



Children's Commissioner for Jersey
Promoting and Protecting Children's Rights

Office of the Children's Commissioner

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██████████
Policy Principal
Department for Strategic Policy, Performance & Population
By email ██████████

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Dear ██████

Migration Policy Development Board

Thank you for providing me with your stakeholder briefing note, outlining the policy areas that the Migration Policy Development Board (MPDB) is seeking advice on.

Clearly, a number of the questions raised in this document fall outside the purview of my role and the work of my office; however, some of the fundamental considerations are of immediate and direct concern to us.

You have requested that I submit an opinion on the assumptions that the Board has set out in Section 3 of the stakeholder document.

My first observation is that this section is silent on the UN Convention on the Rights of the Child (UNCRC) and, more broadly, on the European Convention on Human Rights (ECHR). The document states (in Section 3.4) that migration controls 'will recognise family life with spouses and civil partners gaining CHW status from their partner' and, in the following paragraph, it undertakes to 'ensure that all children accompanying new migrants are registered on entry to Jersey'.

However, the vagueness of these undertakings, combined with the fact that they are not tethered, as I have mentioned, to the relevant UN conventions, gives me cause for serious concern. Of the hypothetical migrant worker categories (W, X, Y and Z) that you have suggested, only three out of the four have a provision for the children of incoming workers. Also, the category to which you have failed to assign provision for children's residential rights ('W') is perhaps the most likely area of risk, as it relates to the most vulnerable income group.

I will give some further detail in this written response regarding my reasons for raising this objection, on the understanding that we will be able to discuss the matter in greater depth when we meet in person.

As previously stated, the MPDB must ensure that both the UNCRC and the ECHR are at the forefront of its approach to policy development. The Board should also have in mind the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and, in particular, the preamble to that convention, which makes it clear that:

“...the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection, taking into account the fact that migration is often the cause of serious problems for the members of the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family...”

The MPDB's 'Discussion Paper: Migrants' access to services' at Section 4 sets out a table for the years 2010 to 2018/2019 which relates to children attending school in Jersey. It states: “The table suggests that there is very little or no pressure on the education system from migrant children at this age.” The paper adds: “The net migration rate for children does not mirror the rate for adults and is almost net nil. Current trends suggest that ratio of children to adults will reduce in the future.” Therefore, there is no pressure or issue with migration relating to children or that migrants are bringing ‘too many’ children to Jersey. The paper refers to the ratio of children to adults reducing in the future on current trends.

Whereas, the MPDB's 'Project Scope' document (dated 21 March 2019) at paragraph 2.3 states that: by 2035, there will be 11,000 more people aged 65 or over living in Jersey, and around 3,000 more people over the age of 85; these are existing residents growing older; and “an ageing population means we need to import more skilled workers into our medical and care sectors... In addition, many more care workers will be needed across both public and private care provision.”

Therefore, there are no pressures on numbers of children entering Jersey and there is also a priority need for migrants (not least, for the care and medical sectors servicing those already living in Jersey).

It stands to reason, then, that to get the best and most committed migrants, it is vital to respect, promote and protect the private and family lives of those migrants. It should not merely be a matter of getting the most hard-working migrants into Jersey. Jersey should set a good example and ensure that the migrants it attracts also have the option to have their partners and/or children come and live in Jersey with them. The conventions previously cited, including Article 8 of the ECHR and a number of Articles of the UNCRC, require that to be so.

The formal preamble to the UNCRC states it in highly explicit and (in the context of this Board's work) very relevant terms:

“... the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community. “Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding...”

It is therefore my view that migrants in all four hypothetical categories should be permitted to bring their partner and/or children to Jersey. The proposal to only permit certain categories of migrants to bring their partners and/or children to Jersey would prevent their family lives continuing in the best way possible. It would also mean migrant children remaining in their own country without one or more parent, which leads to a fracture in family life (which is totally avoidable). The Migrant Workers Convention, although not ratified, refers to avoiding the scattering of families. For some children, it makes them more vulnerable in their own countries and places them at risk of exploitation, trafficking and criminality. The pastoral and nurturing void from not having the absent parent is filled by other more dangerous aspects for the child.

Jersey should therefore consider responsibly how it attracts migrants. The current proposal to not allow 'W' category migrants to bring their families to the Island will impact less skilled and poorer migrants. How can this be justified when it is likely that a higher proportion of those workers, and the children of such migrants, will require more nurturing, protection and direction? Brexit is almost certain to mean many fewer migrants from within Europe, which will, in turn, mean that attracting third-country nationals will be essential.

Given that the fundamental purpose of the MPDB is to find a modern and lasting solution to managing sustainable and healthy immigration into the Island, it should not only be feasible, but also one of the Board's core aims, to establish a policy that models a sound and humane attitude towards the people we are asking to come here and work for our community. Such an approach will inevitably need to be based not only on the rights of the workers in question but also on those of the children in their families.

The statistical evidence is clear that migration is necessary but it must still be achieved in a way that is fair to all migrants, even to those who may come to Jersey for periods of less than one year and who might be undertaking what is seen as unskilled work or less skilled work. It will also help to promote good community relations if all migrants have their partners and/or children with them in Jersey. It will foster a sense of inclusion, which will in turn avoid the view that there is a hierarchical system in operation which determines what 'class' of person is able to bring their partners and/or children to Jersey.

Extending these fundamental rights to all migrants is imperative – rights are not an optional extra. Furthermore, it would enable all migrant workers in Jersey to feel valued and welcomed, and the same for their children, who would see that certain categories of migrants are not discriminated against as having fewer rights or being less important. This will assist those children to integrate better in schools and not feel like an underclass of child.

Also (from a more global perspective), it will help Jersey to deal with the worldwide competition for migrant labour, if the Island is regarded as a leading example of an inclusive, fair and safe place for families and less skilled migrants. Such perceptions have knock-on effects, in our view: it then becomes more likely that Jersey will be better-placed to attract even more of the skilled and medical/social care migrants that are needed as a priority. That is because those more skilled and migrants are more likely to want to live in, and be a part of, a society that promotes fairness for all.

In conclusion to this brief overview, and as a preparation for our forthcoming meeting, I would therefore recommend that you consider Article 5 of the UNCRC:

“States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”

It is for the above reasons that I regard the current draft of section 3.4 of the MPDB's stakeholder briefing note as taking far too brief an approach to family life and children. The note is limited in scope. It also fails to comply with the law.

The MPDB should have at the forefront of its considerations the EHCR and the UNCRC, as it is obliged to do by law. The best interests of the children must be a primary consideration.

Finally, to add some context to what began this correspondence by saying (viz, that some of the matters raised by the CPDB are of 'immediate and direct concern' to us), I would like to draw your attention to a few of the responses we received to our Island-wide consultation of children and young people.

Children under 11 told us that every child should “have a home with food and drink’, with one child phrasing it in the following terms: “I think houses and flats are really expensive in Jersey and sometimes mums and dads don’t earn enough money to afford a nice house for them and their children to live in and sometimes landlords have nice big houses but won’t let children live in them.”

One young person in the older age group (11-18+) asked us to: ““Focus on the financial imbalance and fluctuating behaviour that affects low income homes and split families and how it can severely affect the education, livelihood and future of the children living in those homes.”

I look forward to meeting with the Board next week.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D McMillan', written in a cursive style.

Deborah McMillan
Children’s Commissioner for Jersey