating to that undertaking remain unchanged. Application is required for the engagement of staff.

### **4. Practice Note: Public Sector**

The States, by Regulations adopted in 1978, exempted from the Regulation of Undertakings and Development Law "any undertaking carried on by or on behalf of the Crown, the States, or any administration of the States, or any parochial authority."

In 1999, it was agreed, despite being legally exempt, that the Public Sector would adopt voluntarily the principles of the Law.

## **5. Practice Note: Construction Industry**

The Minister is keen to maintain an efficient and competitive local construction industry, and also to maintain a range of job opportunities for locally qualified persons, in particular, as in other industries, the Minister is keen to promote training and apprenticeships.

A construction business is treated as any other business, other than in respect of the additional ability to obtain a "contract licence" as well as a standard staffing licence. A "contract licence" may be granted in recognition of the nature of the construction industry, in particular, its potential volatility. A "contract licence" enables undertakings to engage temporary staff, on a contract basis only, for the duration of specific contracts

These licences may be granted should the Minister be satisfied that efforts have been made to seek suitable locally qualified individuals.

## **6. Practice Note: Non Resident Contractors**

Permission is required for non-resident contractors or sub-contractors to carry out works within the Island. The Minister's policy is to grant licences provided that sufficient evidence is produced that local firms have been given the opportunity to tender on a level playing field basis, or that the work to be undertaken is specialist in nature and sufficient evidence is provided that the work cannot be undertaken by local firms. In addition, the Minister may place conditions on the licence as deemed appropriate, particularly in relation to the permitted level and mix of non-locally and locally qualified staff.

In the absence of there being a local registered office address, non-resident contractors or sub-contractors are required to provide details as to the name and position of someone of sufficient seniority or status who would travel to the Island to accept service of a summons if need be.

## **7. Practice Note: Engagement of Domestic Staff**

Households recruiting **domestic staff such as housekeepers, gardeners, nurses or carers** are not affected by the Regulation of Undertakings and Development (Jersey) Law 1973, as amended, and do not require a licence to engage domestic staff provided those engaged are working **solely for an individual household**. If, however, the domestic member of staff is working for more than 1 household, that individual is considered to have commenced his/her own undertaking and requires a licence to do so.

Households recruiting **nannies** are not affected by the Regulation of Undertakings and Development (Jersey) Law 1973, as amended, and do not require a licence to engage nannies provided those engaged are working solely for the household. If, however, the nanny is working for more than 2 households, that individual is considered to have commenced his/her own undertaking and requires a licence to do so.

Undertakings that place staff in households require a licence under the Law.

## **8. Practice Note: Environmental Considerations**

In considering applications under the Regulation of Undertakings & Development Law, regard will be had to a range of factors and each application will be judged on its own merits.

The Economic Development Minister, in making decisions, has regard to "the need to regulate and manage demand on the Island's resources", and in doing so, considers the impact a

business may have on the environment, and level of migration, should it require to engage non-locally qualified members of staff.

As such, the extent to which a business seeks to minimise its environmental footprint may be taken into consideration when applications are being evaluated, enabling the Minister to take a more favourable approach.

Such considerations include, but are not limited to, car sharing and travel initiatives which reduce congestion on Jersey's roads, or more efficient practices which reduce demand for energy and local resources from businesses.

In particular, the Minister will have regard to good practices consistent with the **"ECO-ACTIVE BUSINESS"** initiative, an accreditation scheme for Jersey providing a framework for local business to assist them in having a positive impact on the environment in five key areas:

- Waste
- Water
- Energy
- Procurement
- Transport

ECO-ACTIVE BUSINESS is free to join and applicable to all types and sizes of business - existing members include international businesses and sole traders. Full details of this initiative are available at [www.eco-active.je](http://www.eco-active.je).

**Environmental considerations represent one factor taken into consideration by the Minister when making a licensing decision.**

Jersey Enterprise is keen to assist businesses in further enhancing their environmental credentials. More information on their services is available at [www.jersey.com/enterprise](http://www.jersey.com/enterprise)

#### **9. Practice Note: Fulfilment Industry**

The fulfilment industry in the Island is a legitimate aspect of commerce but at times has attracted some negative publicity which may have undermined the Island's good international reputation and integrity. That negative publicity focused on UK companies that switched the distribution of their DVDs/CD's through the Channel Islands to take advantage of the Low Value Consignment Relief (LVCR - the EU approved mechanism for VAT exemption).

The objective of the Minister is to maximise the benefit of the fulfilment industry while at the same time not damage the Island's international reputation or integrity.

There are basically two types of activity within the fulfilment sector, although a number of companies operate as a hybrid of the two activities. Whole Chain Companies (WCC) physically buy in and own the stock and sell the goods to the final customers. Third Party Service Providers (3PS) on the other hand provide logistics or distribution services to other retailers. WCC receive revenues based on the total value of sales whilst 3PS only receive revenues based on the service they provide, with the sales revenue going to the retail company.

The high value added per employee and significant tax contribution of WCC activity means that it is fully complementary to the States Strategic Objectives and therefore should be supported by the States wherever possible.

3PS activity contributes less significantly to the States Strategic Objectives and the States should therefore be much more cautious about this type of activity. The very low value added per employee of 3PS activity suggests that the labour could be put to better use in other areas such as tourism and retail. On pure economic grounds the conclusion should be to support WCC activity but not to allow further growth in 3PS activity, where it requires significantly more labour.

### **The Policy**

(i) Existing WCC should be supported, particularly those that are or have been majority beneficially owned by Jersey principals.

(ii) New WCC which are beneficially owned by Jersey principals will be supported.

(iii) With the exception of those companies trading in DVD/CD's into the UK market, high value hybrid companies should be supported, where they do not involve UK companies diverting current business through the Island.

(v) 3PS activities will be allowed to grow where they do not require significant additional labour and are consistent with Policy.

The Minister will make decisions in line with domestic legislation and policy. However, the Minister will monitor the fulfilment industry and seek to ensure that a level playing field is maintained with other jurisdictions.

### **Notes**

Hybrids are fulfilment related companies that do not fit easily into either category but have a permanent establishment with some or all of their core activities in the Island such as a head office, finance, purchasing, marketing or customer service. Hybrids employ locally qualified people in high value jobs, make a significant local tax contribution and stock is owned and possibly held by the local business. Their pick and pack operations are likely to be carried out by a 3PS but could be done by the company itself. There could also be companies that operate as both WCC and 3PS.

### **10. Practice note: Treatment of General Partners of Limited Partnerships**

Where a general partner of a limited partnership does not directly employ any staff in Jersey and does not exclusively occupy any floor space in Jersey, and benefits from the staff and/or premises of its administrator, being a person licensed to provide administration services pursuant to the Financial Services (Jersey) Law 1998 and licensed pursuant to the Regulation of Undertakings and Development Law (Jersey) 1973, it will be treated as exempt for the purposes of the Regulation of Undertakings and Development Law (Jersey) 1973} under exemptions specified in the Regulation of Undertakings and Development (Jersey) Regulations, 1978. For the avoidance of doubt, such treatment shall not be dependent upon where the business of the limited partnership is being conducted by the general partner.

Nothing in this Practice Note shall be taken to revoke any licence issued under the Law prior to the date of this Practice Note.

### **11. Practice note: Change of Beneficial Ownership**

Persons wishing to sell or purchase an existing undertaking should contact this office in order to establish whether permission is required from the Minister in relation to any transaction or

arrangement effecting any change in the direct or indirect beneficial ownership of the undertaking.

Proposed purchasers are advised to contact this office in order to establish the number of staff permitted to be engaged by the undertaking and their locally qualified status. The proposed purchaser may require to apply to the Minister to engage additional staff.

In order for the Minister to consider granting permission for a change to the beneficial ownership of an undertaking, a 'change in beneficial ownership' form is required to be completed by the proposed vendor(s) and proposed purchaser(s) (or by their legal representatives).

When a change in the beneficial ownership of an undertaking would effect a change to the shareholding of a limited company and/or a change to the registration of a registered business name, evidence from the Jersey Financial Services Commission should be provided when making application.

Application will be required by the proposed vendor if he/she wishes to commence a new undertaking.

## **12. Practice note: Hawkers and Non- Resident Traders (Jersey), Law 1965**

### **Non-Resident Traders**

It is a requirement of the Law that a person who is not a resident shall not use any place for the purpose of (a) selling or offering or exposing for sale at that place goods brought into Jersey to be sold; or (b) offering for sale, according to samples or catalogues there displayed or otherwise submitted, goods to be brought into Jersey, unless the person is the holder of a non-resident trader's licence; and the holder of a non-resident trader's licence shall not sell or offer or expose for sale goods other than goods of the nature specified in his or her licence.

### **Hawkers**

A "hawker" means:-

(a) a person who goes from place to place or from door to door – (i) carrying, or causing to be carried, goods for the purpose of selling or offering or exposing for sale such goods, or (ii) for the purpose of seeking orders for goods to be subsequently delivered;

(b) a person who, in any public place, takes or offers to take a photograph of any other person in that public place with a view to the subsequent sale to that other person of that photograph;

(c) a person who, not being a resident or not having a place of business in Jersey, goes from place to place or from door to door for the purpose of buying or offering to buy goods; and requires a licence of the appropriate class to do so.

### **Making application**

The Parish of St Helier is the authority that grants licences on behalf of the Minister for Economic Development. An application for a Non-Resident Trader or Hawkers licence for the appropriate category shall be provided to the Parish of St Helier not less than 14 days before the day on which the applicant requires the licence to be valid and include the appropriate fee.

Application forms are available from the Parish of St Helier, telephone 01534 811811.