

STATES OF JERSEY



Jersey

DRAFT CONTROL OF HOUSING AND WORK (AMENDMENT) (JERSEY) LAW 202-

**Lodged au Greffe on 20th January 2022
by the Chief Minister
Earliest date for debate: 29th March 2022**

STATES GREFFE



Jersey

DRAFT CONTROL OF HOUSING AND WORK (AMENDMENT) (JERSEY) LAW 202-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Chief Minister has made the following statement –

In the view of the Chief Minister, the provisions of the Draft Control of Housing and Work (Amendment) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Senator J.A.N. Le Fondré**
Chief Minister

Dated: 20th January 2022

REPORT

Executive summary

The proposed amendments to the [Control of Housing and Work \(Jersey\) Law 2012](#) (the “Law”) form part of a broad project to introduce a common population policy for Jersey and to provide more responsive migration controls as a key control mechanism within that policy. The common population policy coupled with these draft amendments to the Law provide a framework and control mechanism in which short, medium and long-term plans can be successfully implemented to manage and impact the population of the Island.

Amendments to the primary legislation maintain the current structure of the Law but provide for a significant level of flexibility to be achieved through the use of Regulations and Orders.

The primary legislation itself establishes two new bodies – a political Panel that will support decision-making in respect of individual applications by both specialist officers (“determining officers”) and on review, by the Chief Minister; and an expert Council that will advise the Chief Minister on overall population policy.

Subject to approval of the primary legislation, detailed Regulations and Orders will be developed during 2022 with the aim of lodging Regulations and an Appointed Day Act by the end of 2022.

Introduction

Through the introduction of the [Control of Housing and Work \(Jersey\) Law 2012](#) in 2013, the States Assembly consolidated a range of previous controls on the occupation of property, the running of businesses and the employment of workers into a single law.

This first amendment to the primary Law acknowledges the robust structure established by the Law but also responds to the need to create more responsive controls on migration, in line with the findings of the Migration Policy Development Board ([R.20/2020](#)) and the States decision to endorse [P.137/2020](#) in March 2021, which included –

- (a) *to agree that action should be taken to provide more responsive controls on the number of migrants who acquire the right to settle permanently in Jersey and to remove the automatic ‘graduation’ from one CHWL permission to another;*

Subject to the approval by the Assembly of this primary legislation, Regulations will be brought back to the Assembly later in 2022, to set out the details of the new CHWL statuses. These will be based on the existing decision approved in [P.137/2020](#) –

- (c) *to request the Chief Minister to bring forward the following amendments to the Control of Housing and Work (Jersey) Law 2012 (CHWL):*
 - i *to introduce a 9 month CHWL permission that does not lead to permanent residential status;*
 - ii *to introduce a 4 year CHWL permission that does not lead to permanent residential status;*
 - iii *to introduce a 10 year CHWL permission that may lead to permanent residential status;*

- iv to introduce a long-term CHWL permission that does provide permanent residential status;*
- v to require the applicant for a new permit to make a declaration of any unspent criminal convictions;*
- vi to introduce enhanced identity requirements for all CHWL cards issued to new residents;*

In addition to these Regulations the Chief Minister will also make new ministerial Orders and issue policy guidelines as required by the new primary legislation.

Subject to the priorities of the next Council of Ministers, it is anticipated that the main areas of subordinate legislation and guidelines will be completed during 2022.

In parallel to the legislative changes, a new IT system is being developed which will be operational in early 2022. This system will be used to gather data under the existing licensing system during 2022 and will then administer applications under the amended legislation, once it is in force.

The details of subordinate legislation and guidelines will also be set within the overarching remit of the Common Population Policy. The first Common Population Policy of the Council of Ministers has been published ([P.116/2021](#)) and is due to be debated in February 2022.

There are a significant number of people living in Jersey today who do not have full access to employment and housing due to their status under the current Law. Whilst these individuals remain living in Jersey their rights will be protected under the new Law, and they will continue to gain housing and employment qualifications in line with their current status. New residents coming to Jersey after the new Law is in force will be subject to the conditions of the new Law.

Current exemptions to the Law contained within the [Control of Housing and Work \(Exemptions\) \(Jersey\) Order 2013](#) (“Exemptions Order”) will be carried forward into the new scheme, through consequential amendments to the Exemptions Order and, as needed, new secondary legislation. For clarity these exemptions will continue to include provision for Jersey to meet its obligations within the Law towards World Trade Organization and Free Trade Agreements, to allow ‘regulated activity’ for financial services and their employees to continue as it does currently, and for the various exemptions that apply to persons to work in Jersey for short periods of time.

Under the revised Law two new bodies will replace the current HAWAG, in line with P.137/2020 –

- vii to provide for an independent statutory, expert panel appointed subject to the oversight of the Jersey Appointments Commission, the members of which are actively sought from across the globe and at least one member of which has proven expertise in small country populations (defined as populations of 500,000 or less), to research and advise on population matters;*

and

- ix to provide for a Committee of States Members to hold responsibility for determining applications under the CHW law that fall outside formal guidelines.*

This revision has not sought to make significant changes to the housing controls included in the Law and properties will continue to be categorised as “qualified” and “registered”.

The changes to primary legislation are subject to an Appointed Day Act which will be lodged in line with the completion of the secondary legislation required to support the full range of the new responsive controls.

Details of Amendments

The Migration Policy Development Board recommended that changes be made to the existing Control of Housing and Work Law, rather than developing wholly new primary legislation.

This section sets out the structure of the existing Law and the changes that are being proposed to create primary legislation that can support responsive migration controls in line with existing States' decisions and the emerging population policy.

Current Law: Part 1: Interpretation

Article 1 provides a list of definitions used in the primary Law.

Proposed amendment

The proposed amended Law creates a new system for decision-making. Additional definitions are added in this area as follows:

Specific officers, known as determining officers, will be appointed to take decisions in certain areas of the Law. These officers will be appointed by the Chief Minister.

A Housing and Work Control Panel ("the Panel") will be established under the amended Law. The Panel will comprise at least three elected members nominated by the Chief Minister, with one of the nominated members being the chair of the Panel and holding a casting vote. The role of the Panel is to provide direction to a determining officer where a decision is needed that sits outside existing population policy and published policy guidelines. The Panel will also provide a recommendation to the Chief Minister in the event of an applicant challenging a decision of a determining officer. The Chief Minister will then make a final decision on the issue.

More detail of decision making is provided below under Part 2 and Part 8.

There are also some minor changes to existing definitions and some terms are removed, as they are no longer required.

Proposed benefits

- Introduces new structures to support robust decision making;
- Removes some terms which are no longer relevant to the new Law;
- Simplifies the language used within the Law.

Current Law – Part 2: Residential & Employment Status

Articles 2 to 6 of the current Law set out the way in which the residential and employment status of an individual is established.

Article 2 creates four types of status:

- entitled,
- licensed,
- entitled for work only,
- registered.

Article 2 also allows the Chief Minister to issue guidance regarding the impact of temporary absences from Jersey on the CHW status of the individual.

Article 3 sets out the conditions under which an individual must apply for a registration card, Article 4 gives details of the card itself and Article 5 give details of the duration

of the card. Article 6 sets out offences in respect of registration cards. The Chief Minister is the decision-maker who confirms the status of an individual. At present the Chief Minister has delegated these powers to a range of specialist officers. (see [R.18/2020](#))

Proposed amendment

Under the amended Law, Article 2 requires that, for purposes of residence and work in Jersey, every adult must have an appropriate CHW status. In order to provide more responsive migration controls, and to give the ability to adapt to future common population policy, Article 2 also includes wide regulation-making powers including the provision of appropriate CHWL statuses, the application of conditions to a particular status, the exemption of certain persons from the requirement to have a status, and to outline circumstances in which a status may be lost or revoked.

The Regulations will provide the detailed rules to establish the following policy areas as endorsed by the States Assembly:

- viii. to introduce a 9 month CHWL permission that does not lead to permanent residential status;*
- ix. to introduce a 4 year CHWL permission that does not lead to permanent residential status;*
- x. to introduce a 10 year CHWL permission that may lead to permanent residential status;*
- xi. to introduce a long-term CHWL permission that does provide permanent residential status;*
- xii. to require the applicant for a new permit to make a declaration of any unspent criminal convictions;*
- xiii. to introduce enhanced identity requirements for all CHWL cards issued to new residents;*

The use of Regulations also allows for future policy changes to be implemented without undue delay, allowing the Assembly to maintain responsive controls as needed from time to time. Regulations will include the need for the declaration of a criminal record for new applicants.

Article 3 explains how decisions are made on the status of an individual by a determining officer. If the officer is unable to make a decision under the published guidelines available at that time, the application can be referred to the Panel for their direction. Separately, if an individual is dissatisfied with a decision of the determining officer, that decision is reviewed by the Panel. The review process is covered under Part 8 below.

Diagram 1 in Appendix 2 provides an overview of the proposed decision-making process. The Panel will direct decision making in respect of initial applications where published guidelines do not cover the circumstances of the application. The Panel will provide their direction to the determining officer. The Chief Minister will have no involvement in this initial decision but will receive general feedback from the Panel on a regular basis, to allow the Chief Minister to consider updates to the published guidelines to take account of changing economic and other external conditions.

Some elements of decision making will always require referral to the Panel. For example, this will include new applications from potential high net worth residents.

The amended Article 4 requires the determining officer to issue evidence of the CHW status to an applicant. At present, this takes the form of a registration card. The amended Law does not specify what form the evidence should take. In the initial phase,

individuals will continue to be issued with a physical CHW card, giving details of their current status. The amended Law will allow for a digital solution, utilising developments in technology, to be used as soon as this can be implemented. Article 5 confirms that a status conferred on an individual may be time limited and may be revoked. This is an important element of the decision made by the Assembly in March 2021. The Regulations that will accompany the primary Law will provide details of each status and how an individual can move from one status to another. In particular, the ability to automatically “graduate” from “Registered” to “Entitled to Work Only” and then to “Entitled” will no longer be provided for, in respect of individuals entering Jersey after the amended Law is brought into force.

The wording of Article 6 has been updated to refer to offences that are associated with an individual seeking to acquire or pass themselves off as having a status that they are not legally entitled to. The level of penalties is based on the penalties set under the current Law. A new power is included, to revoke a status where a person has been convicted of an offence, within the Law, of acquiring that status by deception.

Proposed benefits

- Provides the framework for more responsive migration controls that can adapt in a timely manner;
- Provides the framework for time limited statuses under the Law which do not automatically lead to permanent residential status;
- Requires new applicants to declare unspent criminal convictions;
- Sets out a clear review process;
- Removes the necessity to have a physical registration card to demonstrate a CHWL status, to allow the provision of a digital status, and utilisation of developing technology in the future;
- Allows a CHW status to be revoked where a person has been convicted of acquiring a CHW status by deception under the Law.

Current law: Part 3: Determination of status: Individuals

Articles 7 and 8 of the existing Law deal with situations in which an individual comes to Jersey for the first time; Article 7 requires an adult to have a valid registration card within three months of taking up ordinary residence in Jersey and Article 8 requires an appropriate adult to register a child that comes to live in Jersey within the first three months.

Proposed amendment

The updated Article 7 removes the requirement to apply for a registration card and replaces it with a requirement for a person to apply for an appropriate CHWL status. Article 8 updates the provisions applying to those adults who have responsibility for informing the Chief Minister of the details of a newly arrived child, not born in Jersey.

Proposed benefits

- Removes the requirement to apply for a physical registration card to demonstrate a CHWL status, to provide the ability to have a digital status issued in the future.

Current Law: Part 4: Information to the Chief Minister

Article 9 requires any adult who is ordinarily resident at an address in Jersey for at least three months to provide information to the Chief Minister in respect of each member of the household living at that address. A similar obligation is placed upon the landlord of any property that is rented out. Article 10 allows the Chief Minister to receive details of

the full name, date of birth and address of any individual where that information is held by a government department for which a minister is responsible, and the information is required to administer the Law.

Proposed amendment

The updated Law makes minor changes to Article 9.

Article 10 is replaced. Information sharing is expanded to include government departments, parish administrations and Revenue Jersey. Information is no longer limited to name, address and date of birth, and may include other information as required. Any information shared under this Article must also meet the requirements of current data protection legislation.

Proposed benefits

- Expanded information sharing between government departments, parish administrations and Revenue Jersey is formalised under the Law.

Current law: Part 5: Housing Categories and Occupation of Housing

Articles 11 to 17 relate to the categorisation of dwelling units and their occupation. Each unit of dwelling accommodation is either qualified or registered and the occupation of qualified accommodation is limited to individuals who hold entitled or licensed status in most cases.

Proposed amendment

The main change in this Part is to Article 17(1). The specific references to entitled and licensed statuses are removed. The ability to occupy qualified accommodation will be set out in Regulations to allow flexibility in the future control of housing stock, via amendments to rules regarding the occupation of property.

Proposed benefits

- Minimal changes have been made to the sections on current housing categories;
- Provides a framework to allow flexibility in the future management of housing stock.

Current law: Part 6: Land Transactions

Articles 18 to 21 provide controls over land transactions.

Article 18 sets out the type of transactions that are covered by the Law and Article 19 covers the requirement for an individual to have an appropriate registration card to enter into certain types of transaction. The types of transaction that registered, entitled for work only, licensed and entitled individuals can enter into is set out in detail. Article 20 deals with land transactions that involve companies and other forms of legal entity and Article 21 provides offences in respect of this Part.

Proposed amendment

The main change in this Part is to Article 19. The way in which housing transactions will be controlled will be set out in Regulations. This will allow flexibility in the future control of housing stock.

Proposed benefits

- Provides a framework to allow flexibility in the future management of housing stock.

Current law: Part 7: Controls on Working

Articles 22 to 39 provide the controls on businesses and workers.

Articles 22 and 23 provide additional definitions that are used within this Part of the Law.

Article 24 places an obligation on an individual not to take up new work (starting a new job or setting up a new business) without having an appropriate registration card. Similarly, a business must not take on a new worker unless they have checked that the worker has an appropriate registration card. Some individuals may fall into exempt categories which may be identified in Regulations. Some types of business may fall into exempt categories which may be identified in Regulations.

Article 25 places an obligation on a person to obtain a CHW licence before they carry on any business in Jersey. Articles 26 and 27 give further details as to how licences are granted and conditions that can apply to licences, in particular the ability to employ workers who are licensed or registered. Article 28 imposes specific provisions on a hawker's licence and a non-resident trading licence. Article 29 allows for either the business or the Chief Minister to seek to vary the terms of a licence that has been granted and Article 30 gives the Chief Minister the power to revoke a licence in certain conditions. Article 31 creates annual charges to be paid by businesses that hold a licence to employ licensed or registered person. Article 32 requires undertakings holding a business licence to provide information to the Chief Minister no later than a specified time. This information is used to collate the manpower reports that are currently published twice a year.

Articles 33 to 35 allow the Chief Minister to appoint officers to act as authorised persons and an authorised person can obtain information from a business, enter into the business premises and examine business documents. Article 36 creates an offence if a person obstructs an authorised person or fails to assist them, and Article 37 gives the Chief Minister the power to serve notice on an activity which is operating without an appropriate licence. Article 38 provides for a register of businesses that have been granted licences and Article 39 identifies a range of official positions where the individual postholder is not required to obtain a business licence to undertake that activity.

Proposed amendment

Under the amended Law, some definitions have been removed and businesses are divided into resident and non-resident in Articles 22 and 23.

The amended Article 24 continues to require the individual and the business to have the appropriate CHW permissions but introduces the concept of a staffing licence which contains details of any restrictions on the staff that can work in the business, including the type of work that they can undertake as well as their CHW status. As some CHW statuses will expire under the amended Law, the obligation to have the correct status is maintained throughout the period of work and is not just tested once when new work starts.

Non-resident businesses (those businesses who do not have permanent business premises in Jersey nor employees ordinarily resident in Jersey) will not need to hold a staffing licence. Regulations will provide further details of exemptions and conditions that will apply to staffing licences for resident businesses. Some individuals may fall into exempt categories which will be established by Regulation. Some types of business may fall into exempt categories which will be established by Regulation.

Article 25 continues to require every business operating in Jersey to hold a licence and is subject to minor amendments.

Article 26 is replaced by a new Article 26 and 26A. The replacement Articles provide for applications to be made for a business licence and for a determining officer to collect

relevant information and make a decision based on the current population policy and published guidelines.

If the application falls outside existing population policy and policy guidelines, the determining officer can refer the application to the Panel for their direction. Diagram 1 in Appendix 2 explains how a first decision will be taken in respect of a business licence or staffing licence.

For a non-resident business any licence granted must last for no more than 12 months and the type of business must be specified as part of the licence. For all types of business, the determining officer may grant the licence as applied for, may refuse the application or may grant the licence subject to conditions. If the licence is not granted as originally applied for, the business can request a review of the decision. See Part 8 for further details of the review process.

Article 27 is also replaced and the new Article gives more details of the staffing licence. A staffing licence can specify the status of workers covered by the staffing licence, the nature of the work they can do and the duration of the licence. The licence can specify the names of individual workers.

The original Article 28 provided details of licences granted to hawkers and non-resident traders. These separate categories have not been included in the amended Law and there is no Article 28 in the updated version. A hawker or non-resident trader will apply for a non-resident business licence.

Article 29 deals with variations to existing licences. The details of this Article are similar to the original version, with amendments made to reflect the role of the determining officer as the initial decision-maker, rather than the Chief Minister. As in other areas of the amended Law, if the determining officer is unable to make a decision on the current published guidelines, the matter will be referred to the Panel for their direction.

The power to revoke a licence (e.g. for providing false information, non-compliance with a condition of a licence, a business has ceased to exist, failed to pay an annual charge, or due to being significantly detrimental to the interests of Jersey) is maintained in Article 30 with amendments to the wording to reflect other changes in the amended Law.

A new Article 30A is introduced, setting out the rights of the applicant to seek a review of a decision made under this part of the Law. The review is undertaken by the Panel with their recommendation being made to the Chief Minister (see Article 40A).

The new Article 31 gives the Chief Minister the power to raise fees on a one-off or annual basis in respect of business licences. The details of the fees will be set out in a ministerial order.

Article 32 is updated in line with the wording introduced in other areas of the amended Law. For employers, the intention is to collect this information on a monthly basis as part of the new Combined Employer Return which is being launched by Revenue Jersey in early 2022. This will streamline the returns made by businesses to government through a single monthly process.

Article 33-36 are retained with their original wording and Article 37 is updated to reflect the wording used elsewhere in the amended Law. The power of the Chief Minister under Article 37 is extended so that an offence is committed if an individual fails to comply with the enforcement notice.

The requirement to maintain a register is maintained in Article 38 with the wording amended to provide additional details of the nature of the register.

Proposed benefits

- Simplified language around resident and non-resident businesses;
- Introduces a staffing licence to be clearer on who is able to work for a business under the Law, in what capacity, and for how long;
- Provides the framework for responsive and adaptable migration controls, through exemptions and conditions;
- Provides framework for decisions on business and staffing licences to be based on transparent guidance that aligns with the current population policy objectives;
- A clear right and process of review is outlined;
- A framework of adaptable fees, includes a provision for financial penalties should a fee not be paid by a set date;
- Ability to gather better data on the island's workforce.

Current law: Part 8 General provisions

Articles 40 – 48 cover a range of general provisions required from the Law. These include:

Article 40 provides for notices to be served under the Law.

Article 41 provides for an independent appeal mechanism to the Royal Court.

Article 42 permits the Chief Minister to use statistical information gathered under this Law to develop public policy and provide relevant information to the general public.

Article 43 allows an individual to act on behalf of another person in certain circumstances.

Article 44 allows the Chief Minister to make Regulations and Orders as needed.

Articles 45 and 46 relate to offences under the Law and Article 47 limits the liability of officials acting under the Law.

Article 48 establishes the current Housing and Work Advisory Group and sets out its function in advising the Chief Minister on matters relating to the Law.

Proposed amendments

The amended Law inserts a new Article 40A which establishes a review process in the event of an applicant being dissatisfied with a decision made by a determining officer. In this event, the Panel will review the application and the decision and make a recommendation to the Chief Minister as to whether the decision should be upheld, amended or revoked.

Diagram 2 in Appendix 2 sets out the review process in more detail. The Panel will consider all decisions that are challenged by the applicant. The Panel will make their recommendation to the Chief Minister, to allow the Chief Minister to make the formal decision on the review. An external route will continue to be provided to the Royal Court where the applicant continues to challenge the review decision.

Article 41 is amended to take account of other changes in the amended Law. The appeal route to the Royal Court from the decision of the Chief Minister is retained.

The amended Law also inserts a new Article 42A which permits the Chief Minister to publish guidance on any aspect of the Law. Guidance may be updated and reissued from time to time. Publishing guidance across the full range of CHW issues will provide a much clearer framework for decision-making. Businesses and individuals will be able to check the guidelines when considering their application and determining officers will

make decisions within those published guidelines. The Chief Minister will maintain the guidelines on a regular basis, taking advice from both the Panel and the expert Council.

A minor change is made to Article 43 in line with other changes in the Law.

Article 44 is expanded to allow for civil financial penalties to be established by Regulation and for fees to be raised, rebated, refunded or waived. It also includes the ability to levy a financial penalty for failure to pay a specified fee by a particular date.

Article 45 is expanded so that if an individual acquires a status by deception and is convicted of an offence under Article 45, then the status of the individual is revoked.

Article 48 is replaced. Two bodies are established to replace the Housing and Work Advisory Group. The amended Article 48 creates the Housing and Work Control Panel (“the Panel”). The role of the Panel is to provide direction to a determining officer where a decision is required that falls outside existing policy guidelines; and to provide recommendations to the Chief Minister where an applicant has requested a review of a decision. As explained above, the Panel comprises of at least three elected members nominated by the Chief Minister (one of whom acts as the chair of the Panel and holds a casting vote).

A new Article 48A establishes a Population Advisory Council (“the Council”). The role of the Council is to provide expert advice and guidance to the Chief Minister in respect of population policy and the functioning of the Law. The Council will both examine matters referred to it by the Chief Minister and will initiate its own reviews on relevant matters. The Council’s role is limited to general population policy and the overall operation of the Law, and does not extend to the referral of, or advice on, individual cases under the Law.

Proposed benefits

- Provides a clear and independent review and appeal process;
- Provides a framework for providing clear guidance on any aspect of the Law;
- Provides a framework for civil financial penalties for a breach under this Law;
- Allows a CHW status to be revoked where a person has been convicted of acquiring a CHW status by deception under the Law;
- Establishes the Housing and Work Control Panel to provide appropriate directions and recommendations and an initial review function;
- Establishes the Population Advisory Council to provide expert guidance to the Chief Minister on population matters and the functioning of the Law.

Current law: Part 9: Transitional and saving provisions, repeals and consequential amendments

Articles 49 to 51 provide for the transition to the Law from the previous legal structure, including the [Housing \(Jersey\) Law 1949](#) and the [Regulation of Undertakings and Development \(Jersey\) Law 1973](#).

Proposed amendment

Article 50 is amended to remove references to transitional provisions which have now expired.

Current law: Part 10: Closing

Provides for the commencement of this Law on a day to be specified by Act of the States.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

Human Rights

The notes on the human rights aspects of the draft Law in **Appendix 1** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX 1 TO REPORT**Human Rights Notes on the Draft Control of Housing and Work (Amendment)
(Jersey) Law 202-**

These Notes have been prepared in respect of the draft Control of Housing and Work (Amendment) (Jersey) Law 202- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law will amend the existing Control of Housing and (Jersey) Law 2012 (the “**2012 Law**”). The purpose of the draft Law is to remove the express requirement for individuals to obtain registration cards and to replace them with a more flexible scheme of controls, much of which will be contained in secondary legislation. The new scheme will require:

- a. adults who are ordinarily resident in Jersey to have an ‘appropriate status’ for the purposes of residence and work (that status being determined in secondary legislation);
- b. persons carrying on business in Jersey to have an ‘appropriate licence’ to do so (with the nature of that licence also determined in secondary legislation); and
- c. businesses, other than non-resident businesses, to have a staffing licence to employ anyone within the business.

The draft Law engages four rights under the ECHR. The right to a fair trial in Article 6 of the ECHR; the right to private and family life in Article 8 ECHR; the right not to be subject to discrimination in Article 14 of the ECHR; and the right to the peaceful enjoyment of property in Article 1 of Protocol 1 to the ECHR.

The issues in respect of each of these rights and the reasons why the draft Law is compatible with them are set out below.

Article 6 ECHR – The right to a fair trial

Article 6(1) ECHR provides –

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

Article 6(1) ECHR requires that those who face a determination of their ‘civil rights and obligations’ must be entitled to a ‘fair and public hearing...by an independent and

impartial tribunal'. The guarantees afforded by Article 6 of the ECHR will only be relevant to the extent that an act or a decision is determinative of a 'civil right' or 'obligation'.

Under the 2012 Law at present decisions that affect a person's ability to reside in a particular type of accommodation or work in a place may determine civil rights and therefore engage Article 6(1) of the ECHR. At present the ability to bring an appeal to the Royal Court in respect of decision making ensures that the requirements of Article 6(1) of the ECHR are met in respect of the 2012 Law.

The amendments made by the draft Law mean that, in future, initial decisions made under the 2012 Law will usually be made by an authorised determining officer. In some cases the determining officer must pass an application from an individual or business to a new Housing and Work Control Panel (the "**Panel**") before making an initial determination. Further, if a person is aggrieved by a determining officer's decision, then the person may seek a review of that decision by the Panel under the new Article 40A of the 2012 Law (inserted by Article 27 of the draft Law).

Pursuant to new Article 48 of the CHWL, inserted by Article 32 of the draft Law, the Panel is composed of at least three elected members appointed by the Chief Minister (the "**Minister**"). One of the members appointed by the Minister will be nominated as chair and have a casting vote. When reviewing an initial decision under Article 40A, the Panel is not designed to be an independent and impartial tribunal for the purposes of Article 6 of the ECHR. Rather the Panel will consider individual cases and make recommendations to the Minister who, following any review, will make the final decision.

From an Article 6(1) ECHR perspective, it remains the case that all decisions that are made under the 2012 Law as amended by the draft Law, including decisions made by the Minister following a review by the Panel, can be appealed to the Royal Court (see existing Article 41(2) of the 2012 Law). As the Royal Court is an independent and impartial tribunal for the purposes of Article 6(1) ECHR, the ability to bring an appeal in the Royal Court is sufficient to ensure that these civil rights and obligations are determined in a manner that is compatible with Article 6 of the ECHR.

The draft Law is therefore compatible with Article 6 of the ECHR.

Article 8 ECHR: Right to respect for private and family life

Article 8 of the ECHR provides –

Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Two areas of the draft Law warrant particular attention from an Article 8 ECHR perspective:

- a. power to share tax information;
- b. change from reliance on registration cards to residential and employment statuses.

Power to Share Tax Information

Article 10 of the draft Law substitutes a new Article 10 into the 2012 Law to allow the Minister to obtain from, or disclose to, other public authorities, “relevant information” in relation to individuals that is reasonably required for the purposes of facilitating compliance with the 2012 Law. In addition to the power to share information with public authorities generally in new Article 10(1), there is a new Article 10(2) that permits the Minister to obtain from, or disclose to, the Comptroller of Revenue any ‘relevant information’ held in relation to any person.

The European Court of Human Rights (“**ECtHR**”) has held that the protection of personal data is of fundamental importance to a person’s enjoyment of his or her right to respect for private and family life, as guaranteed by Article 8 of the ECHR. The domestic law must afford appropriate safeguards to prevent any such use of personal data as may be inconsistent with Article 8 ECHR. The domestic law should ensure that such personal data retained by public authorities are relevant and not excessive in relation to the purposes for which they are stored; and preserved in a form which permits identification of the data subjects for no longer than is required.

The sharing of personal data relating to a particular individual by the Minister pursuant to Article 10 may have the potential to interfere with the individual’s rights under Article 8(1) of the ECHR. However, while the power to obtain or share data may be exercised notwithstanding anything in any enactment to the contrary, including the Data Protection (Jersey) Law 2018 (the “**2018 Law**”), it should be recognised that only “relevant information” can be disclosed and only for the purposes of facilitating compliance with the 2012 Law. Further, the requirements of the 2018 Law will be applicable to the retention and use of the data obtained or received by the Minister or any other public authority pursuant to the exercise of these powers.

For the purposes of Article 8(2) of the ECHR there are therefore sufficient safeguards in place for the protection of personal data to ensure that such interference as may arise from the new Article 10 of the 2012 Law is proportionate to a legitimate aim.

Change from reliance on registration cards to residential and employment statuses

The imposition of controls on a person’s ability to live and work in a particular place may amount to an interference with a person’s Article 8(1) ECHR rights. The new Law will require that rather than having a registration card to start employment and take part in specified housing transactions, a person will need to obtain evidence of the person’s residential and employment status and retain an appropriate status to continue to work and live in specified housing in Jersey.

For the purposes of Article 8(2) of the ECHR, it has been held by the ECtHR that the imposition of controls on access to housing and work is, in common with other immigration controls, pursues a legitimate aim. The controls must, however, be both proportionate and applied proportionately in practice. The changes to the 2012 Law that require a person to apply for and hold a status do not appear to fundamentally impact on Article 8 ECHR compliance of the 2012 Law. However, in future the statuses that a person may have and the circumstances in which a status may be acquired or lost will be prescribed in secondary legislation. It will be important to ensure that such secondary legislation as is made in due course is compliant with Article 8 of the ECHR.

The draft Law is therefore compatible with Article 8 of the ECHR.

Article 14: Prohibition against discrimination

Article 14 of the ECHR provides –

“The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Article 14 ECHR provides for a right not to be discriminated against only in respect of the other rights laid down in the ECHR. As noted above, the imposition of controls on a person’s access to employment and accommodation engages their right in Article 8 of the ECHR and therefore Article 14 ECHR is engaged in relation to these controls.

In addition to coming within the ambit of another right, for Article 14 to apply there must be a difference in treatment in terms of the way that right is accorded protection by the State between the complainant on the one hand and another person put forward for comparison; and the difference in treatment must be based on some identifiable ‘status’. The difference in treatment will only be discriminatory in a manner incompatible with Article 14 if it does not have an objective and reasonable justification, that is, if it does not pursue a legitimate aim or if the measure is disproportionate to the aim it pursues.

The imposition of controls on access to housing and work for new migrants to the Channel Islands has been found by the ECtHR, in principle, to be compatible with both the right to private and family life in Article 8 of the ECHR and the right not to be discriminated against pursuant to Article 14 of the ECHR, not that such controls may pursue a legitimate aim.

The changes made by the draft Law to require a person to apply for and retain a status do not appear to fundamentally impact on Article 14 ECHR compliance of the 2012 Law, which has already been considered when that law was passed. It will be important to ensure that such secondary legislation as is made to implement the draft Law is compliant with Article 14 of the ECHR.

The draft Law is therefore compatible with Article 14 of the ECHR.

Article 1 of Protocol No. 1 to the ECHR (“A1P1”): Peaceful enjoyment of property

Article A1P1 provides –

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

There is the potential for requirements to obtain a business licence and staffing licence, and the imposition of conditions or restrictions on such licences to amount to controls on the use of property and therefore to interferences with the right afforded by A1P1. There is also potential for controls on the goods or services provided by non-resident businesses to people in Jersey to impact on Jersey’s compliance with its obligations arising from international trade agreements extended to the Bailiwick, including obligations arising under the World Trade Organisation agreements extended to Jersey in 2021.

Similarly as for Articles 8 and 14 of the ECHR, the changes made by the draft Law to business licensing do not fundamentally impact on the A1P1 compliance of the 2012 Law, which has already been considered when that law was passed. Further, we already have business licensing arrangements in place which are applicable to non-resident businesses in a manner that is compliant with our international trade obligations. However, the detail of the new business licensing scheme will be set out in secondary legislation and it will be important to ensure that A1P1 compliance is maintained by that secondary legislation and that no issues arise as to the compatibility of these controls with Jersey's international trade obligations.

APPENDIX 2 TO REPORT

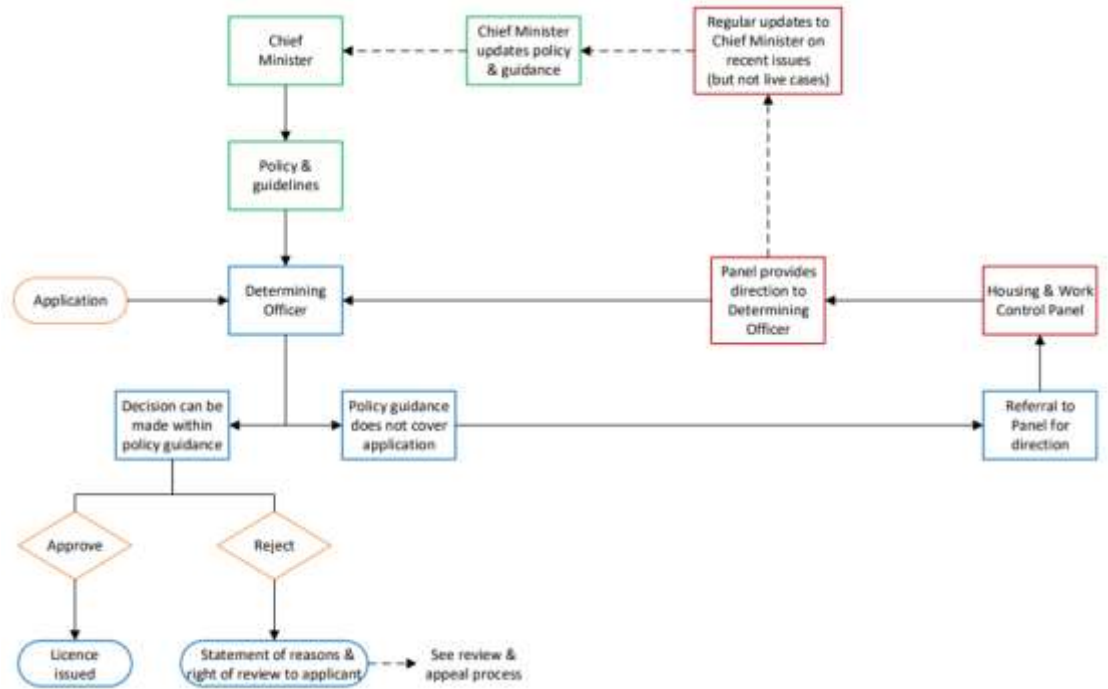


Figure 1: Flowchart of initial application process

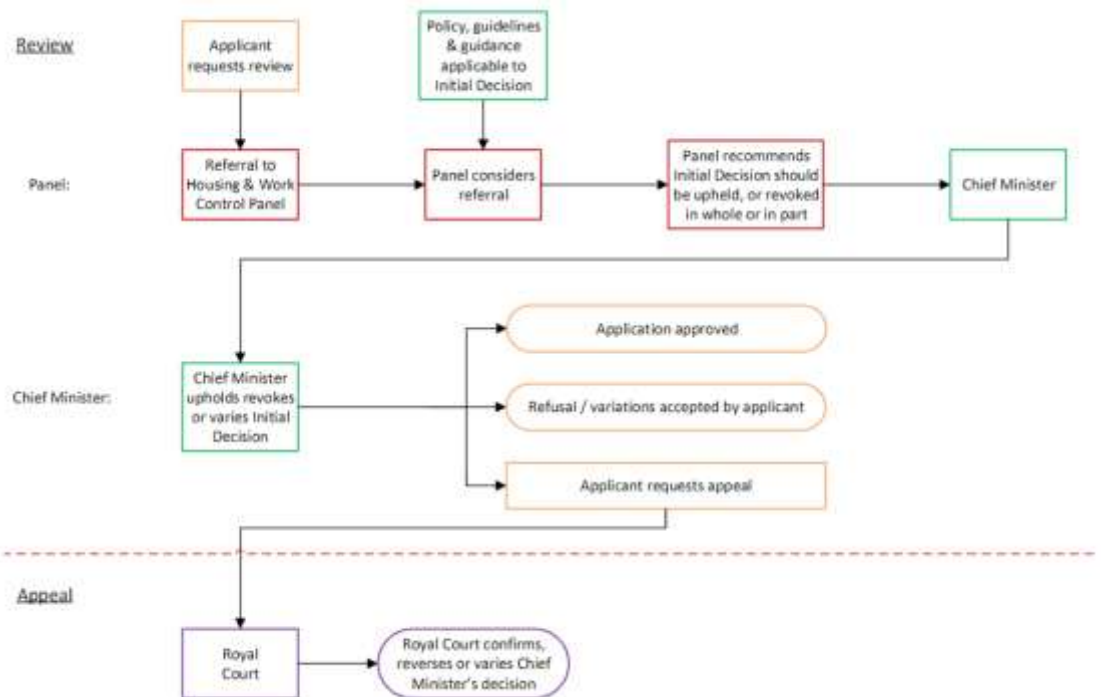


Figure 2: Flowchart of the review & appeal process

APPENDIX 3 TO REPORT**Children's Rights Impact Assessment**

Impact Assessment by: Senior Policy Officer - Immigration & Migration Policy

Date: 19/11/2021

STAGE 1: SCREENING**Question 1: Name the measure / proposal and briefly describe its overall aim**

Common Population Policy & Draft Control of Housing and Work (Amendment) (Jersey) Law 202-

In March 2021, the States Assembly approved plans to require the Council of Ministers to develop a Common Population Policy, with the fundamental aim of addressing the impacts of an increasing population on an island with a finite and relatively small land mass.

The overarching aim of the common population policy is to 'progressively reduce Jersey's reliance on net inward migration within the currently agreed common strategic policy'.

The policy is based on two clear principles:

- The population of Jersey lives on a small island and an ever-growing population would put more and more pressure on finite land resources. As such, the government will take action to reduce the need to grow the population further through net inward migration whenever this is feasible. The long-term aim of the population policy should be to achieve a sustainable rate of population change, to ensure that current generations do not pass on a growing problem to future generations; and
- Within the long-term aim of reducing reliance on continued inward migration, the government will always face new challenges and there may be situations in which the long-term aim of reducing the need for net inward migration will need to be paused or even reversed in order to address specific challenges from time to time. Notwithstanding any such temporary challenges, the underlying principle remains a long-term reduction in reliance on net inward migration.

A successful population policy must include responsive and proportionate controls to allow the Government to manage the flow of people into the Island. The Control of Housing and Work law (CHWL) forms part of these controls, alongside immigration controls, and applies to all adults legally in Jersey, regardless of nationality. States Members supported changes to the CHW controls in March 2021 and law changes will be debated in early 2022 with detailed regulations following later in the year. The amended controls will allow for long- and short-term permissions and will allow improved control over the number of migrants receiving permission to live permanently in Jersey.

Question 2: What children's rights does it impact upon?**Article 2: non-discrimination**

Applies to all children ordinarily resident in Jersey.

Article 3: best interests of the child

Better data will allow decisions around children and young people to be made based upon accurate and timely data not just upon general feelings or anecdotal evidence.

Improved transparency of data allows decisions to be reviewed, better understood or challenged.

Article 6: life, survival & development

Maximise the potential of every person ordinarily resident in Jersey, including children and young people (CYP).

Article 9: separation from parents

The object of controls on population are not to separate families, however, it is accepted that people working in Jersey may live apart from their children. The CHWL amendments do not prevent a child or young person from joining, visiting or keeping in contact with a parent working or living in Jersey.

Article 12: respect for the views of children

Improved data and maximising the potential of children and young people will allow them to input and evidence their thoughts and opinions.

As the common population policy is developed over the next few years, children's views will be sought in respect of the decision to implement specific actions.

Article 17: access to information from the media

Improved data gathering and publication of that data will allow all Islanders to fact check and challenge published information in all communications. This data should be issued in a manner that allows CYP to readily assimilate and understand that information.

Article 23: children with a disability

Giving opportunities to maximise the potential applies to all Islanders.

Article 24: health and health services

Access to, and education on, health and wellbeing allows Islanders to maximise their potential participation rates.

Article 27: adequate standard of living

The increased population has put a strain on a number of services and resources, including housing. Achieving a sustainable rate of population change will allow a balance between housing stock and demand to be achieved.

Article 28: right to education

All children up to school leaving age are able to access free schooling. Education and lifelong learning form a fundamental part of maximising the potential of every islander.

Question 3: What children and young people will be affected?

As the Common Population Policy requires coordination across all Ministerial portfolio it will take into consideration, and impact upon everyone, including all children and young people, living in Jersey.

The CHWL amendments considered within this CRIA do not apply directly to children, but do apply to young people above school leaving age and all adults legally in Jersey, regardless of nationality. However, as considered below children and young people of migrants on time limited statuses will likely be impacted in a different way to those migrants that arrive to settle permanently on the island.

Question 4: What is the likely impact of the proposal / measure on children?

The long-term aim of the population policy is to achieve a sustainable rate of population change, to ensure that current generations do not pass on a growing problem to future generations.

This policy highlights the need to maximise opportunities for children and young people who are ordinarily resident in Jersey in order that they are encouraged to maximise their potential and be best placed to take up job opportunities on island, and in turn reduce the need for inward migration to fill those same roles.

It may be necessary, in a small community with limited resources, to impose controls that limit population growth by making Jersey less attractive for some migrant workers in a proportionate manner. A failure to do so appropriately would impact adversely upon current and potential islanders. The new migration control measures, that will form a part of this policy, include options for a number of time limited CHWL statuses which (as approved by the States Assembly within P.137/2020 [Migration Control Policy \(gov.je\)](https://www.gov.je)) will help to minimise the number of new residents who gain the right to remain permanently in Jersey, and some migrant workers (regardless of nationality), and accompanying family members, may be restricted in the amount of time that they are able to live and work in Jersey.

Question 5: Is a full child rights impact assessment required? Explain your reasons

This Common Population Policy and the changes to the CHWL will impact all person ordinarily resident in Jersey, including children and young people.

If a full child rights impact assessment is required proceed to stage 2

STAGE 2: SCOPING (Background and Rights Framework)

Question 6: Name the measure / proposal being assessed and describe the overall aim

Common Population Policy

Continually increasing the permanent population to drive economic growth is an unsustainable position for the Island, but the output generated by the working population must be sufficient to provide the services and support that Islanders require to ensure physical, mental and financial security. A sustainable rate of population change would mean that levels of economic activity support the health and pension costs of an ageing demographic, but do not adversely impact upon the Island's environment, or Islanders' quality of life, in an unacceptable manner.

This Common Population Policy is intended to be the first of a number of population policies that will adapt to the circumstances that future Council of Ministers wish to address, and explores what the Government can do in response to the gradual ageing of the population and the more immediate challenge of the reduction in supply of labour arising as a consequence of Brexit and the Covid-19 pandemic.

This is not a quick fix and this first Common Population Policy concentrates on reducing reliance on our migrant workforce by maximising the potential of the people who are already here, through improvements in productivity, use of new technology and robotics, or by ensuring that everyone is equipped with the skills they need to contribute (where appropriate) to our environment, our society and our economy.

The overarching principles for this Common Population Policy are that it should:

- be based on accurate, current data;
- maximise the potential of every Islander;
- make full use of improved, responsive controls to emerging economic challenges; and
- represent a sustainable rate of population change position for Jersey.

A successful population policy must include responsive and proportionate controls to allow the Government to manage the flow of people into the Island. The Control of Housing and Work law (CHWL) forms part of these controls, alongside immigration controls, and applies to all adults legally in Jersey, regardless of nationality. States Members supported changes to the CHW controls in March 2021 and law changes will be debated in early 2022 with detailed regulations following later in the year. The amended controls will allow for long- and short-term permissions and will allow improved control over the number of migrants receiving permission to live permanently in Jersey.

Question 7: Which human rights instruments and articles are relevant to the measure / proposal?		
Human Rights Instrument	Article	Further analysis on the expected / actual effect
UNCRC	Article 2: non-discrimination	The Common Population Policy will cover all persons living in Jersey, regardless of age or nationality. The CHWL amendments cover changes to the status a person, above the age of school leaving age, is required to request and hold whilst in Jersey for a period of 3 months or more. These amendments apply specifically to statuses to access work and housing, and do not apply directly to children. Children will, however, be impacted by the CHWL amendments in so much as they will be living with someone who has a CHWL status that may be time limited, or restrict access to certain housing.
	Article 3: best interests of the child	The Council of Ministers' proposal to amend the States of Jersey Law and introduce a legal requirement for this common population policy was to acknowledge the importance of addressing the impacts of an increasing population on an island with a finite and relatively small land mass. The fundamental driver of the common population policy is to achieve a sustainable population level, to ensure that

		current generations do not pass on a growing problem to future generations. Better data will allow decisions around children and young people to be made based upon accurate and timely data.
	Article 6: life, survival & development	<p>The common population policy acknowledges that to succeed it covers the breadth of all Ministerial areas – housing, infrastructure, health, education, skills, preserving the environment, maintaining a vibrant community. All of which are directly linked to the life, survival and development of children and young people. Improved data will allow us to better understand the flow of children and young people into and out of the island, the reasons for this, what the needs of those children and young people are, and how those children and young people who are ordinarily resident in Jersey can be most suitably supported to achieve their full potential.</p> <p>As the common population policy is developed over the next few years, children’s views will be sought in respect of the decision to implement specific actions.</p>
	Article 9: separation from parents	<p>The object of controls on population are not to separate families, however, it is accepted that people working in Jersey may live apart from their children.</p> <p>Improved clarity on the rights, expectations and restrictions of any CHWL status will allow economic migrants, operating in a global market for their skills and experience, to take into account of the factors most relevant to them when choosing whether or not to come to Jersey to work.</p> <p>The CHWL amendments do not place any restrictions on a child or young person from joining, visiting or keeping in contact with a parent working or living in Jersey.</p>
	Article 12: respect for the views of children	<p>To date the common population has concentrated on setting up the legal, political and IT frameworks to allow the gathering, discussion and transmission of better data, and acknowledging the changes to the CHWL requested by the States Assembly in P.137/2020.</p> <p>Improved data and maximising the potential of children and young people will allow them to input and evidence their thoughts and opinions.</p>
	Article 17: access to information from the media	Improved data gathering and publication of that data will allow all Islanders to fact check and challenge published information

		in all communications. This data will be issued in a manner that allows children and young people to readily understand and consider that information.
	Article 23: children with a disability	Significant parts of the common population policy highlight the importance of education and participation, and the commitment to provide a labour market where people with disabilities and long term health conditions are able to contribute as much as they want to. Workers often have caring responsibilities and the common population policy supports changes to the workplace to accommodate those family commitments while also supporting the carer to continue to be economically active if they wish.
	Article 24: health and health services	As identified in Art 6 considerations the supply and access to suitable housing, infrastructure, health, education, skills, environment, and a vibrant community will support the health and wellbeing of all children and young people ordinarily resident in Jersey.
	Article 27: adequate standard of living	The increased population has put strain on a number of services and resources, including housing. Achieving a sustainable future population will allow a balance between housing stock and demand to be achieved.
	Article 28: right to education	All children up to school leaving age are able to access free schooling. Education, and indeed, lifelong learning, form a fundamental part of maximising the potential of every islander.
ECHR	Article 8: Right to respect for private and family life Article 14: Prohibition of discrimination	The object of controls on economic migration to Jersey is not to separate families. Where economic migrants choose to come to Jersey to work they will, as now, do so having regard to a number of factors. Systems of migration control, including controls on the ability of migrant workers to be joined by relatives and dependents in a host country, have regularly been found to be lawful by the European Court of Human Rights. This is not only the case in relation to Jersey, but in relation to many other jurisdictions as well.

STAGE 3: EVIDENCE

Question 8a: What quantitative evidence have you used to inform your assessment? What does it tell you?			
Evidence collected	Evidence source	Explanation of the importance	What are the data gaps, if any?
Population of Jersey since 1841	Jersey Census data	<ul style="list-style-type: none"> there has been a continuous growth in Jersey's population since 1951 (57,310) From 1951 - 2019 population is estimated to have grown by 50,490 This impacts the limited resources available on the island – housing, environment, Infrastructure (e.g., schools, hospitals, sewage treatment plants, water consumption) 	Awaiting 2021 census data. Due to be published Q1 2022.
Jersey Resident Population Estimate - 2019	R Population Estimate Current 20180620 SU.pdf (gov.je)	<ul style="list-style-type: none"> the resident population of Jersey at year-end 2019 was estimated as 107,800 over the 11-year period from year-end 2008 to year-end 2019, Jersey's population has increased by 11,700, four-fifths (80%) of the increase being from net inward migration (9,300) the average increase in the resident population during the latest four-year period (2016 to 2019 inclusive) at 1,300 per year, is around four times that at the start of the previous decade Population growth has continued in recent years and has been most significantly driven by a demand for skills and labour not available within the resident population. 	All estimates, not actual amounts, based upon extrapolations of 2011.
Jersey Labour Market – June 2021	R Jersey Labour Market Jun 21 20211028 SJ.pdf (gov.je)	<ul style="list-style-type: none"> In June 2021, the total number of jobs in Jersey was 62,430 (on a par with the highest recorded level of 62,470 in June 2019) 22% of jobs were in financial and legal 	-

		<p>activities; 14% in the public sector:</p> <ul style="list-style-type: none"> • Economic growth fuelled by a demand for migrant workers has meant the highest number of jobs being carried out in Jersey in history. • Over a third of those jobs are in government, finance or legal activities with more limited opportunities in careers outside these areas. • Relatively highly paid jobs in finance and legal sectors can dissuade people from seeking career in other sectors. 	
Resident Population Projections	R Population Projections 2016 20161013 SU.pdf (gov.je)	<ul style="list-style-type: none"> • At current rates of inward migration population is predicted to be above 128,800 in 2035, & above 166,600 in 2065 • Continued rates of population growth will require more housing and infrastructure which will further impact the natural environment. 	Projections not actual amounts. Extrapolated from 2011 census data.
Impacts of an Ageing Population on Jersey's Economy	PWC Report: Impacts of an Ageing Population on Jersey's Economy 2021	<ul style="list-style-type: none"> • The make-up of Jersey has grown significantly older & this is expected to accelerate in the future. • This will result in increased government costs for care and medical support and potential for the stretching of resources. • As populations grow older tastes and behaviours are reshaped, possibly in a different direction to that which children and young people would demand. 	This looks at the economic impacts only.
Infrastructure Capacity Study Report 2020	R Infrastructure Capacity Study Report 2020 ARUP.pdf (gov.je)	<ul style="list-style-type: none"> • Increasing populations require expanded infrastructure e.g. transport – sustainable transport solution; expanded/new schools – primary, secondary and HE; healthcare – new hospital, extra GPs, 	-

		<p>access arrangements; community facilities – halls, libraries, arts, culture; preserving open space – parks and play spaces; Utilities – zero-carbon & renewable energy, water storage, sewage treatment, digital infrastructure.</p> <ul style="list-style-type: none"> • These need to be supplied for children and young people and paid for by the workers on the island. 	
Whether HE students intended to return to Island, and if not why.	Students & recent graduates' survey	<ul style="list-style-type: none"> • 48% planned to return in the next 5 years; 23% definitely would not • Factors for not returning included high cost of housing (83%), high cost of living (63%), lack of social/cultural opportunities (50%) • 65% of respondents raised cost of housing as an issue that should be addressed 	Self-selecting respondents in tertiary education.

Question 8b: What key missing information / evidence would have been beneficial to your analysis?

Census data relating to the number and housing situation of children and young persons ordinarily resident in Jersey in 2021.

Question 9a: What qualitative evidence have you used to inform your assessment? What does it tell you?		
Evidence collected	Evidence source	Explanation of the importance
Thoughts & opinions of Jersey residents on population.	4insight Focus Groups Research Results	<p>The main themes to emerge from the focus group consultation were the following:</p> <ul style="list-style-type: none"> • <u>Environmental protection</u>: participants highly valued Jersey's natural environment and quality of life. Many were concerned about green space being lost for housing, should the population continue to grow; • <u>Educational opportunities</u>: the need for investment in career opportunities was recognised in the groups, to help reduce our dependency on importing workers with specific skills. Participants favoured increasing work experience opportunities and encouraging employers to train staff and hire locally wherever possible;

		<ul style="list-style-type: none"> • <u>Sustainable transport</u>: traffic congestion was widely perceived to be a consequence of population growth and the focus groups supported the introduction of sustainable transport initiatives to limit the number of vehicles on Jersey's roads; • <u>Housing affordability/housing availability</u>: participants felt that population growth, in the absence of a population policy, had resulted in a lack of supply and caused house prices to rise. Concerns were raised about the number of young people leaving the Island or not returning following higher education. The provision of schemes to assist first-time buyers was supported.
Responses to a public survey questionnaire on Jersey population	Population Conversation: public survey	<p>This was a self-selecting survey, but with a good mix of age, gender, place of birth and current residential qualifications. The survey did not attempt to be statistically representative of the population.</p> <p>Respondents were asked to select between 3 and 5 areas for the Government to prioritise when developing a population policy. The most popular answers to the question '<i>as an Island, we should....</i>' were the following:</p> <ul style="list-style-type: none"> • invest in lifelong learning so that local workers can be retrained to adapt to new jobs and technology (76%); • improve educational outcomes for all children so that local young people are well trained to work in the local economy (73%); • encourage local students to return to the Island on completion of higher education (64%); • live within our means, significantly reduce migration and move to an economy that is not based on continual growth (53%); and • increase the supply of homes so that everyone living in Jersey has good quality accommodation (45%)

Question 9b: What key missing information / evidence would have been beneficial to your analysis?

Impact of Brexit & Covid upon children and young persons' aspirations and plans for the future, and how that might impact their intentions to stay or depart the island.

STAGE 4: SCRUTINISING CHILDREN'S INVOLVEMENT

Question 10: Has evidence from third party consultations with children and young people been considered in the development of the proposal or measure?			
Groups consulted	Source of Information	Please provide a brief description of process	What were the findings?
Views of children aged 9 to 18	Life On The Rock	<p>The Life on the Rock Report from the Children's Commissioner provides useful evidence of issues faced by children that are relevant to the development of a common population policy. The Report builds on an island wide consultation conducted in 2018.</p> <p>It employed a unique children's rights-based methodology developed at the Centre for Children's Rights, Queen's University Belfast.</p>	<p>The issue of population was not directly addressed in this report. However, many of the issues explored resonated with qualitative data gathered from Jersey residents during the population consultation and survey.</p> <p>Children and young people in the Life on the Rock report highlighted:</p> <ul style="list-style-type: none"> • the high cost of housing and cost of living in Jersey; • the amount of traffic on the roads; • the need for more access to leisure activities; • access to health care; • that focus on academic attainment can negate the opportunities for vocational skills; • greater information on careers and qualifications would empower children to shape their own futures; • university options on island are limited; • limited employment opportunities for children and young people; • the value of family life; • their diverse hopes and aspirations

Question 11: What groups of children and young people have been directly involved in developing the proposal or measure?			
Groups involved [<input type="checkbox"/> if those affected by the proposal]	<input checked="" type="checkbox"/>	How were they involved	What were the findings
To date the common population has concentrated on setting up the legal, political and IT frameworks to allow the gathering, discussion and		Many of the issues raised within the population policy consultations and survey matched those raised by children and young people in the	Children and young people shared similar views in the Life on the Rock report as to what was important to them as the common population highlights as important. i.e., having a quality environment, having a good education and career

transmission of better data, and acknowledging the changes to the CHWL requested by the States Assembly in p.137/20.		Life on the Rock report.	opportunities, to reduce traffic, improve housing affordability/availability. As the common population policy is developed over the next few years, children's views will be sought in respect of the decision to implement specific actions.
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STAGE 5: ASSESSING THE IMPACT

Question 12: What impact will (or does) the proposal or measure have on children and young people's rights		
Type of impact <i>[please highlight]</i>	Justification for Argument	likely or actual short/medium/long-term outcomes
Positive / Negative / Neutral	<ul style="list-style-type: none"> The fundamental long-term aim is to prevent children and young people from having to deal with an unsustainable rate of population change in the future. This policy highlights the need to maximise opportunities for children and young people who are ordinarily resident in Jersey in order that they are encouraged to maximise their potential and be best placed to take up job opportunities on island, and in turn reduce the need for inward migration to fill those same roles. A controlled population that will protect the local environment and open spaces for children and young people A system that continues to allow migrants to settle permanently in Jersey and to add to the diversity and cultural mix of the island, as has happened for many centuries To ensure that the government recognises the value of each person, including children and young people, and helps to maximise their contribution to our environment, our society and our economy A vibrant economy to ensure good career opportunities for future children and young people, and taxes to pay for the services children and young people require 	<ul style="list-style-type: none"> Have a sustainable level of population change Maintain a diverse community and culture Have a vibrant economy that offers an increased number of future career opportunities for children and young people Improved, accessible data for all to understand the balance in population required to meet the needs of the environment, the economy and the community More affordable housing Improved educational outcomes for children and young people. Improved life prospects for all children and young people living in Jersey Improved opportunities for children and young people with disabilities or long-term health issues Increased understanding of the views of children and young people on population policy

	<ul style="list-style-type: none"> • Housing matched to the population and needs of the island to reduced demand and improved affordability • Infrastructure to support children and young people’s safety, education, health and wellbeing • Improved education and skill training in the island to maximise the potential of all children and young people • Improved vocational and apprenticeship schemes and support • ensure that future citizens are provided with the knowledge and skills they will need as adults. • A labour market where people with disabilities and long-term health conditions are able to contribute as much as they want to • A sustainable student finance system • Discussion and liaison with children and young people on future proposals for specific actions in the population policy 	
<p>Positive / Negative / Neutral</p>	<p>Although migrants form a valued part of the island community, and have made large contributions to our culture, society and economy over many centuries, it may be necessary, in a small community with limited resources, to impose controls that limit population growth by making Jersey less attractive for some migrant workers in a proportionate manner. A failure to do so appropriately would impact adversely upon current and potential islanders, including those migrants who come to Jersey in the future.</p> <p>New migration control measures, that will form a part of this policy, will help to reduce the number of new residents who gain the right to remain permanently in Jersey, and some migrant workers (regardless of nationality), and accompanying family members, may be restricted in the amount of time that they are able to live and work in Jersey.</p> <p>Some children and young people may not wish to, or be able to, join a parent working in Jersey on a time limited status/permission. CHWL statuses do not prevent children or dependents</p>	<ul style="list-style-type: none"> • Clearer data and published guidance will make it easier for migrants to understand their rights and obligations before arriving in Jersey. • A reduced number of migrants who are able to settle permanently in Jersey. • Any children or young people accompanying a migrant on a time limited status/permission will need to depart the island at the same time as their parent/guardian (as they do now for those on an immigration work permit).

	<p>travelling with their working parent/spouse/partner. However, following Brexit, all persons who are not British or Irish are required to have an immigration permission to work in Jersey, and as with immigration work visas in other countries, these may restrict children or dependents from travelling with them.</p> <p>Children and young people departing Jersey when their parents' status/permission has expired will cease their education in Jersey and are likely to leave behind friends in the island.</p>	
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Question 13: Will there be (or are there) different impacts on different groups of children and young people?		
Group of children affected	Initial analysis of the positive impact on rights	Initial analysis of the negative impact on rights
Those ordinarily resident in Jersey	As per Qs. 12 Positive impacts above	-
Those accompanying parents/guardians on immigration/migration time limited statuses	<ul style="list-style-type: none"> • Will maximise opportunities for children and young people who are ordinarily resident in Jersey, regardless of the amount of time that they are in Jersey. • A protected local environment and open spaces for children and young people • To ensure that the government recognises the value of each person, including children and young people, and helps to maximise their contribution to our environment, our society and our economy • A vibrant economy to ensure good career opportunities for future children and young people • Housing matched to the population and needs of the island to reduced demand and improved affordability • Infrastructure to support children and young people's safety, education, health and wellbeing 	As per Qs. 12 negative impacts above

	<ul style="list-style-type: none"> • Improved education and skill training in the island to maximise the potential of all children and young people • Improved vocational and apprenticeship schemes and support • Ensure that future citizens are provided with the knowledge and skills they will need as adults. • An education system where people with disabilities and long-term health conditions are able to contribute as much as they want to • A sustainable student finance system • Discussion and liaison with children and young people on future proposals for specific actions in the population policy 	
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<p>Question 14: If a negative impact is identified for any area of rights or any group of children and young people, what options are there to modify the proposal or measure to mitigate the impact?</p>	
<p>Negative impact</p>	<p>What options are there to modify the measure(s) or mitigate the impact?</p>
<p>Children and young people departing Jersey when their parents' status/permission has expired will cease their education in Jersey and are likely to leave behind friends in the island.</p>	<ul style="list-style-type: none"> • Time limited permissions are an acceptable form of restriction used by countries around the world, and are compatible with ECHR and UNCRC. • No surprises in relation to the end date. • Clear communication of the restrictions upon any CHWL status or immigration permission before a person decides to work or live in Jersey • Clear guidance on the package of rights and benefits that a migrant and their dependents have on arrival in Jersey, and any time limit that may have • Assistance from education supplier in providing information for future education outside of the island

STAGE 6: CONCLUSIONS AND RECOMMENDATIONS

Question 15: In summary, what are your key findings on the impact of the measure or proposal on children and young people's rights?

The quantitative data highlights the issues of an increasing population on the island. The common population policy has as a fundamental aim to achieve a sustainable rate of population change to ensure that current generations do not pass on a growing problem to future generations of children and young people.

The qualitative data suggests that children and young persons' opinions of what is important to them for the future is aligned in many areas with the opinions gathered during the population survey and consultation.

The common population policy is compatible with the UNCRC and ECHR. The common population policy will enhance the provision of children's rights covered in the paper and will have no negative impact upon those not mentioned in this paper.

This policy, and accompanying CHWL amendment, is committed to respecting and upholding the fundamental rights of all Jersey residents, including migrant workers, their children and their dependents.

A major part of the policy is to support children and young people to maximise their potential. This is regardless of their intention to remain in Jersey or the amount of time that they spend here.

In order to protect the limited resources available on the island the States Assembly has requested mechanisms, through the CHWL, to limit the number of people who are able to settle permanently in Jersey and this means that not all people living in Jersey will be able to settle permanently. However, those who would not have that ability would be aware of that before they made a decision to travel to Jersey.

Any requirement to leave the island at the end of a particular period of time would apply equally to children and dependents. This would likely have implication to friendships and relationships made whilst on the island and for an account of that leaving date to be factored into a child or young person's education provision.

As the common population policy is developed over the next few years, children's views will be sought in respect of the decision to implement specific actions.

STAGE 7: PUBLISH CRIA

Question 16: Should the full assessment or a summary be published? Will a child-friendly version be produced?

This assessment is available for publication.

STAGE 8: MONITOR & REVIEW

Question 17: Have the recommendations made in Stage 6 been acted upon?

Question 18: Where recommendations have not been acted upon, is further action required?

Re-issue Note

This Project is re-issued to include the Children's Rights Impact Assessment report which was inadvertently omitted from the originally published version, and to correct a minor typographical error in the draft Law.

EXPLANATORY NOTE

This draft Law will, if adopted, amend the Control of Housing and Work (Jersey) Law 2012 (the “CHWL”) to remove the requirement for registration cards and to replace it with a wider scheme, much of which will be contained in secondary legislation, requiring most adults who live and work in Jersey to have an ‘appropriate status’ (or, in the case of corporate persons carrying on business here, to have an ‘appropriate licence’) to do so.

The changes of substance and principal consequential changes are explained below, but it should be noted that many aspects of the CHWL, including offences and penalties, remain unchanged.

Article 1 is the interpretation provision for the purposes of this Law, and this Note adopts a similar convention to that provision (in other words, a reference to an *Article* in italics is a reference to a provision of this Law, while a reference to an ‘Article’ or ‘Part’ in this Note without italics or other indication is a reference to the Article or Part of that number in the CHWL.)

Article 2 amends the long title of the CHWL to remove the reference to a registration system. *Article 3* amends the interpretation provision in Article 1, to add definitions of terms used in the new scheme and delete others (such as ‘registration card’) which are no longer relevant.

Article 4 substitutes Article 2 to provide that, for the purposes of residence and work in Jersey, a person must have an appropriate status. ‘Appropriate status’ in any particular case is the status specified by Regulations as appropriate in relation to a category of housing, business or type of work, as provided by new Article 2(6)(a). Article 2(6) contains wide Regulation-making powers for the general purposes of the new scheme, including powers under which persons or classes of persons may be exempted from the requirement to have a status under the CHWL; these powers also enable conditions to be specified in relation to a particular status, and the specification of circumstances in which status may be lost or revoked.

Under Article 2(2) and (3) a person can only acquire a status in one of 4 ways: by transitional provision preserving a qualification under the previous, unamended CHWL; by the allocation of a status by a business with an appropriate staffing licence under Part 7 as amended by *Articles 15 to 19*; by a determination of the person’s status under Article 3, or as provided by Regulations under paragraph (6). Article 2(6) contains a broad Regulation-making power for the States to make further provision in relation to the acquisition and loss or revocation of status.

Under Article 3 as amended by *Article 5*, a determination of status is to be carried out by a determining officer, having regard to any relevant Regulations and guidance but also to the population policy or other relevant strategic objective of the States (and, in the case of the grant of a licence to a business under Part 7, to the additional factors set out in new Article 26A(3) inserted by *Article 18*). The determination may be made following an application, or (under Article 3(3)(b)), a determining officer may, in prescribed circumstances, make a determination whether or not an application has been made.

An application for a determination of status must be made as provided under Article 3(4). The application is considered by a determining officer exercising the powers conferred in Article 3(5) and (6), under which the officer may determine that a person has a status, which may not necessarily be the status applied for, or refuse the application. (A determining officer also has power to decline to consider an application,

in such circumstances as may be specified in Regulations under Article 2(6)(e)). It is envisaged that these circumstances will include, for example, a case where a person has an unexpired criminal conviction.) If the determining officer grants a particular status, conditions may be attached to the status under Article 3(7).

If the case is one in which the determining officer is unable to make a determination, despite the assistance of any relevant policies and/or of guidance provided by the Minister (under new Article 42A inserted by *Article 28*), the determining officer must, under Article 3(8), refer the case for consideration by the new Housing and Work Control Panel. This “Panel” is a body to be established under Article 48 as substituted by *Article 32*. Where the Panel makes a recommendation following its consideration, the determining officer must give effect to the recommendation unless there are cogent reasons (such as the withdrawal of the application) not to do so.

A person aggrieved by a determination, a refusal of an application, or the imposition of a condition may apply to the Panel for a review of the determining officer’s initial decision under new Article 40A (inserted by *Article 27*). The Panel may then make a recommendation to the Minister, as provided by that Article. If, on a further decision of the Minister following a recommendation by the Panel under Article 40A, the person still objects to the decision, there is a right of appeal to the Royal Court (under Article 41 as also amended by *Article 27*).

Once a determination of status has been made, evidence of that status must be provided to the person concerned under Article 4 as substituted by *Article 6*. *Article 6* also makes provision substituting Articles 5 and 6; the latter contains updated offences relating to evidence of status and deception as to a person’s status.

Articles 7 to 9 amend Part 3 to update the provisions applying to adults and children arriving to live or work in Jersey, in accordance with the new scheme introduced by this Law. *Article 9* makes other related minor and consequential amendments to Article 9, including the insertion of a defence of “reasonable excuse” into Article 9(12).

Article 10 substitutes Article 10 to update the powers of sharing information for the purposes of this Law.

Articles 11 to 14 make amendments, consequential on the new scheme, to Parts 5 and 6 which deal with housing controls and specified transactions relating to land. However in general the substance of those Parts is left largely undisturbed.

Articles 15 to 26 amend Part 7 which deals with controls on working. *Article 15* substitutes the interpretation provisions for that Part in Articles 22 and 23, simplifying them as a result of the updating and of changes to Part 7 which will no longer make separate reference to “hawkers” and similar itinerant workers.

Under Article 24 as substituted by *Article 16*, an individual may not work in Jersey without the appropriate status to do so and may not work in or for a business, other than a non-resident business, unless that business has an appropriate staffing licence to employ an individual with that status.

Article 17 amends Article 25 to provide that all Jersey businesses, other than those exempted from this requirement by Regulations or an Order under such Regulations, must have an appropriate licence. (An appropriate licence is a licence of the type specified in relation to the business or type of business concerned, and which permits a person of a specified appropriate status to work for that business, as provided by Article 24(4).)

Article 18 substitutes Article 26 to make provision as to applications for licences under Part 7, and inserts a new Article 26A which sets out the powers of a determining officer in relation to granting or refusing licences, conditions which may be attached to

licences, and referral to the Panel where the officer finds that no determination can readily be made. The determining officer must, in making a decision under Article 26A, have regard to the matters specified in Article 26A(3), which include the population policy agreed by the Council of Ministers. Under Article 26A(6), in the case of a licence granted to a non-resident business the conditions to be imposed must include the period for which the licence is granted, which may not exceed 12 months. Article 27, substituted by *Article 19*, makes further specific provision in relation to staffing licences, in particular as to the conditions which may be specified by the determining officer granting such a licence, and enabling the States by Regulations to specify circumstances in which such licences may be withdrawn, varied or suspended, or as to conditions which may be imposed or withdrawn, etc.

Article 19 deletes Article 28, which related principally to ‘hawkers’ (except for the provision which is now incorporated as Article 26A(6)). *Articles 21 and 22* amend, respectively, Articles 29 and 30 which relate to variation and revocation of licences.

Article 22 also inserts a new Article 30A under which a person aggrieved by a decision of a determining officer under Part 7 may apply to the Panel for review of the decision (the reviewable decisions are listed in Article 30A(2), which may be amended by the States by Regulations). As is the case under Article 3 in relation to determinations of status, the Panel may then make a recommendation (or further recommendation, as the case may be) as provided by Article 40A. If, on a further decision of the Minister following a recommendation by the Panel under Article 40A, a person still objects to the decision, there is similarly a right of appeal to the Royal Court (under Article 41 as also amended by *Article 27*).

Article 23 amends Article 31 to confer power on the Minister to prescribe provisions about charges for and in relation to licences under Part 7. *Article 24* further updates Article 32 (already amended by provision in the Finance (2020 Budget) (Jersey) Law 2019) which concerns the requirement for a business with a staffing licence to provide a regular statement as to the persons employed by the business.

Article 25 makes updating amendments to Article 37 which deals with notices requiring cessation of business carried on without an appropriate licence. In particular it removes the requirement for an application to the Royal Court by the Minister in order to obtain enforcement of such notices, instead allowing a person on whom a notice is served to make representations against the notice, and if necessary to bring an appeal against it. These new rights are counter-balanced by provision making it an offence, unless an appeal has been brought, to fail to comply with the notice.

Article 26 updates Article 38 to require the Minister to maintain a register of businesses licensed under Part 7.

Article 27 makes amendments relating to appeals. First, it inserts a new Article 40A to provide for reviews which may be carried out by the Panel under the new provisions introduced by this Law, for the purposes of which the Panel must have regard to the same powers as may be exercised by a determining officer (other than the powers to request a review, or to act independently in conferring a status or varying a licence) in carrying out a determination. Secondly, *Article 27* updates Article 41 to confer new rights of appeal to the Royal Court, including appeals against determinations of the Minister following a review by the Panel under Article 40A.

Article 28 inserts a new Article 42A which sets out the powers of the Minister to issue and publish guidance as to the application or interpretation of the Law.

Article 29 makes a minor consequential amendment to Article 43. *Article 30* expands the scope of Order and Regulation-making powers in the CHWL, to include the power to make Regulations which impose civil financial penalties; to add the possibility of

making, with the agreement of the Minister for Treasury and Resources, revenue-raising charges; and to permit provision for rebates or refunds of charges or fees in prescribed circumstances, as well as for additional financial penalties for failure to pay a charge or fee.

Article 31 adds provision to the offence of providing false or misleading information in Article 45, to revoke a status acquired by a person as a consequence of such an act of deception.

Article 32 substitutes Article 48 to provide for the constitution and functions of the new Housing and Work Control Panel.

Article 33 inserts a new Article 48A which would establish a Population Advisory Council for the purpose of giving expert advice to the Minister on the formulation of population policy and on the proper operation of the CHWL.

Article 34 deletes, from Article 50, provisions relating to obsolete legislation.

Article 35 gives the title by which this Law may be cited, and provides for its commencement on a day to be specified by Act of the States.



Jersey

DRAFT CONTROL OF HOUSING AND WORK (AMENDMENT) (JERSEY) LAW 202-

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Jersey

DRAFT CONTROL OF HOUSING AND WORK (AMENDMENT) (JERSEY) LAW 202-

A LAW to amend the [Control of Housing and Work \(Jersey\) Law 2012](#), and for connected purposes.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law, a reference to an Article by number is, unless otherwise indicated, a reference to the Article of the same number in the [Control of Housing and Work \(Jersey\) Law 2012](#).

2 Long title substituted

For the long title to the [Control of Housing and Work \(Jersey\) Law 2012](#) there is substituted –

“A LAW to make provision for the control and regulation of housing and work in Jersey, and for connected purposes.”

3 Article 1 (interpretation) amended

In Article 1(1) –

- (a) after the definition “Court” there is inserted –
“ “determining officer” means a person who is appointed by the Minister to carry out determinations of applications and related matters under this Law;”;
- (b) after the definition “Minister” there is inserted –

“ “ordinary residence” for the purposes of this Law is to be determined in accordance with guidance issued by the Minister under Article 42A;

“Panel” means the Housing and Work Control Panel established under Article 48;”;

- (c) after the definition “specified transaction” there is inserted –
“staffing licence” is to be construed in accordance with Article 27(1);”;
- (d) after the definition “States body” there is inserted –
“ “status” means a status under this Law within the meaning given by Article 2;”;
- (e) in the definition “work”, in sub-paragraph (d) for “Article 23(1)(c)” there is substituted “sub-paragraph (c) in the definition “business” in Article 23(1)”;
- (f) the definitions “Hawkers Law 1965”, “registration card”, “residential and employment status” and “valid registration card” are deleted.

4 Article 2 (residential and employment status) substituted

For Article 2(1) to (9) there is substituted –

- “(1) For the purposes of residence and work in Jersey, a person must, unless they are exempted from this requirement by provision under paragraph (6), have an appropriate status under this Law.
- (2) A person has an appropriate status if –
 - (a) they fulfil the conditions specified in relation to that status;
 - (b) they have acquired the status in one of the ways set out in paragraph (3); and
 - (c) their status has not expired, or has not been otherwise lost or revoked.
- (3) A person’s status is acquired in one of the following ways –
 - (a) in the case of a person who, on the day immediately preceding the day on which Article 4 of the Control of Housing and Work (Amendment) (Jersey) Law 202- comes into force, already possesses a residential or employment status under this Law as unamended by the Control of Housing and Work (Amendment) (Jersey) Law 202-, by the application of such transitional provisions as may be made by the States in Regulations;
 - (b) in the case of a person who is or is to be employed by a business with an appropriate staffing licence, by the allocation of the status to the person by that business in accordance with the terms of the licence;
 - (c) by a determination of the person’s status under Article 3; or
 - (d) in accordance with such further provision as may be made by the States in Regulations under paragraph (6).

- (4) A person must make an application for a determination of status in accordance with Article 3, if the person wishes –
 - (a) to acquire an appropriate status, where paragraph (3)(a) or (b) does not apply; or
 - (b) to vary or confirm a status already acquired under this Law (whether or not as amended by the Control of Housing and Work (Amendment) (Jersey) Law 202-).
- (5) Evidence of a person’s status under this Law is to be provided in accordance with Article 4, and no evidence or purported evidence of status is acceptable for the purposes of this Law unless it complies with the requirements of that Article.
- (6) The States may by Regulations make all such provision as is necessary to give full effect to this Article, and for this purpose may in particular –
 - (a) specify different types of status as appropriate in relation to different housing categories, specified transactions, businesses or types of work under this Law;
 - (b) specify conditions or circumstances in which a person will acquire, or lose, a particular status, or a status may be amended or revoked;
 - (c) make provision for a particular status to be subject to such conditions as may be prescribed, including conditions relating to the occupancy of housing of a specified category or of a specified unit of dwelling accommodation;
 - (d) make provision as to the treatment, in relation to housing and work in Jersey, of persons whose previous status under this Law has expired, has been revoked, or is otherwise indeterminate;
 - (e) make provision as to the circumstances in which an application for a determination of status need not be considered;
 - (f) provide that a person of a specified description is exempt from the requirement to have a status under this Law;
 - (g) confer a power, or impose a duty, on the Minister to make, by Order, any provision that may be made by Regulations.
- (7) In paragraph (1) “residence” means ordinary residence in Jersey for a period of 3 months or more.”.

5 Article 3 (application for a registration card) substituted

For Article 3 there is substituted –

“3 Determination of status, and application for determination

- (1) A person’s status is to be determined in accordance with this Article, and –
 - (a) if a person fulfils the specified conditions for a particular status, then subject to such exceptions as may also be

- specified, and to any exemptions in Regulations under Article 2(6), the determination must be that the person has that status; or
- (b) if a person fulfils the specified conditions for more than one status, the determining officer must determine, having regard to –
- (i) the population policy of the Council of Ministers as agreed under Article 2 of the [States of Jersey Law 2005](#),
 - (ii) any other relevant strategic objective of the States of Jersey,
 - (iii) any guidance issued by the Minister under Article 42A, and
 - (iv) such other factors as may be specified by the States in Regulations,
- that the person has one particular status.
- (2) A determining officer must, subject to paragraph (8), make a determination of status within a reasonable time following receipt of an application for such a determination.
- (3) A determination of status may be made –
- (a) in a case where Article 2(3)(a) applies and the person concerned –
 - (i) wishes to obtain evidence confirming their status, where such evidence is required by this Law, or
 - (ii) believes their status to have changed; or
 - (b) by a determining officer, whether or not an application has been made by the person concerned, in such circumstances and such manner as may be prescribed.
- (4) An application for determination of status –
- (a) may be made using such form as the Minister may prescribe and make available, including by electronic means, for that purpose;
 - (b) must contain such details as the Minister may prescribe; and
 - (c) must be accompanied by –
 - (i) such documents or other information as the Minister may reasonably require, and
 - (ii) such fee as the Minister may prescribe.
- (5) Before determining a person’s status, a determining officer may require the person to provide such additional documents or information as the officer may consider necessary, or to attend in person at such place as the officer may specify, for the purposes of –
- (a) verifying the person’s identity; or
 - (b) determining the person’s status.
- (6) A determining officer may –

- (a) determine that a person has a particular status, whether or not that status is the same as the status applied for;
 - (b) refuse to determine an application, on such grounds as may be specified by the States in Regulations under Article 2(6), or in an Order under such Regulations; or
 - (c) refer the matter to the Panel under paragraph (8).
- (7) In granting a particular status, the determining officer may specify such conditions as may be specified by Regulations under Article 2(6), or by an Order under such Regulations, in relation to that status.
- (8) In any case where a determining officer is, despite applying any guidance issued under Article 42A, unable to make a determination, the determining officer must refer the matter to the Panel for consideration and in such a case the determining office must notify the person concerned, in writing, of the referral.
- (9) Having received a recommendation following the Panel's consideration, under Article 48, of a matter referred to the Panel under paragraph (8), the determining officer must give effect to the Panel's recommendation, unless the determining officer is satisfied that there are reasons (including, by way of example, the withdrawal of the application) why the recommendation cannot be given effect.
- (10) A person aggrieved by –
- (a) a determination of status under paragraph (3)(b) or (6)(a);
 - (b) a refusal to determine an application, under paragraph (6)(b): or
 - (c) a condition imposed under paragraph (7),
- may request, in accordance with Article 40A, a review of the determining officer's decision by the Panel.”.

6 Articles 4 (registration card), 5 (duration of a registration card) and 6 (offences concerning registration cards) substituted

For Articles 4 to 6 and there is substituted –

“4 Evidence of status

- (1) Following the determination of a person's status or a review of such a determination, the determining officer must provide –
 - (a) evidence of the person's status according to the determination or review; or
 - (b) where an application is refused, a statement of the decision and of the reasons for it.
- (2) Evidence of status must contain at least the information specified in this Article, but may be provided in such form and manner, whether digital or otherwise, as the Minister may consider expedient.

- (3) Evidence of status is not sufficient for the purposes of this Law unless it contains the following information in respect of the person whose status it evinces –
- (a) name and, in the case of an insured person, social security number;
 - (b) status;
 - (c) date of commencement of status;
 - (d) date of expiry of status, if any, in accordance with Regulations under Article 5;
 - (e) any condition to which the status is subject; and
 - (f) such other information as may be specified, whether generally or in respect of a particular status, by any Regulations or Order under this Part.
- (4) In sub-paragraph (3)(a) –
- “insured person” has the same meaning as given by Article 3 of the [Social Security \(Jersey\) Law 1974](#);
- “social security number” means the number referred to in Article 2 of the [Social Security \(Collection of Class 1 and Class 2 Contributions\) \(Jersey\) Order 2013](#).

5 Duration and validity of status

- (1) The States may by Regulations make provision as to –
- (a) the duration of status under this Law, whether generally or in relation to a particular status, employment or type of work, including limiting such duration by specifying a period of time, or by reference to any date or event;
 - (b) arrangements in the case of expiry of a status which is time-limited; and
 - (c) the circumstances in which a type of status or a particular status may be revoked.
- (2) If a person loses a document or other item (including an electronic item) which provides evidence of their status, the loss does not, by itself, have any effect on the person’s status as acquired in accordance with this Part and Regulations made under it.

6 Offences and penalties concerning evidence of status, etc.

- (1) A person who knowingly makes any false statement or withholds any material information for the purpose of –
- (a) obtaining any status, or evidence of status, for themselves or another person;
 - (b) preventing the acquisition of status or the issue of any evidence of status; or
 - (c) procuring the imposition of a condition in relation to a status or evidence of status,

is guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

(2) A person (the “representor”) who –

(a) with intent to deceive and for the purpose of undertaking work or obtaining either accommodation, or a status conferring a right to residence, under this Law; or

(b) obtaining any benefit under any other enactment,

for themselves or for another person (“A”), represents to any further person that the representor or A enjoys a status which they do not enjoy under this Law, is guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

(3) A person who, with intent to deceive –

(a) forges, alters or uses, or lends to or allows to be used by any other person, any evidence of status; or

(b) makes or has in their possession any document so closely resembling evidence of status as to be calculated to deceive,

is guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

(4) A person who –

(a) purports, or agrees, to assign, sell, or transfer any evidence of status; or

(b) wilfully defaces or destroys any evidence of status,

is guilty of an offence and liable to a fine of level 3 on the standard scale.

(5) A purported sale, transfer or assignment of any evidence of status is of no effect.

(6) Where a person is convicted of an offence under any of paragraphs (1)(a), (2) or (3), a status acquired in consequence of the act of deception constituting or forming part of the offence, is revoked.”.

7 Article 7 (requirement for registration card) etc. amended

(1) For the sub-heading to Part 3 there is substituted –

“DETERMINATION OF STATUS: INDIVIDUALS”.

(2) For the heading to Article 7 there is substituted –

“7 Requirement for initial determination”.

(3) For Article 7(1) there is substituted –

“(1) A person who comes to live in Jersey and who meets the conditions described in paragraph (4) must make an application, within the time limit specified in paragraph (5), for determination of their status.”.

(4) In Article 7(2) for “valid registration card” there is substituted “status”.

(5) Article 7(3) is deleted.

- (6) For Article 7(4)(b)(ii) there is substituted –
- “(ii) the date on which the person attains school leaving age.”.
- (7) In Article 7(5) –
- (a) “Subject to paragraph (6),” is deleted; and
 - (b) for “registration card” there is substituted “determination of status”.
- (8) Article 7(6) is deleted.

8 Article 8 (registration requirements for children not born in Jersey) amended

In Article 8(2)(a) for “applies for a registration card under Article 3” there is substituted “makes an application under Article 3 or otherwise acquires a status under Article 2(3)”.

9 Article 9 (requirement to give information to the Minister upon change of address) amended

- (1) In Article 9(2)(a) and (c) for “the date the person” in each place there is substituted “the date on which the person”.
- (2) For Article 9(11) there is substituted –
- “(11) The requirements of paragraph (1) or (3) do not apply to a person in respect of information –
 - (a) which has been notified to the Minister under Article 7 or under a provision of any other enactment; and
 - (b) which is the same, or substantially the same, information as the information required for the purposes of either of those paragraphs.”.
- (3) In Article 9(12) after “who” there is inserted “, without reasonable excuse,”.

10 Article 10 (power to obtain information from other departments) substituted

For Article 10 there is substituted –

“10 Power to share information

- (1) The Minister may, for the purposes of facilitating compliance with this Law, obtain from or disclose to a parish or any department or administration for which another Minister is assigned responsibility, any information held by the Minister or (as the case may be) by that parish, department or administration in relation to an individual, including in particular –
- (a) full name (including any title);
 - (b) date of birth;

- (c) current address;
 - (d) current status and, if any, date of expiration of status.
- (2) The Minister may, for the purpose of facilitating compliance with this Law, obtain from or disclose to the Comptroller relevant information held by the Minister or (as the case may be) by the Comptroller in relation to any person.
- (3) Information may be disclosed under this Article –
- (a) in such manner as the Minister may direct; and
 - (b) whether or not the disclosure is requested by or on behalf of the person to whom the disclosure is made.
- (4) A power conferred by this Article may be exercised notwithstanding anything in any enactment to the contrary.
- (5) In paragraph (2) –
- “Comptroller” means the Comptroller of Revenue under Article 2 of the [Revenue Administration \(Jersey\) Law 2019](#);
- “relevant information” means such information, and only such information, as may be reasonably required for the purpose mentioned in that paragraph.”.

11 Article 15 (conditions and changes to housing categories) amended

For Article 15(7) there is substituted –

- “(7) In making a determination under paragraph (3), the Minister must have regard to any relevant factors relating to the supply of and demand for housing, including the interests of persons having a particular status, and may have regard to any other factors the Minister considers relevant.”.

12 Article 17 (occupation of Qualified housing) amended

(1) For the heading to Article 17 there is substituted –

“17 Occupation of housing of a particular category”.

(2) For Article 17(1) there is substituted –

- “(1) A person must not occupy, as their ordinary residence, a unit of dwelling accommodation of a category mentioned in Article 11(1), unless –
- (a) the person has the appropriate status to do so, as may be specified by the States in relation to that category by Regulations;
 - (b) the person occupies the unit with the consent of another person who has such an appropriate status as mentioned in sub-paragraph (a), provided that the other person occupies the whole or a substantial part of that unit as their sole or principal place of residence in Jersey;

- (c) the person does not have such an appropriate status but has purchased the unit as a party to a specified transaction described in Article 18(1)(a), to which the person's spouse or civil partner, being a person having such an appropriate status, was also a party in the same capacity;
- (d) the person acquired the unit by inheritance; or
- (e) the person occupies the unit with the consent of the Minister under paragraph (2)."

13 Article 19 (prohibition on specified transactions etc.) substituted

For Article 19 there is substituted –

"19 Prohibitions in respect of parties to specified transactions

- (1) In this Article, "P" means an individual person who seeks to acquire land by means of a specified transaction relating to that land.
- (2) A person must not enter into a specified transaction unless P has the appropriate status enabling P to do so.
- (3) The States may by Regulations specify a particular type of status as appropriate in relation to one or more descriptions of specified transaction.
- (4) For the purposes of this Article references to the acquisition of land mean acquiring land as a purchaser, lessee or transferee."

14 Article 20 (specified transactions concerning companies etc) amended

In Article 20(4) for "Entitled status" there is substituted "the appropriate status".

15 Articles 22 (interpretation) and 23 (meaning of "undertaking") substituted

For Articles 22 and 23 there is substituted –

"22 Interpretation of Part 7

- (1) In this Part –
 - "authorized person" means the Minister or any individual authorized by the Minister under Article 33 to perform functions under this Part;
 - "business" has the meaning given by Article 23;
 - "business document" means a document that –
 - (a) relates to the carrying on of a business; or
 - (b) forms part of a record relating to a business and required to be kept under any enactment;
 - "business premises" means premises used for or in connection with the carrying on of a business, whether or not the premises also

comprise or are in a person's place of residence, or are the sole premises used for that purpose;

“non-resident business” means a business carried on by a person who –

- (a) is not ordinarily resident in Jersey; or
- (b) does not have any permanent business premises in Jersey, but who carries on business in Jersey;

“payment” refers to any form of remuneration, including –

- (a) commissions and benefits in kind; and
- (b) rents and receipts for the provision of accommodation;

“States trading operation” means a trading operation designated under the [Public Finances \(Jersey\) Law 2019](#) or taken to be designated as such under another enactment;

“subsidiary” has the same meaning as given by Article 2 of the [Companies \(Jersey\) Law 1991](#).

(2) A reference in this Part –

- (a) to a “licence”, without more, is to all or any of the types of licence which may be granted under this Part, as the context permits or requires;
- (b) to the conditions of a licence, includes reference to its duration;
- (c) to an appeal or a review being finally determined, is to the point at which all procedures for appeal or review under this Law have been exhausted, or the conclusion of a review has been accepted by all the parties to the review, whichever occurs first.

23 Meaning of “business”

(1) For the purposes of this Part “business” includes, subject to the further provisions of this Article, any –

- (a) trade;
- (b) business; or
- (c) activity involving work or services performed for, or offered to, members of the public, including a section of the public, carried on in Jersey, whether or not carried on for profit.

(2) A trade, business or activity is not a business for the purposes of this Part if no individual working for the trade, business or activity is paid for such work.

(3) Where a business is not carried on by a legal person, any individual having responsibility for the management, direction or control of the business is treated as carrying on that business.

(4) In determining whether a business is being carried on in Jersey –

- (a) if the business has a physical presence in Jersey, it is irrelevant whether the business or a subsidiary of that business has an address of any kind in Jersey; and
 - (b) in any case it is irrelevant whether activities carried on in Jersey and comprised in the business are ancillary to any trade or business carried on by the business outside Jersey.
- (5) In this Part, “physical presence” may refer to the physical presence in Jersey of –
- (a) any person working in or for the business; or
 - (b) any item in the custody or ownership of the business,
- but for the avoidance of doubt, the presence in Jersey of a person working in or for a business which carries on activities outside Jersey, for the purpose only of meeting staff of another business, does not of itself constitute physical presence of the business for which that person works.
- (6) Each parish, States trading operation and States body is a separate business for the purposes of this Part.”.

16 Article 24 (requirement to have a registration card for work) substituted

For Article 24 there is substituted –

“24 Appropriate status for work, and staffing licences

- (1) An individual must not work in Jersey unless they have the appropriate status to do so, or unless either –
 - (a) the individual is exempted, by provision under Article 2(6)(f), from the requirement to have such a status; or
 - (b) the business for which the individual works is a non-resident business.
- (2) A business, other than a non-resident business, must not employ an individual unless –
 - (a) the individual has the appropriate status; and
 - (b) the business, unless otherwise specified under paragraph (6)(b), has the appropriate staffing licence.
- (3) For the purposes of this Part the appropriate status is the status specified, in relation to the type of work or business in question, by Regulations under paragraph (6), or by an Order under such Regulations.
- (4) The appropriate staffing licence is a licence of a type which –
 - (a) is specified, in relation to the business and, where appropriate, the type of work in question, by Regulations under Article 27 or by an Order under such Regulations; and
 - (b) permits a person of the appropriate status to work for the business in question and, where a type of work is specified in the staffing licence, to carry out that type of work.

- (5) For the avoidance of doubt –
 - (a) the total number of persons specified in a staffing licence may consist of, or include, one or more named individuals; and
 - (b) neither a licence nor a status is appropriate if it has expired or has been revoked.
- (6) The States may by Regulations make all such provision as is necessary to give full effect to this Article, and for this purpose may in particular –
 - (a) specify different types of licence, or conditions of licences, as appropriate for different businesses;
 - (b) specify businesses, or types of business or work, which are not required to have a particular type of licence, or any licence under this Part;
 - (c) specify, and make all such provision as may be necessary for determination of, the appropriate status or appropriate staffing licence in relation to particular businesses or types of business or work, including (by way of example) part-time work or the supply of workers by one business to carry out work or services for other persons; and
 - (d) confer a power or impose a duty on the Minister to make, by Order, any provision that may be made by Regulations.
- (7) A person who, without reasonable excuse, contravenes paragraph (1) or (2) is guilty of an offence and liable to a fine.”.

17 Article 25 (requirement for undertakings to have a licence) amended

- (1) For the heading to Article 25 there is substituted –

“25 Requirement for business to have appropriate licence”.

- (2) In Article 25(1) –
 - (a) for “an undertaking in Jersey” there is substituted “a business in Jersey, other than one exempted by Regulations under Article 24 or by an Order under such Regulations,”; and
 - (b) for “that undertaking” there is substituted “that business”.
- (3) For Article 25(2) there is substituted –
 - “(2) For the purpose of paragraph (1), an appropriate licence is a licence of the type which is specified, by Regulations under Article 24 or by an Order under such Regulations, in relation to the business or type of business in question.”.
- (4) For Article 25(3) to (7) there is substituted –
 - “(3) Subject to paragraphs (4) and (5), a business does not have an appropriate licence if –
 - (a) there is a significant change in the ownership of the business; and
 - (b) within the period of 60 days immediately following that change, the person who, following the change, is carrying on

the business did not make an application under Article 26 for the grant of a new licence (or, if such an application was made, it was withdrawn or treated under Article 26(4) as having been withdrawn).

- (4) The Minister may, in guidance under Article 42A, specify descriptions or numbers of change in ownership, in relation to particular businesses or types of business, which are to be regarded as significant for the purposes of paragraph (3).
- (5) Paragraph (3) does not apply to a business which is listed on a recognised stock exchange.”.
- (5) Article 25(9) is deleted.
- (6) For Article 25(10) to (11) there is substituted –
 - “(10) In paragraph (5), “recognised stock exchange” means –
 - (a) the Channel Islands Stock Exchange;
 - (b) any market for the buying and selling of securities which is situated in, and recognised as, a stock exchange within the meaning of the law relating to stock exchanges of any of the following –
 - (i) the United Kingdom or a member State of the European Union,
 - (ii) Australia, Canada, Hong Kong, Japan, Norway, Singapore, South Africa, Switzerland or the United States of America; or
 - (c) any other such exchange approved in writing by the Minister.”.

18 Article 26 (grant and duration of a licence) substituted

For Article 26 there is substituted –

“26 Application for licence

- (1) An application for a licence must be made, in accordance with this Article, by every person carrying on a business in Jersey.
- (2) The application must be made using the form which the Minister makes available for the purpose, including by electronic means.
- (3) The application must be accompanied by –
 - (a) such information or documents as the determining officer may reasonably require; and
 - (b) such fee as the Minister may prescribe.
- (4) If, without reasonable excuse, the applicant does not, within one month or such longer period as the determining officer may permit, provide any further material required under paragraph (3)(a), the determining officer –
 - (a) may treat the application as having been withdrawn; but

- (b) must notify the applicant in writing that the application has been so treated, and of the applicant's right to a review under Article 40A.

26A Grant and duration etc. of licence

- (1) A determination of an application must be made by a determining officer within a reasonable time following receipt of the application and any other items required to accompany the application under Article 26(3).
- (2) The determining officer, having regard to any guidance issued by the Minister under Article 42A and to the matters listed in paragraph (3), may –
 - (a) grant a licence, and in doing so the determining officer must specify –
 - (i) the nature of the business to which the licence relates,
 - (ii) the date on which the licence is granted and the duration (which may be indefinite) or expiry date of the licence,
 - (iii) such conditions as may be imposed under paragraph (4), and
 - (iv) such other particulars as the Minister may prescribe;
 - (b) refuse to grant a licence; or
 - (c) in a case where the determining officer is, despite having regard to the matters listed in paragraph (3) and applying any guidance issued under Article 42A, unable to make a determination, the determining officer must refer the application to the Panel for consideration, and in such a case must notify the applicant, in writing, of the referral.
- (3) In determining whether or not to grant a licence, and in imposing any limitation of time or other conditions, the determining officer must have regard to all relevant matters, including –
 - (a) the population policy of the Council of Ministers as agreed under Article 18 of the [States of Jersey Law 2005](#), and any other relevant policy of the States of Jersey;
 - (b) preserving and maximising the benefits of Jersey's resources, including Jersey's biodiversity and natural environment;
 - (c) promoting a balanced and prosperous economy;
 - (d) protecting the integrity and reputation of Jersey in commercial and financial matters; and
 - (e) whether such a grant or condition would be in the best interests of the public of Jersey.
- (4) In granting a licence the determining officer may impose, with reasons, such conditions as, subject to paragraph (6) in the case of a non-resident business licence or to Article 27 in the case of a staffing licence, the determining officer may think fit.
- (5) Where the determining officer –

- (a) refuses to grant a licence;
- (b) grants a licence, but imposes a condition; or
- (c) grants a licence, but in part only, or to an extent other than as requested by the applicant,

the determining officer must give the applicant a statement in writing of the reasons for the decision and of the applicant's right to a review under Article 40A.

- (6) Where the determining officer decides to grant a licence in respect of business carried on in Jersey by a non-resident business, the determining officer must specify –
 - (a) the period, not exceeding 12 months, for which the licence is to remain in force; and
 - (b) the type of business for which the licence is granted, including the details of any relevant contract.
- (7) Evidence of the grant of a licence must be provided to the applicant, and the provisions of Article 4(2) to (4) apply for this purpose, but as though references in those provisions to a status were references to a licence.
- (8) Activities which are incidental or ancillary to, or a necessary part of, the nature of the business specified under paragraph (2)(a)(i) are deemed also to be authorized by the licence.
- (9) Having received a recommendation following the Panel's consideration, under Article 48, of a matter referred to the Panel under paragraph (2)(c), the determining officer must give effect to the Panel's recommendation, unless the determining officer is satisfied that there are reasons (including, by way of example, the withdrawal of the application) why the recommended determination cannot be given effect.
- (10) A person who, without reasonable excuse, contravenes or procures the contravention of a condition of a licence, is guilty of an offence and liable to imprisonment for a term of 2 years and a fine.”.

19 Article 27 (specific provisions relating to a business licence) substituted

For Article 27 there is substituted –

“27 Specific conditions of a staffing licence

- (1) This Article applies where a licence (a “staffing licence”) is granted to a business involving work or services which are carried out in Jersey by persons who are paid by the business for such work or services.
- (2) In granting a staffing licence the determining officer may impose, as conditions of the licence –
 - (a) the nature of each type of work or activity of the business in relation to which the staffing licence is granted;

- (b) in relation to any status or type of work specified in the staffing licence, the maximum number of individuals of that status permitted to work in or for the business;
 - (c) the duration of the staffing licence (which may be no longer than such period as is specified by Regulations under paragraph (5) or by an Order under such Regulations, and may be expressed either as a period of time or by reference to any date or event).
- (3) Without prejudice to paragraph (2), in granting a staffing licence a determining officer may also specify other conditions, in particular such conditions as may be prescribed in relation to particular businesses or types of business, particular roles or types of role, or a particular status, including –
- (a) conditions as to duration, whether expressed as a period of time or by reference to any date or event, for which persons of a particular status may work in or for a business; and
 - (b) the identity and status of persons who may work in or for a business, including named individuals.
- (4) If a staffing licence is, by a condition of the licence, made subject to a periodic review, the Minister may prescribe fees for that review.
- (5) The States may by Regulations make all such further provision as is considered necessary in relation to staffing licences, including provision as to –
- (a) the withdrawal or termination of such licences;
 - (b) the imposition, review, variation or suspension of conditions in such licences; and
 - (c) the allocations of roles and numbers of individuals, which may be made by conditions of such licences.
- (6) Regulations under paragraph (5) may confer a power or impose a duty on the Minister to make, by Order, any provision that may be made by such Regulations.”.

20 Article 28 (specific provisions relating to a hawker’s licence etc.) deleted

Article 28 is deleted.

21 Article 29 (variation of licences) amended

- (1) For the heading to Article 29(1) there is substituted –

“29 Renewal or other variation of licences”.

- (2) For Article 29(1) there is substituted –

- “(1) The holder of a licence may, at any time while the licence is in force, make an application to vary a condition of the licence, but if the condition relates to the duration of the licence, an application to

extend the licence (with or without variation of any other condition of the licence) must be made no later than the prescribed time.

(1A) A determining officer may, at any time while a licence is in force, serve notice in writing on the licence holder of the officer's intention to vary a condition of the licence.”.

(3) In Article 29(3) for “paragraph (1)” there is substituted “paragraph (1A)”.

(4) For Article 29(4) to (8) there is substituted –

“(4) Following an application under paragraph (1), or the consideration of any representations received under paragraph (3), a determining officer may –

(a) refuse the application;

(b) vary the licence, whether as requested by the licence holder or otherwise; or

(c) in a case where the determining officer is, despite having regard to any relevant matters listed in Article 26A(3) and applying any guidance issued under Article 42A, unable to take a decision, the determining officer must refer the application to the Panel for consideration, and in such a case must notify the applicant, in writing, of the referral.

(5) In taking a decision such as described in paragraph (4)(a) or (b), the determining officer must have regard to the matters listed in Article 26A(3).

(6) The determining officer must serve notice in writing on the licence holder of –

(a) a decision taken by the officer under paragraph (4)(a) or (b) and the reasons for it; and

(b) the licence holder's right to a review under Article 40A.

(7) Unless the licence holder agrees otherwise, a notice under paragraph (6) does not take effect before whichever is the sooner of –

(a) the expiration of one month from the date of the notice; or

(b) the date on which any review or appeal is finally determined or withdrawn.

(8) Having received a recommendation following the Panel's consideration, under Article 48, of a matter referred to the Panel under paragraph (4)(c), the determining officer must give effect to the Panel's recommendation, unless the determining officer is satisfied that there are reasons (including, by way of example, the withdrawal of the application) why the recommendation cannot be given effect.”.

22 Article 30 (revocation of a licence) amended and Article 30A (right to review, etc.) inserted

(1) For the heading to Article 30 there is substituted –

“30 Revocation and expiry of a licence”.

- (2) In Article 30(1) –
 - (a) for “the Minister” in both places there is substituted “the determining officer”;
 - (b) for “Article 26” there is substituted “Article 26A”;
 - (c) in sub-paragraph (a)(iii) –
 - (i) “in the case of a business licence only,” is deleted,
 - (ii) for “the undertaking” in each place there is substituted “the business”;
 - (d) in sub-paragraph (a)(iv) for “the factors specified in Article 26(9)” there is substituted “relevant matters listed in Article 26A(3)”;
 - (e) in sub-paragraph (a)(v) for “the undertaking” there is substituted “the business”.
- (3) In Article 30(2) –
 - (a) for “the Minister” in both places there is substituted “the determining officer”;
 - (b) for “of appeal under Article 41” there is substituted “to a review under Article 40A”.
- (4) For Article 30(3)(b) there is substituted –
 - “(b) the date on which any review or appeal is finally determined or withdrawn.”.
- (5) In Article 30(4) for “the Minister” there is substituted “the determining officer”.
- (6) After Article 30 there is inserted –

“30A Right to review of determining officer’s decision under this Part

- (1) A person aggrieved by a decision of a determining officer under any of the provisions listed in paragraph (2) may request, in accordance with Article 40A, a review of the determining officer’s decision by the Panel.
- (2) The provisions mentioned in paragraph (1) are –
 - (a) a decision, under Article 26(4), to treat an application as withdrawn;
 - (b) the grant or refusal of a licence under Article 26A(2);
 - (c) the imposition of a condition in relation to a licence under Article 26A(4) or Article 27(2) or (3);
 - (d) the refusal of an application to vary a licence under Article 29(4)(a), or the variation of a licence under Article 29(4)(b);
 - (e) the revocation of a licence under Article 30(1).
- (3) The States may by Regulations amend paragraph (2) for the purpose of adding or deleting a reference to a provision of this Part.”.

23 Article 31 (annual charges in respect of business licences) substituted

- (1) For the heading to Article 31 there is substituted –

“31 Charges in respect of licences and conditions of licences”.

- (2) For Article 31 there is substituted –

“(1) The Minister may prescribe all such provision as is necessary or expedient in relation to –

- (a) charges to be payable, whether on an annual basis or otherwise by reference to any condition of the licence, by the holder of a licence;
- (b) the date by which any such charge must be paid; and
- (c) any financial penalty for failure to pay the charge, whether at all or by a specified date, including a penalty payable in respect of, and by reference to, any period for which the charge remains unpaid.

- (2) A person who fails, without reasonable excuse, to comply with an obligation to pay, in accordance with any prescribed requirement, such a charge as mentioned in paragraph (1)(a) or (c) is guilty of an offence and liable to a fine of level 3 on the standard scale.”.

24 Article 32 (undertakings with business licences to provide statements) amended

- (1) For the heading to Article 32 there is substituted –

“32 Requirement for business with staffing licence to provide statement”.

- (2) For Article 32(1) and (1A) there is substituted –

“(1) Subject to paragraph (1B), a person carrying on a business in respect of which a staffing licence has been granted must provide to the Minister, no later than the specified time, a statement –

- (a) for each specified period during which the person carries on that business; and
- (b) containing, in relation to all persons working in or for the business during the period in question, such information as may be prescribed.

- (1A) In paragraphs (1) and (3) –

“specified period” means such period as the Minister may prescribe;
“specified time” means midnight on the 15th day after the end of the period in respect of which the statement is provided, or such other time as the Minister may prescribe.”.

- (3) In Article 32(2) for “determine” there is substituted “prescribe”.

25 Article 37 (notices requiring cessation of unauthorized activity) amended

- (1) In Article 37(1) –
 - (a) for “an undertaking” there is substituted “a business”; and
 - (b) for “the undertaking” there is substituted “the business”.
- (2) In Article 37(2) –
 - (a) for “an undertaking” there is substituted “a business”; and
 - (b) for “Article 26” there is substituted “Article 26A”.
- (3) After Article 37(2) there is inserted –

“(2A) Before serving a notice under paragraph (2), an authorized person must give, to the person on whom the notice is to be served, a reasonable opportunity to make representations or to comply with a request in the notice on a voluntary basis, unless in all the circumstances it is not expedient to give such an opportunity.”.
- (4) For Article 37(3) there is substituted –

“(3) A notice under paragraph (1) or (2) –

 - (a) must specify the nature of the alleged activity;
 - (b) must request that the activity should cease forthwith or at a specified time or on a specified date;
 - (c) must contain –
 - (i) a statement that an appeal may be made against the notice in accordance with Article 41, and
 - (ii) such other information as the Minister may reasonably consider necessary.”.
- (5) In Article 37(4) for “the undertaking” there is substituted “the business”.
- (6) For Article 37(9) to (14) there is substituted –

“(9) Subject to paragraph (10), a person who intentionally and without reasonable excuse fails to comply with a notice under this Article is guilty of an offence and liable to a fine of level 3 on the standard scale.

(10) Where an appeal is made against a notice under this Article, the Royal Court may, in addition to its powers conferred by Article 41 or by Rules of Court –

 - (a) direct that the notice ceases to have effect until the appeal is finally determined; and
 - (b) make any such interim order as the Court thinks fit.”.

26 Article 38 (register) substituted

For the text of Article 38 there is substituted –

- “(1) For the purposes of this Law the Minister must maintain, in any manner which the Minister considers appropriate (including electronically), a register of businesses in Jersey to which licences have been granted under this Part.

- (2) In relation to each business the register must record –
 - (a) the name, and address for service, of the business;
 - (b) the name of the person having management and control of the business;
 - (c) the nature of the licence granted and the date of the grant; and
 - (d) such other particulars of the licence as may be prescribed.
- (3) The Minister must –
 - (a) make the register available for inspection by members of the public free of charge; and
 - (b) make such arrangements as are appropriate to enable members of the public to obtain, upon request and making payment of any fee which may be prescribed, a copy of an entry in the register.”.

27 Article 40A (reviews by the Panel) inserted and Article 41 (appeals) amended

- (1) After Article 40 there is inserted –

“40A Reviews by the Panel

- (1) In this Article and Article 41, “initial decision” means a decision by a determining officer described in paragraph (2), whether or not that decision is made following referral of a matter by the determining officer to the Panel for the Panel’s consideration.
- (2) A person aggrieved by any of the following decisions by a determining officer –
 - (a) a determination, under Article 3(3)(b) or 3(6)(a), of the person’s status;
 - (b) a refusal, under Article 3(6)(b), to grant a status to the person;
 - (c) the imposition, under Article 3(7), of a condition in relation to the grant of the person’s status; or
 - (d) a decision listed in Article 30A(2),may request a review by the Panel of the decision.
- (3) A request for a review under this Article must be made no later than the end of the period of one month beginning with the date of the initial decision and must contain –
 - (a) the person’s name and address for correspondence;
 - (b) details (including any reference number) of the initial decision;
 - (c) the grounds for requesting the review, including where relevant the reasons why the person disagrees with the initial decision or with any reasons for the initial decision;
 - (d) such other information or documents as the Panel may from time to time direct.

- (4) Upon review by the Panel of an initial decision, following a request under paragraph (2) –
 - (a) the Panel must have regard to the powers (and to any limitation on those powers) conferred on a determining officer by the Article under which the initial decision was made; and
 - (b) subject to paragraph (5), the provisions of the Article concerned are to be interpreted for the purpose of the review as though a reference to the “determining officer” is a reference to the “Panel”.
 - (5) Paragraph (4)(b) does not apply in respect of the following powers which may only be exercised by a determining officer –
 - (a) any provision conferring power on a determining officer to make a referral to the Panel; and
 - (b) the powers conferred by Articles 3(3)(b) and 29(1A).
 - (6) In carrying out a review under this Article the Panel may –
 - (a) recommend that the initial decision should be upheld or revoked, in whole or in part; or
 - (b) make a recommendation substituting, in whole or in part, its own decision for the initial decision.
 - (7) The Panel must send notice of its recommendation, and of the reasons for it, in writing to the Minister.
 - (8) Having had due regard to the Panel’s recommendation under paragraph (6), and to any further consideration of the issues by the determining officer, the Minister may –
 - (a) uphold or revoke the initial decision, in whole or in part; or
 - (b) vary any part of the initial decision.
 - (9) The determining officer must send notice of a decision by the Minister under paragraph (8), and of the reasons for it, in writing to the person aggrieved by the initial decision.
 - (10) A notice under paragraph (9) must contain a statement as to the person’s right to appeal, under Article 41, against the Minister’s decision.”.
- (2) In Article 41(1) after “(2)” there is inserted “or (2A)”.
 - (3) In Article 41(2) –
 - (a) for “aggrieved by a” there is substituted “aggrieved by any of the following decisions”;
 - (b) sub-paragraphs (a), (b), and (f) to (h) are deleted;
 - (c) after sub-paragraph (j) there is inserted –
 - “(k) a decision of the Minister under Article 40A, following a review by the Panel of an initial decision,”.
 - (4) After Article 41(2) there is inserted –
 - “(2A) A person on whom a notice is served under Article 37 may, within one month of the date of service of the notice, appeal to the Royal

Court on the grounds that service of the notice on that person, or any request in the notice, was unreasonable.”.

28 Article 42A (guidance) inserted

After Article 42 there is inserted –

“42A Guidance

- (1) The Minister may from time to time issue and publish guidance as to the application or interpretation of a provision of this Law, and –
 - (a) where it appears to the court, when conducting any civil or criminal proceedings in relation to the application or interpretation of this Law, that such guidance is relevant to a question arising in those proceedings, the guidance must be taken into account in determining the question; and
 - (b) whilst a determining officer must, in taking any decision under this Law, have due regard to any guidance relevant to that decision, a failure by a determining officer or an authorized person to comply with such guidance does not of itself make the officer or person liable to any civil or criminal proceedings.
- (2) Guidance under paragraph (1) may be general, or may relate to any particular status, person or class of persons, residence or type of residence, employment or type of employment, business or type of business.
- (3) The Minister may from time to time amend or revoke guidance under paragraph (1), and if the Minister amends any guidance, the Minister must publish the amended guidance in the same manner as that in which the last preceding version of the amended guidance was published.
- (4) The requirement imposed by paragraph (3) as to publishing guidance does not apply to any guidance which may be provided to the Minister by the Population Advisory Council established under Article 48A or by any other body, but nothing in this provision prevents the Minister from publishing any guidance so provided, in whole or in part, if the Minister considers it is necessary or expedient to do so.
- (5) In this Article “publish” includes publication on a website or by such other means as the Minister considers will bring the guidance to the attention of those likely to be affected by it.”.

29 Article 43 (persons authorized to act for other persons) amended

In Article 43(1) for “applying for a registration card” there is substituted “making an application”.

30 Article 44 (Regulations and Orders: general provisions) amended

After Article 44(2) there is inserted –

- “(3) Regulations under this Law may make provision as to the imposition of civil financial penalties for breach of any provision of this Law, including all such provision as may be necessary in relation to –
 - (a) the criteria for imposition, and the level, of a penalty;
 - (b) notification of imposition of a penalty;
 - (c) enforcement of, and appeal against, a penalty.
- (4) In an Order under this Law prescribing the amount of any charge or fee, the Minister may, if making the Order with the agreement of the Minister for Treasury and Resources –
 - (a) take into account such matters as the Minister thinks fit; and
 - (b) set the charge or fee so as to raise income in excess of the amount necessary to cover expenses in discharging functions under this Law.
- (5) A power under this Law to make provision in Regulations as to a charge, fee or other penalty, or to prescribe a charge or fee, includes power to make provision for –
 - (a) a rebate, refund or waiver of a charge or fee, in such circumstances as may be prescribed, or specified in Regulations;
 - (b) a further financial penalty for failure to pay a charge, fee or other penalty, whether at all or by a particular date, including such further penalty payable in respect of, and by reference to, any period for which an amount of a charge, fee or other penalty remains unpaid.”.

31 Article 45 (providing false or misleading information) amended

The text of Article 45 is renumbered as paragraph (1), and after that paragraph there is inserted –

- “(2) Where a person is convicted of an offence under paragraph (1) any status acquired by that person, in consequence of the act of deception constituting or forming part of the offence, is revoked.”.

32 Article 48 (Housing and Work Advisory Group) substituted

For Article 48 there is substituted –

“48 Housing and Work Control Panel

- (1) There is to be constituted a panel, to be known as the Housing and Work Control Panel, to exercise functions relating to certain decisions under this Law in accordance with this Article.
- (2) The Panel must consist of at least 3 elected Members of the States Assembly who are nominated by the Minister, one of whom is to be

nominated by the Minister as the chair of the Panel and to have a casting vote.

- (3) The Panel's functions are to be allocated, subject to paragraph (4), by agreement between the Minister and the Panel and, in default of such agreement, the Minister is to determine what functions are to be allocated.
- (4) The Panel's functions must include the functions of –
 - (a) reviewing decisions as described in Article 40A; and
 - (b) making a recommendation, where requested to do so by a determining officer referring a matter under Article 3(10), 26A(2)(c) or 29(4)(c).
- (5) Where the Panel exercises the function of making a recommendation following a request as mentioned in paragraph (4)(b) –
 - (a) the Panel must have regard to the powers (and any limitation on those powers) conferred on the determining officer by the Article to which the request relates; and
 - (b) subject to paragraph (6), the provisions of the Article concerned are to be interpreted for this purpose as though a reference to the “determining officer” is a reference to the “Panel”.
- (6) Paragraph (5)(b) does not apply in respect of the following powers which may only be exercised by a determining officer –
 - (a) any provision conferring power on a determining officer to make a referral to the Panel; and
 - (b) the powers conferred by Articles 3(3)(b) and 29(1A).
- (7) The Panel must make its recommendation as soon as reasonably practicable after receiving a request, and must send notice in writing of its recommendation and of the reasons for it, to the determining officer concerned.
- (8) Except as provided by this Article and to the extent that the Minister directs otherwise, the Panel may determine its own procedures.
- (9) The Panel must, within the period of 3 months following the end of a year, present to the Minister a report on the Panel's assessment of the operation of this Law and any recommendations by the Panel for its revision.”.

33 Article 48A (Population Advisory Council) inserted

After Article 48 there is inserted –

“48A Population Advisory Council

- (1) The Minister may establish a body to be known as the Population Advisory Council (in this Article, the “council”) to give advice and assistance to the Minister in relation to –
 - (a) population policy generally; and
 - (b) the exercise of the Minister's functions under this Law.

- (2) The Minister may, from time to time, refer to the council, for consideration and advice –
 - (a) matters of or relating to population policy;
 - (b) proposals for new or amended provision in this Law or subordinate legislation made under it;
 - (c) such other matters as may be prescribed.
- (3) Following consideration of any matter referred under paragraph (2), the council may submit to the Minister a report in writing containing such recommendations and advice as are considered appropriate and if, after receiving such recommendations or advice, the Minister presents a proposition to the States comprising the whole or part of the recommendations or advice, the Minister may present with the proposition a copy of the relevant part of the council's report.
- (4) The council may independently make written recommendations to the Minister as to the operation of this Law, and as to population policy generally, and where the council does so the Minister must present to the States a response to the recommendations, no later than 3 months after receiving them.
- (5) The Minister may prescribe all such further provision as is necessary or expedient in relation to the council, including –
 - (a) the constitution and membership of the council;
 - (b) the appointment of members, qualification and disqualification for membership and remuneration;
 - (c) the procedures of the council; and
 - (d) the administration of the council.”.

34 Article 50 (licences granted under the RUD Law 1973 etc.) amended

Article 50(2) to (5) is deleted.

35 Citation and commencement

This Law may be cited as the Control of Housing and Work (Amendment) (Jersey) Law 202- and comes into force on a day to be specified by the States by Act.