

EXECUTIVE COUNCIL

RESTRICTED

Title of Report: Immigration – Permanent Residence Permits

Paper No: 12/09

Date: 29 January 2009

Report of: Principal Crown Counsel/Chief Executive

1.0 Purpose

The purpose of this paper is to recommend that the suspension of operation of section 18 of the Immigration Ordinance (which provides for the issue of permanent residence permits) be further extended by order from 1 April for a period of three months.

2.0 Recommendations

Honourable Members are recommended to:

- (a) approve the making of an order which extends the suspension of operation of section 18 of the Immigration Ordinance (which provides for the issue of permanent residence permits) from 1 April for a period of 3 months; and
- (b) agree that the work necessary to implement a general migrants points system and other appropriate systems for the issue of permanent residence permits on 1 July 2009 be carried out by a civil service group to be led by the Chief Executive.

3.0 Summary of Financial Implications

None.

4.0 Background

4.1 Further to Members' consideration of ExCo paper number 159/08 at the November meeting of Executive Council, the Principal Immigration Officer was tasked to consult the public in relation to a proposed points system for "general migrants", and the Immigration Policy Working Group (IPWG) was tasked to reconsider a number of matters arising in relation to the proposed points system.

4.2 It was intended that the proposal for a "general migrants" points system, together with an enabling Bill would be tabled at January's meeting of Executive

Council with a view to the “general migrants” points system, together with a supplementary system or systems for consideration of applications from persons outside the “general migrants” points system, being regulated for and implemented ready for a start date of 1 April 2009.

4.3 The operation of section 18 of the Immigration Ordinance, which provides for the issue of permanent residence permits, is currently suspended until 31 March 2009 (this suspension is generally known simply as the moratorium).

5.0 New system/s for the issue permanent residence permits

5.1 Implementation of the proposal as set out in paragraph 4.2 would require a substantial amount of work by the Principal Immigration Officer and Immigration staff in order to achieve the 1 April start date.

5.2 The IPWG met on 21 January in an attempt to progress some issues in the absence of the Principal Immigration Officer. It became apparent at that meeting that some members of the group did not share the understanding of the proposal set out at 4.2 above in relation to the implementation of the system or systems for the issue of permanent residence permits from 1 April 2009.

5.3 It appears that there are two key options available in the current circumstances:

(a) the suspension of the operation of section 18 of the Immigration Ordinance be further extended to allow the necessary work to be carried out for the purpose of implementing a new system/s for the issue of permanent residence permits as set out above; or

(b) the suspension of the operation of section 18 be allowed to expire on 1 April, and an interim solution, which operates under the existing legislative framework and policies, be introduced from that date, involving, for example:

(i) the use of the general migrants points system, either determinately or as a guide, to the issue, by the Principal Immigration Officer, of permanent residence permits to applicants who come within the “general migrants” scheme; and

(ii) the issue of permanent residents permits to applicants who do not come within the “general migrants” scheme is carried out on the same basis as occurred prior to the initial suspension of 18 in January 2007.

5.4 In the light of both the existing resource limitations, and the lack of clarity available in relation to exactly how the new system or systems were to be implemented on 1 April, Members are advised that the only sensible course is to further extend the suspension of operation of section 18 for a period of three months to allow officers to undertake the work necessary to be in a position to recommend implementation of a general migrants points system and other appropriate systems for the issue of permanent residence permits.

5.5 The 1 April deadline is a self imposed deadline, which has already been extended on two occasions. There seem to be no policy reasons why option (a) should not be preferred. Legal advice strongly favours option (a) as set out below.

5.6 The work necessary to ensure that a “general migrants” points system and other appropriate systems for the issue of permanent residence permits are in place for 1 July is substantial. It is considered that such work would be most efficiently and effectively carried out by a civil service group led by the Chief Executive.

6.0 Financial Implications

None.

7.0 Legal Implications

7.1 The advice of the Attorney General’s Chambers is that both elements of option (b) are vulnerable to legal challenge in the event that an applicant is unsuccessful. On this basis, the situation would represent a backwards step.

7.2 If the points system is determinate, that is very risky without appropriate statutory provision, because it involves other criteria, which might be put forward by the applicant who does not reach the points threshold, being disregarded.

7.3 On the other hand, if it is only a guide, the points system remains as discretionary as the position under section 18 and we are no further forward than we were two years ago when the operation of section 18 was suspended.

7.4 As to the consideration of issue of a permanent residence permit to persons who do not come within the “general migrants” points system, without sufficient policy work having been done on the make up of the alternative system/s, it is difficult to see on what basis a decision to grant or refuse would be made. Equally, any application made under the points system, but which fails, could probably be re-submitted under the alternative system/s and with a better prospect of success.

7.5 The option of extending the suspension of the operation of section 18 is not without legal risk, but of the two options, option (a) carries significantly less legal risk.

8.0 Human Resources Implications

None.