

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Immigration Reform Consultation: Findings and Recommendations

Paper No: 124/14

Date: 25th June 2014

Report of: Head of Policy

1.0 Purpose

- 1.1 To report the findings of the public consultation on immigration reform, and a series of recommendations arising.

2.0 Recommendations

[NOTE: Executive Council's decisions on each recommendation are annotated below. Items marked "AGREED IN PRINCIPLE" will be subject to further policy development before implementation; Items marked "NOT AGREED" will not be progressed further.]

- 2.1 Following discussion of the consultation results by the Immigration Review Group, Executive Council is advised to approve the following recommendations. Hon. Members should note that, if approved, further policy development will be required (on points of detail and clarification) before legislative drafting can commence. This is to ensure the rights and restrictions are fully defined, and to address areas of concern highlighted in the consultation i.e. further more detailed proposals will be brought to Executive Council at a future date regarding all of the proposed changes. Executive Council is recommended to approve the following:

- **Note the findings from the public consultation and publish the results (as presented in the standalone report at Appendix 2 of this paper).
AGREED**
- **Adopt in principle the following policies arising from the immigration review:**

A1: Visitors to the Falkland Islands will be allowed to visit for a maximum cumulative period of four months in any 12 month period (with the possibility of extension in certain cases). AGREED IN PRINCIPLE, WITH MAXIMM PERIOD TO BE 6 MONTHS IN ANY 12 MONTH PERIOD.

A2: Create a new immigration status of ‘Family Visitor’ entitling a close relative to visit the Islands for up to 12 months (subject to the restrictions and provisions detailed in paras. 5.8-5.10). **AGREED IN PRINCIPLE**

A3: Retain the current ability of Visitors to obtain Temporary Work Permission, but ensure that this is capped at a maximum of three months for any individual. No extensions will be permissible, but individuals can apply for a Work Permit through the established process if they wish to work beyond this initial three month period. **AGREED IN PRINCIPLE**

B1: The maximum period for which a work permit can be issued to be increased to four years. **AGREED IN PRINCIPLE**

B2: Adopt a revised approach to Work Permits with defined routes for different skills/occupations dependent on the needs of the Islands (as set out in paras. 5.20-5.22 below and pages 30-31 of the Migration Review document). **AGREED IN PRINCIPLE**

C1: Create a specific immigration route for Business/Investors to provide greater incentive for investment in the Islands (as detailed at 5.27-5.30). **NOT AGREED**

D1: Create a Skills Assessment Council to identify the Islands’ current and future skills needs, and to publish a Workforce Shortage List on an annual basis (as detailed at 5.33-5.34). **AGREED IN PRINCIPLE**

D2: A system of Registered Employer Sponsors will be introduced to better manage and monitor the migrant population (as detailed at 5.36-5.38). **AGREED IN PRINCIPLE**

D3: Reject the idea of an FIG Central Bond Fund to cover repatriation costs. **AGREED**

E1: Residence Permit to be abolished and replaced by separate immigration statuses for partners and dependents of FIS/PRP holders and partners and dependents of Work Permit Holders. **AGREED IN PRINCIPLE**

E2: New status of Accompanying Dependant (FIS/PRP) to be created, conferring rights to live and work in the Islands for three years, subject to guarantees and relationship tests (as described in 5.45 - 5.46). **AGREED IN PRINCIPLE**

E3: New category of Accompanying Dependent (Work Permit Holder) to be created, conferring a right to work in identified shortage occupations in the Islands. If accepted, these provisions

would also apply to partners and dependents of persons holding a Business/Investor Permit. **AGREED IN PRINCIPLE**

E4: PRP will be a necessary (but not sufficient) requirement to secure Falkland Islands Status (FIS). Persons will be required to hold PRP for a minimum of 4 years before being eligible to apply for FIS.

AGREED IN PRINCIPLE

E5: PRP points system to be subject to formal review, with greater emphasis to be placed on skills and contribution to the Islands.

AGREED IN PRINCIPLE

F1: Policy Unit to be tasked with undertaking a review of policies regarding land and property ownership by migrants. Initial priority to address commercial land and property issues if recommendation C1 is approved. NOT AGREED

F2: Switching between different types of immigration control from within the Islands to be limited to visitors and Work Permit holders moving to Dependent status; Work Permit Holders moving to Business/Investor Permit; and Visitors with Temporary Work Permission moving to full Work Permit. AGREED IN PRINCIPLE (WITH EXCEPTION OF REFERENCE TO BUSINESS/INVESTOR PERMIT)

- **Agree the release of funds from the EDS budget reserve to the Policy Unit to enable specialist short-term resources to be acquired to accelerate the policy development and legal drafting instructions. AGREED, SUBJECT TO TERMS OF REFERENCE BEING AGREED BY EXECUTIVE COUNCIL**

Responsible Officer: Head of Policy in the first instance (policy development) working with Director of Emergency Services and Immigration Service;

Timeframe: 12 months to complete detailed policy and legislative drafting instructions (assuming additional resource agreed).

3.0 Additional Budgetary Implications

3.1 None.

4.0 Background

4.1 In August 2012 Executive Council agreed to undertake a review of the Falkland Islands immigration system with a view to assessing whether the existing system was suitable to meet the current and future needs of the Islands (see ExCo 202/12 – for completeness some elements of this paper are repeated here). The aim was to ensure that the Islands has an immigration system that is

efficient and effective in responding to economic development ambitions, and that is robust and sufficiently flexible to deal with any future decision that might be taken on immigration policy. The review focused primarily on the immigration system (the way that immigration is regulated and controlled and the rights afforded to migrants) and did not seek to change overriding immigration policy in terms of the number and nature of migrants that may be desired or required for the sustainability and future development of the Islands.

- 4.2 The need for the review stemmed from the 2010 Economic Development Strategy (EDS) – with the imperative increased by the subsequent emergence of oil and gas developments in the Islands and the potential for a long-term oil industry presence that was not anticipated in the EDS.
- 4.3 The EDS identified the immigration system as being one of the key constraints to economic growth in the Islands. The fundamental issue being that the current immigration system “*fails to ease the tight labour market, resulting in limited supply and high labour costs that limit business expansion in the islands*”. This remained the position in 2012, with the potential labour market issues further exacerbated by the emergence of hydrocarbons developments and associated new jobs created in both the public and private sector.
- 4.4 The Falkland Islands Census 2012 confirmed the labour market constraints present in the Islands – showing a static population, a declining and aging population in Camp, a declining birth rate; virtually no unemployment and almost a fifth of the working population holding more than one job.
- 4.5 Beyond hydrocarbons, there were already concerns that the Islands need more labour to ensure continued economic success and to deliver on ambitions for growth in the tourism and agricultural sectors. The review was commissioned to examine these issues and to address a range of additional areas of concern, including:
 - Issues of labour shortage in Camp and the need for growth in population and economic activity as envisioned in the Rural Development Strategy;
 - Facilitating additional labour to ensure that the aims of the Tourism Strategy can be delivered (with an anticipated increase in the quality of the tourism offer, expansion in accommodation, new activities and facilities etc.);
 - Issues related to attracting investors and entrepreneurs to the Falkland Islands;
 - Related issues of land holding rights (and home ownership) that may discourage migration and investment;
 - Dealing with demand for seasonal labour with the minimal amount of time and administrative burden;
 - Revisiting the effectiveness of the points-based system and consideration of how the system should deal with skilled/unskilled workers and other specialist categories;

- Consideration of the duration of work-permits to establish if this is an impediment to growth and skills retention and transfer;
 - The need/desirability of measures to encourage transition to permanent residency among the transient working population.
- 4.6 It was agreed that a specialist immigration advisor would be appointed to undertake a review of the Islands' immigration system. A suitable candidate was identified through a recruitment and selection exercise and was appointed to undertake a six-month secondment to the Islands to conduct the review during January to June 2013.
- 4.7 The findings and recommendations arising from that review were presented in a report entitled "*Migration Review: An Immigration System fit for the future of the Falkland Islands*" (attached at Appendix 1). This report was considered by the Immigration Review Group (IRG)¹ during May 2013. The IRG recommended that the report be submitted to Executive Council to seek approval for a public consultation exercise on the issues and proposals put forward in the review.
- 4.8 Executive Council considered the report at its meeting of 26th June 2013 and agreed that a public consultation exercise should take place on the proposals (see ExCo 124/13).
- 4.9 Following this, the Policy Unit coordinated an extensive consultation and publicity campaign over an 8-week period between 5th August and 27th September 2013. Individuals and organisations wishing to respond had the option of submitting the questionnaire online or by post. The consultation process included a series of public events during which the proposals were presented and discussed. A total of 73 people attended these events:
- Two public meetings in Stanley (7th and 14th August)
 - Meeting with the Chamber of Commerce (5th August)
 - Three public meetings on West Falkland (Port Howard 11th August; Hill Cove and Fox Bay 12th August)
 - Two public meetings on East Falkland (Hope Cottage and Goose Green on 9th August).
- 4.10 In addition, a number of other informational and promotional activities were undertaken:
- A live phone-in debate on the proposals took place on Falkland Islands Radio Service in the evening of 21st August;
 - A series of explanatory articles were placed in the Penguin News covering different topics in three separate editions during August;

¹ At that time the IRG consisted of Gavin Short MLA (Chair), Dick Sawle MLA, Head of Legal Services, Head of Policy, Principal Immigration Officer, Collector of Customs, Immigration Advisor (seconded from Home Office) and the Immigration Officer.

- Links to the survey and instructions on how to complete it were posted on Facebook;
- Posters and copies of the consultation document were made available at various locations around Stanley, including the Post Office, Standard Chartered Bank and the library.

4.11 A total of 113 individual responses to the questionnaire were received, of which more than half (55%) were received online. The vast majority of responses (87%) were received from persons who were Falkland Islanders or who held Falkland Islands Status. Analysis and recommendations have been drawn from this group of respondents only (see Appendix 2 for detailed analysis of the consultation results).

4.12 The results of the consultation were discussed at a meeting of the Immigration Review Group² on 17th April 2014. The Group agreed to forward the Consultation Findings report (as attached at Appendix 2) to Executive Council along with a series of recommendations as detailed in this paper.

5.0 Issues and Recommendations Arising from the Review and Consultation

5.1 The remainder of this report discusses potential options for taking forward proposals in the immigration review and presents a series of recommendations. For brevity, this covering paper makes reference to the detailed consultation findings presented in Appendix 2 to avoid lengthy repetition. The recommendations are summarised under the same headings used in the consultation document.

5.2 The recommendations presented below should be read in conjunction with the full report on immigration reform and the findings from the consultation (Appendices 1 and 2). Figures quoted here are based on the feedback from Falkland Islanders and Falkland Island Status holders only.

A: Visitors to the Falkland Islands

5.3 The first area of review concerned the arrangements for persons visiting the Falkland Islands. The immigration review suggested that the current arrangements for visitors were open to use as a means of gaining entry to the Islands with the intention of obtaining work and/or longer-term status – which was suggested to be a back-door to longer term settlement that undermined the integrity of immigration control.

5.4 Specific proposals were put forward in the consultation to address this, with the intention that the visitor route should be just that: someone who visits the Islands on a temporary basis or transiting here, and hence periods of allowable stay should reflect this.

² Following the General Election in November 2013, the IRG is now chaired by Michael Summers MLA with Barry Elsby MLA also attending in addition to the previous complement of FIG officers.

Period of Stay

- 5.5 The current system allows a visitor to stay in the Islands for up to twelve months in any 24 month period. The review suggested that this was an excessive period for persons meeting the definition of a visitor. It was also suggested that this could lead to ‘unofficial residency’ (persons conducting business here on a regular basis without being resident) and provide an opportunity for speculative immigration (persons coming to the Islands as visitors for up to a year whilst actually seeking work during that period). The latter is a particular concern if significant new job creation arises from oil developments and other ambitions for economic growth.
- 5.6 For these reasons, the consultation proposed that a standard period of four months in any twelve month period be applied to visitors. This would accommodate most visitors whilst also allowing flexibility to family members and visiting business people to stay for a longer period (also see below for additional recommendations regarding family visitors who may wish to stay for longer than the standard 4-month period).
- 5.7 This proposal found favour with the majority of respondents in the consultation (68%) and it is recommended that it be adopted. In defining the policy instructions for this, additional provisions should be included to enable extension of this period for certain groups/individuals (such as persons visiting on yachts wishing to stay for extended repairs etc.). Any extensions to a Visitors Permit will require that the individual (and dependents) demonstrate to the Immigration Service that they hold valid medical insurance for the duration of their stay.

Recommendation A1: Visitors to the Falkland Islands will be allowed to visit for a maximum cumulative period of four months in any 12 month period (with the possibility of extension in certain cases).

Family Visitors

- 5.8 In order to address a perceived need for specific provision for an immigration route for family members who may wish to visit the Islands for periods substantially longer than four months (e.g. to care for relatives, assist with family childcare etc.), a specific immigration route for Family Visitors was proposed. This would allow close family members to stay in the Islands for up to 12 months. There was broad approval for this proposal with 63% of respondents to the consultation indicating that there would be benefit in this approach.
- 5.9 In order to address concerns regarding potential abuse of this route and to ensure that no additional burden is placed on public services, it is recommended that this immigration status should be limited to close family members of a person holding Falkland Islands Status, PRP or a Work Permit – meaning a parent, child, de facto partner, brother, sister or grandparent (or the ‘step’ equivalents of these).

- 5.10 Family Visitor status would not confer any rights to work in the Islands and neither is it intended that a person holding this status would have unrestricted rights of access to public services – hence as a condition of entry they would be expected to undertake to cover all costs of healthcare, education and other public services that they may access during their stay on the Islands. As an additional protection there would be benefit in requiring such individuals to be sponsored by an existing FIS or PRP holder – who would be expected to sign an undertaking to accept all financial obligations associated with a Family Visitor. The latter approach may have additional administrative implications that will be discussed with the Immigration Service should ExCo wish to approve the principles of a Family Visitor route (i.e. the merits of this approach need further development should ExCo approve the principle of a Family Visitor route).

Recommendation A2: Create a new immigration status ‘Family Visitor’ entitling a close relative to visit the Islands for up to 12 months (subject to the restrictions and provisions detailed in paras. 5.8-5.10)

Visitors’ Rights to Work

- 5.11 There was no clear consensus from the public consultation on the issue of whether Visitors should be able to secure work whilst visiting the Islands. The current system allows visitors to apply for a Temporary Work Permission, which allows them to work for up to 3 months in the Islands.
- 5.12 The Immigration Review proposed that work should be prohibited under the Visitor route and the Temporary Work permission abolished. Just over half (53%) of respondents to the consultation agreed with this approach whilst 44% were opposed.
- 5.13 There were clearly opposing views on this topic. Of those in favour of restricting Visitors from working the main concerns expressed were around potential risks to safety and security as a result of unchecked workers, though some exceptions were proposed in the case of emergency and the case of voluntary workers. Of those against the proposal, the prevailing view was that Temporary Work Permissions were a useful tool to address chronic labour shortages in the Islands and certainly many consider this to be a valid stepping-stone to longer term settlement in the Islands.
- 5.14 On balance, the recommendation is that Temporary Work Permissions should remain as a means for employers to fill urgent labour gaps, however this right should be restricted to a maximum of three months for any individual. Hon. Members should also note that whilst there is a common desire for this mechanism amongst both individuals and businesses, it does pose some risks to the integrity of immigration control. Any Visitor wishing to remain in the Islands to work beyond this initial three month period should seek to secure a Work Permit through the established process for this i.e. no extensions to temporary work permissions should be allowed to avoid this becoming a route to longer-term residency as a matter of course. This will also ensure that the current system of local preference for FIS holders can be maintained and not

subverted through extended Temporary Work Permissions. It is also recommended that individuals holding a temporary work permission be allowed to apply for a full Work Permit without the requirement to leave the Islands first.

Recommendation A3: Retain the current ability of Visitors to obtain Temporary Work Permission, but ensure that this is capped at a maximum of three months for any individual. No extensions will be permissible, but individuals can apply for a Work Permit from within the Islands through the established process if they wish to work for beyond this three month period (this largely reaffirms the current provisions of the Immigration Ordinance (1999) – though change would be needed to enable holders of temporary Work Permission to apply for a Work Permit from within the Islands). This may pose some difficulties and risks to the robustness of immigration control - The Immigration Service has concerns regarding how such individuals would be assessed from within the Islands (e.g. is it sufficient that they undertake a medical whilst in the Islands and in the absence of input from a GP who knows the persons medical history?).

B: Working in the Falkland Islands

- 5.15 The review proposed a number of changes to the current system of Work Permits that were intended to address aspects of the current system that pose difficulties for employers and that are a disincentive to attracting people who may wish to settle in the Islands in the longer-term.

Duration of Work Permits

- 5.16 At present Work Permits are generally limited to a maximum period of two years but may be extended – meaning that in most cases the maximum length of contract that can be offered to an individual is two years in the first instance. It was proposed that the initial work permit period could be extended to a maximum of four years to enable employers to commit to longer term planning (if a sufficient case is made and it is relevant for that post). Employers would need to indicate and justify the length of work permit being applied for at the point of application.
- 5.17 As well as addressing issues of longer term labour force planning and investment in training, this proposal would provide additional benefits as it would act as an incentive for migrants to look at the Islands as a longer term prospect i.e. jobs could be offered with the potential for long-term residency as individuals could progress to PRP without necessarily having to secure a contract extension. This has the potential to attract migrants who may wish to make the Islands their home, rather than just presenting an attractive short-term opportunity as is currently the case. It would also reduce the administrative burden on employers and the Immigration Service given that around a third of all work permits issued over the past five years have been extended beyond the initial two years. Three quarters (75%) of respondents to the consultation were in favour of this change.

- 5.18 Concerns raised during the consultation regarding employers' ability to remove unsuitable employees and revocation of Work Permits are already provided for within the current Immigration Ordinance and should be retained.

Recommendation B1: The maximum period for which a work permit can be issued to be increased to four years.

Categories of Work Permit

- 5.19 The consultation revealed a broad consensus on the need to change the current system of Work Permits (92% of respondents indicated there was a need for change). A priority for change highlighted in the consultation responses was the need to change the requirement for a separate work permit for every job in certain types of occupations and for seasonal work.
- 5.20 The Immigration Review suggested a revised system that would see the creation of four categories of Work Permit, each conferring different rights and obligations on the permit holder. This was intended to create flexibility in the system in order to better meet labour market needs, to better manage the working migrant population, and to address some of the commonly voiced concerns about the current system.
- 5.21 The proposed categories of work permit are summarised below (also see pages 30-31 of the Migration Review for further details). Whilst at first glance these proposals may be seen to add more complexity to the system this is not the case. In fact, the proposals will streamline the work permit application process and ensure that the interests of the Islands are protected throughout (the current 'local preference' policy has been retained within the new proposals)

WORK PERMIT (WP)

WP(Sp) – Specialist: High value, high skilled roles which are not currently available in the Islands, not likely to be in the short term. Such roles are likely to be time limited with persons in the FI to fill a highly specialised role and unlikely to seek to remain.

WP(G) – General: Sector based, where an Islands skills shortage has been identified. Similar to current WP – and will remain time limited. Holders may choose to remain longer term (where there are opportunities) and can bring dependants.

WP(W) – Worker: Pool of workers in certain occupations. Holders would be able to hold multiple jobs under a single permit and can change jobs within the approved occupational categories.

WP(WS) – Seasonal: Skilled/Semi-Skilled/Unskilled labour; specific purpose, seasonal needs. As with WP(W) this would allow permit holders to hold more than one job however limited to no more than nine months and no dependants allowed.

5.22 The Consultation revealed a strong desire to address the perceived inflexibility of the current system – with three quarters (75%) of respondents agreeing with the specific proposal to create a pool of workers who would be able to access multiple jobs in certain occupations under a single work permit. In addition, 84% of respondents indicated a need for a separate category of permit for seasonal workers as outlined above.

5.23 Some individuals and businesses expressed a view that the proposals were overcomplicated and that there was no need to distinguish between different categories of worker i.e. that there should be a single work permit that allows persons to access any job on the Islands (subject to existing conditions on local preference offered to local candidates). The proposals for differentiation between different categories of worker are designed to ensure that employers can efficiently access the skills they need whilst also protecting the interests of Islanders to ensure that they are not disadvantaged.

Recommendation B2: Adopt a revised approach to Work Permits with defined routes for different skills/occupations dependent on the needs of the Islands (as set out in paras. 5.20-5.22 above and pages 30-31 of the Migration Review document).

C: Promoting Business Growth

Business/Investor Immigration Status

- 5.24 To support and promote the development ambitions of the Falkland Islands, it was proposed that a new Business/Investor Permit be created. 63% of respondents to the consultation were in favour of this proposal.
- 5.25 This was intended to support longer term ambitions for development of the Falkland Islands (as detailed in the EDS) by encouraging and securing funding and expertise from outside the Islands. At present there is limited scope for an enterprising individual or group to establish itself in the Falkland Islands - the current system of work permits is not an attractive offer to would-be entrepreneurs, and offers little security over investment. The idea was to provide sufficient security and opportunity for investors or entrepreneurs to come to the Islands via a specific immigration category, whilst at the same time ensuring that the best interests of the Islands are protected – additional protections proposed under this route are detailed below.
- 5.26 By creating a specific immigration route for entrepreneurs and investors it is possible to put in place clearly defined criteria against which migrants must qualify before they can gain entry to the Falkland Islands. Such measures will be needed to ensure that individuals coming to the Falkland Islands are those prepared to invest in its future and make a commitment, rather than come to make a ‘fast buck’.
- 5.27 It is recommended that this route attract a longer period of entry to the Islands (up to five years) to facilitate investment and business development. This would provide sufficient time for an individual to build a business – and enable them to access more permanent residence following the established procedures (e.g. progress to PRP after 3 years minimum).
- 5.28 Further policy development is required regarding any additional benefits that might be conferred in terms of land-ownership rights – the concern being that the absence of a transparent policy regarding rights to own land and property in the Islands as part of their business/investment enterprise would be a disincentive to investment, and present a major barrier to individuals seeking to establish a new business here. Accepting that further policy development is needed on this issue, it is suggested that the new immigration category can be introduced whilst maintaining the current system (i.e. would require an application to ExCo to hold land). This can be revisited if and when there is any further policy advice on the land/property issue.
- 5.29 It recommended that the normal qualifying requirements on time spent in the Islands for PRP be set aside for those individuals seeking to progress from Business/Investor status – it is quite possible that such individuals would be frequent travellers. Additional preference should be given to individuals seeking to establish a business in Camp.

- 5.30 In return for these benefits and opportunities, it would be expected that the applicant would need to demonstrate:
- Access to suitable funds (sufficient for the purposes of start-up (though no minimum investment level is proposed) and to maintain and accommodate themselves);
 - A realistic business plan (to be assessed by FIG Policy Unit);
 - A proven track record of delivery or a background/expertise within a relevant sector;
 - That he/she will be actively involved full-time in trading or providing services connected with that business/partnership (and that s/he does not intend to supplement business activities by undertaking any other employment in the Islands);
 - That there is a genuine need for the proposed investment and services in the Falkland Islands.
- 5.31 Some businesses raised concerns that attracting investors would lead to competition in markets. This is indeed likely and healthy competition will improve the level and quality of services available in the Islands. It is not recommended that local businesses be protected against fair competition from possible investors – otherwise all that is achieved is the protection of local interests that may not be providing value for money goods and services, leading to poorer outcomes for consumers. Where local businesses need assistance to improve their competitiveness, training and development support is available through FIDC and other sources. However, certainly local businesses should be protected against any kind of unfair competition – and ExCo has already agreed to the principle of introducing some form of competition law in the Islands to guard against this.

Recommendation C1: Create a specific immigration route for Business/Investors to provide greater incentive for investment in the Islands (with protections and requirements as detailed at 5.27-5.30).

D: Managing the Migrant Population

- 5.32 In order to better manage migrants and to ensure that the immigration system is more effective, a number of proposals regarding administration were proposed.

Skills Assessment Council

- 5.33 Proposals were put forward for a Skills Assessment Council to be created which would be a professional, independent, informed and transparent standing Council of experts to assess and review current and future employment and skills requirements for the Islands. The Skills Council would provide a formal mechanism to identify labour and skills needs across the Islands – and to enable the Islands to be pro-active in responding to these needs through the immigration system by creating a Workforce Shortage List. This list would identify the Islands’ needs that cannot be met from the domestic labour force and inform the Immigration Service as to which work permits are to be afforded priority. This would be a requirement if the revised system of Work Permits is to work effectively.
- 5.34 Two thirds of respondents to the consultation were in favour of establishing a Skills Assessment Council. The Council will be tasked with undertaking an annual skills survey and producing the Islands Workforce Shortage List. Membership of this Council will comprise:
- An economic/policy advisor (from the FIG Policy Unit)
 - Representative from the FIG Immigration Service
 - Representative from FIG Human Resources Department
 - FIG Education/Training Officer
 - A minimum of two representatives from the private sector
 - A minimum of one representative from the local community.

Recommendation D1: Create a Skills Assessment Council to identify the Islands current and future skills needs, and to publish a Workforce Shortage List on an annual basis (as detailed at 5.33-5.34).

Registered Employer Sponsor Scheme

- 5.35 With proposals to introduce some types of work permit that would allow migrants to undertake several jobs or to move between jobs under the terms of that permit, comes a requirement to better manage and track the migrant population. This is necessary to ensure that individuals are not breaching the terms of their Permit (i.e. are actually employed). To address this it was proposed that a system of Registered Employer Sponsors be introduced.
- 5.36 It would be a requirement for any employer employing a person on a Work Permit to be registered with the Immigration Service and they would be

legally required to participate in a notification process i.e. to notify the Immigration Service when a new Work Permit appointment is made and when a Work Permit Holder leaves their employ. Holders of a Work Permit would also have an obligation to inform the Immigration Service of any change in their employment circumstances (or changes in other circumstances, e.g. changing from Work Permit to Dependent).

- 5.37 This system will allow the Immigration Service to track the migrant population and to identify persons to check their current status and require their removal from the Islands if they are found to be in breach of their Permit. Responsibility for repatriation costs would remain with the employer – another reason why the notification process is important as this obligation may move from one employer to another if a person moves jobs within the remit of a single Worker Permit.
- 5.38 Some 76% of respondents to the consultation were in favour of the introduction of a Registered Employer Sponsor system. Some concerns were raised about this system being linked to wider obligations on commitment to good employment practices – the recommendation is that the notification system is introduced without additional requirements at this stage.

Recommendation D2: A system of Registered Employer Sponsors will be introduced to better manage and monitor the migrant population (as detailed at 5.36-5.38).

Central Bond Fund

- 5.39 The Migration Review also proposed that a Central Bond Fund be introduced as a mechanism to assist small firms in covering the possible costs of repatriation of individuals who require to be removed from the Islands. This was identified as a barrier to smaller firms in recruiting from overseas.
- 5.40 This proposal found very little support during the consultation process, with the majority of individuals and employers opposed to the idea. Less than one third (31%) of respondents were in favour of such a scheme. The prevailing view was that this responsibility should rest with the employer; and that it might be open to abuse, with employers with bad practices effectively being subsidised by others.

Recommendation D3: Reject the idea of an FIG Central Bond Fund.

E: Living in the Falkland Islands

- 5.41 The consultation explored a number of possible changes to the immigration system that could affect the rights and obligations of migrants seeking to settle in the Islands in the longer term. This was to ascertain views on ways in which the current system might be changed to encourage and support those migrants who wish to make a longer term commitment to the Islands (and whom the Islands consider will be of value to the community as permanent residents).

Partners and Dependents (General Principles)

- 5.42 Currently those coming to marry or live with partners who hold PRP or FIS are placed in the same category as those accompanying Work Permit holders under a specific Residence Permit Category. It was proposed that there would be benefits to the Islands from measures that encouraged and supported partners and dependents of PRP and Status Holders to settle in the Islands. If such benefits are desired then a different approach is required - one which differentiates between the rights of partners/dependents of PRP and Status Holders and the rights afforded to partners/dependents of Work Permit Holders.
- 5.43 Over three quarters of respondents (79%) felt that the Residence Permit should be replaced with a more defined immigration route, and more than two thirds (71%) felt a separate route for partners/dependants of PRP/FIS holders should be created. Specific details of proposals for each are presented below.

Recommendation E1: Residence Permit to be abolished and replaced by separate immigration statuses for partners and dependents of FIS/PRP holders and partners and dependents of Work Permit Holders.

Partners and Dependents: FIS and PRP Holders

- 5.44 In line with Recommendation E1, it is proposed that a new category of Status be introduced for Accompanying Dependent (FIS/PRP) – this would confer different rights and obligations to a similar category of permit for dependents of Work Permit holders (discussed in the next section).
- 5.45 For dependents of Falkland Islanders, Falkland Island Status Holders and holders of Permanent Residence Permits it is proposed that specific provisions are needed to better facilitate integration into the Islands. As such it is proposed that persons in this category:
- Can be granted entry for a period of three years;
 - Will be subject to a relationship test to verify that there is a genuine and continuing relationship between the dependent and their sponsor (including documentary evidence);
 - Will have permission to work with unrestricted access to the local labour market (to aid integration);

- Will require their sponsor (i.e. the FIS or PRP holder) to provide commitment to and provide evidence of accommodation and healthcare provision for the applicant for the first 6 months (after which the permit holder would have access to mainstream services in the same way that Work Permit holders currently do).
 - Will be subject to the agreed tests to ascertain whether they may pose an undue burden on public services in the Islands.
- 5.46 This would be an eligible route for spouses/civil partners/fiancés/dependents and vulnerable dependents of persons who are Falkland Islanders, FIS or PRP holders.

Recommendation E2: Creation of Accompanying Dependant (FIS/PRP) immigration status, conferring rights to live and work in the Islands, subject to guarantees and relationship tests (as described in 5.45 and 5.46).

Partners and Dependents: Work Permit Holders

- 5.47 Based on feedback from the consultation, there is a desire to confer greater rights upon the partners and dependents of Work Permit Holders. Such an approach would enhance the attractiveness of the Islands to potential migrants (some migrants are put off knowing that their partner may not be able to accompany them or may not be able to secure employment) – and potentially provides further opportunities to deal with issues of labour shortage as and when they arise.
- 5.48 It is therefore proposed that a specific immigration status of Accompanying Partner/Dependent (Work Permit Holder) be created. Persons in this category (if aged 18 or over) would be entitled to work in the Islands under the conditions of that permit, in occupations that have been identified on the Skills Shortage List. This approach makes it less cumbersome for migrants (no need to independently apply for a Work Permit) whilst also protecting local people by limiting the extent of work to those occupations that have been deemed to be in shortage in the Islands. Only a minority of respondents in the consultation felt that further restrictions should be placed on accompanying dependents (e.g. in terms of working hours, earnings cap etc.) and none are proposed at this time.
- 5.49 It is worth noting that 35% of respondents to the consultation felt that accompanying dependents should be given either an automatic right to work or limited rights to work (such as that proposed above), whilst 45% felt that dependents should go through the Work Permit process independently. The results being within the margins of error do not provide a clear indication one way or the other – though it is evident that opinions on the matter are mixed. Nonetheless, the author has put forward his recommendation based on a balance of the evidence and consideration of the economic needs of the Islands going forward.

Recommendation E3: New category of Accompanying Dependent (Work Permit Holder) to be created, conferring a right to work in identified shortage occupations in the Islands. If accepted, these provisions would also apply to partners and dependents of persons holding a Business/Investment Permit.

Permanent Residence Permit: Gateway to Falkland Islands Status

- 5.50 The Migration Review highlighted weaknesses in the existing immigration system in terms of its complexity and multiple routes to achieving Falkland Islands Status (which can currently be achieved without undergoing the more rigorous testing that is part of the PRP application process).
- 5.51 It was therefore proposed that greater clarity and simplicity be brought to the immigration system, and to eliminate the multiple different routes to achieving FIS. It was suggested that migrants and Islanders should be able to see a linear pathway to FIS which tests and measures skills, talent and commitment at each stage and that PRP should be a requisite before Falkland Islands Status can be achieved. The vast majority (86%) of respondents to the consultation were in favour of this proposal. It is proposed that in order to demonstrate commitment to the Islands, that it be a requirement to hold PRP for a minimum of four years before being eligible to apply for FIS (this is consistent with the current requirement of 7 years residents before being eligible for FIS, but potentially lengthens the process for those who wait longer than 3 years to apply for PRP for whatever reason – it is considered an appropriate timeframe for persons to demonstrate their long-term commitment to the Islands before acquiring all the rights that FIS offers).

Recommendation E4: PRP will be a necessary (but not sufficient) requirement to secure Falkland Islands Status (FIS). Persons will be required to hold FIS for a minimum of 4 years before being eligible to acquire FIS.

Permanent Residence Permit: Points System

- 5.52 The Migration Review and the consultation process also highlighted concerns within the community regarding the current emphasis placed upon educational attainment, high responsibility jobs and assets within the existing PRP points system. The review suggested (and this was confirmed during the consultation) that there are individuals who have committed themselves (or wish to commit themselves) to a life in the Falkland Islands, but who do not meet these criteria – tradespeople and labourers for example.
- 5.53 The review suggested that there would be merit in reviewing the points system with a view to placing more emphasis on skills and contribution to the Islands, and less on financial assets and educational qualifications. Overwhelmingly, respondents to the consultation indicated that a change to the PRP points system was required (91%).

Recommendation E5: PRP points system to be subject to formal review, and greater emphasis to be placed on skills and contribution to the Islands.

F: Other Issues

Review of Land Ownership Restrictions

- 5.54 As a factor that was identified in the Review as a potential barrier to settlement and investment, the consultation sought to ascertain opinions on whether current rules around land ownership should be reviewed. At present, land and property ownership is restricted to those with PRP and FIS and anyone else who wishes to acquire property or land, or leasehold, can apply to ExCo for a licence. For potential investors or migrants this places an additional hurdle, causes uncertainty, and, for investors, places a level of risk that discourages investment. It was proposed that if there was a desire to encourage inward investment and for migrants to view a move to the Falkland Islands as a longer term option, then a changed approach to land ownership could be taken – whilst ensuring that all appropriate safeguards are in place.
- 5.55 No specific proposals for change were proposed at this stage – however some 56% of respondents to the consultation indicated that there was merit in reviewing the current approach to land and property ownership by migrants. Opinions are clearly mixed, however the consultation suggests there is some appetite for review, though clearly all necessary measures to protect the interests of Islanders must be considered in any proposals that are developed.

Recommendation F1: Policy Unit to be tasked with undertaking a review of policies regarding land and property ownership by migrants. Initial priority to address commercial land and property issues if Recommendation C1 is approved.

Switching Between Types of Immigration Control

- 5.56 Under the proposed system of immigration for the Falkland Islands, the ability for migrants to move freely between immigrant categories is restricted. This is to protect the integrity of the immigration control and enable better controls, checks and balances to be placed on migrants before they come and while they are in the Islands. Migrants should be clear about why they are coming to the Falkland Islands and while it may be that individuals are welcome for a limited, short period, they may not be welcome for a longer time. If an individual is already in the Islands, it is more difficult to remove them than if they are applying from outside of the Islands, when it will be easier to prevent them from coming.
- 5.57 It was therefore proposed that switching immigration status while in the Falkland Islands should be restricted to:

- Visitors and Work Permit holders may switch into Partner/Dependant Permit: the rationale being that these are individuals who may be seeking to establish a life in the Islands and wish to ‘test’ the experience before going to the expense of securing a longer term Permit;
- Work Permit holder may switch into Business/Investor Permit: the rationale being that those working here may be in a position to identify and establish business opportunities of benefit to the islands.

5.58 Some 62% of respondents to the consultation were in favour of this approach – with anyone else wishing to change their immigration status while in the Falkland Islands being required to do so from outside of the Islands and follow the established processes.

5.59 Based on earlier considerations regarding Temporary Work Permissions, the ability to switch status whilst in the Islands should also be extended to cover persons moving from a Temporary Work Permission (Visitor) to a Work Permit (though would remain subject to the normal application process and requirements). This would mean that persons would not be able to switch directly from Visitors permit to a full Work Permit – ensuring that this route is only open where there is a clear labour market need that cannot be addressed through the normal Work Permit process (i.e. the need must be demonstrated through the issuance of a Temporary Work Permission in the first instance).

Recommendation F2: Switching between different types of immigration control from within the Islands to be limited to visitors and Work Permit Holders moving to Dependent status; Work Permit Holders moving to Business/Investor Permit; and Visitors with Temporary Work Permission moving to full Work Permit.

6.0 Financial Implications

6.1 Further policy development and more detailed consultation with the Immigration Service on administration of the proposals is required before the potential costs of implementing the recommendations can be fully considered. If the policy principles proposed in this paper are approved, then this work will be completed with a full cost consideration to be presented to ExCo in due course.

6.2 With respect to taking forward the policy development work that is recommended, this can be accelerated if additional resource is allocated to enable a dedicated policy advisor to work on this project on a short-term basis. The alternative is for the work to be undertaken internally which will inevitably lead to delays in implementation.

6.3 To ensure that the recommendations can be implemented successfully it is recommended that funding of [REDACTED FOR TENDER PURPOSES] is released from the EDS budget to enable the Head of Policy (in conjunction with the Director of Emergency Services) to secure a short-term policy advisor

to work specifically on the immigration policy development and legal drafting instructions.

- 6.4 Funding is currently available in 2013/14 and therefore an application will need to be made through Standing Finance Committee to carry forward this funding to 2014/15.

7.0 Legal Implications

- 7.1 This paper seeks to approve some high-level policy principles, and as such has no immediate legal implications. However, if the recommendations of this paper are approved, changes to the Immigration Ordinance would be required following a period of more detailed policy development. The detailed legal implications can be presented once the more detailed policy development has been completed.

8.0 Human Resources Implications

- 8.1 The immediate implications will be the prioritisation of the more detailed policy development within the Policy Unit, with input from the Immigration Service to fully articulate any operational implications of what is proposed. This can be accommodated within existing workloads, though the work would benefit from and be accelerated if additional, dedicated resource is allocated.
- 8.2 For this reason it is proposed that a short-term immigration specialist be engaged to assist in the policy development process. This would be a short term appointment (or secondment) of less than one year, to be managed by the Policy Unit (though the post would clearly require to also work closely with the Immigration Service).

Appendix 1: Immigration Review Report (June 2013)

**Appendix 2: Report on Findings from Immigration Review Consultation
(February 2014)**

**CHECKLIST FOR FINAL SUBMISSION OF PAPERS TO GO TO
EXECUTIVE COUNCIL**

Tick for **YES** Cross for **NO**

Submitted By:

Paper Number: 124-14

- | | | |
|----|---|-------|
| 1. | Is this really an Executive Council Matter? | ✓ |
| 2. | Is this an Information Paper? | x |
| 3. | Is this a paper for decision? If so, does it have clear recommendations or options? | ✓ |
| 4. | Have the following implications been fully considered: | |
| a) | Financial – Have the financial implications been agreed with Treasury (in the event there are none this must also be stated in the paper)? | ✓ |
| b) | Legal – Has the advice of the Attorney General been sought (in the event there are none this must also be stated in the paper)? | ✓ |
| c) | Human Resources – Have these implications been discussed with HR (in the event there are none this must also be stated in the paper) | ✓ |
| d) | Environmental – any environmental implication – has the advice of the Environmental Planning Officer been sought? | n/a |
| e) | Planning – has the advice of the Environmental Planning Officer been sought? | n/a |
| f) | Roads and Services/Building and Construction – has the advice of the Director of Public Works been sought? | n/a |
| g) | Land – is the development of Crown Land involved – have you referred the matter to the Lands Committee? | n/a |
| h) | The impact upon staffing and employment? | ✓ |
| i) | The availability of housing? | n/a |
| 5. | Has this paper been before GMT or the relevant Committee/s? | ✓ IRG |

(Papers of significance must go before the GMT before referral to EXCO – significant includes: Policy Changes, Supplementary expenditure or an impact on another department)