

# **STATES OF JERSEY**



## **MIGRATION POLICY STEERING GROUP: CONSULTATION REPORT**

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**Presented to the States on 20th April 2004  
by the Policy and Resources Committee**

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**STATES GREFFE**

## REPORT

### 1. Purpose of the report

The following report is being published by the Policy and Resources Committee as a *consultation paper*, or 'green paper', to promote wider consideration of the principles and options relating to the development of a new migration policy. It is intended this open, consultative approach to policy development will be the usual practice in the future system of government.

The purpose is not to put forward firm policy proposals at this stage, but to seek a wide range of views on the principles before bringing forward a more detailed policy paper.

#### 1.1 Background - Migration Policy P.102/2003

The report outlines the preliminary findings of the Migration Policy Steering Group,<sup>[1]</sup> established following the States debate on 7th October 2003. On that occasion, the States adopted the proposition on Migration Policy P.102/2003, as amended, by a large majority of 41 votes to two. They agreed that systems should be developed to monitor inward migration to the Island, and a review should be carried out of the existing policy and regulatory systems with a view to proposing new arrangements.

In particular, the States:

- *agreed, in principle, that having regard to paragraph 2.1 of the report of the Policy and Resources Committee dated 8th July 2003, all inward migration by persons wishing to establish themselves by living or working in the Island, and who did not have links with the Island which would enable them to qualify currently under Regulation 1(1)(a)(h) of the Housing (General Provisions) (Jersey) Regulations 1970, as amended, should be monitored and regulated;*
- *charged the Policy and Resources Committee, in consultation with the Housing, Home Affairs, Economic Development and Employment and Social Security Committees; and with other committees as appropriate, with reviewing the Housing (Jersey) Law 1949, the Housing (General Provisions) (Jersey) Regulations 1970, the Lodging Houses (Registration) (Jersey) Law 1973 and the Regulation of Undertakings and Development (Jersey) Law 1973, together with other related legislation, with a view to giving effect to paragraph (a) above by bringing forward proposals for a new Migration Policy and supporting regulatory system(s) by 31st March 2004;*
- *agreed, in principle, that such new Migration Policy and supporting regulatory system(s) should be developed to meet the basic objectives outlined in paragraph 5.5 of the report of the Policy and Resources Committee dated 8th July 2003.*

The States further agreed that a proposed new migration policy should ensure –

- there are definitions of persons who are considered to be 'residents' which differentiate between those persons who are 'entitled' (by virtue of familial or other connections with the Island) and those who may be 'licensed' (as essential persons) to live or work in the Island;
- there is regulation by licence of all 'non-entitled' persons wishing to establish themselves by living or working in the Island;
- subject to initial registration, all 'entitled' residents' are free from ongoing regulation;
- there is a licensing scheme which can be operated effectively and efficiently by a single authority through a 'one-stop-shop' access point.

## 1.2 Policy aims

The main reason for wishing to monitor and regulate the overall pattern of inward migration, apart from the ability to understand the existing population mix at any one time, is to enable the Island's government to manage the demand for and supply of sufficient residential accommodation in an equitable manner, to facilitate the planning and provision of acceptable public services, to ensure sufficient resources are available and to manage the Island's economy.

This report does not aim to recommend a population 'ceiling' or to set out the policy changes that would impact directly on population numbers; rather it proposes the principles that should underpin a policy to monitor migration and more effective mechanisms to manage migration in future.

However, the migration policy would be a key element in the Strategic Plan approved by the States. The migration system should therefore be capable of either allowing population to grow in a measured fashion or reducing immigration.

The purpose of this report is therefore to enable wider discussion of the approach being considered.

## 1.3 Outline of a possible system

It is proposed that the current un-coordinated Regulation of Undertakings and Development Law (RUDL) and Housing controls should be replaced by a new co-ordinated arrangement. The following brief summary is expanded upon in the following sections.

- Everyone entering and residing in the Island (i.e. not tourists / visitors) would be required to register so that their existence is known. The population register would therefore record overall population levels. (Section 3.1)
- People who are entitled by reason of birth or period of residence would be registered as such and would have free access to any accommodation, services or employment. (Section 3.2)
- All other people would be registered but could become licensed by virtue of being employed in a licensed post, or being related to and residing with a licensed person. Once someone is employed in a licensed post they automatically gain licensed housing rights. (Section 3.6)
- All other registered people would have to reside in uncontrolled accommodation.
- Initially the housing provisions for licensed and registered people could mirror current housing rights, but over time the States could widen the range of licensed posts and reduce residence qualifications in order to introduce greater equality into the housing market. (Sections 3.7 and 3.5)
- Control of migration would be carried out by the States at a higher 'macro' level, predominantly through regulating employment within an overall States control framework. (Section 3.4)
- All employers would be required to have an agreement on staffing levels. This would specify overall numbers allowed to be employed and an upper limit on the number of licensed posts and registered employees. Thus the States could maintain overall control of the total numbers employed at any one time. This could be amended in the light of unemployment, housing demand, or pressure on infrastructure and services.
- An employer would be free to employ the most appropriate people but could not employ more in total than agreed, or more people who are licensed or registered than the total for these categories. Once a person is employed in a licensed post they would attract licensed housing rights.

- Any employer would be free to request a change to their agreed numbers. This would be considered in the light of overall levels of employment and the availability of local people.
- The States functions of Social Security registration, Housing controls and RUDL could be amalgamated into one office thus reducing bureaucracy and the impact of multiple visits on employers or individuals. Manpower and Social Security returns could also be amalgamated into a single automated return. In the early years the new system could be operated using the existing laws, but in time they would be replaced. (Sections 3.3 and 3.8)

The following sections add more detail to this outline The transition from the current systems to the new system would need to be very carefully managed in order to ensure that the housing market does not become destabilised and that any impact on benefits are fully evaluated.

The resources timescale and data protection implications have to be fully evaluated as the detail is finalised. The specific details of the housing rights will also need very careful development.

#### 1.4 Policy options

The policy options will be considered in this report under the following headings:

- a population register
- a single Population Office
- migration control through ‘macro’ level regulation of employment
- managing housing demand and supply
- three categories of registration and employment
- access to accommodation linked to employment
- simplifying the control mechanisms.

#### 1.5 Consultation

The Migration Policy Steering Group has published this report to seek views from States members, businesses and other organisations, and the public on the options outlined.

##### **Options**

The report includes a number of possible options. These are intended to illustrate some of the potential policies that have been considered and to describe their consequences. Their purpose is to facilitate consultation; they are not recommendations at this stage.

##### **Consultation questions**

Each option includes specific consultation questions on which your views are requested. For convenience, a summary of these questions is also included at the end of the report, which can be used as a template for your response.

You are not required to answer all the questions; however, please complete as many as you can in order to provide a better understanding of your views.

**Responses to the consultation questions and any other comments on the options are requested by Friday, 28th May 2004.**

These should preferably be sent by completion of the on-line consultation response form at <http://www.policyandresources.gov.je/migration> or e-mailed to: [m.entwistle@gov.je](mailto:m.entwistle@gov.je) or [pfc.ozouf@gov.je](mailto:pfc.ozouf@gov.je)

or by post to:

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Cyril le Marquand House  
St. Helier, JE4 8QT

Organisations or other bodies wishing to request a presentation on the subject may also contact the above.

Your contribution to this consultation paper will be valued and will help to inform and guide the direction of future policy.

## 1.6 Timetable

Further work is continuing to clarify any legal requirements, practical arrangements and resource implications, and to develop appropriate implementation processes. It will also be necessary to model the consequences for businesses and different sectors of the housing market, and the impact on individuals and the Island administration.

Following consideration of the consultation responses, the Migration Policy Steering Group will submit a report to the Policy and Resources Committee in July, and it is intended the Committee should lodge a Report and Proposition to the States by October 2004.

## 2. **Policy principles**

This report highlights some policy principles which would be the basic assumptions underpinning a migration policy.

The principles proposed are –

- (a) In the context of Jersey's existing legal relationship with the United Kingdom, it is not possible to apply border controls to the majority of those who might wish to enter the Island. It is proposed that any policy for managing migration must be developed within this current legal framework. (See Appendix 1).
- (b) It is essential to gather basic information as to what constitutes the 'resident population' at any time. Without such knowledge it would not be sensible to seek to regulate migration - as there would be no basis upon which to properly make regulatory decisions.
- (c) Population information should be used to enable the Island's government to plan and manage the supply of and demand for residential accommodation, the provision and resourcing of acceptable public services, and to manage the Island's economy.
- (d) Regulation of employment should ensure that any changes reflect the availability of housing, the skills of the island population and the local employment level.
- (e) It is essential to tackle the unacceptable inequities arising within the accommodation market and it is necessary to move towards a scheme which would apply fairly to all persons seeking to occupy property or work in the Island.
- (f) Overall monitoring and control of migration should be carried out by the Island government at a 'macro' level; that is, by regulating total numbers and categories of employment and classes of accommodation.

- (g) The existing control mechanisms, under the Housing (Jersey) Law 1949, and the Regulation of Undertakings and Development (Jersey) Law 1973, should be simplified, streamlined and co-ordinated.

These principles are discussed in detail in the following report.

**Consultation questions - Principles**

1. Do you agree with these principles as the basic assumptions in which a migration policy should be developed? If not, which do you disagree with, and why?
2. Are there any other key principles (not detailed implementation arrangements) that you think should be included?

### **3. How a migration policy can be achieved**

#### **3.1 Population information**

At present, people arriving in the Island are not apparent to the administration until they take up employment, transact within the controlled housing market or, after a period, access public sector services. It is proposed that all residents, whether existing residents or new arrivals, should have to make themselves known for the purpose of population monitoring.

It is proposed there should be single source of basic information on the whole population. The options discussed are designed to:

- minimise future bureaucracy;
- provide high levels of integrated and up to date information on population change;
- inform the development of flexible and coordinated migration controls which can be modified as necessary.

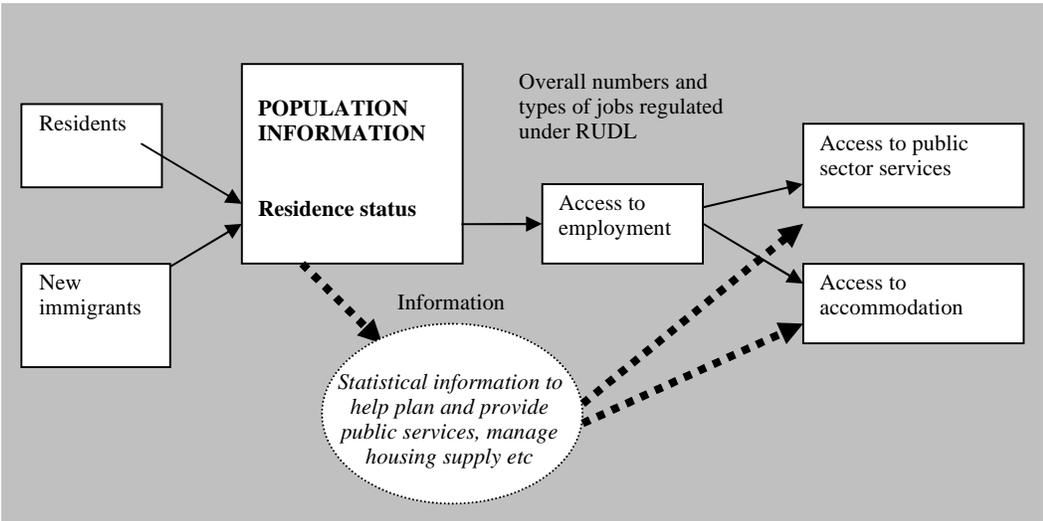
Gathering basic information should not be over-bureaucratic. The information should be up-dated with information on inward and outward migration, and as people's circumstances change over time.

Such information could also become a very powerful aid to the States and the public in planning and managing varying and flexible responses to a wide range of changing economic, social and environmental aspects of Island life. Better information on residents could also enable the provision of significantly improved services and benefits to individual residents.

#### **3.2 Residence status**

Evidence of a person's residence status could be a requirement to access accommodation, employment and a wide range of public services, including education, some healthcare and social security benefits.

A diagrammatic outline of how such a population information system might work is given below.



**Option 1 – A population register**

There will be a comprehensive population register. All residents (including dependents) wishing to live or work in Jersey would be required to register on the population database.

This core database would only contain basic information on all residents, such as name, date of birth and address, and essential information relating to employment and residence period.

Registration would be the gateway to access employment and the accommodation market, and to use some public sector services.

Evidence of registration would need to be presented: when applying for a post, so that the employer can verify the person is entitled or licensed to take up that post; when taking up occupation of controlled accommodation to ensure the person is entitled or licensed to occupy that type of accommodation; and when accessing public services such as some healthcare, education or social security services.

Once registered, each person would have recognised rights and be free to access employment, accommodation and services to the extent approved, by simply producing evidence of registration status.

It is recognised that this concept might extend beyond the immediate requirements for monitoring inward migration, and could enable improved services and benefits for residents.

**Consultation questions**

3. Do you support the concept of resident registration, possibly with a legal requirement to register, in order to provide comprehensive up-to-date information on population? If not, what alternative options would you propose?
4. Do you consider access to employment, accommodation or some public sector services should be controlled? If so, which of these do you think should be controlled?

### 3.3 A single office for population monitoring and control

A single *office* should be established, by amalgamating some of the relevant functions of Housing and the Regulation of Undertakings and Development Office, together with Social Security registration. This would:

- lead to greater administrative efficiency and improved information flow,
- minimize the additional costs of a population register,
- from the perspective of individuals and employers, the convenience of a ‘*one-stop-shop*’ that would help to simplify the existing complex arrangements.

The population office would have lead responsibility for monitoring migration through the population

register, developing migration and population policy proposals, and for implementing those policies approved by the States. The intention is to achieve far greater policy co-ordination and more efficient implementation than is presently possible with the involvement of separate Departments.

### **Option 2 – A Population Office**

A population office would be established, by amalgamating the relevant functions of Housing, Regulation of Undertakings and Development and Social Security registration.

A relatively simple way forward would be to physically locate the existing staff in one office. The arrangement would lead to greater administrative efficiency, improved information flow and, from the public's perspective, simplify the existing complex arrangements.

The population office would take the lead in enabling the employment and accommodation management systems to be brought together and to design the integrated resident registration system. In doing this, regard will have to be given to data protection rules, so as to ensure that all of the systems can share information sufficiently to meet the needs of the office.

The population office should become the single, corporate point of information for all population data.

#### **Consultation questions**

5. Do you agree with the establishment of a single population office - amalgamating the relevant functions of Housing, Regulation of Undertakings and Development and Social Security registration? If not, what alternative would you propose?
6. Are there other functions which you think a population office should carry out?

### 3.4 Control of migration should be carried out by the Island authorities at an overall or 'macro' level

It is recognised that it is the employment market which has the greatest direct effect on inward (and outward) migration and must remain at the forefront of the Island's attempts to monitor and, as necessary control, population. If a new immigrant is unable to find employment, and in the absence of access to any unemployment benefits and long-term accommodation, that individual is unlikely to remain in Jersey for long.

The States should continue to apply high level or 'macro' control to the overall availability (numbers / types / mix) of posts in the best interests of the Island.

In the short term, the filling or vacating of approved posts and decisions regarding an individuals' employment should be made by employers *within the manpower quotas set under the RUDL* in accordance with States policy. However, in the longer term, it is proposed to review the existing legislation and consider alternative employment controls.

This is intended to:

- help to minimise bureaucracy;
- create effective overall monitoring and control of posts, vacancies, and skills matches;
- maintain overall control on employment, whilst giving businesses the freedom to make appropriate employment decisions within States policy;

- ensure appropriate employment is available for local residents.

**Option 3 – Migration control through ‘macro’ level regulation of employment**

The Population Office should agree the total number of approved posts including a maximum number of non-local posts, for all employers on an Island-wide basis, in order to protect the employment of local residents.

Under the existing RUDL, the authorities may control overall employment within the Island, in agreement with individual employers through three-year joint licences for businesses. This involves considering individual undertakings’ business objectives and reaching agreement on staffing establishments for a future period (generally 3 years) in accordance with States objectives.

Each business would be allocated a maximum quota of posts. These allocations could be adjusted by the Population Office according to, for example, the economy or housing supply.

Businesses would have the freedom to make appropriate employment decisions *within States policy* and subject to appropriate employment protection for existing employees.

Statistics gathered on the employment market will also assist by providing information on how many posts are vacant, any particular skills needed in the short to medium term, and by using such information to shape future local training programmes and migration policy.

**Consultation questions**

7. Do you consider that overall regulation of employment at a macro level is an appropriate mechanism for the control of migration? If not, what alternative mechanisms do you consider more appropriate?
8. Do you agree that employers should only be required to submit one return which contains Employment and Social Security and RUDL information?

3.5 Management of housing demand and supply

- Whilst it would be possible to manage migration at a macro level, as described above, this will have direct consequences in relation to the control of demand for and supply of accommodation, as follows;
- monitoring and regulating access to employment as the principal means of managing migration would enable more effective overall control of the demand for accommodation;
- reliable information on the population would provide a sound basis for planning and managing the balance between the supply and demand for accommodation, in different sectors of the market, and therefore future housing development needs;
- access to accommodation would primarily be linked to an individual’s employment and residence status, although there would be certain exceptions. This will enable effective control, through the total allocation of ‘licensed’ posts, on the majority of individuals able to rent / lease or purchase accommodation.

By planning development and managing the availability of accommodation in relation to the allocation of ‘licensed’ posts, it will be possible to broadly balance the market and, in time, influence accommodation

costs and help to alleviate social inequity. However, such changes in the accommodation market can only be implemented over a period of years in order to avoid disruption in the availability and cost of accommodation.

**Option 4 – Managing housing demand and supply**

People who are entitled by reason of birth or residence will have the right to rent or buy any property, except that restricted to first time buyers.

For everyone else access to accommodation will be linked to employment status, rather than how long they have been resident in the Island.

It is suggested that through control of employment licenses, whilst some people will continue to occupy uncontrolled accommodation, over a period of several years a greater proportion of residents will be able to gain ‘licensed’ status and access better quality or longer term rental / lease accommodation.

This will require carefully planned development and management of accommodation supply, taking into account the Island’s social and economic needs, migration trends and the effects on the accommodation market. Such a change needs to be carefully managed and all of the implications considered; for example the effect on housing benefit will need to be modelled in some detail.

**Consultation questions**

9. Do you consider it desirable for a greater proportion of the population currently occupying uncontrolled accommodation to be able to access rental / lease accommodation? If not, why?
10. To what extent is it appropriate for the Island’s government to manage the market for accommodation – or should market forces be unrestrained?

3.6 Registration in one of three categories: ‘entitled’, ‘licensed’ or ‘registered’

In moving towards a fairer and more effective system for monitoring and control of migration, it is proposed that every person resident in Jersey should be registered within one of three categories: ‘entitled’, ‘licensed’ or ‘registered’.

The registration category will be determined by a person’s birth or family connection with Jersey, employment status or other criteria (as explained below), which will then enable them to access to accommodation and some public sector services.

It is proposed the criteria for becoming ‘entitled’ for accommodation purposes should be harmonised for those who are both ‘licensed’ and ‘registered’. At present the ordinary residence requirement for housing ‘qualification’ is 15 years; it is suggested that in future *over a number of years* this could be gradually reduced to the same 10 year residence requirement currently applicable to others. Whilst this could only be achieved over a time period, in the longer term it would ensure consistency with, for example, a current (j) category employee.

Further work will be required on transitional arrangements, to determine how existing residents would fit into a new scheme. However, the three categories could in future be defined as follows:

Proposed future registration category	Access to employment (RUDL)	Access to accommodation – current equivalent Housing Regulations
<b>Entitled</b> <i>Includes individuals: after 10 years * ‘licensed’</i>	Full access to any employment - posts allocated for ‘entitled’, ‘licensed’ or ‘registered’	Categories (a) - (h): Jersey-born person after 10 years

<i>employment</i> after 10 years * 'registered' <i>employment</i>	persons Entitled to establish an undertaking	Spouse or child of a Jersey-born person – after 10 years residence <b>Access to rent / lease or purchase any property</b> (j) category after 10 years 'registered' individuals after 10 years ( <i>Currently 15 years</i> )
<b>Licensed</b> <i>Includes 'registered' individuals appointed to a post restricted to a 'licensed' person – (no residence period requirement) (0-10 years) *</i>	(j) category contract – Access to any posts allocated for 'licensed' or 'registered' persons <i>Currently those continuously resident for the previous 5 years are able to establish an undertaking. This will need to be reviewed.</i>	Category (j) Housing consent granted under specific circumstances / essential qualifications and subject to conditions (e.g. continuation of employment in an 'essential' post) <b>Access to rent / lease any property for duration of employment contract</b>
<b>Registered</b> (0- 10 years) *	Access only to any posts allocated for 'registered' persons	Individuals with no local connection and not appointed to a 'licensed' post <b>No housing qualifications</b>

The specific time periods indicated by '\*' could be gradually revised over a number of years, subject to agreement of the States, as appropriate depending on the level of employment and accommodation demand and supply.

#### **Option 5 – Three categories of registration and employment**

A person would be classified within one of three categories: 'entitled', 'licensed' or 'registered' as indicated in the table above. The classification system will identify the person's employment category and access to accommodation.

The most significant change considered, apart from the categories themselves, is the possibility of a person who is initially 'registered' to gain employment in the 'licensed' category on the basis of *appropriate qualifications or experience*. This would not depend on the person's period of residence in Jersey (i.e. not as the current '*five year rule*' applies under RUDL).

It will be important that new employment protection legislation is in force, which would ensure that employment of an existing 'licensed' person could not ordinarily be terminated prior to completion of the employment contract.

It is proposed that, in future:

- After 10 years employment in a 'licensed' post, a person would be able to register and gain employment as 'entitled'.
- After 10 years in 'registered' employment (or a mixture of 'registered' and 'licensed') a person would be able to register and gain employment

as 'entitled' (*N.B. the present residence period to gain housing 'qualification' of 15 years could only be reduced gradually over a number of years*)

### **Consultation questions**

11. Do you agree with a simplified three-category classification system to incorporate the existing housing categories? If not, what other categories, if any, would you propose?
12. Should a Jersey-born person, or their spouse or child, be required to reside in Jersey for 10 years (as at present) to become registered as 'entitled'? If not, what other period, if any, would you propose?
13. Should individuals in the 'registered' category be able to progress into employment in a 'licensed' post if they have the appropriate qualifications or experience, no matter how long they have been resident in Jersey?
14. Should a 'licensed' person be able to progress to become 'entitled' after 10 years – or what other period would you propose?
15. Should a 'registered' person be able to progress to become 'entitled' after 10 years – or what other period would you propose?
16. Once a person is registered as 'entitled' should they be liable to lose their entitlement due to absence from the Island – and if so, after how long?

### 3.7 Access to residential accommodation will be linked to an individual's employment

Access to residential accommodation, and some public sector services, will be linked to an individual's employment category. For example, a licensed person's lease on a property should ordinarily only be for the duration of the employment contract.

It is considered that the existing Housing Regulations categories should, for the present, remain the relevant criteria for 'entitled' and 'licensed' persons access to accommodation. However, it is envisaged that, in future, these criteria could be simplified if the States should decide to do so

#### **Option 6 - Access to accommodation linked to employment**

##### Entitled

The entitled category will encompass a wide range of persons currently given housing consent under the existing Housing Law and Regulations. Only a person registered as 'entitled' will ordinarily be able to purchase a property.

##### Licensed

The rights of licensed individuals to occupy controlled accommodation would depend on employment in a 'licensed' post.

A person will, only for the duration of their employment contract in a 'licensed' post, be able to rent or lease accommodation restricted to 'licensed' persons. Consideration should be given to the appropriate level of employment protection for contract 'licensed' employees, and the obligations of the employer if a contract was terminated prematurely.

As at present, those who are licensed (e.g. equivalent to 'j' category) should be able to progress to purchase property after 10 years residence.

There are currently arrangements for people who are allowed to purchase via a company, although their occupation is restricted to the period of their employment. It may be possible for this to be extended more widely, since most people could not afford to retain a property in which they could not reside.

Over time, the existing controls relating to rental accommodation for this group should be reviewed to ensure that individuals are treated in an equitable manner.

#### Registered

Those who have been registered as residents for less than 10 years, and are not employed in a 'licensed' or 'entitled' post, could occupy uncontrolled accommodation, for example lodging houses.

After 10 years, a registered person should be able to progress to licensed or entitled status. These changes would need to be phased in over a period of years. Whilst there are cost implications, this would make significant progress in improving sub-standard living conditions, increasing equity and alleviating social hardship for those who are seeking to become established in Jersey.

#### **Consultation questions**

17. Is it appropriate that the employment category should determine access to different types of accommodation – i.e. uncontrolled, lease / rental or purchase?
18. Should certain exceptions apply to the licensed category – to allow property purchase?
19. Is it reasonable to restrict access to rental / lease accommodation to the duration of a 'licensed' person's employment – and this will be lost on completion / termination of the employment contract?
20. Should a 'licensed' person become able to purchase property after 10 years – or if not, what other period is appropriate, if any?
21. Should a 'registered' person become able to purchase property after 10 years – or if not, what other period is appropriate, if any?

### 3.8 The existing control mechanisms should be simplified and streamlined

It is proposed that, in principle, that there should be greater consistency and harmonisation between the current Housing legislation and Regulation of Undertakings and Development Law (RUDL) (see Appendix 2). This would enable increased clarity for the public, and less bureaucracy (for example, standardizing the existing definitions of 'locally qualified', i.e. currently 5 years residence for employment / 15 years for Housing). There is logic in suggesting that an entitlement to employment should go hand-in-hand with access to controlled accommodation.

Consideration has been given to whether the existing controls could be dismantled entirely and replaced with another system. It is concluded that the development of migration policy and regulation systems should be carried out within the existing legal framework. However, it would be better to incorporate the present effective housing and employment controls within a single system.

The need to retain some protection for the resident population against an open and free market outweighs the perceived advantages of doing away with controls at this time. However, the housing controls should move towards becoming an *accommodation monitoring and regulating system* focused on the overall numbers and categories of accommodation, rather than directly regulating individual property transactions.

Flexibility over a period of time could enable the criteria for persons to become 'entitled' and 'licensed' to be modified as the States might decide. This maintains the opportunity for the States to address some of

the inequities of the existing systems and to effectively manage migration in future, depending on the changing social and economic pressures and demands on the Island's resources.

Steps could be taken to reduce the administrative burden on businesses by amalgamating into a single process the periodic reporting required on employment, i.e. the RUDL manpower returns and Social Security employer's returns.

#### **7 – Simplifying the control mechanisms**

##### **Consultation questions**

22. Do you agree the existing Regulation of Development and Undertakings Law (RUDL) or Housing Regulations should be simplified and streamlined – or if not, what would you propose?
23. Is it desirable that the existing 'five year rule' (*residence requirement*) for employment under the RUDL should be replaced with access to 'licensed' employment based on the qualification or experience of an employee (*an employee requirement*)? If not, what alternative would you propose, if any?

#### **4. Conclusions and summary**

The Migration Policy Steering Group believes that the States can develop and maintain an effective and integrated population policy, by:

- developing basic information on the whole resident population, to assist in planning and managing population changes and to help plan and provide adequate public services;
- continuing to exert high level influence over the overall number of posts available within the economy in the best interests of the Island, and the setting a maximum number of non-local employees;
- introducing a post licensing process as the principal mechanism of a population policy, to eventually replace 'permissive' access to accommodation, and ensuring access to accommodation is closely linked to individuals' employment and period of residence;
- using information gathered in relation to migration, to provide intelligence for employment, skills and training programmes, and for the Housing Department and private sector housing providers on present and future accommodation requirements;
- if deemed desirable, revising the controls on the overall number and/or 'type' of persons granted access to employment and housing through modifying the criteria for gaining licences.

It is recognised that, whatever controls the States may decide to apply on migration in future, there needs to be a measured approach to change and the introduction of more overt population management systems, based on improved information on the population demographic mix, the composition of the workforce, the available employment and housing resources.

A step-by-step approach will ensure that arrangements are introduced in an effective and transparent manner, allowing sufficient consultation and gaining broad consensus at each stage. This will allow the States to consider each policy proposal on an individual basis, as part of a developing programme of coordinated policy across a broad range of initiatives.

## 5. Summary of consultation questions

### QUESTIONS

#### Principles

1. Do you agree with these principles as the basic assumptions on which a migration policy should be developed? If not, which do you disagree with, and why?
2. Are there any other key principles (not detailed implementation arrangements) that you think should be included?

#### Option 1 – A population register

3. Do you support the concept of resident registration, possibly with a legal requirement to register, in order to provide comprehensive up-to-date information on population? If not, what alternative options would you propose?
4. Do you consider access to employment, accommodation or some public sector services should be controlled? If so, which of these do you think should be controlled?

#### Option 2 – A Population Office

5. Do you agree with the establishment of a single population office - amalgamating the relevant functions of Housing, Regulation of Undertakings and Development and Social Security registration? If not, what alternative would you propose?
6. Are there other functions which you think a population office should carry out?

#### Option 3 – Migration control through ‘macro’ level regulation of employment

7. Do you consider that overall regulation of employment at a macro level is an appropriate mechanism for the control of migration? If not, what alternative mechanisms do you consider more appropriate?
8. Do you agree that employers should only be required to submit one return which contains Employment and Social Security and RUDL information?

#### Option 4 – Managing housing demand and supply

9. Do you consider it desirable for a greater proportion of the population currently occupying uncontrolled accommodation to be able to access rental / lease accommodation? If not, why?
10. To what extent is it appropriate for the Island’s government to manage the market for accommodation – or should market forces be unrestrained?

#### Option 5 – Three categories of registration and employment

11. Do you agree with a simplified three-category classification system to incorporate the existing housing categories? If not, what other categories, if any, would you propose?
12. Should a Jersey-born person, or their spouse or child, be required to reside in Jersey for 10 years (as at present) to become registered as ‘entitled’? If not, what other period, if any, would you propose?
13. Should individuals in the ‘registered’ category be able to progress into employment in a ‘licensed’ post if they have the appropriate qualifications or experience, no matter how long they have been resident in Jersey?

14. Should a 'licensed' person be able to progress to become 'entitled' after 10 years – or what other period would you propose?
15. Should a 'registered' person be able to progress to become 'entitled' after 10 years – or what other period would you propose?
16. Once a person is registered as 'entitled' should they be liable to lose their entitlement due to absence from the Island – and if so, after how long?

**Option 6 - Access to accommodation linked to employment**

17. Is it appropriate that the employment category should determine access to different types of accommodation – i.e. uncontrolled, lease / rental or purchase?
18. Should certain exceptions apply to the licensed category – to allow property purchase?
19. Is it reasonable to restrict access to rental / lease accommodation to the duration of a 'licensed' person's employment – and this will be lost on completion / termination of the employment contract?
20. Should a 'licensed' person become able to purchase property after 10 years – or if not, what other period is appropriate, if any?
21. Should a 'registered' person become able to purchase property after 15 years – or if not, what other period is appropriate, if any?

**Option 7 – Simplifying the control mechanisms**

22. Do you agree the existing Regulation of Development and Undertakings Law (RUDL) or Housing Regulations should be simplified and streamlined – or if not, what would you propose?
23. Is it desirable that the existing 'five year rule' (*residence requirement*) for employment under the RUDL should be replaced with access to 'licensed' employment based on the qualification or experience of an employee (*an employee requirement*)? If not, what alternative would you propose, if any?

## Legal Context

Prior to the debate of P.102/2003 the Law Officers advised as follows –

*“Development of a migration policy has to be seen against the current legal position in relation to the rights of persons to enter and remain and establish themselves in the Island under UK law as extended to Jersey and under the relevant Community law.*

*It has to be borne in mind that Jersey is, with the rest of the British Islands, in the Common Travel Area in which there are no immigration controls on the movement of persons.*

*Furthermore, all British citizens have the right of abode in Jersey and are free to live in and come and go into and from Jersey without hindrance.<sup>[2]</sup>*

*If the migration policy were to amount to control over these rights, it would be inconsistent with the law, as presently in force. In addition, if that were the case, Jersey would have to recognise that it would be introducing controls over the freedom of British citizens in Guernsey and the Isle of Man to move here.*

*At the very least, therefore, it will be necessary to ensure that the measures proposed are consistent with the Immigration Act or, if not, that changes to that Act can be made in order to incorporate the proposed policy.*

*It is also necessary to have regard to Section 7 of the Immigration Act 1988,<sup>[3]</sup> which provides that a person does not need permission to enter or remain in Jersey if he would be entitled to enter or remain in the UK by virtue of an enforceable Community right. This means that any EEA national may enter Jersey, without leave, and remain here with a view to obtaining employment, for instance.*

*Furthermore, it will not be possible for Jersey to introduce migration controls which apply differently to British and other EU member States and EEA national citizens. This is because Article 4 of Protocol 3 to the UK’s Act of Accession to the Treaty of Rome requires that Jersey shall ‘apply the same treatment to all national and legal persons of the Community’.*

*This provision has been interpreted in two cases concerning the British Islands as meaning that in areas where, in a Member State, the subject matter is covered by Community law, the Islands must treat all EU citizens equally. Since the freedom of movement of workers is covered by Community law, it follows that whatever new rules are to be applied to restrict persons wishing to come to Jersey to work or establish themselves must apply to all EU citizens (and all EEA nationals, as well).*

*For these reasons, it would be necessary to consult with the UK and the other Islands during the development of new migration controls, if the effect of them would be the removal of rights to which British or EEA citizens are currently entitled pursuant to the Immigration Acts of 1971 and 1988, as extended to Jersey in 1993 coupled with Article 4 of Protocol 3 and the relevant decision of the European Court of Justice.”*

2. P.102/2003 summarised this advice and made clear that:

- All British citizens and, certain Commonwealth citizens have the right of abode in Jersey and are free to live in and come and go into and from Jersey without let or hindrance, except as may be required under the Immigration Act or as otherwise may be lawfully imposed on any person, and;
- All nationals of other E.E.A. Member States (E.U. member States plus Iceland, Norway and Liechtenstein), do not need leave to enter or remain in Jersey – if they do so in circumstances in which they would be entitled to enter or remain in the U.K.

3. In relation to the development of new migration policies and regulation systems, it further identified that:
- These rights are not currently infringed by existing housing and employment controls;
  - If a new migration policy were to amount to control over these rights, it would be inconsistent with the law, as presently in force. (i.e. a control of immigration at point of entry could not be introduced for British, certain Commonwealth and E.E.A. nationals without change to existing international law, which would be extremely difficult and would require the agreement of all affected parties), and;
  - Any new migration policy must be applied equally, and in a non-discriminatory manner, to both U.K. and other E.E.A. nationals.
4. In short, the international legal position in which Jersey exists prohibits:
- the introduction of immigration or border controls in relation to U.K., E.E.A. and certain Commonwealth citizens;
  - taking measures which would amount to control over the rights of such citizens to come and live in the Island;
  - the Island from treating U.K. citizens differently from citizens of other E.U. states - in relation to their rights to establish themselves in the Island, and;
  - taking actions which might not be consistent with the U.K. Immigration Act as extended to Jersey, Article 4 of Protocol 3 and European Court judgements relating thereto.

## Existing migration controls

It is important to note that the Island currently has two major control mechanisms which, although they do not impact on migration directly, do affect the numbers of people who may seek to establish themselves in the Island.

Before moving on to consider what if any new systems might be introduced, it was necessary to examine the existing housing and employment controls to see whether it would be appropriate to amend them to monitor migration without new systems needing to be introduced.

## Housing legislation

The Housing Law was enacted in 1949, the Regulations in 1970. Although both Law and Regulations have been amended to meet changing needs over time, the intent of both to a large extent remain intact.

### Housing (Jersey) Law 1949, as amended

The Housing Law requires application for consent from all parties wishing to enter into any property transaction except short lease (9 years or less) for wholly commercial property. The Law also enables the Housing Committee to impose conditions on all consents granted, stipulating the qualifications of persons entitled to seek consent to occupy that accommodation. Standard conditions imposed on accommodation are;

- (a) 1(1)(a)-(h) only: (locally qualified);
- (b) 1(1)(a)-(j) only: (locally qualified plus essentially employed);
- (c) 1(1)(a)-(k) only: (locally qualified plus essentially employed plus “wealthy immigrants”).

### Housing (General Provisions)(Jersey) Regulations 1970

The Regulations set out the classes of persons to whom the Committee **shall** grant consent and those to whom the consent **may** be granted. The three classes of discretionary consent relate to –

- (a) Hardship: Regulation 1(1)(g).
- (b) Essential Employment: Regulation 1(1)(j).  
The terms of Regulation 1(1)(j) are that: *“the Committee is satisfied that the intending purchaser either is, or will be, essentially employed in the Island and that consent can, in the best interest of the Community be justified”*.
- (c) “Wealthy Immigrants”: Regulation 1(1)(k).  
The terms of Regulation 1(1)(k) are that: *“the Committee is satisfied that consent can be justified on social or economic grounds”*.

Regulations 1(1)(j) and 1(1)(k) are very general, and allow a wide variety of interpretation depending on policies, economic factors, and the housing situation, at any given time.

All applications for essential employment have to be submitted by the employer, and any consent granted for a specific property contains a condition restricting the occupation by the employee for a specified period, and linked to the post for which the consent had been obtained. Since 1987, in accordance with States approved policy, the majority of consents are issued for no more than 5 years in the first instance.

Certain residential qualifications, once having been obtained, stay with the individual for life, for example Jersey born plus 10 years total residence. Other qualifications, such as the 15 years continuous residence can be lost once the individual ceases to be resident in the Island (save for one break of no more than 5 years). Essential employees and “Wealthy Immigrants” have to some extent to prove their qualification

each time they transact.

## People

The Housing Committee holds information on the qualifications of every person who has entered into a transaction since 1970, relevant at the time of that transaction. The Committee therefore, has information on every occasion when an occupant moves in to a controlled unit of accommodation which is subject to a formal transaction, but does **not** have any information where a person moves out of existing accommodation and does not need to seek a new consent, for example moving into shared accommodation, moving into staff accommodation or leaving the Island. The more recent a transaction has taken place the more accurate and up to date information held will be.

## Property

All property subject to sale will have conditions imposed on it as to who is entitled to occupy, and all applications to lease will have similar conditions applicable for the duration of that lease. However, properties that have no occupancy conditions attaching to them are:

- Inherited property
- Inherited by a Company prior to 1993
- Acquired in a Company name following degreavement prior to 1993
- Property in same ownership since prior to 1949
- Registered Lodging House spaces
- Staff accommodation (except where designated subject to a consent for occupation by full time staff or 1 (1)(a)-(h)).

## Lodging Houses

- Lodging Houses and unqualified accommodation (available to persons who do not possess residential qualifications).

The Committee administers the Lodging Houses (Registration) (Jersey) Law 1973 which covers all Lodging Houses. The Committee controls room sizes, standards, and the number of persons allowed to occupy any specific unit. There are currently 252 premises housing 4,304 lodgers (including 737 children under the age of 18). It is this legislation that currently dictates for any unit of accommodation the maximum number of lodgers (currently up to 5) that may be housed *without* being required to register. This accounts for all lodgers that are being housed in the private sector, and over whom there is no regulatory control.

## **Regulation of Undertakings and Development (Jersey) Law 1973**

The Economic Development Committee is responsible for administering the Regulation of Undertakings and Development (Jersey) Law 1973, as amended.

This Law was established to control the carrying on of undertakings and to regulate further development. The definition of an undertaking is any “trade, business or profession whether or not carried on for profit”. Development has the same meaning as in the Island Planning (Jersey) Law 1964, as amended.

Subject to the provisions of Part II of the Law, no person shall (a) commence a new undertaking or (b) increase the number of persons engaged in an undertaking, unless he has been granted a licence so to do.

Under Part III of the Law, no person may carry out a development of more than 1500 sq. ft. unless they have been granted a licence and for agricultural buildings a licence will be required where the area is more than 10,000 sq. ft.

Over the years, there have been a number of Law and regulation amendments which have been introduced

according to the economic climate, usually reactive rather than proactive measures.

In administering the Law, the Committee is required under Article 5 of the Law to have regard to the need to regulate and manage demand on the resources of the Island and to protect the integrity of the Island in commercial and financial matters. The Committee also has particular regard for the Population and Immigration Policy recommendations adopted by the States in November 1997.

### Part II of the Law

In November, 1997 the Finance and Economics Committee (which at that time was responsible for administering the Law) was charged with “tightening up the application of the Law”. The Committee produced a new policy based on propositions adopted the States in connection with Population and Immigration Policy and the objectives contained in the Strategic Policy Review 1995 “2000 and Beyond”.

In early 1998, the Finance and Economics Committee decided that it had no alternative other than to be “flexible” and “pragmatic” in its approach to tightening up the application of the Law. The existing Regulations were amended to remove the exemption categories in relation to the engagement of additional locally qualified staff and a loophole was closed whereby non-locally qualified people could become employed without the requirement for a licence.

### Current Applications

Nearly all applications for a new undertaking with locally qualified principals or for the engagement of locally qualified staff are approved.

Applications for the engagement of non-locally qualified staff are considered more carefully and a recent change has been to permit applications from non-local beneficial owners to establish an undertaking in the Island especially where the only staff to be engaged are locally qualified. This is in accordance with the Committee’s desire to increase competition and promote more consumer choice. An example of this is the number of Guernsey based businesses which have been granted a licence to open an office or branch in Jersey.

### Year Joint Licences

It has been recognised that the Committee could not adequately take into account the various objectives mentioned in the policy statement if it only dealt with matters on an application by application basis and it was therefore decided that the Committee should have information on the whole circumstances of an undertaking if it was to assess how that undertaking should be treated. The Committee therefore now considers individual undertakings business objectives and reaches agreement on staffing establishments for a future period (generally 3 years).

When proposing joint licences the Committee, in accordance with its normal policy, does not usually restrict the number of additional locally qualified staff to be engaged in a future period. However, it only allows a degree of additional non-locally qualified staffing in specific circumstances. Certainly, if the percentage of locally qualified staff is only average or below average, and/or the increase in non-locally qualified staff appears excessive, the Committee will either reduce the number of such staff in any future proposed agreement, and/or impose targets to improve the percentage of locally qualified over time.

All undertakings, no matter what size, have been actively encouraged to consider entering into joint staffing licences as outlined above.

The RUD Office produces half yearly reports for the EDC on the number of licences issued and refused for both new undertakings and additional staff. An annual independent report of the same is produced by the Statistics Unit (See R.C.8/2003).

### Manpower Survey

Manpower returns are made half yearly as at 30th June and 31st December by all businesses. An independent report is produced thereafter by the Statistics Unit (latest report to June 2003 R.C.44/2003). In December 2002, a facility was introduced for the electronic submission of Manpower returns. This facility has proven very successful. The Manpower Survey gives a good short-run indicator of the state of the labour market and is a guide to the States of the economy since there are inevitable links between growth in economic activity and employment changes.

### Part III of the Law

As indicated above, under Part III of the Law, no person may carry out a development of more than 1500 sq. ft. unless they have been granted a licence and for agricultural buildings a licence will be required where the area is more than 10,000 sq. ft. Applications have generally been granted apart from a period in the late 80s when some applications were deferred and some applications refused in relation to the development of luxury homes and office blocks.

The Committee administers the Law by considering each application on its merits having regard to the States anti-inflation strategy (P.125/2000) but seeks to manage demand within the actual capacity of the industry.

Statistics are maintained by the RUD Office on the type and value of development licences issued and consolidated quarterly workflow statistics for both private and public sector are presented to the States.

**MIGRATION POLICY STEERING GROUP MEMBERS**

Senator P.F.C. Ozouf – Chairman  
Senator L. Norman  
Senator M. Vibert  
Deputy D. Crespel  
Deputy B. Fox  
Deputy J. Reed  
Deputy G. Southern  
Deputy P. Troy  
Deputy M. Taylor  
Deputy S. Ferguson (until February 2004)  
Senator P. Routier (from February 2004)

**MIGRATION POLICY WORKING GROUP MEMBERS**

Bill Ogley	Policy and Resources (Chairman)
Andrew Mallet	Policy and Resources (until December 2003)
Mike Entwistle	Policy and Resources (from December 2003)
William Bailhache	H.M. Attorney General
Eric Le Ruez	Housing
Peter Connew	Housing
Bevan Anthony	Economic Development
Wayne Gallichan	Economic Development
John Noel	Home Affairs
Tom Gales	Employment and Social Security

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[1] Members of the Migration Policy Steering Group and Working Group are listed in Appendix 3.

[2] Immigration Act 1971, Section 1(1) as extended to Jersey by the Immigration (Jersey) Law 1993, Article 3(1).

[3] Immigration Act 1988, Section 7, as extended to Jersey by Article 3(4) of the 1993 Order.