

EXECUTIVE COUNCIL

PUBLIC

Title: Extension of Work Permit Validity Period

Paper Number: 17/18

Date: 21 February 2018

Responsible Director: Director of Emergency Services and Islands Security

Report Author: Immigration Officer

Portfolio Holder: MLA Roberts

Reason for paper: This paper is submitted to Executive Council:
For policy decision (including budgetary policy)

Publication: Yes

Previous papers: 195/15 – Immigration Review: Work permit policy, including Registered Employer Sponsor Scheme and Accompanying Dependents
218/15 – Falkland Islands Immigration Review: Context, Basis-for-Action and Outcomes
83/17 – Immigration (Amendment) Bill 2017

List of Documents:

1. Recommendations

Honourable Members are recommended to approve:

- (a) That, as provided for under Section 17(5)(b)(i) of the Immigration Ordinance 1999, permission be granted to the Principal Immigration Officer to issue or renew a work permit so as to be valid for a period of up to four years from the date of its commencement, where a new contract of employment requires a permit of such duration.

2. Additional Budgetary Implications

None. Any proposals for changes to work permit application fees will be brought forward for consideration during the 2018/19 budget process and addressed in the Finance Bill 2018.

3. Executive Summary

- 3.1 In the Immigration Ordinance work permit validity is currently limited to a maximum of two years but provision is made for the Governor to give consent for permits to be granted for longer periods of time. This paper seeks authority for the Governor to give a blanket approval/consent to the Principal Immigration Officer to issue or renew work permits such that they may be valid for periods of up to four years.
- 3.2 The recommended course of action will allow immediate implementation of the decision by Executive Council on 25th November 2015 (ExCo Paper 195/15) to increase the maximum period of a work permit from two to four years. This change has been included as part of the Immigration (Amendment) Ordinance 2017, passed by the Legislative Assembly in August 2017 but not yet commenced. While full implementation of the Ordinance will require time, there are some changes that can be effected quickly, as they do not require secondary legislation. The interim measure proposed here will provide an immediate improvement for employers and workers, supporting our labour attraction and retention goals.
- 3.3 Development of the required guidelines, procedures and secondary legislation to support full commencement of the Ordinance is proceeding as a high priority activity for the Customs and Immigration Service and is expected to be complete by the end of June 2018.

4. Background and Links to Islands Plan and Directorate Business Plan/s

- 4.1 Section 17(5) of the Immigration Ordinance 1999 states:

“(5) Subject to this section, the Principal Immigration Officer shall not issue or renew a work permit –

(b) so as to be valid –

(i) without the consent of the Governor, for a period of greater than two years from the date of its commencement.”
- 4.2 On 25th November 2015 Executive Council (Paper 195/15) approved a recommendation that the maximum period of validity for a work permit be increased from 2 years to 4 years. This recommendation was made to provide both employers and employees with some certainty and to encourage settlement by making the transition to Permanent Residence easier. It was felt that limiting employment to two years and subjecting employees to the process of re-advertising their jobs made retention of staff difficult. The recommendation was not to give 4 year permits to everyone but where contracts of employment support the need.
- 4.3 The Immigration (Amendment) Ordinance 2017 (Paper 83/17) which includes this amendment was passed by the Legislative Assembly at the end of August 2017.

- 4.4 The Immigration (Amendment) Ordinance 2017 has not yet been commenced as it requires supporting subsidiary legislation, safeguards and administrative measures to be put in place. This recommendation, to immediately allow the Immigration Officer to issue four year work permits where justified, is made as an interim measure to address one of the main areas of concern for employers, including FIG, until the full implementation of the amendment Ordinance can be completed.
- 4.5 Immigration policy review has been an ongoing target of the Islands Plan since 2010 and this is a first step towards implementing the approved new policy.

5. Options and Reasons for Recommending Relevant Option

- 5.1 The Immigration Review commenced in 2010 and despite approval in principle being granted for a number of changes as long ago as June 2014, the public have yet to see any changes. The publication of the Immigration (Amendment) Ordinance 2017, as well as the publicity relating to the changes it will make, raised employer and public expectations.
- 5.2 Full implementation of the amended Ordinance will require additional time. However, some of the changes can be implemented quickly, do not require secondary legislation and are strategically important to improving labour attraction and retention. In particular, the Immigration Department has been under some pressure to start giving effect to permission for longer Work Permits.
- 5.3 This recommendation therefore addresses one of the most important areas of concern for employers. As the validity of permits is currently subject to approval by the Governor this change can be implemented by a decision of the Governor in Council immediately as an interim measure without the requirement to change any other aspects of the process while the necessary supporting mechanisms are put in place to give full effect to the amendment Ordinance.

6. Resource Implications

- 6.1 Financial Implications
None
- 6.2 Human Resource Implications
None.
- 6.3 Other Resource Implications
None identified.

7. Legal Implications

- 7.1 Section 17(5) of the Immigration Ordinance 1999 allows for the Governor to give consent to allow for the issue or renewal of work permits for periods longer than 2

years. There are no legal implications as this recommendation is within the requirements of that section and if approved will be lawful.

8. Environmental & Sustainability Implications

8.1 None

9. Significant Risks

9.1 There are no significant risks identified.

10. Consultation

10.1 Public consultations on Immigration reform took place in 2013 and 2014 and the amendments contained in the Immigration (Amendment) Bill 2017 are based on the findings from those consultations. 75% of respondents to an Immigration Policy questionnaire were in favour of increasing the maximum period of a work permit from two years to four.

11. Communication

11.1 Employers who currently sponsor work permit holders will be informed of the possibility of obtaining four year permits and the need to provide evidence of the planned employment duration e.g. contract of employment with any applications. The existing rule which prevents applicants from applying to renew their permit more than 12 months before the date on which the current permit expires will still apply.