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BILLET D'ÉTAT

WEDNESDAY 25th JANUARY 2012

POLICY COUNCIL –
GUIDING PRINCIPLES FOR THE
DEVELOPMENT OF A POPULATION
MANAGEMENT REGIME

B I L L E T D ' É T A T

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **25th JANUARY, 2012**, at 9.30 a.m, to consider the item contained in this Billet d'État which has been submitted for debate.

G. R. ROWLAND
Bailiff and Presiding Officer

The Royal Court House
Guernsey
8 December 2011

POLICY COUNCIL

GUIDING PRINCIPLES FOR THE DEVELOPMENT OF A POPULATION MANAGEMENT REGIME

EXECUTIVE SUMMARY

The Policy Council is bringing forward the Population Policy Group's proposals for a population management mechanism. This mechanism will need to provide the States with the ability to manage, as far as possible, the size and make-up of the Island's population and will ultimately replace the Housing Control regime.

The Policy Council acknowledges that this is the first time that the States has debated such fundamental change to the way in which the population of Guernsey might be managed. Given the importance and scope of the matters raised in this report, the Policy Council is keen for the debate to address the general principles underlying the policy issues contained within it and therefore requests that its recommendation be considered by the States without amendment, in accordance with Rule 12(4) of the Rules of Procedure.

This is based on the understanding that if the recommendation is accepted, the Policy Council will return to the States with detailed proposals for debate which can be accepted or rejected, together with any amendments.

This report recommends the States to approve the replacement of the Housing Control and Right to Work Laws with a Population Management regime, based on a system of Permits for Residence and Employment, which determines and manages the circumstances under which people may reside in Guernsey, for what reasons and for how long.

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PART A – INTRODUCTION

SECTION 1 – BACKGROUND

- 1.1 The States has made considerable progress in its approach to future planning – through the continued development of the States Strategic Plan¹ – but there is one important piece of the jigsaw missing and that is a mechanism which will allow the Island to effectively manage the size and make-up of its population.
- 1.2 In March 2010, Guernsey’s population was 62,431. Although the States current strategic population policy seeks to maintain Guernsey’s population at approximately the same level as it was in March 2007 (61,175) – there is neither a comprehensive mechanism in place nor an integrated set of policies designed to deliver this objective. Such mechanisms as are currently available in the form of the Housing Control and Immigration regimes were not designed for this purpose and in any event affect only a relatively small proportion of the population. It is against this background that the States decided to explore the concept of a comprehensive population management regime.

The Population Policy Group

- 1.3 With this in mind, in 2008 the Policy Council established the Population Policy Group (PPG) under the Chairmanship of the Deputy Chief Minister, Deputy Flouquet and appointed Deputy Dorey, Deputy Jones, Deputy Mahy and Deputy McNulty Bauer as its members. The Group also includes senior advisors from the Policy Council and the Law Officers’ Chambers as well as the Housing, Social Security, Commerce & Employment and Home Departments. The PPG is the successor to the Labour Utilisation Strategy Group and the Demographics Policy Group (itself the successor to the Strategic Population Review Group)².
- 1.4 The PPG has been tasked by the Policy Council with an overriding priority to develop options for a legal and administrative framework for a comprehensive population management regime. That new regime needs to provide the States with the ability to manage, as far as possible, the size and make-up of the Island’s population and will ultimately replace the Housing Control regime.
- 1.5 The new regime needs to include detailed and explicit policies which determine who should be able to come to live in Guernsey, either permanently or temporarily. Whether an individual was born in the Island, or whether they want to move to Guernsey for economic reasons or to be near to family, there is a need to have in place clear policies which manage their ability to live in Guernsey and the length and purpose of their stay. This needs to be done in a way that will benefit the community – maintaining Guernsey’s unique character

¹ Billet d’État XVI 2011 – Policy Council, States Strategic Plan, 2011 – 2016

² Further history on the review of the Housing Control regime can be found in Billet d’État VI 2011 – Housing Department, Extension to the Housing (Control of Occupation) (Guernsey) Law 1994

and environment, while ensuring that the Island remains an attractive place to live and work with a buoyant and diverse economy.

Developing a Population Management Regime

- 1.6 The PPG has not been asked to focus on, or seek to establish, what the total size of Guernsey's population should be. Its starting point is the current States strategic policy to maintain a population of approximately 61,000. Developing a mechanism which allows the States to have an impact on the size and make-up of the population must take priority because there is little to be gained from having a strategic population policy which cannot be delivered due to the lack of such a mechanism.
- 1.7 The proposals described later in this report are aimed at influencing the size of the Island's population over the medium to long term and are designed to be effective whether the States strategic population policy at any point in the future is for the population to rise, to fall or to remain static.
- 1.8 In January 2011, the PPG published its consultation document, *Managing Guernsey's Population – A Consultation Document*³, which marked the launch of a 14 week consultation process. The consultation process provided the community with the opportunity to have an input into options for a population management regime for Guernsey at a very early stage in the complex development process.
- 1.9 Given that managing the Island's population is such a complex and wide ranging issue, the Policy Council is pleased that more than 350 responses to the consultation were received, including more than 20 from organisations whose responses represent the views of many individuals. Around 800 people also took the opportunity to attend the PPG's various public events. The resulting output from the consultation process was published in June 2011 in the PPG's report *Managing Guernsey's Population – The Public Response to the Consultation Document*⁴.
- 1.10 This major consultation followed almost two years of research and development of possible options for a mechanism to enable the States to manage the size and make-up of the Island's population. This development process included a number of workshops for all States Members.
- 1.11 Since the conclusion of the consultation process, the PPG has reviewed the proposals and options which featured in the consultation document, taking into account the feedback received from the public. The PPG's new proposals have since been subject to review by the Policy Council.

³ www.gov.gg/population

⁴ www.gov.gg/population

SECTION 2 – CURRENT POSITION

- 2.1 Having reviewed the PPG's new proposals, the Policy Council is now bringing them forward, in full, for debate by the States and they are reproduced in Part B, sections 7 – 21 of this report. In some cases, proposals are being put forward for the first time and, in the cases where these new proposals did not form part of the original consultation, the PPG is recommending further consultation with the public, an approach which the Policy Council fully supports.
- 2.2 It is perhaps unsurprising, given the range of complex issues that are touched upon within this States Report, that not all members of the Policy Council agree with all of the PPG's proposals. Indeed, there are some proposals that do not have the full support of every member of the PPG itself, albeit that each proposal is supported by at least 4 out of the 5 members of that group.
- 2.3 In preparing to bring proposals forward to the States, the Policy Council acknowledges that this is the first time that the States has debated such fundamental change to the way in which the population of Guernsey might be managed and that the range of issues to be considered is complex.
- 2.4 The Policy Council therefore wishes to have the opportunity to reflect on States Members' views about the PPG's proposals and to consult further in certain areas, before returning to the States with detailed proposals for a comprehensive population management regime.

Debating General Principles

- 2.5 Given the importance and scope of the matters raised in this report, the Policy Council is keen for the debate to address the general principles underlying the policy issues contained within it, without the need to take a definitive position on any of those issues at this stage.
- 2.6 The Policy Council therefore requests that its recommendation be considered by the States without amendment, in accordance with Rule 12(4) of the Rules of Procedure. This is based on the understanding that, if the recommendation is accepted, the Policy Council will return with detailed proposals for debate which can be accepted or rejected, together with any amendments.

SECTION 3 – KEY CHANGES TO THE PROPOSALS

- 3.1 The Policy Council notes that the consultation process has been a valuable exercise and, as a result of the feedback received, a number of changes have been made to the proposals and options which were detailed in the consultation document. While it is important to read the relevant sections in order to understand the detail, some of the key changes are highlighted below.

Legislative and Policy Framework

- 3.2 The Policy Council acknowledges that, while the new regime will still include provision for an applicant to appeal against a decision of the Statutory Official, the PPG is intending to research the various mechanisms available more fully, before making firm proposals on whether such an appeal should be to an Appeals Tribunal or the Courts.

Long Term Residency

- 3.3 In its consultation document, the PPG proposed that, for most individuals, once they had lived continuously and lawfully in Guernsey for 7 years, they would reach the *first milestone* and would acquire the right to continue living in Guernsey permanently if they chose to. The Policy Council is pleased to note that many respondents to the consultation process understood and accepted the reasons behind this proposal, which are intrinsically linked to the Island's desire to protect the human rights of all those who live here. However, there was a general feeling expressed that 7 years was too short a period of residence. The PPG is therefore now proposing that the *first milestone* will be reached after a period of continuous residence of 8 years.
- 3.4 The Policy Council is pleased to note that, having fully explored the issue during the consultation process, the PPG is proposing that no individual will lose the right to return to the Island, once they have gained that right, regardless of how long they are away from the Island.

Employment Permits

- 3.5 Because it is now proposed that an individual will reach the *first milestone* after a period of continuous residence of 8 years, the PPG is now proposing that Long Term Employment Permits will be issued for a period of 8 years, instead of 7 years. There will also be provision for Long Term Employment Permits to be issued where continuity in a specific post in the longer term is in the Island's interest.
- 3.6 Taking into account the concerns expressed during the consultation process regarding the proposed duration of Medium Term Employment Permits, and as a result of the change in duration of Long Term Employment Permits mentioned above, the Policy Council endorses the PPG's proposal that Medium Term Employment Permits will be issued for a period of up to 5 years, instead of 4 years.
- 3.7 The PPG is also now making proposals that will ensure that the holders of Short Term Employment Permits do not accrue a number of separate periods of residence that, when added together, might lead to them being able to live in the Island permanently because they have built up very strong connections here.

The Open Market

- 3.8 Taking account of the wide range of views expressed during the consultation process, the PPG is now making proposals with respect to the Open Market. Because these are new proposals, they will be subject to further consultation – an approach which the Policy Council fully supports.
- 3.9 The Policy Council confirms its commitment to retaining an Open Market as part of the new regime, and notes that the PPG’s proposals will have little or no effect on the majority of Part A properties. Albeit that further work is proposed, any perceived uncertainty with regard to the attractiveness of the Open Market to families occupying such properties now, or in the future, should therefore be reduced.

Other Islands of the Bailiwick

- 3.10 The Policy Council recognises that dialogue with the other Islands of the Bailiwick will continue, once the States has debated the guiding principles for the new regime as it might apply to the Island of Guernsey.

SECTION 4 – THE CURRENT HOUSING CONTROL REGIME

- 4.1 The current Housing Control regime, which is often regarded by many as a population management tool, was never designed for that purpose and the Policy Council is firmly of the view that it cannot fulfil the Island’s population management requirements of the future.
- 4.2 The Housing Control regime was originally introduced in 1948 because of a need to “protect” the Island’s very limited housing stock in the immediate post-war years for the indigenous population, including those wanting to return to Guernsey after having left the Island as a result of the Occupation. The Island’s housing stock was depleted during the war years as a result of the way in which properties were treated by the occupying forces. The States agreed to require any individual not ordinarily resident in the Island before June 1940 to have a Licence before occupying any dwelling house on the Island.
- 4.3 The Law’s primary purpose was, and still is, to preserve a stock of Local Market housing for occupation by Qualified Residents⁵ and existing Housing Licence holders. Given these origins, it must be acknowledged that the current regime is

⁵ Under the current Housing Control regime there are certain groups of people who, depending on their circumstances, are granted Qualified Resident status after they have been resident in the Island for a significant period of time. It is important to point out here that the majority of people living in Guernsey are already defined as Qualified Residents under the current Housing Control Law. Details of the circumstances under which an individual becomes a Qualified Resident under the current Law are contained in Appendix A – *QUALIFICATION ROUTES*.

not about managing population levels; it is concerned with numbers of Local Market households and not numbers of people. However, over the last 60 years the Housing Control regime has evolved and is now used to attempt to regulate length of residence and type of employment for some people living in the Island.

- 4.4 The Housing Control regime has served the Island well for 60 years and it can still be applied effectively in the vast majority of cases. But, it only controls a small proportion of the Island's population – those who require a Housing Licence. At any one time, the residence of only around 15% of the population is subject to some form of control through the Housing Control regime.
- 4.5 Because the primary purpose of the current Law is to preserve a stock of Local Market housing for occupation by Qualified Residents and existing Housing Licence holders, at the heart of any decision made under the Law is a justification based on housing availability. It has to be acknowledged that the challenges associated with managing the size and make-up of the Island's population go much further than the single issue of housing availability.
- 4.6 Furthermore, the Island has adopted Human Rights legislation and, having adopted such legislation, it is right and proper to abide by it. However the Housing Control Law itself has not kept pace with the development of Human Rights legislation. This is explored more fully in Section 6 – *The Influence of Human Rights*, but the Housing Department is finding itself in an increasingly difficult position where the Housing Control Law itself might suggest that a decision is lawful, but applying that Law in the light of Human Rights legislation might suggest otherwise.
- 4.7 All of the above has led to a situation today where, from a Housing Control perspective, the justification behind some policies is weak or outdated and the justification for certain decisions has been open to successful legal challenge. The decision making process is over reliant on the exercise of discretion and is perceived as being confusing rather than being open and transparent. Even more importantly, because of the lack of strategic direction provided by the States to guide the decision making process, the current regime is very much a reactive one as opposed to being proactive in attempting to support the Island's strategic aims.

SECTION 5 – WIDER CONTEXT

- 5.1 Managing the growing and often competing demands of the world's population is fast becoming the major challenge for Governments world-wide. Guernsey is not immune from this challenge and if it is to continue to succeed as an attractive place in which to live, work and do business then it is going to have to take pragmatic steps to manage the size and make-up of its population in future.

- 5.2 Before considering any proposals, it is important to acknowledge that developing a mechanism that is capable of influencing the size and make-up of the Island's population cannot be done in isolation. Any new regime must take account of Guernsey's past, and importantly, its future. While a population management regime cannot provide solutions to every challenge that the Island faces with regard to its population level, there are some key factors which it must take into account and, in some cases, seek to influence. The Policy Council wants to reiterate the importance of some of those key factors which were detailed in the PPG's consultation document⁶ and these summarised below.

An Integrated Strategy

- 5.3 Having a regime in place that enables the States to manage changes in the size and make-up of Guernsey's population is only one part of the wider picture of how the challenges of providing the quality of life that Islanders want in environmental, social and economic terms might be met. The States needs to have in place an integrated strategy that ensures that these challenges are being tackled from a number of policy directions, therefore allowing the level of inward migration that is needed to be kept at an appropriate level.
- 5.4 Getting the right balance between economic gain and the resulting environmental and social impacts is fundamental to the Island's quality of life and standard of living and this forms the primary aim of the States Strategic Plan⁷.
- 5.5 The States Strategic Plan includes a statement of government aims as follows:

The government of Guernsey aims to improve the quality of life of Islanders and to secure our economic future while protecting the Island's environment, unique cultural identity and rich heritage. It recognises that this requires:

- Maintenance and enhancement of Guernsey's standing in the global community,
- Wise long term management of Island resources,
- Good governance,
- Co-ordinated and cost-effective delivery of public services,
- Sustainable economic growth and effective public services without increasing the population to the detriment of our environment and way of life, and

⁶ www.gov.gg/population

⁷ Billet d'État XVI 2011 – Policy Council, States Strategic Plan, 2011 – 2016

- Improved awareness of the culture and identity of Guernsey.

- 5.6 It is clear that the effective management of the size and make-up of the Island's population, one of the Island's major "resources", cannot be considered in isolation from those aims listed above.
- 5.7 In addition, the Population Management Plan should be recognised as forming just one part of the "family" of Island Resource Plans as detailed in the States Strategic Plan, which also includes the Energy, Strategic Land Use and Island Infrastructure Plans.
- 5.8 The States Strategic Plan goes on to detail the principal objectives of the Fiscal and Economic Plan, the Social Policy Plan and the Environmental Policy Plan. These policy developments, combined with a new population management regime, will provide an integrated strategy to enable Guernsey to meet the challenges of an ageing population and the challenge of obtaining the skills and manpower that the Island needs.

Immigration Regime

- 5.9 Immigration controls were not intended to be, and cannot be used as, a means to manage the size and make-up of the population. It is important to recognise that the immigration regime operated in Guernsey applies across the Bailiwick and very closely reflects UK provisions. Determining nationality, and associated immigration issues, depends on international law and relations, for which the UK is responsible.
- 5.10 Guernsey's regime comprises the extension of the UK Immigration Act 1971 and a set of detailed Rules based on those made for the UK, but tailored for the Bailiwick. The States has little scope to depart from rules applying consistently throughout the British Islands.
- 5.11 Guernsey is part of the Common Travel Area (the islands of Great Britain, the Channel Islands, the Isle of Man and Ireland). What this means is that once an individual has lawfully entered the Common Travel Area, wherever they did so, they can then come and go throughout the Common Travel Area, including Guernsey, without the need for them to show their passport / visa again.
- 5.12 Immigration controls are primarily concerned with improving domestic security through strong border protection, targeting those who represent the greatest risk while welcoming legitimate travellers. Although other jurisdictions might use their immigration regimes as a population management tool, the extended Immigration Act was not designed for that purpose.
- 5.13 The European Union (EU) law on free movement of persons for the purpose of taking up work or engaging in other economic activity does not apply in Guernsey. The special relationship that Guernsey has with the EU under Protocol 3 to the UK's 1972 Act of Accession (subsequently extended to include

Iceland, Liechtenstein and Norway as the European Economic Area (EEA)) primarily relates to the removal of barriers to free trade in goods, but also contains a principle of non-discrimination on grounds of nationality. This generally means that different treatment cannot be afforded to nationals of other EEA States coming to, and already in, Guernsey than it is to British citizens. That principle similarly means that Islanders who travel throughout the EEA States cannot generally be subjected to discrimination on grounds of nationality, although not all of them are able to exercise the full EU law rights relating to employment, etc.

- 5.14 The Immigration Act, as extended, does not apply to British citizens and only applies to EEA State nationals to a limited degree. Any population management regime will need to avoid infringing the immigration-related rights of British citizens and EEA State nationals and must not discriminate regarding their ability to exercise those rights.
- 5.15 These rights are not infringed by the current Housing Control regime's controls on housing occupation and employment. If the new population management regime were adversely to affect these rights, it would be inconsistent with the UK Immigration Act as extended to Guernsey and might even be in breach of Protocol 3.
- 5.16 Any attempt to manage the population through nationality-based border controls could not be introduced for the majority of those who might wish to come to the Island (British citizens and EEA State nationals) without changes to existing international law. This would be extremely difficult, would require the agreement of all affected parties, and might have undesirable reciprocal consequences.
- 5.17 In developing proposals for a new regime, the need for the extended Immigration Act and the new population management regime to interlink and overlap has been taken into account. The Policy Council believes that it is possible for both regimes to operate side by side in a complementary way without needing to make changes to the extended Immigration Act.

Limited Skills Pool

- 5.18 In common with many other small jurisdictions across the world, a degree of inward migration of people, both for economic and other reasons, is inevitable and, to some extent, necessary to maintain the current quality of life enjoyed on the Island.
- 5.19 There are a number of situations where it would be appropriate to allow an individual to move to Guernsey to live for a period of time. One of these is for employment-related reasons.

- 5.20 It is recognised that the success of Guernsey's economy and the quality of its public services owe a lot to the diverse skills and experience of those who have moved to the Island to work. It would be unrealistic to believe that all of these levels of skills, experience and manpower could have been obtained entirely from within the Island's population. If public services and a vibrant economy are to be maintained, then the Island needs to continue to permit people with certain skills to come to the Island to work in order to fill skills, experience and manpower shortages.

Future Demographic challenges

- 5.21 The number of people aged 65 years or over is projected to approximately double between 2010 and 2040. Conversely, the population under 65 years of age is projected to decrease over the same time period.
- 5.22 Dependency ratios are used to indicate the proportion of the population which is likely to be economically dependent. Trends in the dependency ratio are used, for example, to assess the Social Security contribution rates required from the economically active (aged between 16 and 64) in order to support the economically dependent (aged 15 and under and aged 65 and over). The dependency ratio in 2010 was 0.48, which means that for every 100 people of working age, there were 48 people of non-working age i.e. those under the minimum school leaving age or above pension age.
- 5.23 Based on the same age groupings, the dependency ratio is projected to increase to 0.76 by 2040, which means that for every 100 people aged between 16 and 64, there is predicted to be 76 people aged 15 and under and aged 65 and over. However, the pension age is set to be increased to 67 by the year 2031. So, based on the changed age groupings by 2040, for every 100 people of working age (16 to 66), there is projected to be 70 people of non-working age (15 and under and 67 and over). Both forecasts assume that the current life expectancy trends and birth rates continue, and that migration levels are maintained at their current levels⁸.
- 5.24 This "ageing" of the population will have major economic and social consequences as, in the foreseeable future, we move towards a population where an increasing proportion of people beyond working age will need to be supported, both physically and financially, by a decreasing number of people who are economically active. This is despite the raising of the pension age.
- 5.25 Any new regime must have the ability to influence the demographic make-up of the population in order to assist the Island to mitigate any potentially negative effects of the demographic changes described above.

⁸ For more information on population and projections, see www.gov.gg/population

Existing Rights to Live in Guernsey

- 5.26 Under the current Housing Control regime there are certain groups of people who, depending on their circumstances, are granted Qualified Resident status after they have been resident in the Island for a significant period of time. It is important to point out here that the majority of people living in Guernsey are already defined as Qualified Residents under the current Housing Control Law.
- 5.27 Anybody who has already gained Qualified Resident status under the current Housing Control regime and has chosen to leave the Island, can return at any point in the future and live in Guernsey indefinitely, free from any existing controls. (There is no proposal to change these rights to return for existing Qualified Residents.)
- 5.28 It is also recognised that people might want to live in Guernsey because they have strong family connections with an individual who is already permitted to live here. Preventing such individuals from being able to live in Guernsey to maintain their family relationships would not reflect Guernsey's desire to behave as a fair society.
- 5.29 For these reasons, there is a constant and unrestricted ebb and flow of Qualified Residents and people with strong family connections with Guernsey who, because they have the right to do so, may at any time choose to leave the Island, or choose to return here to live, for any number of unpredictable and personal reasons.

Other Jurisdictions

- 5.30 It has to be remembered that the Island does not sit in isolation from other jurisdictions, some of which Guernsey is in direct competition with in terms of wanting to be an attractive place to live, work and do business.
- 5.31 The PPG reviewed a number of other jurisdictions in order to understand how they tackle the issue of managing changes in the size and make-up of their population and to see if there is a regime already in use elsewhere which could be adopted for use in Guernsey. A summary of the PPG's findings is contained in its consultation document⁹.
- 5.32 Every jurisdiction is different in terms of what it is trying to achieve from a population management perspective. For example some jurisdictions might be actively seeking to increase its population level, or actively trying to discourage their skilled young people from emigrating. Having reviewed other regimes, it is clear that there is no single regime that delivers everything that Guernsey needs in terms of managing changes in population levels.

⁹ www.gov.gg/population

- 5.33 The proposals which are detailed later in this report include some relevant parts of regimes that have already been proven to be effective, either in Guernsey or elsewhere in the world, including work permits, residence permits and Guernsey's current Housing Control regime. However, the Policy Council believes that these proposals offer a completely new regime which is, appropriately, bespoke to Guernsey.

SECTION 6 – THE INFLUENCE OF HUMAN RIGHTS

- 6.1 The Policy Council is keen that all of those involved in debating this important issue understand the influence that Guernsey's Human Rights legislation rightly has over how the States can seek to manage the size and make-up of the Island's population. The main points are explained in the paragraphs below.
- 6.2 The European Convention on Human Rights was extended to Guernsey in the 1950's and our own Human Rights Law came into force in 2006. This Law means that we are required to protect the human rights of all members of the community and that all of Guernsey's laws must be applied in a way that respects those human rights. A summary of the rights which must be protected can be found in Appendix B – *Human Rights*.
- 6.3 When considering how to manage changes in the size and make-up of Guernsey's population, there is one set of rights that is of particular significance: *Article 8 - the right to respect for private and family life, home and correspondence*. This is significant because any regime which determines who should be able to come to live in Guernsey and for how long; whether specific conditions should apply to them during their stay; and which allows the States to require some people to leave the Island after a period of residence, has the potential to cause a direct intrusion into an individual's private and family life and their home.
- 6.4 However, the rights described above are "qualified rights", which means that rights in these areas can be interfered with in certain, defined circumstances. Article 8 states that:
- (1) *Everyone has the right to respect for his private and family life, his home and correspondence.*
 - (2) *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

6.5 The European Convention on Human Rights does not stop Guernsey from having a regime that applies conditions to an individual's residence in Guernsey and that allows the States to require some people to leave the Island after a certain period of residence, BUT this "interference" in an individual's Article 8 Rights can only be justified when it is "*necessary in a democratic society*" for defined reasons. In respect of Guernsey's Housing Control regime, the European Court of Human Rights stated:

*"... the Housing Laws and the licensing system in general pursued the legitimate aim of ensuring that accommodation was available in Guernsey for persons with strong connections or associations with the island and of responding to the problem of potential overpopulation, taking account of the overall population density of the island and its economic, agricultural and tourist interests."*¹⁰

6.6 It has to be remembered that the Article 8 rights of those individuals who are already resident in the Island also need to be protected. The fact that Guernsey is able to exercise its own domestic regime, which supplements the basic principle of non-discrimination on grounds of nationality applicable to EU citizens, recognises that the rights of the existing residents in Guernsey also need to be protected. Being able to have such a regime in place recognises that Guernsey is a small Island and therefore needs to manage the size and make-up of its population. Any measures in place to manage population levels must very carefully balance the impact of population growth on the rights of the whole community against the impact on the individual (and their family) of being asked to uproot themselves and move elsewhere.

6.7 This means that an individual can be prevented from living in Guernsey, but only if that is a proportionate and necessary response to protect the rights of the rest of the Island's population.

6.8 As mentioned above, the existence of a Law which allows Guernsey to require some people to leave Local Market accommodation after a certain period, and in some cases those individuals might consequently have to leave the Island, does not in itself contravene the European Convention on Human Rights. Such powers have been considered to be appropriate given Guernsey's particular circumstances.

6.9 However, in having such a regime, Guernsey must justify that any interference with an individual's Article 8 rights is in accordance with Paragraph 2 of Article 8 as detailed above. Any measures that are taken to protect the needs of the community as a whole must be reasonable, proportionate and justifiable in terms of their potential effect on the rights of individuals. The Policy Council believes that the PPG's proposals for a new population management regime for Guernsey which are described later in this report meet these criteria.

¹⁰ *Gillow v the United Kingdom [1986] 11 EHRR 335*

Challenges to the Housing Control Regime on Human Rights Grounds

- 6.10 As mentioned earlier, a fundamental issue with the current regime, which is intrinsically linked to the system of acquiring Qualified Resident status, is the likelihood of a successful challenge on human rights grounds.
- 6.11 For some people their circumstances will change (e.g. their Housing Licence has expired or a relationship has broken down) and they face the prospect of having to leave Guernsey because they are not yet Qualified Residents and they cannot afford Open Market accommodation. In these circumstances, the individual concerned may approach the Housing Department to request that they are given a Housing Licence which will enable them to remain in the Island in Local Market accommodation.
- 6.12 Although an individual coming to work in Guernsey knows from the outset how long their Housing Licence has been issued for and what conditions have to be met for the Licence to remain valid, human rights considerations can still intervene when considering a request for a further Licence.
- 6.13 Since the Human Rights (Bailiwick of Guernsey) Law, 2000 came into force it has – quite intentionally and properly – become less difficult for people who have been here for six, seven, eight or more years and who wish to remain indefinitely, to assert their rights under, in particular, Article 8 of the Human Rights Convention.
- 6.14 Those rights exist because the longer an individual lives in a particular place, the stronger their ties to that place become. They will have set up a home in the Island, made friends, joined organisations and started to feel “settled”. Their children will be settled in at school, will have made their own friends and Guernsey might be the only place that they really know. It is these everyday and ordinary things that go into the mix that is an individual’s “*home, family and private life*” which must be considered as a result of their Article 8 rights.
- 6.15 In each case, the Housing Department must show that a decision not to grant a Housing Licence is not an unreasonable interference in the Article 8 rights of the individual and their family.
- 6.16 The Human Rights Law incorporates into domestic law a requirement that every law is applied in accordance with human rights principles. Therefore, if an individual’s Housing Licence expires or their circumstances change such that they can no longer live lawfully in Guernsey, although the Housing Control Law itself implies that the individual must cease to live in Local Market accommodation in Guernsey, the Housing Department must look again at the individual’s situation, from the perspective of the Human Rights Law, and ask itself “*Has this individual and their family established their home and/or family and private life in Guernsey to such an extent that to require them to leave*

would be unreasonable and disproportionate?” before reaching a final decision about whether or not to grant a Housing Licence permitting them to live in Local Market accommodation.

- 6.17 The legal advice which the Housing Department has been given over recent years is that, in a number of cases, after a period of around six, seven or eight years living in Guernsey, the answer to that question is likely to be “yes”. However, it is important to note that when the Housing Department grants a Licence in these circumstances, this does not mean that the individual becomes a Qualified Resident at that point in time. The further Licence, in most cases, allows the individual to remain in Guernsey, if they so choose, long enough for them to become a Qualified Resident in the future.
- 6.18 If a Housing Licence is not issued – which might be in line with the original intent of the Housing Control Law – the individual might win an appeal because the decision is an interference with the Article 8 rights of them or their family, and the extent of that interference is not “*necessary in a democratic society for the protection of the rights and freedoms of others*”. As mentioned above, the Housing Department is finding itself in an increasingly difficult position where the Housing Control Law itself might suggest that a decision is lawful, but applying that Law in the light of Human Rights legislation might suggest otherwise.

PART B – PROPOSALS FROM THE POPULATION POLICY GROUP

- 7.1 As mentioned earlier, the Policy Council is now bringing the PPG’s proposals forward, in full, for debate by the States and they are reproduced in sections 7 – 21 of this report. In some cases, proposals are being put forward for the first time and, in the cases where these new proposals did not form part of the original consultation, the PPG is recommending further consultation with the public, an approach which the Policy Council fully supports.

SECTION 7 – SUMMARY OF THE PROPOSALS FOR EACH SECTION

SECTION 8 – OBJECTIVES OF A NEW REGIME

Proposal A – The new regime will have clear and transparent objectives, as listed.

SECTION 9 – POLITICAL AND ADMINISTRATIVE RESPONSIBILITY

Proposal B – The PPG proposes that political and administrative responsibility for the new regime should be via the establishment of:

- 1 A Sub-Committee of the Policy Council which will be responsible for the development of population management policies and for implementing those policies which are agreed by the States.
- 2 A Statutory Official who will be responsible for administering the new regime and making day-to-day administrative decisions in accordance with policy directions from the States.
- 3 An Advisory Panel, with members drawn from the community, which will provide independent advice to the Policy Council Sub-Committee.

SECTION 10 – LEGISLATIVE AND POLICY FRAMEWORK

Proposal C – The PPG proposes the following legal and administrative framework for the new regime:

- 1 A new regime will be established in law, but it will be “driven” by policies set by the States. Those policies will be determined by reference to the strategic objectives of the States and will be responsive to the Island’s needs as they change over time.

- 2 The primary legislation will include provision for an applicant to appeal against a decision of the Statutory Official.
- 3 Both civil and criminal sanctions will be established.
- 4 Population management policies will be made public to ensure that the system is transparent.

SECTION 11 – SYSTEM OF PERMITS

The proposed regime will be managed using a system of Permits and Certificates for Residence and Employment

SECTION 12 – LONG TERM RESIDENCY

Proposal D – The PPG proposes that:

- 1 An individual who has lived continuously and lawfully in Guernsey for 8 years will have reached the *first milestone*. They will acquire the right to continue living in Guernsey permanently if they so choose and will be issued with a Permanent Residence Permit. (Open Market Residents are considered separately, in Section 16.)
- 2 An individual who has lived continuously and lawfully in Guernsey for 14 years will have reached the *second milestone*. They will be defined as a Qualified Resident and will be issued with a Qualified Resident Certificate. (Open Market Residents are considered separately, in Section 16.)
- 3 Once an individual has reached the *second milestone* and has become a Qualified Resident, if they then decide to move away from the Island, they will have the automatic right to return to live in Guernsey at a later point and this right will be retained, regardless of the length of time that the individual is away from the Island.
- 4 An existing Qualified Resident who is not currently resident in the Island, but who decides to return in the future, will be required to obtain a Qualified Resident Certificate.
- 5 An existing Qualified Resident who is, or wishes to be, employed in the Island, will be required to obtain a Qualified Resident Certificate.
- 6 Existing Qualified Residents who are not, and do not intend to be, in employment will not be required to obtain a Qualified Resident Certificate.

- 7 In some specific circumstances where an individual may spend time off-Island, their residence will be considered to be continuous or unbroken.

SECTION 13 – EMPLOYMENT PERMITS

Proposal E – The PPG proposes that:

- 1 Long Term Employment Permits will be issued for a period of 8 years to address persistent and enduring skills shortages where it is unlikely that those skills will be easily sourced, either on Island or globally, in the foreseeable future or where continuity in the post in the longer term is in the Island's interest.

If the circumstances of the Permit holder do not change during that 8 year period, they will acquire the right to continue living in Guernsey permanently if they so choose and will be issued with a Permanent Residence Permit.

- 2 Medium Term Employment Permits will be issued for a period of up to 5 years either:
- (i) Where a post requires specific skills which are not available in Guernsey, but where that skills shortage is likely to be able to be met in the foreseeable future; or
 - (ii) Where the skills required are held by Qualified Residents or Residence Permit holders, but the number of people resident in Guernsey with those skills is insufficient to fill the total number of posts requiring a similar or identical skill set.

In both cases, it should be possible, if required, to source a replacement Employment Permit holder with relative ease, because the skills required are not in short supply globally. Ordinarily, the holder of a Medium Term Employment Permit will not acquire any permanent residence rights.

- 3 Short Term Employment Permits will be issued for a period of up to 1 year to fill posts where there is not a need for a high level of skill, but where there is a need for additional manpower over and above that which can be sourced from within the Island.

Such a Permit can be re-issued to the same individual subject to a maximum period of continuous residence of 3 years or a maximum period of aggregate residence of 5 years. The holder will acquire no permanent residence rights.

- 4 In exceptional circumstances, the Statutory Official will have the discretion to

consider requests to adjust the time periods prescribed above.

- 5 An individual must have been away from the Island for a period of time which is at least equal to the duration of their last period of residence in the Island before they will be eligible to obtain an Employment Permit for a subsequent period of residence.
- 6 An Employment Permit must be issued before the individual arrives on the Island to work, or before an individual who is already resident in the Island changes jobs.
- 7 Holders of Employment Permits will be able to apply to change job at any time during the life of their Permit, as long as the new post is also identified in the published policies as one which will attract an Employment Permit.
- 8 Anyone who has been issued with an Employment Permit may hold more than one job.

SECTION 14 – RESIDENCE PERMITS – FAMILY CONNECTIONS

Proposal F – The PPG proposes the following with regard to those people who wish to reside in Guernsey because they have strong family connections with an individual who is already permitted to live in the Island:

- 1 Immediate family members will be defined as an individual's:
 - a) Spouse / Partner
 - b) Parents and Parents-in-law
 - c) Children
 - d) Grandchildren
- 2 Qualified Residents and holders of Permanent Residence Permits will be able to accommodate “immediate” family members within their household.
- 3 The holder of a Long Term or Medium Term Employment Permit will be able to accommodate “immediate” family members within their household.
- 4 The holder of a Short Term Employment Permit will not be permitted to be accompanied by any family members.
- 5 Family members will need to continue to live within the household of the individual with whom they have the close relationship during their period of residence under a Temporary Residence Permit and Permanent Residence Permit. Once they become a Qualified Resident, they will have the right to live independently if they so choose.

- 6 Family Members will be required to obtain a Temporary Residence Permit before they are able to come to the Island to live.
- 7 Every adult who is currently permitted to live in the Island under the existing provisions for “members of a household” will be required to obtain a Temporary Residence Permit under the new regime.

SECTION 15 – RESIDENCE PERMITS – STATES OWNED PROPERTIES

Proposal G – The PPG proposes that any individual living in States owned property will be subject to the same requirements as any other member of the community with regards to their requirement to obtain the relevant Permit.

SECTION 16 – THE OPEN MARKET

Proposal H – The PPG proposes that an Open Market, with some changes as described in the remainder of this section, should be retained as part of the new population management regime.

Proposal I – The PPG proposes that:

- 1 That further consultation takes place on the basis of the children of Open Market residents becoming Qualified Residents after a period of continuous residence of 14 years, the same period after which it is proposed that all other children resident in the Island will become Qualified Residents. This will be the case as long as they were first resident in the Island as a minor and as a member of the household of their mother or father.
- 2 The general policy should remain that, with the exception of those children mentioned in 1 above, any Open Market resident without residential qualifications will not be permitted to live in a Local Market property. Policies should be in place to allow for exceptional circumstances.

Proposal J – The PPG proposes that all residents of the Open Market should be required to hold an Open Market Resident Certificate.

Proposal K – The PPG proposes that, while the Policy Council might recommend the States to adopt such a strategic objective in the future from a fiscal and economic development perspective, from a *population management perspective* no requirement should be introduced as part of the new population management regime for Open Market residents to demonstrate their ability to make some specific personal contribution to the Island.

Proposal L – The PPG proposes that criminal conviction checks will form part of

the application process for all of those moving to Guernsey who are required to obtain a Permit or Certificate, including those wishing to live within the Open Market.

Proposal M – The PPG proposes that:

- 1 A clear policy direction is set to limit the long term effects on the Island's population of the current arrangements enabling unlimited numbers of unrelated adults to be accommodated within private houses and flats inscribed on Part A of the Housing Register.
- 2 The Policy Council embarks on an information gathering and public consultation exercise designed to fully explore the positive and negative consequences for the Island of various options related to 1 above, including retaining the status quo.
- 3 The Policy Council reports back to the States during the first half of 2013, or sooner if possible, with definitive proposals for how the current arrangements for unrelated adults to be accommodated within Part A properties should be changed or if they should be retained.

Proposal N – The PPG proposes that:

- 1 A clear policy direction is set to limit the long term effects on the Island's population of the current arrangements enabling unlimited numbers of staff living and working in hotels, guesthouses and some nursing and residential homes to be permitted to reside in the Island for unlimited periods of time, without any test of the Island's need for their skills and without the need for the appropriate Employment Permit.
- 2 The Policy Council embarks on a public consultation exercise designed to fully explore the positive and negative consequences for the Island of various options related to 1 above, including retaining the status quo.
- 3 The Policy Council reports back to the States in the first half of 2013, or sooner if possible, with definitive proposals for how the current arrangements for staff to be accommodated within Part B & C properties should be changed or if they should be retained.
- 4 Controls related to residency in Part D properties are re-visited as part of the consultation regarding residency in Parts A, B and C of the Open Market.

SECTION 17 – UNFORESEEABLE CHANGES IN CIRCUMSTANCES

Proposal O – The PPG proposes that, if the circumstances under which an

individual is permitted to live in the Island change, in certain situations:

- 1 The conditions under which the permission was originally granted may be changed to allow the individual to remain in the Island.
- 2 The relevant policies will be published.

SECTION 18 – RESTRICTING WHERE AN INDIVIDUAL CAN LIVE

Proposal P – The PPG proposes that:

- 1 Provision should be included within the new regime to prevent Short Term Employment Permit holders from living independently.
- 2 In general, there should be no restriction on where the holders of Long Term and Medium Term Employment Permits may live.
- 3 There should be some provision for the Statutory Official to restrict where the holders of Long Term and Medium Term Employment Permits can live, where there is an identified and proven need to protect specific parts of the housing market for those Qualified Residents and existing Permit holders who most need them.

SECTION 19 – CRIMINAL CONVICTIONS

Proposal Q – The PPG proposes that criminal conviction checks will form part of the application process for all of those moving to Guernsey who are required to obtain a Permit or Certificate.

SECTION 20 – OTHER CONDITIONS

Proposal R – The PPG proposes that:

- 1 There will be no restriction on the type of work that the holder of a Temporary Residence Permit can undertake.
- 2 There will be no conditions restricting access to public services built into the new regime, although it will be able to react to such restrictions if they are introduced by service providers.
- 3 There will be provision in the new Law to place a maximum age limit on applicants for Employment Permits which could be activated by the States in the future if there is an identified and proven need to do so.

SECTION 21 – OTHER ISLANDS OF THE BAILIWICK

Proposal S – The PPG proposes that:

- 1 The proposals being debated should at this stage be concerned only with the Island of Guernsey, excluding Herm.
- 2 Once the States has debated the guiding principles of a new regime, dialogue with the other islands will continue.

SECTION 8 – OBJECTIVES OF A NEW REGIME

- 8.1 Having a population management regime in place is only one part of the wider picture of how Guernsey achieves the right economic, social and environmental balance that is fundamental to the Island’s quality of life and standard of living. The States needs to have in place an integrated strategy that ensures that these challenges are being tackled from a number of policy directions and this forms the primary aim of the States Strategic Plan¹¹. Many of the objectives listed in the States Strategic Plan are not “people free” options and some are heavily dependent on the availability of highly skilled individuals and well-qualified staff.
- 8.2 Some consultation respondents referred to wider States objectives which fall outside of the scope of the mechanism for managing the size and make-up of Guernsey’s population (for example cultural and environmental issues). The proposed objectives 3 and 4 listed below aim to ensure that the population management regime can react to, and act as an enabler for, some of those objectives, but the population management regime itself cannot be the policy driver for them.
- 8.3 Having reviewed the key factors which need to be taken into account in developing a new population management regime, the objectives which the PPG believes a new regime should aim to achieve are listed below.
- 8.4 **Proposal A**

The PPG proposes the following objectives for the new population management regime:

¹¹ Billet d’État XVI 2011 – Policy Council, States Strategic Plan, 2011 – 2016

The PPG proposes the following objectives for the new population management regime:

- 1 The proposed regime needs to be as effective as possible in enabling the States to manage the size and make-up of the population.
- 2 The proposed regime needs to be legally robust and designed to meet the Island's domestic and international obligations. Human rights considerations and the Immigration regime are of particular significance in managing changes in the population level and are expanded on at various points in this report.
- 3 The States Strategic Plan sets out objectives, policies and priorities for the Island. The new regime needs to be capable of taking into account what those objectives, policies and priorities are and needs to be flexible enough to take into account any changes in them.
- 4 The regime should give the States the ability to respond quickly to the Island's changing economic, social and environmental demands, including the Island's demographic challenges, without the need for changes in legislation.
- 5 The regime needs to be supported by an efficient and flexible administrative process that supports the Island in being an attractive place to live, to work and to do business. The process must not deter people from using it and it should avoid being unnecessarily complex and bureaucratic.
- 6 The new regime needs to be capable of providing regular population statistics. This will allow the States to monitor changes in the population level and the extent to which the new regime is effective in managing changes in the population. Informed decisions can then be made on what policies need to be adjusted to take account of changes in the population.
- 7 To ensure that the new regime is delivering what the community needs, there needs to be a good degree of transparency with well publicised policies, procedures and rules. The public need to be able to understand how and why decisions are being made.

SECTION 9 – POLITICAL AND ADMINISTRATIVE RESPONSIBILITY

- 9.1 Within the current Housing Control regime, the five politicians serving on the Board of the Housing Department are responsible not only for developing and approving policies which govern day-to-day decisions on Housing Licence applications, but also for interpreting those policies and how they should be applied with respect to individual applications.

- 9.2 By contrast, the Director of Income Tax and the Administrator of Social Security are both statutory posts. Although the political Boards of these departments are responsible for developing the legislation, administering and implementing the requirements of that legislation falls to the Statutory Officials themselves. In these examples, the legislation holds the Statutory Official responsible for making day-to-day decisions within the Law on individual cases and the political Board plays no part in that decision making process.

Policy Council Sub-Committee

- 9.3 In order to improve the coordination between different areas of States policy which affect the management of the population, the PPG proposes that political responsibility for population policy should fall specifically within the mandate of the Policy Council. Detailed proposals for the governance of the new regime have not yet been developed, but the PPG proposes that the Policy Council should appoint a political Sub-Committee to take responsibility for developing population management policies and for implementing those policies which are agreed by the States. During the consultation process, a number of respondents wanted to see clear political accountability for the new population management regime.
- 9.4 The exact constitution of the Sub-Committee can be defined at a later stage, but the PPG envisages that this Sub-Committee might be required to hold delegated responsibility¹ for decision making in specifically defined areas. The Sub-Committee would also have responsibility for monitoring and publishing regular information on the size and make-up of the Island's population.
- 9.5 It is important that the new regime is driven by the overall objectives of the States and is able to take into account a broad range of policy objectives as defined in the States Strategic Plan. The PPG believes that a centrally co-ordinated structure that is not linked to one department should ensure that a corporate approach is adopted for the future.

Decision Making Responsibility – Statutory Official

- 9.6 It is proposed to establish a Statutory Official who will be responsible for making the day-to-day administrative decisions as to who is able to move to Guernsey, either temporarily or permanently, for what reason and for how long. The Statutory Official will make those decisions in line with the directions given to him by the States, whether via the legislation or policy / strategic guidelines. This means that the Statutory Official will be obliged to act in accordance with the wishes of the States.
- 9.7 The reason for this proposal is the need to provide a clear and transparent separation between the two distinct roles in the process – policy making and

¹ Rules 16 and 16A of *The Constitution and Operation of States Departments and Committees* defines the rules regarding Sub-Committees with delegated responsibility.

administration. The States, as the political body, has the responsibility for policy making which forms the basis of the population management regime, whereas the Statutory Official has the administrative responsibility for making decisions on individual cases in line with those policies.

- 9.8 The proposal should reduce any perception of bias or pre-determination. Individual political members might disagree with the policy direction which has been decided by the States and might therefore be at risk of being accused of making a decision which is more in line with their own views than those of the States. The proposed structure will enable States members to express their views on population management matters at a *policy level* and to govern policies directing the decision making process without any conflict of interest with the day-to-day administrative decision-making.
- 9.9 The relationship between a Statutory Official and the political process must always be carefully balanced. There are various models, some already in existence within the States, which could be adopted and which would allow for clear political accountability for the administration of the new regime, without compromising the need to separate the roles of policy making and decision making. The merits of various such models will be explored if the principle of establishing a Statutory Official who is responsible for day-to-day decision making is accepted. In the meantime, examples of where similar relationships already exist within the States are summarised in Appendix C – *Statutory Roles*.

Advisory Panel

- 9.10 The proposed structure for the new population management regime includes the creation of an Advisory Panel to assist and advise the Policy Council Sub-Committee in respect of the new regime. It is envisaged that the Panel would provide advice and evidence-based recommendations to the Policy Council Sub-Committee where it believes policies need to be changed. The Sub-Committee could also ask the Advisory Panel to “test” any new policies or proposed changes to the regime. The Advisory Panel will have close links with the Skills Strategy.
- 9.11 It is proposed that the Advisory Panel would draw its membership from members of the community. Those members would be required to draw on their personal experience to provide general advice and on their professional experience to provide regular monitoring of the Island’s economy and labour market. The exact constitution of the Advisory Panel can be defined at a later stage, but the PPG envisages that its members would be appointed by the States, on the recommendation of the Policy Council.

Other Options

- 9.12 In coming to the proposals above, the PPG also considered alternative approaches. These other options do not go far enough in removing the

limitations that are described above and therefore the PPG does not recommend them. These include:

- Not appointing a Statutory Official but having a group of politicians make day-to-day decisions under the new regime,
- Establishing a new States department to administer the new regime, and
- Giving the responsibility for the new regime to an existing States department, for example the Housing Department or the Home Department (given the intrinsic links with housing policy and with the Immigration regime).

9.13 **Proposal B**

The PPG proposes that political and administrative responsibility for the new regime should be via the establishment of:

- 1 A Sub-Committee of the Policy Council which will be responsible for the development of population management policies and for implementing those policies which are agreed by the States.
- 2 A Statutory Official who will be responsible for administering the new regime and making day-to-day administrative decisions in accordance with policy directions from the States.
- 3 An Advisory Panel, with members drawn from the community, which will provide independent advice to the Policy Council Sub-Committee.

SECTION 10 – LEGISLATIVE AND POLICY FRAMEWORK

Legislation

- 10.1 It is proposed that the new population management regime will sit within a legal framework which will be supported by a set of States policies. Although the drafting of the legislation is a major consideration in its own right, it is useful to summarise the framework and how this can be used to support the objectives of a new population management regime.
- 10.2 A new regime for managing changes in the size and make-up of Guernsey's population will need new primary legislation (approved by the Queen in Council). It will set out the general powers available to the States and will enable the States to prescribe more detailed requirements by Ordinance (i.e. without the need for further approval by the Queen in Council).

- 10.3 The primary legislation will be drafted in such a way that it will give directions as to how to administer the new legislation in accordance with policies approved by the States. The primary legislation will itself give directions but will also enable the States to give some directions by Ordinance or by resolution.

Appeals

- 10.4 The primary legislation will include provision for an applicant to appeal against a decision of the Statutory Official. A range of well informed views regarding the pros and cons of various appeal mechanisms were expressed by respondents during the consultation process. The States itself is also still gathering experience and learnings from appeals mechanisms which have been recently established. The appeal mechanism and the procedures related to the appeal process need further research and have yet to be developed.

Offences

- 10.5 It is not possible for the PPG to determine at this early stage what range of offences will be included within the new regime, but any offence must reflect the Law's primary purpose and will relate to breaches of the requirements under the Law. The offences will need to be set out in the Law and they will therefore be subject to further consultation once the drafting of new legislation is approved by the States at a later point.

Sanctions

- 10.6 In designing an enforcement regime, the PPG has considered what mix of penalties should be included. It is proposed that the new regime will include both civil and criminal sanctions. Civil sanctions are increasingly being used where breaches of statutory obligations occur, for example in respect of health and safety requirements and environmental protection.
- 10.7 The PPG believes that a shift away from a regime solely based on criminal sanctions to a hybrid approach involving both civil and criminal sanctions will provide flexibility, will encourage compliance and will enable enforcement resources to be focussed on identifying breaches, as fewer resources are engaged in preparing prosecution files for court cases.
- 10.8 Criminal prosecutions would be reserved for breaches of the legislation which have the most serious consequences and/or where there is evidence of deliberate or repeated disregard for the requirements of the law. It is likely, in these cases, that civil sanctions will have already been used, or that there is reason to believe that civil sanctions are unlikely to secure compliance.

Policies

- 10.9 Within the current Housing Control regime, there is very little States direction as to how the Law should be applied. The policies currently in use have been largely developed internally by the Housing Department in response to particular situations, they are not strategic in focus, are not widespread in their coverage and the majority have no statutory status in relation to the Housing Control regime, or any other Law.
- 10.10 Although the Housing Department has consulted with various industry sectors in developing these policies, they have not been subject to public consultation or States approval and, in the main, the public is not aware of what policies exist or how they are being applied.
- 10.11 Underpinning the new Law, there will need to be clear policies which govern the decision making on who is able to move to Guernsey to live, either temporarily or permanently, for what reasons and for how long.
- 10.12 If the States change an existing policy, or bring in a new policy, the Policy Council Sub-Committee and the Statutory Official will be directed to take that policy change into account without the need to go through the very lengthy process of changing the primary legislation. This means that the new regime will always be current as it is taking into account the most recent policies of the States. The range of possibilities on which directions can be made in this way would be detailed in the primary legislation.
- 10.13 It is envisaged that the various policies will sit within a hierarchy with each “level” of policy being treated differently in terms of how they can be changed i.e. by resolution of the States, and the detail that they contain.

Transparency

- 10.14 At each level of the new framework, it is proposed that all policies will be published and will be made available to the general public. The level of consultation that will take place as each policy level is reviewed, and with whom, has not yet been defined, but it is envisaged that the process will include the requirement to gain input from the public and from particular interest groups. This will be of great importance if the new regime is to meet the objective of greater transparency and helping the public to understand and appreciate how and why decisions are being made on who is able to move to Guernsey to live, for what reasons and for how long.
- 10.15 The policy framework outlined above will offer a good level of transparency and will mean that the new population management regime is able to reflect the same policies and priorities that the States agrees each year in the States Strategic Plan. This will provide flexibility and the ability for the new population management regime to be responsive to the Island’s needs. The community and

the States will have an influence over, and a greater understanding of, the policies which govern who is able to move to Guernsey, either temporarily or permanently, for what reasons and for how long.

10.16 **Proposal C**

The PPG proposes the following legal and administrative framework for the new regime:

- 1 A new regime will be established in law, but it will be “driven” by policies set by the States. Those policies will be determined by reference to the strategic objectives of the States and will be responsive to the Island’s needs as they change over time.
- 2 The primary legislation will include provision for an applicant to appeal against a decision of the Statutory Official.
- 3 Both civil and criminal sanctions will be established.
- 4 Population management policies will be made public to ensure that the system is transparent.

SECTION 11 – SYSTEM OF PERMITS

- 11.1 One of the main reasons why the Housing Control regime has proved to be ineffective in allowing the States to manage the size and make-up of the Island’s population is that the vast majority of the population do not require any form of Housing Licence in order to be able to live here. Everyone who wishes to take up employment is required to obtain a Right to Work document which confirms that they are legally housed, but those who do not work do not have any requirement to make themselves known to the Housing Department. For this reason, it is not possible for the Housing Department to determine the size and make-up of the Island’s population at a particular point in time.
- 11.2 Under the new regime, the PPG proposes that a system of Permits be introduced. Various options were explored in the consultation document¹³. There will be different types of Permits issued, depending on the reason why an individual is permitted to live in the Island.

¹³ www.gov.gg/population

Employment Permits

- 11.3 Employment Permits will be issued for those who are permitted to live in the Island for employment reasons. There will be different types of Employment Permit with different conditions attached to them, including conditions on which posts and individuals would be eligible to receive them and restrictions on the period of time for which the Permit holder can continue to live in the Island. These conditions are considered in further detail in the following sections of this report.

Residence Permits

- 11.4 Residence Permits will be issued for those who are permitted to live in the Island for reasons other than their employment, although they will be permitted to work. There will be different types of Residence Permit depending on the length of time which the individual is permitted to live in Guernsey. Again, the circumstances in which a Residence Permit will be issued, and the conditions that would be attached to those Permits are considered in further detail in the following sections of this report.

Who Needs to Obtain a Permit?

- 11.5 It could be argued that in order to be able to effectively manage the size and make-up of the Island's entire population, everybody who is permitted to live on the Island should be required to obtain some form of Permit. However, requiring everybody to obtain a Permit would be a substantial administrative undertaking. It would also be a radical departure from the situation as it stands today and might therefore, in some instances, represent a cultural shift which the public find difficult to accept.
- 11.6 Various groups who may, or may not, be required to obtain some form of Permit are explored in more detail in the following sections of this report. The effects that the Permit system will have on individuals who are currently permitted to live on the Island and those who will be permitted to live here in the future, including whether or not they will be required to obtain a Permit and the conditions that may apply in each case, are examined.

Exemptions

- 11.7 While the detail has yet to be established, it is also proposed that certain groups of people will not need to obtain a Permit. These might include tourists; those in the Island for very temporary periods of employment e.g. entertainers; and people who are required to come to the Island to work for short periods on an intermittent basis e.g. consultants.

Proposal

- 11.8 This section of the report is simply designed to introduce the concept of an Employment and Residence Permit based system. Details of who will require a Permit, the various conditions that might be associated with such permits and options associated with long term residency are covered in sections 12 – 21 of this report. For this reason, proposals related to the Permit system are contained in each of those relevant sections.

SECTION 12 – LONG TERM RESIDENCY

- 12.1 In this section, the circumstances under which an individual is permitted to reside in the Island for the long term are explored, along with the concept of becoming a Qualified Resident – how that happens under the current Housing Control regime and proposals for how a similar approach might work under the new population management regime. It is important to cover this aspect of the proposals before considering the details associated with the proposed system of Employment Permits and the detail of other Residence Permits, which are discussed in the following sections of this report.
- 12.2 The concept of a person becoming a Qualified Resident is particularly important in terms of how we are able to manage the size and make-up of the Island's population in the future, primarily because Qualified Residents have obtained the right to choose whether or not to live in Guernsey at any point and therefore can influence the long term population of the Island.

Qualified Resident Status – The Situation Today

- 12.3 Under the current Housing Control regime there are certain groups of people who, depending on their circumstances, are granted Qualified Resident status after they have been resident in the Island for a significant period of time.
- 12.4 It is important to point out here that the majority of people living in Guernsey are already defined as Qualified Residents under the current Housing Control Law. Where an individual is familiar with the Law, or has needed to contact the Housing Department in order to obtain a document (for example a Status Declaration), they will probably already be aware that they are defined as a Qualified Resident under the provisions of the current Law.
- 12.5 However, there are some Guernsey residents (an example might include an individual who was born here, has lived here for a significant period of time and has never worked) who might not appreciate that, technically, they are defined as a Qualified Resident under the current Law. Details of the circumstances under which an individual becomes a Qualified Resident under the current Law are contained in Appendix A – *Qualification Routes*.

- 12.6 Everyone who acquires the status of Qualified Resident is treated the same, at least in respect of the Law, regardless of the circumstances which led to them becoming qualified.
- 12.7 Becoming a Qualified Resident means that:
- The individual concerned does not require a Housing Licence to occupy any property in Guernsey,
 - They can leave Guernsey and return at any time in the future without being subject to any controls,
 - They have the automatic right to accommodate their immediate family within their own household, and
 - Their spouse, and any children born in the Island, can qualify in the shortest qualification period of only 10 years.
- 12.8 There are currently 13 different routes to becoming a Qualified Resident. The full details are contained in Appendix A – *Qualification Routes* but, in broad terms, they relate to an individual’s residence on a particular date or during a particular period and reflect a complex combination of different conditions which may include:
- An individual’s place of birth,
 - The residential status of their parents,
 - Their length of residence in Guernsey, and/or
 - Their status during their period of residence.
- 12.9 The number of years that an individual must have been “ordinarily resident” in the Island before they can become a Qualified Resident is 10, 15 or 20 years depending on the route through which the individual qualifies.
- 12.10 There are two fundamental concerns with the current regime which relate to how a person acquires Qualified Resident status –
- Challenges on human rights grounds.
 - Complexity.

The issues regarding challenges on human rights grounds are detailed earlier in this report in Section 6 - *The Influence of Human Rights* and are therefore not repeated here.

Complexity

- 12.11 One of the fundamental concerns with the existing system of how a person acquires Qualified Resident status is its complexity and lack of clarity for members of the public. These concerns have been a constant theme reflected in political and public debate over the years.
- 12.12 The main reason behind this level of complexity is that the conditions that are required to be met in order for an individual to become a Qualified Resident differentiate between groups of people on a number of levels as described above. In addition, given the length of residency required, it is not surprising that the circumstances of those concerned can change, causing them to switch from one qualification route to another.
- 12.13 This level of complexity is also a function of the existing system having been developed over a lengthy period of time. Since 1948, the Housing Control regime has been through various changes, amendments and extensions with each change being driven by the need to address the various issues that the Island faced at each point. It is easy to understand how the changes in the Island's environmental, economic and social pressures over a period of more than 60 years, not to mention changes in the political objectives of successive States Assemblies during that time, set against the need to respect people's acquired rights, has led to the complex system which exists today.

Proposals

- 12.14 The PPG believes that the principle of a person acquiring Qualified Resident status after a significant period of residence is a sound one and therefore proposes that this principle is carried through into the new population management regime. As mentioned above in paragraph 12.2, Qualified Residents add to the long term population of the Island because they can choose whether or not to live in Guernsey. A system of establishing Qualified Resident status therefore forms a key part of the proposals.
- 12.15 However, as explained at various points earlier in this report, there are a number of problems associated with the details of the existing system and these proposals aim to ensure that those problems are not continued into the future. The proposals are effectively a very different system for establishing Qualified Resident status, even though the principle of an individual obtaining Qualified Resident status remains the same.
- 12.16 After considering the detail of the current regime and its associated problems, the PPG believes that there are two significant milestones that are reached by an individual who is permitted to live in Guernsey for a significant period of time:

- The **first milestone** is the point after which a person's connections with the Island are likely to have become so strong that to require them to leave Guernsey would be an unjustifiable infringement of their human rights.
- The **second milestone** is the point after which the community believes that it is reasonable to acknowledge a person's status as an "Islander" or "citizen" because of the contribution and commitment that they have made having lived in the Island for a significant period.

12.17 The PPG has concluded that these two separate milestones are very distinct and are potentially reached at different stages, they should therefore be considered separately within the new regime. The implications of this are discussed below, along with proposals for how this might be managed in the future.

The First Milestone

(Open Market residents are considered in Section 16)

12.18 As described in Section 6 – *The Influence of Human Rights*, there comes a point after which a person's connections with the Island are likely to have become so strong that to require them to leave Guernsey would be an unjustifiable infringement of their human rights.

12.19 Is it very difficult to determine exactly what that period of time is, and arguably it will be different for each individual as their personal circumstances will vary. However, in order to provide certainty it is important to determine, and set out in the Law, the period after which an individual will have the right to continue living in Guernsey permanently if they so choose. This is the first milestone and the PPG proposes that people who acquire that right should be defined as Permanent Residents and therefore will be issued with a Permanent Residence Permit.

12.20 The PPG has examined what the period of residence should be in order to uphold the Island's commitment to human rights and for the new regime to be capable of withstanding legal challenges on human rights grounds. After considering the casework associated with administering the current Housing Control regime and taking into account legal advice, the PPG has concluded that the period of residence should be between 5 and 8 years.

12.21 The question is what period should be specified in the Law. The shorter the period, the lower the risk of successful legal challenge, but this needs to be balanced against the risk that the community will find the period unacceptable because an individual living in Guernsey for that period of time will have the choice to remain living here permanently.

12.22 During the consultation process mixed views were expressed about this proposal, but, acknowledging the arguments set out in the consultation

document, there was general acceptance that a continuous period of residence of 7 years represented a reasonable point at which an individual should reach the first milestone. However, several respondents felt that this period was too short, except for those who were born in the Island, or had strong family links here.

- 12.23 Many of the respondents who did not agree with the proposal simply expressed the view that a continuous period of residence of 7 years was too short. Some expressed concerns about the impact that this change would have on overall population numbers. Several respondents felt that the period should be slightly longer than the 7 years proposed and suggested that by increasing it to 8 years it would still be possible to demonstrate Guernsey's desire to want to behave as a fair and reasonable society and protect the human rights of all its residents.
- 12.24 Balancing the risk of the new regime being subject to constant legal challenge with the need for the community to understand and accept the proposals, the PPG proposes that a period of 8 years represents a reasonable compromise. After an individual has lived in the Island for a continuous period of 8 years, it is likely that they will have established their home, family and private life in Guernsey to such an extent that to require them to leave the Island after such time would be considered to be an unreasonable interference with their human rights.
- 12.25 This means that in the future, in most circumstances, if an individual has lived continuously, and lawfully, in Guernsey for 8 years, under the new regime they will acquire the right to continue living in Guernsey permanently if they so choose and will be issued with a Permanent Residence Permit. (As mentioned above, Open Market residents are considered in Section 16.)
- 12.26 However, it must be pointed out that whatever the period of residency which is defined in the law, an individual living in Guernsey for *any* period of time, could claim that their Article 8 rights have been infringed by a requirement for them to leave the Island if they believed that to be the case. In determining specific applications to remain in the Island indefinitely in these cases, the States must justify that any interference with an individual's Article 8 rights is justifiable and in accordance with Article 8(2) and must undertake a balancing act between the rights of the individual and the needs of the community as a whole.
- 12.27 Because this first milestone forms a fundamental part of the Island's commitment to protecting the human rights of all members of the community, the same conditions must apply to everyone in the same way - regardless of place of birth, Guernsey ancestry or route by which the person came to be resident in Guernsey originally.

Rights to Return Having Left the Island After the First Milestone

- 12.28 Although an individual who has reached the first milestone and acquired a Permanent Residence Permit will have the right to continue living in the Island

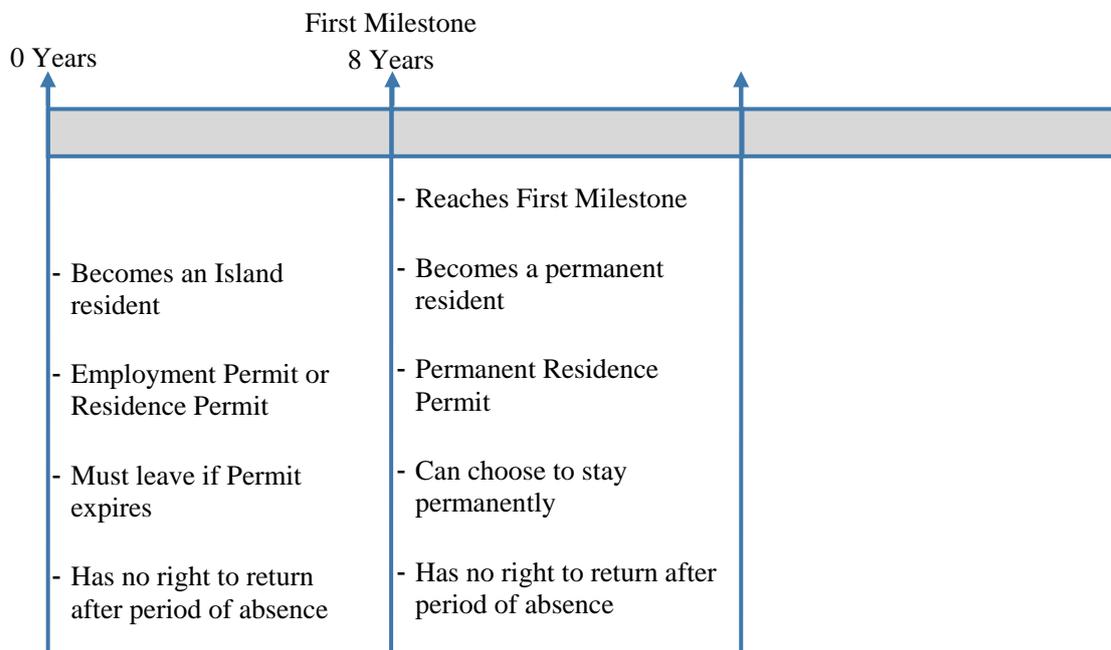
permanently if they so choose, it is proposed that if they decide to break that period of permanent residency and move away from the Island *before* they have reached the second milestone (which is explained below), they *will not* have the automatic right to return to live in Guernsey at a later point. Proposals regarding rights to return to the Island *after* an individual has reached the second milestone are explained later in this section.

Other Conditions

12.29 In later sections of this report, the different conditions that may be applied to an individual during their period of residence on each type of Permit are considered (including conditions relating to the property in which the Permit holder can live, the work they can undertake and who they can accommodate within their household). Those later sections include consideration of what conditions may apply to holders of a Permanent Resident Permit. However, it is important to point out here that any conditions that are placed on an individual once they have acquired a Permanent Resident Permit must not include conditions which have the potential to infringe that person's Article 8 Rights – their right to respect for their private and family life and their home.

Summary of First Milestone

12.30 The diagram below provides a summary of the effect of this first milestone.



The Second Milestone

- 12.31 As described above, the PPG believes that there is a second, and distinct, milestone that is reached by a person who is permitted to live in Guernsey. This is the point after which the community believes that it is reasonable to acknowledge a person's status as a Guernsey "citizen" or a "belonger" because of the contribution and commitment that they have made having lived in the Island for a significant period.
- 12.32 As described earlier, the longer an individual has lived in Guernsey, the stronger their links will have become. They will have set down roots and developed a sense of "belonging" to the Island. They will have made friends, joined clubs and organisations; their children will be settled in at school and will have made friends of their own. All of these factors will become stronger for those individuals who have lived in the Island until they reach the first milestone and then decide to continue living here after that point. During their time in the Island, such individuals will have made a significant contribution to Guernsey through their work, the taxes that they pay and through their own personal achievements.
- 12.33 Under the new regime, the PPG proposes that individuals who reach this second milestone in the future should be defined as Qualified Residents and they will be issued with a Qualified Resident Certificate.

The Point at Which an Individual Reaches the Second Milestone and Becomes a Qualified Resident

- 12.34 In order to provide certainty it is important to determine, and set out in the Law, the period after which an individual will acquire the status of Qualified Resident. Because this second milestone is more about how the Island's community values the contribution and commitment that is generated from a lengthy period of residence, and less directly about human rights in a legal sense, there is arguably less constraint in determining what that period of residence should be.
- 12.35 The current Housing Control regime enables an individual to become a Qualified Resident after a period of residence of 10, 15, or 20 years depending on their circumstances and the route through which they qualify – See Appendix A – *Qualification Routes*. Historically, the community appears to have accepted that a person's contribution and commitment to the Island should be recognised after some point between 10 and 20 years.
- 12.36 As described earlier in this section, the PPG is concerned that, because the existing system of becoming a Qualified Resident differentiates between groups of people on a number of levels, the system is unnecessarily complex and difficult to understand. The PPG is mindful that these concerns have been a constant theme reflected in political and public debate over the years and wants to ensure that the new regime does not replicate those issues.

- 12.37 Respondents to the consultation process had mixed views about this proposal but there was general acceptance that an individual should reach the second milestone, and acquire the status of Qualified Resident, after a continuous period of residence of 14 years. The most frequently cited reasons included a simplification of the qualification routes under the current Housing Control regime, the removal of any discrimination between different groups of the population and the same qualification period applying where an individual moves from one qualification route to another.
- 12.38 Many expressed the view that individuals should reach the second milestone after the same period of continuous residence regardless of the circumstances of the individual concerned. However, several respondents indicated a preference for a 10 year qualification period for an individual who was born in Guernsey or who has a strong family link with the Island. Several respondents were concerned that for this group of individuals, the proposal of 14 years would increase the length of time before they would become Qualified Residents.
- 12.39 Having considered all of the feedback, the PPG proposes that an individual will reach the second milestone and become a Qualified Resident after a continuous period of residence in the Island of 14 years.
- 12.40 This means that in the future, in most circumstances, if an adult or child has lived continuously and lawfully in Guernsey for 14 years, under the new regime they will acquire the status of Qualified Resident and will be issued with a Qualified Resident Certificate. (Open Market residents are considered in Section 16.)

Other Options

- 12.41 In developing this proposal, the PPG considered some alternative options which are described below.
- 12.42 **Discriminating between different groups of people** – An alternative approach would be to allow different groups of people to become Qualified Residents after different periods of time, depending on their circumstances. For example, depending on where they were born or whether they, or their parents, came to the Island for employment reasons etc. The PPG does not recommend this approach, which would replicate a number of the problems associated with the existing system, particularly those relating to complexity, which were outlined earlier in this section.
- 12.43 **Children becoming Qualified Residents after a shorter period than adults** – The point at which a child becomes a resident in Guernsey, and the length of their stay, will be entirely dependent on the decisions made by their parents. If their parents decide to move away from the Island after the child has lived here for a period of time, for example 8 or 10 years, this does not mean that the child feels any less a part of the Guernsey community.

- 12.44 The period of time during which the child has lived in the Island might be a significant proportion of their lifetime and, for many, Guernsey might well be the only place that they really know. Their lifestyle choices, cultural views and influences, lifelong friendships and many aspects of their character might have been largely developed while they have been resident in the Island. There is a view that their sense of “belonging” and commitment to the Island will be reached after a shorter period than, for example, in the case of an adult who spends only 8 or 10 years in the Island, having spent significant parts of their life living elsewhere.
- 12.45 For these reasons, the PPG considered whether the new regime should include provision for children to become Qualified Residents after a shorter period of continuous residence than adults. Again, it was concluded that this would replicate a number of the problems associated with the existing system which were outlined earlier in this section, as well as introducing the difficulties associated with a child potentially becoming a Qualified Resident before their parents.
- 12.46 **Aggregating Periods of Residence** – An alternative approach to requiring an individual to complete a *continuous* period of residence of 14 years would be to allow that 14 years to be made up of a number of shorter periods i.e. requiring an individual to be resident in the Island for an *aggregate* period of 14 years. The PPG rejected this proposal because it does not believe that the additional administrative complexity associated with such arrangements is justifiable. In addition, the PPG’s proposals for periods of time spent off-Island, which will be considered to be continuous residence, will account for many of the circumstances which might cause an individual to spend periods of time away from the Island. These are outlined later in this section.

Rights to Return Having Left the Island After the Second Milestone

- 12.47 In paragraph 12.25, it was explained that once an individual has reached the *first milestone* they will have the right to continue living in the Island permanently but, if they decide to break that period of permanent residency and move away from the Island *before* they have reached the second milestone, they *will not* have the automatic right to return to live in Guernsey at a later point.
- 12.48 Several responses were received during the consultation process which solely addressed the issue of Rights to Return. Many respondents strongly supported the proposal that once an individual had reached the second milestone, and become a Qualified Resident, they should have an automatic right to return to Guernsey if they choose to move away at some point in the future.
- 12.49 The PPG has concluded that once an individual has reached the *second milestone* and has become a Qualified Resident, if they then decide to break their period of residency and move away from the Island, they *will* have the automatic right to return to live in Guernsey at a later point.

Losing the Right to Return

- 12.50 There is a view that this right to return to the Island after a period of absence should never be lost. Once an individual has made a long term commitment to Guernsey and therefore acquired their status as a Qualified Resident, that commitment should entitle them to come and go from the Island as they choose later in their life.
- 12.51 There is an alternative view that once an individual has been away from the Island for a significant period of time, made their home and life elsewhere and has therefore not continued to contribute to the Island financially or personally, they should not have the automatic right to return to the Island later in life.
- 12.52 Currently, anybody who has gained Qualified Resident status under the current Housing Control regime and has chosen to leave the Island, can return at any point in the future and live in Guernsey indefinitely, free from any existing controls. The same would be true for a Qualified Resident who currently lives in Guernsey but chooses to leave at some point in the future. (There is no proposal to change the rights to return for existing Qualified Residents.)
- 12.53 As discussed previously in this report, the new population management regime seeks to enable Guernsey to manage changes in the size and make-up of the population in a way that will benefit the community, maintaining the Island's quality of life and standard of living.
- 12.54 There is no way of predicting what impact existing Qualified Residents who are currently living off-Island will have on the quality of life for the Island's community, if and when they do choose to return to the Island. For example, it is not known whether their skills and experience will be of benefit to the Island's economy; whether their age will have a negative impact on the demographic make-up of the population; whether they have made, or will make, any contribution to the Island through paying taxes or through their own personal achievements.
- 12.55 While the PPG considers it inevitable that the above uncertainties will probably have to remain in place in respect of those individuals who have already gained Qualified Resident status under the current Housing Control regime, it is important to consider whether or not to adopt policies to reduce those uncertainties for the future.
- 12.56 If the pool of Qualified Residents who can automatically return to the Island to live is allowed to continue to increase in an uncontrolled manner, then it will compromise the ability to ensure that changes in the population are managed in the future. However, this compromise has to be balanced against the acceptability of any proposal to remove an individual's rights to return.

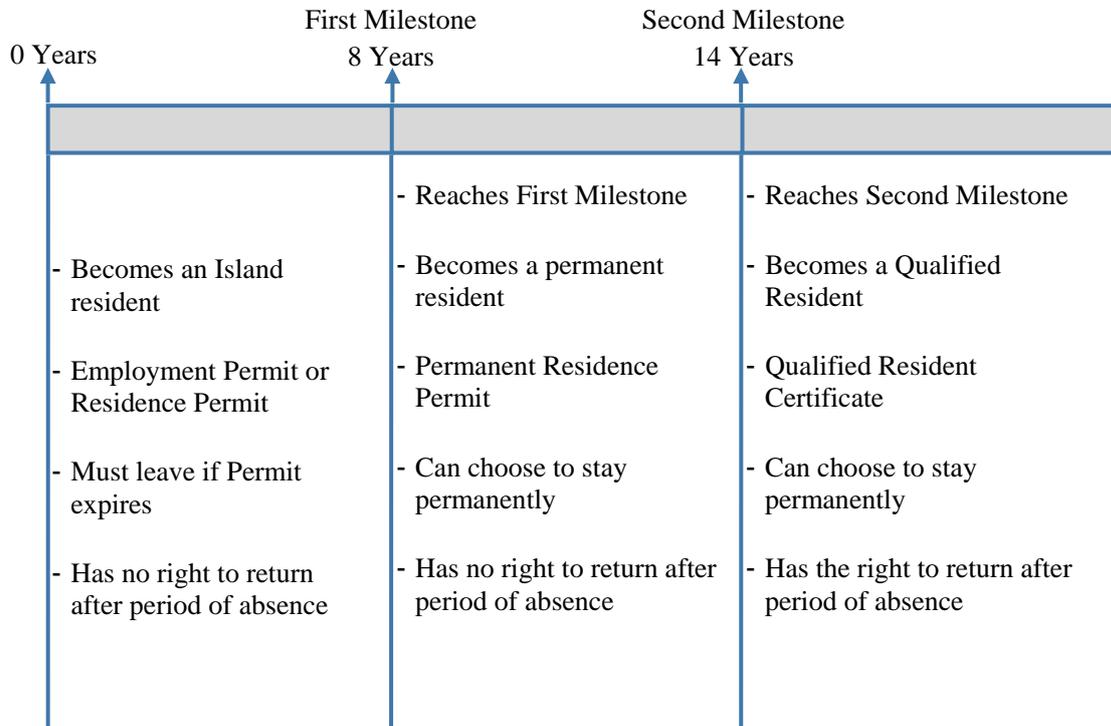
- 12.57 It is perhaps helpful to note the approach adopted by other jurisdictions in terms of loss of qualifications / rights to return. Some jurisdictions distinguish between those who attain their right to return through birth or through close familial connections and those who acquire them through other routes, e.g. for employment reasons.
- 12.58 As mentioned above, several responses were received during the consultation process which solely addressed the issue of Rights to Return. A very significant majority of respondents indicated that they disagreed with any proposal to remove a Qualified Resident's automatic right to return to Guernsey, regardless of how long the individual might have lived away from Guernsey. Many commented that such a change would be particularly unfair for Qualified Residents who had been born in Guernsey or who had strong family connections with the Island.
- 12.59 The PPG has concluded that once an individual has reached the *second milestone* and has become a Qualified Resident, if they then decide to break their period of residency and move away from the Island, they will retain the automatic right to return to live in Guernsey at a later point, regardless of how long they are away from the Island.
- 12.60 However, the PPG proposes, later in this section, that any existing Qualified Resident who is not currently resident in the Island, but who decides to return in the future, will be required to obtain a Qualified Resident Certificate.
- 12.61 This will provide a detailed picture of return patterns for such individuals. The PPG recommends that this new data is regularly reviewed in the future and that the issue of whether or not an individual should retain the right to return to the Island to live after a significant break in residence should be revisited based on that data.

Other Conditions

- 12.62 The different conditions that may be applied to an individual during their period of residence on each type of Permit are considered later in this report. However, it is proposed that a Qualified Resident will have the maximum possible freedom from any of those restrictions or conditions related to population management.

Summary of First and Second Milestones

12.63 The diagram below provides a summary of the two milestones and the differences between periods of residence.



Existing Qualified Residents

12.64 As described earlier in this section, the majority of people living in Guernsey are already defined as Qualified Residents and details of the circumstances under which an individual can acquire that status under the current Law are contained in Appendix A – *Qualification Routes*.

12.65 Under the current Housing Control Regime, a Qualified Resident is not required to obtain a Housing Licence. However, they are required to obtain a Right to Work document if they wish to be employed in the Island. This requirement was introduced to enable the Housing Department to confirm that everybody who is employed in the Island is legally housed and that is the only condition which needs to be met in order to obtain a Right to Work document.

12.66 It could be argued that in order to be able to effectively manage the size and make-up of the Island's entire population, all existing Qualified Residents should be required to obtain some form of Permit or Qualified Resident Certificate.

- 12.67 The PPG has reviewed this requirement for existing Qualified Residents in three groups:
- a) Existing Qualified Residents who are not currently resident in the Island but who decide to return in the future,
 - b) Existing Qualified Residents who are, or wish to be, employed in the Island who are currently required to obtain a Right to Work document, and
 - c) Existing Qualified Residents who are not currently required to obtain any document under the current regime.
- 12.68 In the case of the first group, the PPG proposes that any existing Qualified Resident who is not currently resident in the Island, but who decides to return in the future, will be required to obtain a Qualified Resident Certificate. There will be no conditions attached to the Certificate, but it would be issued to improve the monitoring of the size and make-up of the population.
- 12.69 As mentioned earlier, this will help to give a detailed picture of return patterns for existing Qualified Residents who are currently residing off-Island. Such information can be used in the future to better understand the impact that such individuals might have on the Island.
- 12.70 There was strong support for this proposal, with respondents appearing to accept the need to monitor the number of existing Qualified Residents who were returning to the Island after a period of absence if the population management regime was to be successful.
- 12.71 In the case of the second group, the PPG proposes that any existing Qualified Resident who is, or wishes to be, employed in the Island, will be required to obtain a Qualified Resident Certificate.
- 12.72 A large majority of respondents supported the proposal, with some making the link with the current requirement for those working in the Island to obtain a Right to Work document to show that they were lawfully housed under the Housing Control regime. Many respondents felt that without this requirement, it would be very difficult for employers to know with any certainty whether an individual is lawfully entitled to work without the need for an Employment Permit.
- 12.73 With respect to the third group, the advantages of requiring them to obtain a Qualified Resident Certificate are firstly, that all Qualified Residents would be treated in the same way, therefore reducing any discrimination within the new regime. Secondly, this would provide more data from which to monitor the size and make-up of the population. However, some data is available from other sources within the States which could be combined, for monitoring purposes, with information held under the new population management regime.

- 12.74 The disadvantages of requiring the third group to obtain a Qualified Resident Certificate are firstly, an additional administrative undertaking in terms of issuing Certificates and verification processes. Secondly, the community might find it difficult to accept.
- 12.75 During the consultation process, mixed views were expressed, but there was general acceptance that if existing Qualified Residents, who are not currently required to obtain any document under the current regime, were required to obtain a Qualified Resident Certificate, then monitoring of the size and make-up of the population would be improved in the future. However, many respondents felt that to require everybody, regardless of age, status and the length of time they had lived in Guernsey, to obtain a Qualified Resident Certificate was unnecessary and would be very costly to administer.
- 12.76 The PPG therefore proposes that other data sources available within the States should be used for monitoring purposes and that existing Qualified Residents who are not, and do not intend to be, in employment will not be required to obtain a Qualified Resident Certificate.

Agreed Absence Provisions

- 12.77 There will be situations where an individual might spend some time off-Island and the PPG proposes that, in some specific circumstances, their residence will be considered to be continuous or unbroken.
- 12.78 Some of those circumstances are listed below; however, please note that this list is not intended to be exhaustive:
- Any period of time spent in full-time education,
 - A “Gap Year” additional to time spent in full-time education,
 - Time spent in the service of HM Forces,
 - Time spent off-Island for medical reasons,
 - Time spent off-Island for welfare reasons,
 - Periods of time necessary to gain work-related training or experience not available in Guernsey, and
 - Off-Island work placements and secondments.
- 12.79 It is envisaged that some of these situations will require the prior approval of the Statutory Official in order for the period of time to be considered to be “ordinary residence”.

12.80 While the specific details have yet to be developed, it is proposed that in some cases – for example for those serving in HM Forces – time spent off-Island which is deemed to be continuous or unbroken residence will also apply to the spouse and children of the individual who is making use of the agreed absence provisions. A large number of respondents, including all of the organisations representing service personnel, suggested that the provisions proposed for those serving in HM Forces should be extended to their spouse and children.

12.81 **Proposal D**

The PPG proposes that:

- 1 An individual who has lived continuously and lawfully in Guernsey for 8 years will have reached the *first milestone*. They will acquire the right to continue living in Guernsey permanently if they so choose and will be issued with a Permanent Residence Permit. (Open Market Residents are considered separately, in Section 16.)
- 2 An individual who has lived continuously and lawfully in Guernsey for 14 years will have reached the *second milestone*. They will be defined as a Qualified Resident and will be issued with a Qualified Resident Certificate. (Open Market Residents are considered separately, in Section 16.)
- 3 Once an individual has reached the *second milestone* and has become a Qualified Resident, if they then decide to move away from the Island, they will have the automatic right to return to live in Guernsey at a later point and this right will be retained, regardless of the length of time that the individual is away from the Island.
- 4 An existing Qualified Resident who is not currently resident in the Island, but who decides to return in the future, will be required to obtain a Qualified Resident Certificate.
- 5 An existing Qualified Resident who is, or wishes to be, employed in the Island, will be required to obtain a Qualified Resident Certificate.
- 6 Existing Qualified Residents who are not, and do not intend to be, in employment will not be required to obtain a Qualified Resident Certificate.
- 7 In some specific circumstances where an individual may spend time off-Island, their residence will be considered to be continuous or unbroken.

SECTION 13 – EMPLOYMENT PERMITS

- 13.1 As discussed previously, there are a number of situations where it would be appropriate to allow an individual to move to Guernsey to live for a period of time. One of these is for employment-related reasons. Guernsey does not have all of the skills that it needs within the existing population. Incoming workers have been in the past, and still are, filling skills shortages in the Island. These individuals include nurses, teachers and people working in our wealth creating businesses.
- 13.2 It is recognised that the success of Guernsey's economy and the quality of its public services owe a lot to the diverse skills and experience of those who have moved to the Island to work. It would be unrealistic to believe that all of these levels of skills and experience could have been obtained entirely from within the Island's population. If public services and a vibrant economy are to be maintained, then the Island needs to continue to permit people with certain skills to come to the Island to work.
- 13.3 It is proposed that those people who are permitted to come to the Island to live for employment-related reasons will be issued with an Employment Permit.
- 13.4 These Employment Permits will be issued for an individual to move to Guernsey to fill a post of employment where it has not proved possible to fill the post with an individual who is already a Qualified Resident or Residence Permit holder and where the post falls into one of the three categories set out below:

13.5 LONG TERM EMPLOYMENT PERMITS

These Permits will be issued to respond to a persistent and enduring skills shortage where the following criteria apply:

- The skills required are in short supply in Guernsey,
- They will also be relatively scarce globally,
- It will be highly unlikely that the skills shortage will be able to be met by Qualified Residents or Residence Permit holders in the foreseeable future, and
- The global shortage of skills means that it will be difficult to recruit a replacement Employment Permit holder in the future should the post holder leave.

Long Term Employment Permits may also be issued for posts where a strong case can be made that:

- The organisation or business will be seriously disadvantaged to such an extent that Guernsey would be unable to meet its social, economic or environmental objectives without continuity in the post in the longer term.

13.6 **MEDIUM TERM EMPLOYMENT PERMITS**

These Permits will be issued in two sets of circumstances.

13.7 The first scenario:

- A post requires specific skills which *are not* available in Guernsey, and
- That skills shortage *is* likely to be able to be met in the foreseeable future. (This might be because of either an anticipated reduction in demand for those skills locally or because a suitably skilled Qualified Resident or Residence Permit holder is likely to become available to fill the post upon the expiry of the Employment Permit.)

13.8 The second scenario:

- A post requires specific skills which *are* available in Guernsey,
- The number of people resident in Guernsey with those skills is not sufficient to fill the number of posts requiring a similar or identical skill set, and
- In the foreseeable future, it will be highly unlikely that the full shortage of these skills will be able to be met by the number of Qualified Residents or Residence Permit holders available with those skills.

13.9 However, as distinct from Long Term Employment Permits, in both of the scenarios described above it will be possible, should the need arise, to source a replacement Employment Permit holder because the skills required are not in short supply globally.

13.10 **SHORT TERM EMPLOYMENT PERMITS**

These Permits will be issued to respond to manpower shortages where:

- Posts require no specific skills or skills of a lower order than those eligible for Long Term or Medium Term Employment Permits, and
- There is a need for additional manpower over and above that which can be met by Qualified Residents or Residence Permit holders.

Other Conditions

- 13.11 There will be different conditions attached to the Permits issued for each of the three levels listed above, including conditions about which posts and individuals would be eligible to receive them and the maximum period of time which such Permits will be issued. These conditions are explained below.

LONG TERM EMPLOYMENT PERMITS

- 13.12 Long Term Employment Permits will be issued for a period of 8 years.
- 13.13 As discussed previously in Section 12 – *Long Term Residency*, a Permanent Residence Permit will be acquired after an individual has been a lawful resident in Guernsey for a continuous period of 8 years. Therefore, if the circumstances of the Long Term Employment Permit holder do not change during the 8 year period of their Employment Permit, then they will have the right to continue living in Guernsey permanently. After the first 8 years of their employment, the Permit holder’s ability to remain in Guernsey will no longer be conditional upon their continued employment in a specific post.

Maximum Period of Continuous Residency

- 13.14 As described in Section 12 – *Long Term Residency*, a period of 8 years is proposed as the period after which an individual will be permitted to continue living in the Island permanently if they so choose. The duration of a Long Term Employment Permit is intrinsically linked to that same period of time. Hence, an individual who obtains a Long Term Employment Permit will know from the outset that, unless their circumstances change significantly, they will be granted a Permanent Residence Permit after 8 years and will be able to continue living in Guernsey permanently if they so choose.

Family Members

- 13.15 The holder of a Long Term Employment Permit will be able to accommodate certain “immediate” family members within their household. The details and conditions relating to those family members are contained in Section 14 – *Residence Permits – Family Connections*.

MEDIUM TERM EMPLOYMENT PERMITS

- 13.16 Medium Term Employment Permits will be issued for a period of up to 5 years.
- 13.17 During the consultation process several respondents, while supporting the general principles for the issuing of Medium Term Employment Permits, expressed the view that a duration of less than 5 years would cause considerable

recruitment difficulties because it might not prove attractive enough for potential off-Island employees. Foreseeable increases in costs associated with increased staff turn-over were also highlighted.

- 13.18 At the end of the period for which the Employment Permit is issued, the postholder will be required to leave the Island. If the conditions that led to the issue of the original Permit still apply, it will be possible for the employer to obtain a new Medium Term Employment Permit in relation to the post, but it will not be possible for it to be issued to the same postholder. More details about breaks in residence between Permits are set out later in this section in paragraphs 13.37 – 13.44.

Maximum Period of Continuous Residency

- 13.19 An individual obtaining a Medium Term Employment Permit for up to 5 years will know from the outset that, if their circumstances do not significantly change, they will not be permitted to continue to live in Guernsey for any longer than 5 years.

Family Members

- 13.20 The holder of a Medium Term Employment Permit will be able to accommodate certain “immediate” family members within their household. The details and conditions relating to those family members are contained in Section 14 – *Residence Permits – Family Connections*.

SHORT TERM EMPLOYMENT PERMITS

- 13.21 Short Term Employment Permits will be issued for a period of up to 1 year.
- 13.22 It is worth pointing out here that because a Short Term Employment Permit can be issued for a period of up to 1 year, a business or organisation can apply for a Short Term Employment Permit which is valid for a period of, for example, only 9 months. During the consultation process, some businesses, particularly those operating on a seasonal basis, wanted clarity that this flexibility would be included under the new regime.
- 13.23 At the end of the period for which the Short Term Employment Permit is issued, the postholder will be required to leave the Island. However, once the Short Term Employment Permit has expired, if the conditions that led to the issue of the Permit still apply, then the Short Term Employment Permit may be re-issued to the same individual for a further period of up to 1 year. This will be subject to a maximum period of continuous residence of 3 years.

Maximum Period of Continuous Residency

- 13.24 All Short Term Employment Permit holders will know from the outset that, if their circumstances do not significantly change, they will not be permitted to live in Guernsey for any longer than a period of continuous residence of 3 years.

Multiple Periods of Short Term Residency

- 13.25 A number of responses were received during the consultation process from businesses requesting clarification on whether or not they could continue to employ staff from off-Island on the basis of them working and living in the Island for short periods of time, followed by short breaks in residence, before returning to be employed for a further short period, and continuing that cycle.
- 13.26 The PPG proposes that issuing a Short Term Employment Permit in these circumstances will only be considered where the individual concerned has lived away from the Island for a specified minimum period of time between Permits. It is proposed that an individual must have been away from the Island for a period of time which is at least equal to the duration of their last period of residence in the Island. This principle applies for the issue of all Employment Permits and more details can be found later in this section in paragraphs 13.37 – 13.44.
- 13.27 In addition, in order to restrict the build-up of separate periods of residence in the Island, the PPG also proposes that an individual can only come and go under these arrangements until such time that they have built up an aggregate period of total residence of 5 years.
- 13.28 This is important because there is a risk that individuals who repeatedly spend short periods of time working in Guernsey, followed by short breaks away, are over the years potentially building up strong connections with the Island.
- 13.29 In Section 6 – *The Influence of Human Rights* it was explained that there comes a point after which an individual's connections with the Island are likely to have become so strong that to require them to leave Guernsey would be an unjustifiable infringement of their human rights. By including a restriction on the overall length of time that an individual can spend living and working in Guernsey for short periods, followed by short breaks away, the PPG hopes to ensure that such individuals do not establish their private and family life and their home in the Island to such an extent that a requirement for them to leave the Island might be considered to be an unjustifiable interference in their Article 8 Rights.
- 13.30 The PPG believes that this proposal will give employers a reasonable degree of flexibility and a good return on their "investment" in their employees who are eligible for a Short Term Employment Permit, but without compromising the

new regime's overriding objective to manage the size and make-up of the Island's population.

Family Members

- 13.31 The holder of a Short Term Employment Permit will not be permitted to be accompanied by any family members.
- 13.32 Because the primary purpose of Short Term Employment Permits is to address manpower or lower order skill shortages, the PPG does not consider it unreasonable for the holder of such a Permit to be restricted from accommodating their immediate family, as they are only in the Island on a short term basis. In addition, there is no evidence to suggest that the availability of short term manpower would be reduced as a result of continuing this existing restriction.

ADMINISTRATION ARRANGEMENTS FOR EMPLOYMENT PERMITS

Flexibility

- 13.33 In the previous paragraphs, specific durations for each type of Employment Permit have been defined. However, the PPG recognises that in exceptional circumstances there may need to be some flexibility within those time periods.
- 13.34 The legislation should also be sufficiently flexible to allow the ability for an Employment Permit to be issued to suit the length of a specific project, for example a construction contract. It will also be necessary for an Employment Permit to be able to stipulate a maximum number of nights in, or visits to, Guernsey if this arrangement is best suited to a specific post, for example in the case of business consultants.
- 13.35 The PPG also recognises that the circumstances of the individual, the business, or the situation regarding skills shortages might well change for a given Permit during its lifespan.
- 13.36 The PPG proposes that the Statutory Official will have the discretion to consider requests to adjust the time periods prescribed if there are exceptional circumstances related to a specific application for a Permit.

Breaks in Residence

- 13.37 In addition to the conditions relating specifically to the re-issue of Short Term Employment Permits described in paragraphs 13.23 – 13.30 above, there is the need for an overarching policy relating to breaks in residence which will prevent the build up of separate periods of residence in the Island, reflecting the principles of the new population management regime.

- 13.38 Where an individual has been issued with a Residence or Employment Permit for a given period and has then left the Island once that period of time has been completed or before, they might subsequently wish to seek to return to live in the Island under a further Employment Permit at a later point.
- 13.39 The PPG proposes that issuing an Employment Permit in these circumstances will only be considered where the individual concerned has lived away from the Island for a specified minimum period of time between Permits. It is proposed that an individual must have been away from the Island for a period of time which is at least equal to the duration of their last period of residence in the Island.
- 13.40 For example, an individual who leaves the Island having lived here for 5 years by virtue of a Residence or Employment Permit will need to spend at least 5 continuous years away from the Island before they will be eligible to obtain an Employment Permit for a subsequent period of residence.
- 13.41 It has already been explained that Short Term Employment Permits can be re-issued to the same individual up to a maximum period of continuous residence of 3 years or a maximum period of aggregate residence of 5 years. As above, an individual who leaves the Island having lived here continuously for 3 years, will need to spend at least 3 years away from the Island before they will be eligible to obtain an Employment Permit for a subsequent period of residence. Similarly, an individual who has spent an aggregate of 5 years living in the Island would need to spend at least 5 continuous years away from the Island before they would be eligible to obtain an Employment Permit for a subsequent period of residence.
- 13.42 The new regime is aimed at enabling the States to manage the size and make-up of the Island's population. It therefore aims to restrict the number of people who can obtain the right to live here permanently, for reasons of their employment, to only those who meet the requirements to fill a post attracting a Long Term Employment Permit (as detailed in paragraph 13.5). It will therefore be important to ensure that other individuals coming to the Island for employment reasons (who are eligible for Employment Permits of a shorter duration) do not build up a number of separate periods of residence that, when added together, may lead to them being able to apply to live in the Island permanently if they so choose.
- 13.43 Again, in Section 6 – *The Influence of Human Rights*, it was explained that there comes a point after which an individual's connections with the Island are likely to have become so strong that to require them to leave Guernsey would be an unjustifiable infringement of their human rights. By including a requirement for an individual to have spent a specified minimum period of time away from the Island before being issued with a subsequent Permit for employment reasons, the PPG hopes to ensure that such individuals do not establish their private and family life and their home in the Island to such an extent that a requirement for

them to leave the Island might be considered to be an unjustifiable interference in their Article 8 Rights.

- 13.44 To reiterate, the PPG believes that its proposals relating to breaks in residence will give employers a reasonable degree of flexibility and a good return on their “investment” in their employees, but without compromising the new regime’s overriding objective to manage the size and make-up of the Island’s population.

Issuing the Permit

- 13.45 It is proposed that the Employment Permit will be issued to an individual and that the Permit will enable that individual to work in a specific post for a specific employer.
- 13.46 For those individuals requiring an Employment Permit, it is proposed that the Permit must be issued before the individual arrives in the Island, or before they take up employment for those who are already resident. It will be an offence for them to undertake any work on the Island before the Permit is issued. Equally, it will be an offence for an employer to allow such an employee to commence working without the appropriate Permit.

The Application Process

- 13.47 As discussed earlier in this report, the new population management regime needs to be supported by efficient and flexible administrative processes that support the Island in being an attractive place to live, to work and to do business. If the process for applying for an Employment Permit is unnecessarily complex and bureaucratic, then there is a risk that Guernsey’s economy and public services will suffer because of an inability to attract people with the skills that are needed.
- 13.48 The regime will have a good degree of transparency with well-publicised policies, procedures and rules. This means that an employer, and any potential employee, should be able to establish the likelihood, and type and duration, of an Employment Permit being issued before they begin the application process. As a result, the number of unsuccessful applications should be minimal.
- 13.49 Before an Employment Permit is granted, the employer will be required to:
- Confirm the details of the job offer, thereby acting as the “sponsor” of the Employment Permit holder,
 - Demonstrate that it has not proved possible to fill the post with an individual who is a Qualified Resident or Residence Permit holder, and
 - Confirm that they have taken up references and carried out appropriate criminal records checks for the potential employee.

13.50 The potential employee will be required to provide the following information:

- A job offer, from an employer, for a post which is identified in the published policies,
- Details of their relevant qualifications and experience,
- Details of any criminal convictions,
- Evidence of English language skills where appropriate for the post,
- Details of any existing connections to Guernsey, e.g. close family members already resident in Guernsey,
- Their age,
- For Long Term and Medium Term Employment Permits, details of any family members accompanying them, and
- Details of any criminal convictions for those accompanying them.

13.51 Some of the information provided will be used as determining factors in the decision making process and some will be used for population monitoring purposes.

13.52 More generally, as discussed in Section 10 – *Legislative and Policy Framework*, before any request for an Employment Permit can be considered, the employer will be required to demonstrate that his business falls within an area of business where, as a result of the direction given by the States Strategic Plan, inward migration will be permitted.

13.53 Rather than this requirement having to be met in respect of each request for an Employment Permit, it will be possible for employers to submit details about their business activities at agreed intervals, for example annually, in order to reduce the administrative processes required for each individual application for an Employment Permit.

13.54 Once the application process has been successfully completed, the Employment Permit will be issued to the individual who can then move to Guernsey to take up the post specified on the Employment Permit.

Changing Jobs

13.55 It is proposed that holders of Employment Permits will be able to apply to change job at any time during the life of their Permit, as long as the new post is also identified in the published policies as one which will attract an Employment Permit.

- 13.56 This proposal recognises that businesses will change and develop over the period for which Employment Permits will be issued. It also recognises that an individual will continue to develop skills over the duration of their Employment Permit and that they are likely to want to develop their career. If, within the life of their Employment Permit, an employee wants to change employer, or change jobs with the same employer, then it is likely that they will be able to do so, as long as the new post is identified in the published policies as one which will attract an Employment Permit and as long as all of the relevant criteria for it to be issued can be met.
- 13.57 However, a Permit will only be issued to an individual for the balance of the original Permit duration i.e. if an individual moves from a post which attracts a 5 year Employment Permit after 2 years, to another post attracting the same length Permit, the new Permit will only be issued to that individual for 3 years. This is to ensure that an individual who does not meet the criteria for filling a post attracting a Long Term Employment Permit does not accrue a period of continuous residence of 8 years by “stacking” Permits of a shorter duration.
- 13.58 The employment and training opportunities available for Qualified Residents and Residence Permit holders will not be affected as an Employment Permit holder will only be able to move to another post which will also attract an Employment Permit; and one of the criteria that needs to be met before any Employment Permit will be issued is that the employer must demonstrate that it has not proved possible to fill the post with an individual who is a Qualified Resident or Residence Permit holder.
- 13.59 These proposals will mean that those individuals who have been issued an Employment Permit will be able to deliver the best possible value to Guernsey’s economy but not at the expense of the opportunities available to Qualified Residents or Residence Permit holders.

Additional Jobs

- 13.60 It is proposed that anyone who has been issued with an Employment Permit may hold more than one job.
- 13.61 This proposal reflects the current arrangements, and the PPG has not found any evidence to suggest that they are having a negative impact on the employment situation in the Island.
- 13.62 There is a view that unemployment numbers in the Island could be reduced if existing employment-related Licence holders were restricted from having second jobs. However, there is anecdotal evidence to suggest that many of the roles which are taken as second jobs are not roles which those individuals who are registered as unemployed are looking to fill.

13.63 The PPG believes that its proposal will give Employment Permit holders flexibility and choice, and will enable Guernsey to maximise the productivity of its available workforce.

13.64 **Proposal E**

The PPG proposes that:

- 1 Long Term Employment Permits will be issued for a period of 8 years to address persistent and enduring skills shortages where it is unlikely that those skills will be easily sourced, either on Island or globally, in the foreseeable future or where continuity in the post in the longer term is in the Island's interest.

If the circumstances of the Permit holder do not change during that 8 year period, they will acquire the right to continue living in Guernsey permanently if they so choose and will be issued with a Permanent Residence Permit.

- 2 Medium Term Employment Permits will be issued for a period of up to 5 years either:
 - (i) Where a post requires specific skills which are not available in Guernsey, but where that skills shortage is likely to be able to be met in the foreseeable future; or
 - (ii) Where the skills required are held by Qualified Residents or Residence Permit holders, but the number of people resident in Guernsey with those skills is insufficient to fill the total number of posts requiring a similar or identical skill set.

In both cases, it should be possible, if required, to source a replacement Employment Permit holder with relative ease, because the skills required are not in short supply globally. Ordinarily, the holder of a Medium Term Employment Permit will not acquire any permanent residence rights.

- 3 Short Term Employment Permits will be issued for a period of up to 1 year to fill posts where there is not a need for a high level of skill, but where there is a need for additional manpower over and above that which can be sourced from within the Island.

Such a Permit can be re-issued to the same individual subject to a maximum period of continuous residence of 3 years or a maximum period of aggregate residence of 5 years. The holder will acquire no permanent residence rights.

- 4 In exceptional circumstances, the Statutory Official will have the discretion to consider requests to adjust the time periods prescribed above.
- 5 An individual must have been away from the Island for a period of time which is at least equal to the duration of their last period of residence in the Island before they will be eligible to obtain an Employment Permit for a subsequent period of residence.
- 6 An Employment Permit must be issued before the individual arrives on the Island to work, or before an individual who is already resident in the Island changes jobs.
- 7 Holders of Employment Permits will be able to apply to change job at any time during the life of their Permit, as long as the new post is also identified in the published policies as one which will attract an Employment Permit.
- 8 Anyone who has been issued with an Employment Permit may hold more than one job.

SECTION 14 – RESIDENCE PERMITS – FAMILY CONNECTIONS

- 14.1 As discussed previously, there are a number of situations where it would be appropriate to allow an individual to move to Guernsey to live for a period of time. It is recognised that people might want to live in Guernsey because they have strong family connections with an individual who is already permitted to live here. In these cases, it is proposed that these individuals will be required to obtain a Temporary Residence Permit before they are able to come to the Island to live.
- 14.2 Since the early 1980's the Housing Control regime has limited who may be accommodated, without the need for a separate Licence, within the household of Qualified Residents and some Licence holders. Since short term Licences were introduced in 1982, the holder of such a Licence has not been permitted to be accompanied by any members of his immediate family.
- 14.3 As described in Section 13 – *Employment Permits*, the PPG proposes that the holder of a Long Term or Medium Term Employment Permit *will* be able to accommodate certain “immediate” family members within their household. The PPG also proposes that the holder of a Short Term Employment Permit *will not* be permitted to be accompanied by any family members.

- 14.4 The PPG also proposes that the holders of Permanent Residence Permits and Qualified Residents will be able to accommodate certain “immediate” family members within their household.
- 14.5 Under the new regime, immediate family members will be defined as an individual’s:
- a) Spouse / Partner
 - b) Parents and Parents-in-law
 - c) Children
 - d) Grandchildren
- 14.6 The PPG believes that this definition should allow most close family relationships to be maintained and should allow an individual to continue to support those who are their genuine dependents.
- 14.7 The PPG also believes that this definition, which is the same as the provisions under the current Housing Control regime, will not be considered unreasonable by the community or by those who might be looking to relocate to Guernsey for employment reasons.
- 14.8 Although the list of proposed immediate family members was questioned by a small minority of people during the consultation process, the Housing Department’s experience of administering the current Housing Control regime has shown that relatively few people wish to be accompanied by members of their immediate family beyond their spouse or partner and children. It is not common for people to choose to live in families comprising more than their most immediate family and the cost of property in Guernsey makes this an expensive option.
- 14.9 Where people are joined by other family members it is usually because an unforeseen event has occurred that makes this necessary – the most obvious being where an elderly parent is no longer able to look after themselves independently. In those circumstances, it is a natural reaction for the family to want to relocate their relative so that they can live in their household to provide that support.

Conditions

- 14.10 The duration of a Temporary Residence Permit will be dependent on the relationship and the length of time which the individual with whom the Family Member has a close relationship is permitted to live in Guernsey.

- 14.11 This Temporary Residence Permit will be linked to the individual with whom they have a close family relationship and will be conditional on the continued residency of that individual and the continuation of that relationship.
- 14.12 The Family Member must live within the family home of the individual with whom they have a close family relationship.
- 14.13 The Temporary Residence Permit will enable the Family Member to work if they so wish, with no restrictions on the type of work they can undertake. This proposal is discussed further in Section 20 – *Other Conditions*.

Long Term Residency

- 14.14 As discussed previously in Section 12 – *Long Term Residency*, a Permanent Residence Permit will be acquired after an individual has been a lawful resident in Guernsey for a continuous period of 8 years. If the Family Member described above lives continuously, and lawfully, in Guernsey for 8 years, then they will have the right to continue living in Guernsey permanently. Once they reach their Qualification Point, they will then be entitled to hold a Qualified Resident Certificate and will be defined as a Qualified Resident.
- 14.15 However, an individual obtaining a Temporary Residence Permit would know from the outset that they will be granted a Permanent Residence Permit after 8 years if their circumstances do not change.
- 14.16 The PPG proposes that family members will need to continue to live within the household of the individual with whom they have the close relationship during their period of residence under a Permanent Residence Permit. Once they become a Qualified Resident, they will have the right to live independently if they so choose.

Changes in Circumstances

- 14.17 Where there is an unforeseeable change in circumstances which affects the ability of a Family Member to be able to remain living within the family home of the individual with whom they have a close relationship, for example the breakdown of a relationship, they might be entitled to obtain a Residence Permit in their own right. The circumstances in which this may apply are detailed later in Section 17 – *Unforeseeable Changes in Circumstances*.

Family Members – Existing Residents

- 14.18 Under the current Housing Control regime, in most cases family members who are permitted to reside in the Island as “members of a household”, are not required to obtain a document unless they wish to be employed in the Island (in which case they are required to obtain a Right to Work document).

- 14.19 In order to be able to effectively manage the size and make-up of the Island's population, the PPG proposes that every adult who is currently permitted to live in the Island under the existing provisions for "members of a household" will be required to obtain a Temporary Residence Permit under the new regime.
- 14.20 Although this is essentially an issue related to the transition from the Housing Control regime to the new population management regime, because a number of this group of people do not currently require any form of document (those who do not work), it is important to establish this principle early in the development process.

The Situation Today

- 14.21 The current Housing Control regime allows Qualified Residents and the holders of essential and non-essential Licences to be accompanied by their spouse, children, grandchildren and their parents and in-laws, subject to them all living as part of his household, without the need for those family members to hold a Housing Licence.
- 14.22 There are no restrictions on the type of work they can undertake.
- 14.23 All can become Qualified Residents, although only the children and spouse/partner have an automatic route to qualification.
- 14.24 The holder of a short term Licence may not be accompanied by any dependents and/or members of his immediate family.

Other Options

- 14.25 In coming to the proposals relating to family members, the PPG also considered alternative approaches. These other options are not recommended for the reasons described below.
- 14.26 **Limiting family members to spouse / partner and children** – although this issue was raised during the consultation process, the PPG is not persuaded that the evidence from the current regime suggests that there is a need to reduce the current list of "members of household" for the reasons set out in the above discussion. The PPG is also concerned that if the list was restricted in this way it might prove to be unattractive to potential skilled employees who would otherwise be interested in working in Guernsey. This will place additional limitations on the pool of available people to fill some essential jobs in the Island.
- 14.27 **Allowing Short Term Employment Permit holders to accommodate members of their immediate family** – the PPG concluded that as the primary purpose of Short Term Employment Permits is to address short term or temporary manpower shortages, it would not be considered to be unreasonable

for the holder of such a Permit to be restricted from accommodating their immediate family, as they are only in the Island on a short term or temporary basis. In addition, there is no evidence to suggest that the availability of short term labour would be reduced as a result of the restriction proposed.

- 14.28 **Restricting employment options for family members** – there is a view that employment options for family members should be restricted to posts which would attract an Employment Permit because of a skill or manpower shortage in the Island. The PPG does not recommend this restriction at the current time because it does not believe that there is any evidence to suggest that the unemployment situation in the Island would be improved by such a measure.
- 14.29 Anecdotal evidence suggests that having this group of people available as part of the general workforce might well have contributed to the growth of some Island businesses, thereby creating increased job opportunities for the Island, not less.
- 14.30 The demographic challenges which the Island faces in terms of its ageing population suggest that Guernsey should be actively encouraging anybody of working age in the Island to be economically active. The Skills Strategy Development Group is examining this matter under its ‘Participation’ pillar and to restrict the employment options of some members of the available workforce further would seem to run contrary to that aim.
- 14.31 The additional administrative commitment that would be required, combined with the potential to deter prospective employees that the Island needs in order to fill essential posts, suggests that there would need to be substantial benefits gained from the introduction of such a condition. The PPG has not found any evidence to suggest that that is likely to be the case.
- 14.32 **Proposal F**

The PPG proposes the following for those people who wish to reside in Guernsey because they have strong family connections with an individual who is already permitted to live in the Island:

- 1 Immediate family members will be defined as an individual’s:
 - a) Spouse / Partner
 - b) Parents and Parents-in-law
 - c) Children
 - d) Grandchildren
- 2 Qualified Residents and holders of Permanent Residence Permits will be able to accommodate “immediate” family members within their household.
- 3 The holder of a Long Term or Medium Term Employment Permit will be

able to accommodate “immediate” family members within their household.

- 4 The holder of a Short Term Employment Permit will not be permitted to be accompanied by any family members.
- 5 Family members will need to continue to live within the household of the individual with whom they have the close relationship during their period of residence under a Temporary Residence Permit and Permanent Residence Permit. Once they become a Qualified Resident, they will have the right to live independently if they so choose.
- 6 Family Members will be required to obtain a Temporary Residence Permit before they are able to come to the Island to live.
- 7 Every adult who is currently permitted to live in the Island under the existing provisions for “members of a household” will be required to obtain a Temporary Residence Permit under the new regime.

SECTION 15 – RESIDENCE PERMITS – STATES OWNED PROPERTIES

- 15.1 Currently, with few exceptions, all properties within States ownership are exempt from any controls, under the Housing Control Law, in terms of who may occupy them. Properties falling within this exemption include, for example the Health and Social Services Department’s (HSSD) staff accommodation. To illustrate the numbers involved - currently the HSSD employs just under 200 nursing staff who occupy such accommodation; these individuals make up more than 20% of HSSD’s total nursing staff.
- 15.2 This exemption has been in existence since 1948 and was originally intended to provide the States with the flexibility it needed to be able to bring in key labour with construction experience, and other essential skills, without restriction or delay as the Island recovered from its occupation during the war years.
- 15.3 Because there is no requirement for an individual who lives in one of these properties to obtain a Housing Licence under the Housing Control regime, the Housing Department does not have any control over who lives in these properties and for how long. If the occupants are employed, they will need to obtain a Right to Work document, but that simply requires that they are legally housed, there are no other conditions which need to be met. The essentiality of their employment is not assessed, neither is the strength of their connection with the Island. (The exception to this is States social housing, the occupation of which is managed by the Housing Department, but through its social housing

allocations policies rather than through the administration of the Housing Control Law.)

- 15.4 Because the primary purpose of the Housing Control Law is to preserve a stock of Local Market housing for occupation by Qualified Residents and existing Licence holders, the Housing Department has no reason to have an interest in the occupation of these properties. This is because, while they are, in the main, Local Market properties, they would not otherwise be available for occupation by the general population of Qualified Residents and Licence holders, because there are other policies in place which may restrict who can occupy them. The properties therefore fall outside of the “stock of Local Market housing” which is the concern of the Housing Department.
- 15.5 However, from a population management perspective, the situation is different. Regardless of what type of accommodation an individual is living in, they still contribute to the population of the Island at any given time and, depending on their length of residency, they could contribute to the Island’s population in the longer term.
- 15.6 The new regime is intended to enable the States to manage the size and make-up of the Island’s population. For this reason the PPG does not see any justification for individuals living in States owned accommodation to be exempt from the requirement to obtain a Permit simply because of the type of accommodation which they occupy.
- 15.7 Because this accommodation is “managed” by the States, there is an argument that data relating to the number of people occupying this type of property could be made available from other sources within government for the purposes of population monitoring. However, the same could be said for other types of “managed” accommodation which is outside of the control of the States. There does not seem to be any reasonable justification for the States, as a landlord, to be treated any differently than any other landlord.
- 15.8 Given the proportion of, for example, nursing staff who are accommodated in such properties, it would not be unreasonable to assume that many such “key workers” would be employed in the future in a post that would attract an Employment Permit of 5 years or more duration. In examining this area, the PPG is conscious that work is ongoing with regard to a Key Worker Strategy, one part of which is focussed on resolving accommodation issues. The new population management regime should be capable of supporting whatever plans the Key Worker Strategy produces.
- 15.9 The PPG proposes that any individual living in States owned property should be subject to the same requirements as any other member of the community with regards to their requirement to obtain the relevant Permit.

Other Options

15.10 The PPG has not considered any alternative options in this area. As explained above, the ownership of a property in which an individual lives is not something which the PPG believes has an impact on the management of the size and make-up of the population. A number of respondents during the consultation process were concerned that the States, as an employer and a landlord, should not be treated as a special case and should be subject to the same population management requirements as any other employer or landlord in the Island.

15.11 Proposal G

The PPG proposes that any individual living in States owned property will be subject to the same requirements as any other member of the community with regards to their requirement to obtain the relevant Permit.

SECTION 16 – THE OPEN MARKET

Open Market Residents within the New Population Management Regime

- 16.1 An individual's impact on the population is the same regardless of the type of property in which they live. From a population management perspective, it does not matter *where* a person lives in the Island, what matters is simply that they do live here.
- 16.2 It was explained in the PPG's consultation document that under the current Housing Control regime the States has no ability to manage the size and make-up of much of the Open Market population. The PPG believes that, while it might be controversial for some, in order to discharge its mandate and in the interests of the Island as a whole, it is essential to include *everybody* who lives in the Island in the development of a new population management regime, regardless of whether they reside in a Local Market property or an Open Market property.
- 16.3 Approximately 5500 people, or 9% of the Island's population, are resident in the Open Market. All of these individuals live in properties which are listed on the Open Market Housing Register and which are exempt, to varying degrees, from controls in terms of who may occupy them. On October 7th 2011, there were 1694 properties on the Register, which is broken down into four parts as listed below.

Part A – Private Houses and Flats (94.4% – 1599 properties)

Part B – Hotels and Guesthouses (3.4% – 58 properties)

Part C – Nursing and Residential Homes (0.6% – 10 properties)

Part D – Lodging Houses (1.6% – 27 properties)

- 16.4 Although there have been numerous States decisions which have shaped the Open Market as we know it today¹⁴, it has been in existence in some form or another for more than 50 years. In 1957 properties at the upper end of the housing market (defined as having a Rateable Value of over £50 at that time) were made exempt from any Housing Controls because it was acknowledged that there was little demand for such properties from “*local families*”. It was believed that the loss of such properties from within the stock of housing that was subject to Housing Control would not seriously affect the housing shortage which was a major concern for the Island at that time.
- 16.5 Because of continued concern about housing availability, the primary purpose of the current Housing Control Law has remained to preserve a stock of properties for occupation by Qualified Residents and existing Licence holders. Since 1957, successive States have continued to resolve that this can be achieved by exercising controls on the occupation of Local Market properties only, while also allowing people to come to Guernsey and live in Open Market properties, who might not be Qualified Residents, might not have strong family connections here and might not necessarily possess essential skills or fill manpower shortages.

The Future of the Open Market

- 16.6 There was some speculation prior to the release of the PPG’s consultation document that the Open Market might cease to exist when a new Population Management regime comes into place. Although new legislation will be required, the PPG has always believed that the Open Market can, and should, be retained as part of any new regime in some form or another, but that it should also be subject to review from a population management perspective given that approximately 5500 people, or 9% of the Island’s population, are resident in the Open Market.
- 16.7 As far as the PPG has been aware there is no desire on the part of the States for the Open Market to cease to exist in the future. In fact a number of States members, including some members of the PPG, have been very vocal about their desire not only to see the Open Market retained in some form, but for some parts of it to be able to expand and develop under the new population management regime.
- 16.8 The majority of respondents to the consultation process supported provision for the continuation of an Open Market to be included in the new regime to allow an

¹⁴ Further information is available in the PPG’s previously published document entitled The Development of the Open Market. See www.gov.gg/population/openmarket.

individual to live in the Island for reasons other than being a Qualified Resident, filling a skill or manpower shortage or having close family connections with the Island. Many expressed their concerns about the potential negative impacts for Guernsey and its economy of any significant changes to the current arrangements. These views were also reflected in many of the responses from community, business and professional organisations. Only a small number of respondents felt that residence in Guernsey should be restricted to Qualified Residents and those coming to fill a skill or manpower shortage or with close family connections.

16.9 **Proposal H**

The PPG proposes that an Open Market, with some changes as described in the remainder of this section, should be retained as part of the new population management regime.

Moving Between the Open and Local Markets

- 16.10 As described earlier in this report in Section 6 – *The Influence of Human Rights*, the human rights of every member of our community must be protected, including those living in the Open Market. However, this does not mean that an Open Market resident should be permitted to move into a Local Market property simply because they wish to, regardless of the length of time that they have been resident in the Island.
- 16.11 Under the current Housing Control regime, there are a number of routes to becoming a Qualified Resident but, with the exception of children who meet specific criteria, occupation of an Open Market property is not one of them.

Children of Open Market Residents

- 16.12 Under the current Housing Control regime, the child of an Open Market resident is able to become a Qualified Resident after they have been resident in the Island for an aggregate period of 20 years in any 30 year period, as long as they were first resident in the Island as a minor and as a member of the household of their mother or father.
- 16.13 Some might consider that a qualification period of 20 years is excessive. However, there is a view that this has always been based on the principle that a distinction should be made between those individuals who come to live in Guernsey by virtue of the Open Market, and those who come to live here because their family has strong connections with the Island or have skills which the Island needs for the long term.

- 16.14 There is also a view, as expressed in Section 12 – *Long Term Residency*, that the point at which a child becomes a resident in Guernsey, the length of their stay and the property in which they live, will be entirely dependent on the decisions made by their parents. The period of time during which the child has lived in the Island might be a significant proportion of their lifetime and, for many, Guernsey might well be the only place that they really know. Their lifestyle choices, cultural views and influences, lifelong friendships and many aspects of their character might have been largely developed while they have been resident in the Island.
- 16.15 The sense of “belonging” and commitment to the Island of a child living in the Open Market are no more or less significant for them than those of any other child living in Guernsey for the same period of time.
- 16.16 The PPG therefore proposes that further consultation takes place on the basis of the children of Open Market residents becoming Qualified Residents after a period of continuous residence of 14 years, the same period after which it is proposed that all other children resident in the Island will become Qualified Residents. This will be the case as long as they were first resident in the Island as a minor and as a member of the household of their mother or father.
- 16.17 This further consultation will take place once the guiding principles for the further development of the new population management regime have been debated, and taking into account the views expressed during the debate regarding the PPG’s other proposals regarding the Open Market and qualifying periods for all adults and children.

Other Open Market Residents

- 16.18 In the main, Open Market residents who do not hold residential qualifications cannot live in a Local Market property unless they are granted a Housing Licence under the current Housing Control regime¹⁵. There was very little dissatisfaction expressed about this current policy through the consultation process and the PPG cannot find any justification, from a population management perspective, for it to change.
- 16.19 The PPG therefore believes that the general principle should remain that, with the exception of those children mentioned above, any Open Market resident without residential qualifications will not be permitted to live in a Local Market property. Nonetheless, policies should also be developed to allow for exceptional circumstances, which may be similar to those described below.

¹⁵ A Qualified Resident, or an individual who is entitled to hold a Housing Licence, who opts to live in the Open Market can retain or attain residential qualifications in the same way as if they had opted to live in the Local Market.

- 16.20 Under a current policy operated by the Housing Department, a Housing Licence can be issued to enable the owner(s) of an Open Market property to reside in Local Market accommodation provided that they have been resident in Guernsey for more than 20 years, are aged over 65 or are in ill health. However, this policy is subject to the person deleting an Open Market property from the Housing Register, thereby increasing the Island's Local Market housing stock. Such applications are rare.
- 16.21 The only other means by which an Open Market resident who wishes to move into the Local Market can currently be permitted to do so, is if it can be demonstrated that there has been a significant change in their personal circumstances which means that they are unable to remain in the Open Market. The change in circumstances must be significant, normally such that if they were prevented from moving into the Local Market, then they would have to leave Guernsey, resulting in an unjustifiable interference with their human rights under Article 8, as discussed earlier in this report.

16.22 **Proposal I**

The PPG proposes that:

- 1 That further consultation takes place on the basis of the children of Open Market residents becoming Qualified Residents after a period of continuous residence of 14 years, the same period after which it is proposed that all other children resident in the Island will become Qualified Residents. This will be the case as long as they were first resident in the Island as a minor and as a member of the household of their mother or father.
- 2 The general policy should remain that, with the exception of those children mentioned in 1 above, any Open Market resident without residential qualifications will not be permitted to live in a Local Market property. Policies should be in place to allow for exceptional circumstances.

Monitoring the Size of the Open Market Population

- 16.23 In earlier sections of this report, it was explained that the proposals for the new population management regime will mean that:
- Employment Permits will be issued for those people who are permitted to live in the Island to fill a skill or manpower shortage,
 - Temporary Residence Permits will be issued for those people who have a strong family connection with an individual who is already permitted to live here,

- Permanent Residence Permits will be issued after a period of continuous residence of 8 years for the two groups above, and
- Qualified Resident Certificates will be issued to Qualified Residents.

16.24 Under the current Housing Control regime, which is concerned with the availability of residential properties, the States has no requirement to monitor or manage the size and make-up of the Open Market population. Accordingly, for the majority of Open Market properties there is no requirement for the individuals living in them to obtain a document under the current Housing Control regime¹⁶, the downside being that there is very little information readily available to the States about who lives in the Open Market, or for how long.

16.25 Given that approximately 5500 people, or 9% of the Island's population, are resident in the Open Market it is clear that if this policy continues under the new population management regime, then the ability of the States to effectively monitor and manage the size and make-up of the Island's population in the future will be compromised. There would appear to be little justification for Open Market residents to fall outside of the provisions for monitoring within a new regime which is specifically aimed at population management. As already mentioned, an individual's impact on the population is the same regardless of the type of property in which they live. From a population management perspective, it does not matter *where* a person lives in the Island, what matters is simply that they do live here.

16.26 The PPG therefore believes that, in addition to those described in paragraph 16.21 above, a specific certificate to be held by residents of the Open Market will need to form part of the provisions for monitoring within the new population management regime. This certificate will be issued to confirm that an individual is resident in the Island in the Open Market and will be used to improve the monitoring of the size and make-up of the population.

16.27 **Proposal J**

The PPG proposes that all residents of the Open Market should be required to hold an Open Market Resident Certificate.

Personal Contribution of Open Market Residents

16.28 The question of whether or not Open Market residents should be required to provide some specific personal contribution to the Island in order to be able to live here was raised as part of the consultation process. The limited data which

¹⁶ If they are employed, individuals will need to obtain a Right to Work document, but that simply requires that they are legally housed, there are no other conditions which need to be met.

has currently been reviewed shows that economic contribution is being made, without the need for any regulatory requirement to do so, and that this is primarily through a combination of the taxes paid by such residents and the contribution that they make to the Island's economy via their employment.

- 16.29 There is also much anecdotal evidence that some Open Market residents make significant contributions to the Island via the investment of capital and/or expertise in local businesses, their spending within the Island, the management of their wealth through the Island's financial services sector, and their voluntary and charitable contribution in terms of time and/or funds.
- 16.30 Many respondents to the consultation process, including many of the community, business and professional organisations, referred to the benefits that they believed Guernsey had gained, and continues to gain, through the existence of residents living in the Open Market.
- 16.31 However, whether that evidence is sufficiently persuasive, the PPG does not believe that there is a justifiable need from a *population management perspective* to use the Open Market as an economic generator for the Island. Whether or not the direct financial economic contribution generated from the Open Market can, or indeed should, be improved in the future is not a population management issue of itself and is therefore not for the PPG to define.
- 16.32 However, the PPG believes that the question of whether or not the States should adopt a definitive strategic objective to use the Open Market as an economic generator for the Island in the future should be examined from a fiscal and economic perspective.
- 16.33 If the States was to adopt such a strategic objective, then the PPG can confirm that any new population management regime should be able to react accordingly. However, the PPG believes that the need to manage the size and make-up of the Island's population cannot be used as the policy "driver" for such a move.
- 16.34 **Proposal K**

The PPG proposes that, while the Policy Council might recommend the States to adopt such a strategic objective in the future from a fiscal and economic development perspective, from a *population management perspective* no requirement should be introduced as part of the new population management regime for Open Market residents to demonstrate their ability to make some specific personal contribution to the Island.

Criminal Conviction Checks

- 16.35 In Section 19 – *Criminal Convictions*, it is proposed that the new regime will include a system of criminal conviction checks. The full details of this proposal are contained in that later section and are therefore not repeated here, however it is important to point out here that the PPG proposes that *everybody* applying for a Permit or Certificate to move to the Island to live will be required to provide a criminal conviction check as part of the application process. This will include those wishing to live within the Open Market.
- 16.36 There is a view that certain groups of people should be exempt from criminal conviction checks depending on the reason that they are seeking to live in the Island. However, this view was strongly opposed by many respondents during the consultation process. The PPG is also of the view that the potential risk that might be presented to the community is not in any way reduced because of the reason that an individual is seeking to live in the Island and therefore does not believe that any individual who is required to obtain a Permit or Certificate to move to the Island to live should be exempt from this provision.

16.37 Proposal L

The PPG proposes that criminal conviction checks will form part of the application process for all of those moving to Guernsey who are required to obtain a Permit or Certificate, including those wishing to live within the Open Market.

The Size and Make-up of the Open Market Population

- 16.38 There is a view that there is still only limited demand for the type of property that is inscribed on the Housing Register from the population of Qualified Residents, those with strong family connections here and those filling skill or manpower shortages. If this perception is correct, it could be argued that from a housing availability perspective there is no reason to consider any significant changes to how the Open Market is managed in the future.
- 16.39 However, the new population management regime is not concerned with the availability of housing for Qualified Residents and Licence holders, but with the size and make-up of the population; from that perspective, an individual's impact on the population is the same regardless of the type of property in which they live. It does not matter *where* a person lives in the Island, what matters is simply that they do live here.
- 16.40 There is also a view that because the Housing Register was effectively closed in 1982 (i.e. the stock of properties within the Open Market cannot get any larger) there is a self-limiting effect on the size of the population that can be

accommodated within the Open Market, because there are only a limited number of properties available. However, any perception that there is a limiting effect is flawed given that there are currently no restrictions on how many people can be accommodated within 94% of Open Market properties (those private houses and flats which are on Part A of the Housing Register).

- 16.41 While it is clear that there is a need to introduce the means to ensure that the size and make-up of the Open Market population can be managed to some degree in the future, the problem which the PPG faces is that there is very little information readily available about that part of the Island's population. This limits the ability to make conclusive judgements about the most appropriate methods of population management that could reasonably be employed across the Open Market.
- 16.42 Even more importantly, because of this lack of information, there is a serious risk that any population management methods which might be considered could result in unintended consequences which are detrimental to the Island as a whole.
- 16.43 The PPG is not the first political group to have considered the Open Market from a population management perspective and to have come up against this problem of lack of information. There has historically been a negative cycle where groups of politicians have wanted to make changes to the provisions for residence in the Open Market, but have been unable to provide compelling enough evidence to sufficiently justify such action without the risk of unintended consequences. *The PPG believes that this cycle now needs to be stopped.*
- 16.44 As mentioned above, there is very little information readily available to the States about who lives in the Open Market, or for how long. However, information is available regarding the total number of individuals living in various parts of the Open Market. In the following paragraphs, the population of each of the four parts of the Open Market Housing Register is examined¹⁷. The risks from a population management perspective of making no changes to the existing provisions are also highlighted. Proposals are then made for clear policy direction and for detailed information gathering, which the PPG believes are necessary before any changes, other than those already described, to the way in which the population of the Open Market is managed can be considered.

¹⁷ - The Social Security Department's data for December 2009 has been used to produce the information.
- Information provided has had all personal references removed and individuals cannot be identified.
- Everybody living in Guernsey must register with the Social Security Department after they have been resident in Guernsey for 26 weeks or when they commence work, whichever is the sooner.
- All total population comparisons are based on March 2009 data, when the Island's population was reported to be 62,274.

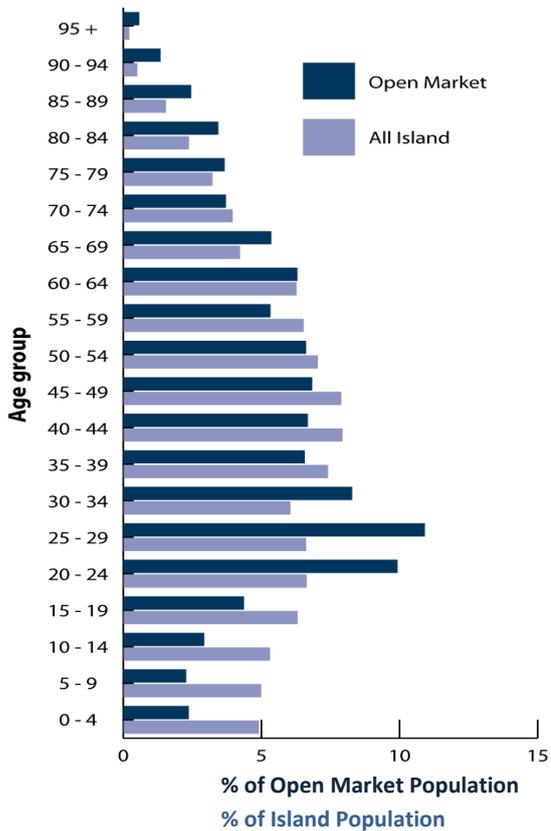
The Overall Population of the Open Market

16.45 In December 2009, there were 5560 people living in Open Market properties, which was approximately 9% of the Island’s total population.

16.46 45% of those living in Open Market properties (2513 people) were working, either employed or self-employed, and they accounted for approximately 8% of the Island’s total workforce.

16.47 Chart 16.1 below shows the age distribution of the population living in Open Market properties compared with the age distribution of Guernsey’s total population.

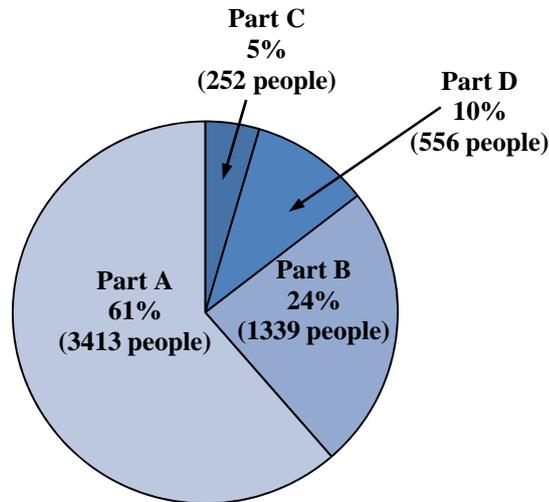
Chart 16.1 Age Distribution – 2010



This diagram, known as a population pyramid, gives a representation of the age distribution of the population of Guernsey and the population of the Open Market.

Each bar represents a particular age group and the length of that bar shows the proportion of the population of that age.

16.48 Chart 16.2 shows the number of people who were living in properties listed in each of the four parts of the Open Market Housing Register. The size and characteristics of each of these groups are examined in more detail below.

Chart 16.2 Where the Open Market Population Live

The Population of Part A Open Market Properties (Private Houses and Flats)

- 16.49 As shown in Chart 16.2 above, in December 2009, 61% of those living in the Open Market were living in Part A properties (3413 people). This was approximately 5% of the Island's total population.
- 16.50 In December 2009, the average household size for Part A properties was approximately 2.13 people. Although these household size figures are only indicative, the Open Market figure is lower than the average household size for the whole Island, which was estimated in the 2006 Housing Needs Survey at just over 2.5 people and at the time of the 2001 Census, was 2.51 people.
- 16.51 Properties listed on Part A of the Housing Register may be occupied by the owner or principal tenant¹⁸ and members of his household for an indefinite period, without the need for a Housing Licence.
- 16.52 38% of those living in Part A properties were working (1303 people), either employed or self-employed, and they accounted for approximately 4% of the Island's total workforce. This group are employed in various parts of the Island's economy across both the private and public sectors and, while it is not possible to determine the extent of their contribution, we know that these people are contributing to the success of our economy to some degree, simply by virtue of the fact that they are employed.

¹⁸ The 1994 Law defines "*principal tenant*" in relation to a dwelling listed in the Housing Register as the person who is the principal tenant of the whole of that dwelling.

Lack of Restrictions on Who May Occupy a Part A Property

- 16.53 There are no restrictions on who is considered to be a “member of the household” for properties listed on the Housing Register. The definition in the current Law limiting a member of the household to the Spouse, Parents, Children, Grandchildren and Parents-in-law of the “householder” only applies to Local Market properties.
- 16.54 There are benefits associated with this lack of restriction on who can be accommodated within an Open Market Part A property, primarily through providing a flexible mechanism for employers to meet some of their ever changing skills requirements without the need to apply for additional, or extended, Housing Licences.
- 16.55 However, the PPG believes that there are two main concerns about this lack of restriction on who can be accommodated within a Part A property. Firstly, there is a perceived unfairness when compared with residents in the Local Market, who can only accommodate members of their immediate family without the need for a Housing Licence.
- 16.56 Secondly, this lack of restriction has led to families living in Open Market Part A properties being able to lawfully accommodate individuals who are unrelated to them and who do not hold a Housing Licence, without any review of the strength of their connections with the Island or any appraisal of the Island’s need for their skills. Indeed, a number of Part A properties are now being used for multiple occupation by such adults. The issues regarding this latter group are explored below. Although such arrangements are lawful within the current Housing Control regime, it could be argued that they fall outside of the common understanding of the purpose of Part A of the Open Market.

Properties in Multiple Occupation by Unrelated Adults

- 16.57 An analysis of the limited data available about Open Market households shows that approximately 9% (more than 130) of all Part A properties have four or more adults living in them and more than 1% have seven or more adults living in them. While some of these households are family units, the Housing Department is aware, from the information that it holds on Right to Work documents, that approximately 8% of Part A properties are occupied by groups of apparently unrelated adults i.e. they are not occupied by family units.
- 16.58 Because there is no requirement for the Housing Department to hold the relevant information, it is difficult to establish what the rate of growth in the number of such properties has been over the years. However, when the States first debated this issue in the early 1980’s, the then Housing Authority stated that it *“has for some time been concerned about the use of Open Market dwellings for accommodating numbers of persons other than the owner (or lessee) and his*

*family. For example the Authority is aware of **at least two** Open Market houses which are used as lodging houses”¹⁹.*

- 16.59 It is therefore obvious that there has been significant growth in the number of Open Market properties occupied by unrelated adults since that time, despite the introduction of Part D of the Housing Register to account for properties which are in use as lodging houses.
- 16.60 A property may be owned by a number of individuals, a single individual or a company. As long as the property is occupied in a way that means it can remain listed in Part A of the Housing Register, all of the occupants are exempt from controls over the length of their residence in the Island and are free to undertake any type of employment.
- 16.61 The information available shows that more than half of the working adults in Part A of the Open Market are living in these properties, but it is not possible to establish whether or not the employment that these individuals are engaged in would attract a Housing Licence if one was applied for and, if so, for what duration.
- 16.62 Those who are living under this type of arrangement are likely, among others, to be made up of some individuals who would probably be eligible for a short term Housing Licence²⁰ but who do not want to break their period of residence between Licences; some who work for employers who do not want to go through the administrative process of applying for a Licence; and some who have previously been resident in the Island under an essential employment-related Licence that requires them to leave after a period of say 5 years, but who have wanted to stay in the Island despite not being eligible for a further Housing Licence.

The Consequences of the Existing Arrangements

- 16.63 The current Housing Licence system and the proposed Permit system are intended to acknowledge that the Island cannot expect to fill all of its skills and manpower requirements from within the population of Qualified Residents and existing Licence holders. However, the conditions attached to such Licences / Permits and the proposed Employment Permits are designed to ensure that only those who have strong connections with the Island or those whose skills the Island needs for the long term are permitted to secure long term residency rights in Local Market accommodation. All others are expected to leave the Island after a period of residence thereby not having any long term effect on the Island’s population.
- 16.64 There is a principal concern from a population management perspective arising from the ability of an Open Market Part A householder to accommodate those

¹⁹ Billet d’État XI 1984, States Housing Authority – Registered Dwellings in Multiple Occupation

²⁰ An employment-related Licence of between 9 months and 3 years duration.

outside of his family and the growth in the number of such properties being used for the multiple occupation of unrelated adults. That concern is the number of people who are able to reside in Guernsey for long periods of time, potentially building up substantial connections and links with the Island, who are very unlikely to be able to support themselves in independent Open Market accommodation should the need, or desire, to do so arise later in their life.

- 16.65 The States is at risk of having to allow all such individuals to eventually occupy Local Market accommodation because, as explained in Section 6 – *The Influence of Human Rights*, a refusal to do so might leave the individual concerned with no other option but to leave the Island, which could result in an unjustifiable interference in their Article 8 rights to respect for their private and family life and home.
- 16.66 There is a further concern which is related specifically to the growth in the number of Part A properties being used for the multiple occupancy of unrelated adults and that is that such properties are not available for occupation by family units which are arguably the very people that Part A of the Open Market was originally intended to attract. The benefits that residents of the Open Market have brought to the Island described earlier in this section, whether fully evidenced or not, have almost always been attributed to family units. It follows that every Part A property that becomes unavailable to such families, because it is being used for the multiple occupation of unrelated adults, risks reducing the potential benefits generated by Open Market residents that many Islanders want to protect.

Managing the Process of Change

- 16.67 The PPG is aware that there are a small number of Island residents, and an unknown number of off-Island residents, who have invested in Part A properties purely for their long term investment potential, and who rent those properties out to groups of unrelated adults, because this is often more profitable than renting a property to a single family unit. The PPG is also aware that on-Island agents operating for such individuals e.g. Estate Agents, Advocates etc. will benefit from such investments in terms of initial purchase and sale transactions, as well as the ongoing management of the investment, property and related tenancy arrangements.
- 16.68 Some of these groups have already been, and will continue to be, very vocal about their lack of support for any changes to such arrangements. When the potential benefits to their own business interests, as noted above, are considered, this is perhaps unsurprising. What the PPG and the Island has to consider however is whether Guernsey as a whole will benefit from the continuation of such arrangements.
- 16.69 Opinion expressed through the consultation process was evenly divided on whether restrictions should be placed on who can live in a Part A property.

Several respondents who did not believe that any restrictions should be introduced referred to an obligation to honour previous commitments of the States and felt that the lack of such restrictions was a fundamental principle of the Open Market as it exists today.

- 16.70 However, several respondents also expressed their concern that, without any restrictions on who can be accommodated within a Part A property, there is a risk of the Open Market population increasing significantly, particularly if the number of properties being occupied by groups of unrelated tenants was allowed to increase.
- 16.71 On the face of it, it would seem that there are risks from a population management perspective, as outlined above, of such arrangements continuing. However, as already identified, the lack of information that has previously been available means that it has been very difficult to fully understand the potential positive and negative consequences of such change.
- 16.72 More recently, there has been a general improvement in the sophistication of data collection across the States such that more information is now more readily available than has previously been the case, albeit spread across a number of States departments. The PPG believes that, with the cooperation of various States departments and with robust data sharing protocols in place, information can now be much more effectively gathered and analysed. This will allow a full evaluation of the potential positive and negative consequences of any proposals which might affect the ability of an Open Market householder to accommodate those outside of his family, and which might limit the growth in the number of Part A properties being used for the multiple occupation of unrelated adults.
- 16.73 Gaining that understanding is critical because:
- a. The PPG does not want to make ill-informed proposals that do not fully weigh up the potential positive and negative consequences for the Island as a whole of such change,
 - b. It is very unlikely that such proposals would be accepted by the public or the States unless there is real justification for making such changes,
 - c. Such information gathering will require the co-operation of a number of States Departments, private sector organisations and, not least, members of the Open Market community, and
 - d. As has been seen historically, it is almost inevitable that there will be high profile opposition to such changes which experience suggests can only be successfully countered by solid justification on behalf of the States.
- 16.74 Added to this, if the principle of such a move is broadly accepted by the States, there are many ways in which such changes could be implemented each with

differing consequences. These will need to be considered in great detail and fully consulted upon.

Dealing with Uncertainty

- 16.75 The PPG is very conscious that for a small number of property investors, their on-Island agents and, perhaps more importantly, those members of our community who are living under such arrangements today, the uncertainty associated with a period of information gathering, consultation and deliberation by the States will be unsettling.
- 16.76 However, the PPG firmly believes that the cycle of poorly informed attempts to review such arrangements from a population management perspective needs to be stopped. The States owes it to all of those who will be affected to commit to such information gathering and to follow due process in justifying - in the Island's interests as a whole - any decision to retain or change such arrangements.
- 16.77 It also has to be acknowledged that any uncertainty associated with these proposals, would apply to relatively few dwellings which continue to be used for the multiple occupation of unrelated adults. It will have little or no effect on the majority of Part A dwellings, where the householder will continue to be permitted to accommodate his immediate family without interference. Any perceived uncertainty with regard to the attractiveness of the Open Market to such families now, or in the future, should therefore be reduced.

16.78 Proposal M

The PPG proposes that:

- 1 A clear policy direction is set to limit the long term effects on the Island's population of the current arrangements enabling unlimited numbers of unrelated adults to be accommodated within private houses and flats inscribed on Part A of the Housing Register.
- 2 The Policy Council embarks on an information gathering and public consultation exercise designed to fully explore the positive and negative consequences for the Island of various options related to 1 above, including retaining the status quo.
- 3 The Policy Council reports back to the States during the first half of 2013, or sooner if possible, with definitive proposals for how the current arrangements for unrelated adults to be accommodated within Part A properties should be changed or if they should be retained.

The Population of Part B and Part C Open Market Properties

16.79 Hotels and guesthouses with a valid Boarding Permit are listed on Part B of the Open Market Housing Register. The people who can occupy such properties without a Housing Licence are listed below.

- Qualified residents,
- The owner or, if the property is let, the principal tenant,
- The manager, provided he is employed full-time and does not work anywhere else,
- The immediate family of either the owner, principal tenant or manager,
- Full time staff of the hotel or guesthouse, provided they are not employed elsewhere, and
- Bona fide tourists.

16.80 As shown in Chart 16.2 above, in December 2009, 24% of those individuals living in the Open Market were living in hotels and guesthouses on Part B of the Housing Register (1339 people). This was approximately 2% of the Island's total population.

16.81 60% of those living in Part B properties were working (805 people), either employed or self-employed, and they accounted for approximately 2.5% of the Island's total workforce. Given the restrictions on who can live in this type of property, the majority of these people will be staff of the hotel or guesthouse in which they live²¹.

16.82 An Open Market nursing or residential home is listed on Part C of the Housing Register. The people who can occupy such a property without a Housing Licence are listed below.

- Qualified Residents,
- The owner or, if the property is let, the principal tenant,
- The manager, provided he is employed full-time and does not work anywhere else,
- The immediate family of either the owner, principal tenant or manager, and
- Full time staff of the home, provided that they are not employed elsewhere.

²¹ Members of the family of the owner, tenant or manager may be resident within the property and working elsewhere.

- 16.83 As shown in Chart 16.2 above, in December 2009, 5% of those individuals living in the Open Market were living in nursing and residential homes on Part C of the Housing Register (252 people).
- 16.84 The majority of people living in Part C properties are not employees of the residential or nursing home, but are living there to benefit from the health and social care services which are offered. At the present time, despite the fact that a home is classified as Open Market, such individuals are required to either be Qualified Residents or to hold a Housing Licence permitting them to reside in that specific home.
- 16.85 Information about employment for those living in Part C properties on the Housing Register has not been included for data protection reasons – the small size of some of the data sets leaves the potential for individual people or businesses to be identified.

The Consequences of the Existing Arrangements

- 16.86 The current provisions regarding who can live within an Open Market Part B Hotel or Guesthouse were originally introduced in the early 1980's to enable the owners of such hotels to be able to convert existing parts of the hotel into self-contained managers' quarters and/or staff accommodation. Another objective was to ease the administrative burden associated with the increasing trend for hotels to be occupied and operated by persons without residential qualifications, because of the lack of residentially qualified people wishing to take on such roles.
- 16.87 However, while achieving the above objectives, the current arrangements have also led to some consequences, that appear to be unintended, with regard to the long term residence of full-time staff living and working within the hotel or guesthouse. Such staff are currently able to reside in Guernsey without any test of the Island's need for their skills and without the need for a time limited employment-related Housing Licence.
- 16.88 The same is true for staff living and working in Part C residential and nursing homes. It is worth noting here that there are also nursing and residential homes that are part of the Local Market. The difference in the conditions applying to staff working in these homes leads to considerable frustration, particularly on behalf of the managers of Local Market nursing and residential homes, who are not able to offer employment to off-Island staff without the necessary employment-related Housing Licence.
- 16.89 As stated earlier, the conditions attached to employment-related Housing Licences, and the proposed Employment Permits, are intended to acknowledge that the Island cannot expect to fill all of its skills and manpower requirements from within the population of Qualified Residents and existing Licence holders.

- 16.90 However, they are also designed to ensure that only those whose skills the Island needs for the long term are permitted to secure long term residency rights in Local Market accommodation. Everyone else is expected to leave the Island after a period of residence, thereby not having any long term effect on the Island's population. Because those individuals living and working in Part B and Part C of the Open Market do not currently need to hold an employment-related Housing Licence, these conditions do not apply to them.
- 16.91 The primary concern, from a population management perspective, is the number of people who are able to reside in Guernsey living and working in Parts B and C of the Open Market for long periods of time, potentially building up substantial connections and links with the Island, who are very unlikely to be able to support themselves in independent Open Market accommodation should the need, or desire, to do so arise later in their life.
- 16.92 The States is at risk of having to allow such individuals to eventually occupy Local Market accommodation because, as explained in Section 6 – *The Influence of Human Rights*, a refusal to do so might leave the individual concerned with no other option but to leave the Island, which could result in an unjustifiable interference in their Article 8 rights to respect for their private and family life and home.

Managing the Process of Change

- 16.93 In terms of preserving the Island's housing stock, the purpose of the Housing Control regime, the current arrangements have served the Island well. The PPG is also very aware that the businesses concerned have organised their staffing and accommodation arrangements in line with the provisions of the current Housing Control regime.
- 16.94 The benefits to such businesses of continuing the existing arrangements are that they can continue to recruit off-Island staff for as long as they need such individuals. What the PPG and the Island has to consider however is whether, from a population management perspective, Guernsey as a whole will benefit from the continuation of such arrangements.
- 16.95 The PPG believes that there is little justification, from a population management perspective, for the continuation of the arrangements whereby all staff living and working in hotels, guesthouses and some nursing and residential homes can be permitted to reside in the Island for long periods of time, potentially building up substantial connections and links with the Island, without any test of the Island's need for each individual's particular skills and without the need for each individual to be issued with the appropriate Employment Permit.
- 16.96 However, the PPG is conscious that if such a proposal is to be considered, it should only be done with the benefit of consultation, primarily with those businesses and individuals who will be directly affected by such a change. This

will ensure that the potential positive and negative consequences of such a change are fully considered.

The Population of Part D Open Market Properties (Lodging Houses)

- 16.97 An Open Market lodging house is listed on Part D of the Register and can only be occupied, without a Housing Licence, by the owner and his immediate family. Anyone else living in an Open Market lodging house must hold either residential qualifications or a Housing Licence.
- 16.98 As shown in Chart 16.2 above, in December 2009, 10% of those individuals living in the Open Market were living in Lodging Houses on Part D of the Housing Register (556 people). This was approximately 1% of the Island's total population.
- 16.99 67% of those living in Part D properties were working, either employed or self-employed (375 people). Because of the restrictions on who can live in Part D properties, with the exception of the owner and their family, this group will all be Qualified Residents or holders of a Housing Licence. In the main, those on an employment-related Housing Licence hold a short term Licence valid for between 9 months and 3 years.
- 16.100 The PPG is satisfied that, because of the restrictions on who can live in Part D properties, this part of the Island's population can be sufficiently well managed under the proposals for Employment and Residence Permits described earlier in this report. However, the outcome of the proposals put forward relating to Parts A, B and C of the Open Market are likely to have an effect on residence within Open Market Lodging Houses. Those effects will be considered as part of the proposed consultation and report to the States.

16.101 Proposal N

The PPG proposes that:

- 1 A clear policy direction is set to limit the long term effects on the Island's population of the current arrangements enabling unlimited numbers of staff living and working in hotels, guesthouses and some nursing and residential homes to be permitted to reside in the Island for unlimited periods of time, without any test of the Island's need for their skills and without the need for the appropriate Employment Permit.
- 2 The Policy Council embarks on a public consultation exercise designed to fully explore the positive and negative consequences for the Island of various options related to 1 above, including retaining the status quo.
- 3 The Policy Council reports back to the States in the first half of 2013, or

sooner if possible, with definitive proposals for how the current arrangements for staff to be accommodated within Part B & C properties should be changed or if they should be retained.

- 4 Controls related to residency in Part D properties are re-visited as part of the consultation regarding residency in Parts A, B and C of the Open Market.

SECTION 17 – UNFORESEEABLE CHANGES IN CIRCUMSTANCES

- 17.1 This section covers situations where an individual finds that their circumstances have changed while they are resident in Guernsey. The list of different circumstances below is not intended to be exhaustive; by their very nature it is impossible to predict all such scenarios. However, these examples are considered to be those in which an individual will find themselves in such a difficult position that it is considered important for them to have a clear understanding of the relevant policy.
- 17.2 These policies are very similar to those which are used within the current Housing Control regime, although those policies are not published. It is intended that, as part of the new population management regime, these policies will be open and transparent, something that many respondents during the consultation process felt was important.
- 17.3 There will be many other unforeseen changes in circumstances which arise and it is intended that these will be dealt with by the Statutory Official on a case by case basis.

Relationship Breakdown

- 17.4 An individual might have been issued with a Temporary Residence Permit to allow them to live with their spouse / partner who is permitted to live in the Island. As described earlier, this Temporary Residence Permit will be linked to their spouse / partner and will only allow the holder to live within the same household.
- 17.5 If this relationship breaks down, the Temporary Residence Permit holder will not be entitled to retain their Permit, because it was only issued on the condition that their relationship continues.
- 17.6 However, the Temporary Residence Permit holder would be able to retain their Permit, but the condition that requires them to live within the same household as their spouse / partner would be removed allowing them to live independently, only if:

- they have day-to-day care and control of dependent children from the relationship, or
- to enable them to maintain contact with such children for so long as their spouse / partner and the children remain in Guernsey.

Bereavement

- 17.7 An individual might have been issued with a Temporary Residence Permit to allow them to live as an immediate family member with an individual who is permitted to live in the Island. As described earlier, this Temporary Residence Permit will be linked to the individual with whom they have a close family relationship and will only allow the Permit holder to live within the same household.
- 17.8 In the event of the death of the individual with whom they have the relationship, the Temporary Residence Permit holder would be able to retain their Permit, but they would be permitted to live on the Island independently.

Serious Illness or Disability

- 17.9 Where an individual has been issued with an Employment Permit and they become seriously ill or disabled during the period for which the Employment Permit was issued, they will be issued with a Temporary Residence Permit that is not linked to their employment. In other words, irrespective of whether they can continue to work or not, they will be able to remain in Guernsey for the period of time for which the Employment Permit was originally issued. Unless that period of time entitles them to remain living in Guernsey beyond that point, requests to do so will be considered only on medical grounds.
- 17.10 An immediate family member might have been issued with a Temporary Residence Permit to allow them to live with the individual described above. They will be able to retain their Permit which allows them to live within the same household as their family member.

Victims of Abuse

- 17.11 An individual might have been issued with a Temporary Residence Permit to allow them to live as an immediate family member with an individual who is permitted to live here. As described earlier, this Temporary Residence Permit will be linked to the individual with whom they have a close family relationship and will only allow them to live within the same household.
- 17.12 In the event that any individual becomes the victim of abuse, they will be able to retain their Permit, but the condition requiring them to live within the same household as those carrying out the abuse would be removed which would allow

them to live independently, or in the case of a dependent child, in the care of others.

- 17.13 This policy recognises the anecdotal evidence which suggests that people might feel forced to stay within an abusive environment, because they fear that they will have to leave the Island if they leave the family home. Such an individual, or their family members, will know with certainty that this is not the case and it is hoped that this certainty will go some way to assisting those affected to remove themselves from an abusive situation.

17.14 **Proposal O**

The PPG proposes that, if the circumstances under which an individual is permitted to live in the Island change, in certain situations:

- 1 The conditions under which the permission was originally granted may be changed to allow the individual to remain in the Island.
- 2 The relevant policies will be published.

SECTION 18 – RESTRICTING WHERE AN INDIVIDUAL CAN LIVE

- 18.1 The PPG is conscious that the primary purpose of the new population management regime is about managing the size and make-up of the population, rather than managing where an individual can live. It therefore believes that if restrictions continue to be placed on where an individual can live under the new regime, they must be considered within that context.
- 18.2 The PPG recognises that such restrictions are at the very heart of the Housing Control regime, but has found no supporting evidence to show that they continue to be effective in ensuring that those who are permitted to live in Guernsey can find a property which meets their needs. Indeed, there has been respected economic opinion over recent years which suggests that the current approach is causing property prices to rise to the detriment of all Islanders, mainly because essential employment-related Licence holders are being directed to particular parts of the property market and so increasing demand in those areas.
- 18.3 The PPG proposes that restrictions on where the holder of a Short Term Employment Permit can live should continue to be used. Under the current Housing Control regime, anybody on a short term employment-related Licence is not permitted to live independently and the PPG believes that this restriction should be carried through into the new regime for the holders of Short Term Employment Permits.

- 18.4 The primary purpose of Short Term Employment Permits is to address short term or temporary manpower shortages, and the PPG believes that it would not be unreasonable for the holder of such a Permit to be restricted from living independently, as they are only in the Island on a short term or temporary basis. In addition, there is no evidence to suggest that the availability of short term labour would be reduced as a result of this restriction.
- 18.5 However, the PPG proposes that, as a general principle, there should be no restrictions on where an individual can live attached to Long Term and Medium Term Employment Permits. In reaching its proposals, the PPG is mindful that the individual will have skills and / or experience which are in short supply within the Island and has therefore been identified as being essential to Guernsey's economy.
- 18.6 Furthermore, the Housing Department's experience is that essential employment-related Licence holders, like the majority of people, look to rent or buy the property that best suits their needs rather than simply looking for their cheapest option. This experience was echoed in a large number of responses during the consultation process. Based on this experience it is questionable whether government interference in restricting where a small percentage of the Island's population can live is having any positive influence on the property market.
- 18.7 In reaching these proposals, the PPG noted that not only is the effectiveness of the current approach open to question, but it is also difficult and time consuming to administer. However, the PPG accepts that the ability to impose some restrictions on where a Permit holder can live might be a useful tool in protecting parts of the housing market where there is an identified demand from Qualified Residents or existing Permit holders. A significant proportion of respondents during the consultation process expressed the view that it could prove useful to be able to protect specific parts of the housing market.
- 18.8 The PPG therefore proposes that provision should be made within the new regime for the Statutory Official to include such restrictions, where there is an identified and proven need to do so, to protect a specific part of the Island's housing stock, as part of the conditions attached to Long Term and Medium Term Employment Permits.

Current Situation

- 18.9 The Housing Control Law allows the Housing Department to attach conditions to any Licence it issues, including conditions it believes are necessary to address any housing shortages in Guernsey. The ability to limit a Licence holder's housing choices reflects the Law's primary purpose of ensuring that there is sufficient housing to meet the needs of Qualified Residents and current Housing Licence holders.

18.10 The Housing Department's approach is to attach standardised housing conditions to most essential employment-related Licences which generally take the form of restricting the holder's housing options by:

- Setting a minimum Tax on Real Property (TRP) value for the property they might wish to rent or purchase, or
- Setting a maximum number of habitable rooms (i.e. excluding kitchen and bathrooms etc.) the property which they occupy can have.

18.11 These housing restrictions are calculated by looking at the Licence holder's salary package and, in general terms, the higher the salary package of the Licence holder, the higher the minimum TRP. There is also a link between the Licence holder's salary package and the number of habitable rooms offered.

18.12 The Housing Department has advised the PPG that imposing housing controls based on the TRP or number of habitable rooms of a property is far from ideal for a number of reasons, the most significant of which are summarised below.

- Using the relationship between TRP and the licence holder's salary as the method of assigning their accommodation options is inexact and oversimplifies the correlation between the size and purchase/rental price of a property.
- Accommodation options are based solely on the licence holder's income and have no regard for other factors that influence where a person might choose to live. These factors include: their overall assets; the total household income and expenditure; the size of their family; and how they elect to live their lives, e.g. whether they have pets, need a garden for children to play in, etc.
- Supply and demand at different points in the purchase and rental markets are non-uniform and vary over time. As a result, requiring licence holders to occupy dwellings in certain parts of the market can contribute to inflated property prices both in those parts of the market and overall.
- The open plan design of many homes means that calculating the number of habitable rooms in a property is often not straightforward.
- Moving house in any circumstance is stressful, but when undertaken in conjunction with a move to a different jurisdiction and all the changes that this brings for the whole family, the added pressure of having to find suitable accommodation within a relatively narrow field of choice is a further impediment. This can result in the person opting not to take up the offer of employment in the Island, even though it has been agreed that the Island needs their skills.

- 18.13 In order to appreciate more fully the issues surrounding this subject, further detail of the issues raised above can be found in Appendix D – *Restricting Where an Individual Can Live – Current Situation*.
- 18.14 Several respondents during the consultation process cited their own difficulties in finding a suitable property when taking up essential employment in Guernsey and some employers gave examples of people who had not taken up offers of employment for the same reason. Several of the responses from community, business and professional organisations also referred to the difficulties their members had experienced when recruiting key staff, which were specifically linked to the application of controls on where an individual can live.

Other Options

- 18.15 The PPG has considered a number of ways in which restrictions could be placed on where a Permit holder may live. These were detailed in the consultation document²² and include:
- Price (the purchase or rental price),
 - Size (e.g. number of rooms),
 - Local Market House Price Index, and
 - Price per TRP Unit.
- 18.16 Although each of these alternative approaches offers a different method for determining such restrictions for Permit holders, none has a direct link to population management issues.
- 18.17 Furthermore, none of the options will overcome all of the difficulties associated with the current TRP-based approach described in Appendix D – *Restricting Where an Individual Can Live – Current Situation*. Some will not only recreate many of the existing problems but are likely to introduce additional problems. Others will do no more than mitigate some of the existing difficulties simply by reducing the number of Permit holders affected by such restrictions. Most respondents during the consultation process agreed that the other options discussed in the consultation document did not have the potential to provide an improved approach.
- 18.18 Perhaps most importantly, such conditions would continue to apply throughout the duration of the Long Term or Medium Term Employment Permit and so require the holder to seek the agreement of the Statutory Official before moving house. This would create a layer of administration which is unrelated to the population management objectives of the regime and so might serve to undermine the strategic objectives of the new regime.

²² www.gov.gg/population

18.19 Having looked at all of these options, further evaluation is required before any decision is made as to which, if any, could be employed to provide a genuine benefit to the Island without repeating the difficulties of the existing approach, resulting in house price inflation, creating a whole new set of difficulties, or a combination of all three of these. Each of these options will be evaluated more fully once the guiding principles for the further development of the new population management regime have been debated.

18.20 **Proposal P**

The PPG proposes that:

- 1 Provision should be included within the new regime to prevent Short Term Employment Permit holders from living independently.
- 2 In general, there should be no restriction on where the holders of Long Term and Medium Term Employment Permits may live.
- 3 There should be some provision for the Statutory Official to restrict where the holders of Long Term and Medium Term Employment Permits can live, where there is an identified and proven need to protect specific parts of the housing market for those Qualified Residents and existing Permit holders who most need them.

SECTION 19 – CRIMINAL CONVICTIONS

- 19.1 Since the early 1990's there has been a strong political desire that criminal conviction checks should be carried out on people who are permitted to live in the Island for employment and other reasons. Guernsey is a small community and there is a perception that the harm caused through serious offending can have much wider consequences than would be the case in a larger community.
- 19.2 Given the intrinsic links with the Immigration regime, as described in Section 5 – *Wider Context*, the PPG believes that the introduction of a new population management regime could also be used as an opportunity to meet the wider policy objectives of protecting the community from potential harm caused through serious offending and by preventing criminal behaviour.
- 19.3 It is therefore proposed that the new regime will include a system of criminal conviction checks. The PPG proposes that *everybody* applying for a Permit or Certificate to move to the Island to live will be required to provide a criminal conviction check as part of the application process.

- 19.4 There is a view that certain groups of people should be exempt from criminal conviction checks depending on the reason that they are seeking to live in the Island. However, this view was strongly opposed by many respondents during the consultation process. The PPG is also of the view that the potential risk that might be presented to the community is not in any way reduced because of the reason that an individual is seeking to live in the Island and therefore does not believe that any individual who is required to obtain a Permit or Certificate to move to the Island to live should be exempt from this provision.
- 19.5 The PPG believes that this approach will be beneficial because:
- It may allow government to prevent some of those convicted of the most serious crimes from being able to live in the Island,
 - The existence of such a system can act as a deterrent. There is anecdotal evidence to suggest that jurisdictions where a criminal conviction disclosure is required have benefitted simply by having that requirement in place – people with criminal convictions simply choose not to apply to live in that jurisdiction, and
 - It will provide intelligence. Although the criminal conviction check might not provide sufficient justification for preventing an individual from living in the Island, the information (subject to data protection considerations) can be used to good effect by the Home Department in the prevention and detection of crime.
- 19.6 Requiring a criminal conviction check to be carried out on everybody who requires a Permit or Certificate to move to Guernsey to live should be considered to be reasonable because:
- The application will be made, in most cases, before the individual has established themselves in Guernsey,
 - The applicant will know that previous criminal convictions will be one factor to be taken into consideration in deciding whether or not to issue a Permit or Certificate,
 - The applicant will have provided this information so will know which convictions have been disclosed,
 - The existence of a criminal conviction will not automatically lead to the refusal of a Permit or Certificate,
 - Any information provided will be balanced against the reasons for the application, particularly the strength of any connections with Guernsey, and

- The applicant will have the right of appeal against any decision on whether or not to issue a Permit or Certificate.

- 19.7 It must be pointed out that the circumstances under which it would be considered to be reasonable to refuse to issue a Permit or Certificate based on the information provided in an individual's criminal conviction check will be limited. The process is about risk management and the decision whether or not to issue a Permit or Certificate will need to take into account a number of factors which will help to determine the level of risk that the individual might present to the community. These factors may include, for example, consideration of the nature of the offence, whether there is any pattern to the convictions, how old the offender was and how long it has been since the offences occurred.
- 19.8 The assessment of whether or not to issue a Permit or Certificate is a balancing exercise and the decision must be proportionate to the likely risk of harm that the individual presents to the community of Guernsey if a Permit or Certificate is issued. The decision must also take into account the individual's Article 8 rights – their right to respect for their private and family life and home (these rights are explained in Section 6 – *The Influence of Human Rights*). Infringing these rights could only be justified on the basis that refusing a Permit or Certificate was a reasonable and proportionate response in the interests of “public safety” or the “prevention of disorder or crime”.
- 19.9 Although the administrative details of the proposals have not been set out at this stage and there might be some practical difficulties to overcome, the principle is that any individual applying for a Permit or Certificate to move to the Island to live will be requested to provide their own criminal conviction disclosure document which they will obtain in their home area. It is very common practice for people to have to provide criminal conviction checks for employment purposes and so this information is becoming increasingly accessible. This will reduce some of the administrative issues that have arisen with the existing system and will resolve some potential data protection issues.

Interaction with Other Regimes

- 19.10 Criminal conviction checks are undertaken by a number of arms of government and organisations for a range of reasons. Some examples of these are given in Appendix E – *Other Criminal Conviction Check Regimes*. Whatever measures are included in the new population management regime, they will be designed to work alongside the provisions included in those other regimes.

The Situation Today

- 19.11 Within the current Housing Control regime, criminal conviction checks are part of the application process for anybody applying for an employment-related Housing Licence. However, these checks only apply to a very small minority of people coming to Guernsey to live. The following groups are not checked:

- The spouse / partner and other household members of an individual on an employment-related Housing Licence,
- The spouse / partner and other household members of a Qualified Resident,
- Qualified Residents returning after a break in residence,
- Anybody living in Open Market accommodation, and
- Anybody living in States owned accommodation.

Other Options

19.12 In coming to the proposals above, the PPG also considered alternative approaches which are not recommended for the reasons detailed in the discussion above. These include:

- Not including criminal conviction checks in the application process for a Permit or Certificate under the new population management regime, and
- Only requiring certain groups of people, depending on their circumstances, to have a criminal conviction check as part of the application process for a Permit or Certificate.

19.13 Proposal Q

The PPG proposes that criminal conviction checks will form part of the application process for all of those moving to Guernsey who are required to obtain a Permit or Certificate.

SECTION 20 – OTHER CONDITIONS

20.1 There are some conditions that the PPG has considered which could be applied to the holders of some types of Permit under the new regime. For the reasons described below, they are either not being proposed at all, or not being proposed for application at the introduction of the new regime.

Restricting the Maximum Age for Employment Permit Holders

20.2 Some jurisdictions apply a maximum age at which an individual can move to that jurisdiction for employment purposes. The main advantage in doing so is to assist in balancing the demographic make-up of an ageing population. Another reason cited is to ensure that an individual has the opportunity to contribute

financially, through their taxes, for the services that they might want to draw upon as they themselves become older.

- 20.3 The disadvantages of doing so are that this provides an instant limitation on the size of the pool of available employees and this was one of the issues raised during the consultation process by a few of the community, business and professional organisations. Additionally, many of the posts which might attract a Permit associated with employment in such jurisdictions are likely to require significant experience in a particular field, something that is often demonstrated by employees who are in the latter stages of their career.
- 20.4 The PPG does not believe that there is enough evidence at this time to ensure that the advantages would outweigh the disadvantages of any such measure
- 20.5 For this reason, the PPG proposes that a maximum age restriction for Employment Permit holders should be built into the new regime as a condition which could be applied at some point in the future, if there is a legitimate reason for doing so. It is proposed that such a condition would be able to be “activated” by the States in the future, should the need arise.

Restricting the Employment Options of Family Members

- 20.6 As described in Section 14 – *Residence Permits – Family Connections*, it is recognised that people might want to live in Guernsey because they have strong family connections with an individual who is already permitted to live here. In these cases, it is proposed that these individuals will be required to obtain a Temporary Residence Permit and that Permit will enable the Family Member to work if they so wish.
- 20.7 However, there is a concern that, should the unemployment situation deteriorate, the Island could find itself in a position where substantial numbers of skilled Qualified Residents are unable to find employment. This would however, be balanced by a reduction in the need for Employment Permits, except for the most specialised posts.
- 20.8 Because of the concern above, and as expressed by a small minority of respondents during the consultation process, there is a view that employment options for family members should be restricted to posts which would attract an Employment Permit because of a skill or manpower shortage in the Island. The PPG does not recommend this restriction at the current time because it does not believe that there is any evidence to suggest that the unemployment situation in the Island would be improved by such a measure.
- 20.9 In Section 14 – *Residence Permits – Family Connections*, it was explained that anecdotal evidence suggests that having this group of people available as part of the general workforce might well have contributed to the growth of some Island businesses, thereby creating increased job opportunities for the Island, not less.

- 20.10 The demographic challenges which the Island faces in terms of its ageing population suggest that Guernsey should be actively encouraging anybody of working age in the Island to be economically active. The Skills Strategy Development Group is examining this matter under its 'Participation' pillar and to restrict the employment options of some members of the available workforce further would seem to run contrary to that aim.
- 20.11 The additional administrative commitment that would be required, combined with the potential to deter prospective employees that the Island needs in order to fill essential posts, suggests that there would need to be substantial benefits gained from the introduction of such a condition. The PPG has not found any evidence to suggest that that is likely to be the case today, or in the future.
- 20.12 For these reasons, the PPG does not propose that a provision for restricting the employment options of family members should be included within the new regime.

Restricting Access to Services

- 20.13 There is a view that restricting access to certain public services should be a condition for the holders of some types of Permit, at least for their initial period of residency. The PPG has concluded that any restrictions placed on who can and cannot access public services, for example health care and social benefits, should be determined by the service providers themselves through their own "terms and conditions" and must be determined on the basis of need, not on the type of Permit that an individual holds.
- 20.14 The Legislative and Policy Framework described in Section 10 means that the new population management regime will be able to react to such measures if a particular service provider was successful in bringing in any such proposal in the future. The PPG believes that there is therefore no requirement for this condition to be directly included within the new regime.

20.15 Proposal R

The PPG proposes that:

- 1 There will be no restriction on the type of work that the holder of a Temporary Residence Permit can undertake.
- 2 There will be no conditions restricting access to public services built into the new regime, although it will be able to react to such restrictions if they are introduced by service providers.
- 3 There will be provision in the new Law to place a maximum age limit on

applicants for Employment Permits which could be activated by the States in the future if there is an identified and proven need to do so.

SECTION 21 – OTHER ISLANDS OF THE BAILIWICK

- 21.1 The proposals contained in this report are, at this stage, primarily concerned with the Island of Guernsey. However, it will be important to determine how the other islands of the Bailiwick, and their residents, might be considered as part of the new population management regime.
- 21.2 It is therefore important to understand the relationships that exist between the islands in terms of the way that government and legislation is administered. These relationships are important in respect of how the other islands might be able to, or want to, be integrated within the new population management regime. The different relationships are explained below.
- 21.3 The Bailiwick of Guernsey includes the three separate jurisdictions of Guernsey, Alderney and Sark. The islands of Herm, Jethou and Lihou are part of Guernsey and the Island of Brecqhou is part of Sark.

Alderney

- 21.4 Alderney is governed by the States of Alderney. However, the States of Guernsey exercise financial and administrative responsibility for certain public services in Alderney and it applies Guernsey taxes, duties and impôts, which accrue to Guernsey general revenues. The States of Guernsey legislates for Alderney in respect of those services for which Guernsey has responsibility and in recognition of this, Alderney is represented by two members in the States of Deliberation.
- 21.5 The States of Guernsey may legislate for Alderney in any matter with the consent of the States of Alderney. In criminal matters and in respect of the services for which it is responsible, the States of Guernsey may legislate for Alderney without its consent.

Sark

- 21.6 Sark is governed by the Chief Pleas of Sark who, by means of a committee system, administer the functions of government in a manner broadly similar to the States of Guernsey and the States of Alderney. As with Alderney, the States of Guernsey may legislate for Sark in criminal matters without the agreement of Chief Pleas, but on any other matter only with its prior agreement.

Further Consultation

- 21.7 As part of the development process for the new population management regime, the PPG is continuing to ascertain the views of those living in the other islands of the Bailiwick about how those other islands and their residents might be included within, or otherwise interrelate to, the new population management regime.
- 21.8 A wide range of differing views have so far been expressed during the consultation process and, given the early stage in the development of the new regime, the PPG believes that the proposals being debated should at this stage be concerned only with the Island of Guernsey, excluding Herm (it is important to note that the current Housing Control regime does not apply to Herm). Once the States has debated the guiding principles of a new regime, dialogue with the other Islands will continue.

The Situation Today

- 21.9 The current Housing Control regime only applies to the Island of Guernsey and does not apply to Herm or the other Islands of the Bailiwick. People living in those other islands:
- are not accruing any residence that will assist them to become a Qualified Resident in Guernsey,
 - gain no benefit from being born in Guernsey in the absence of maternity services in the other islands, and
 - need to apply for a Housing Licence if they want to live in Local Market accommodation in Guernsey.
- 21.10 Licences are granted in limited circumstances as set out in Housing Department policies. Broadly speaking, under the current regime Housing Licences will be granted to people resident in the other islands of the Bailiwick who, upon moving to Guernsey:
- are living with a 'host' family while in secondary education,
 - are living in Residential or Nursing Homes so long as they meet certain criteria with regard to age, length of residence in the Bailiwick and eligibility for Long Term Care Benefit, or
 - are aged under 26 and are commencing higher education or employment so long as they and/or their parents meet certain criteria with regard to their length of residence in the Bailiwick. The accommodations options associated with these types of Licence will vary depending on the individual's circumstances and will be relaxed over time.

21.11 Proposal S

The PPG proposes that:

- 1 The proposals being debated should at this stage be concerned only with the Island of Guernsey, excluding Herm.
- 2 Once the States has debated the guiding principles of a new regime, dialogue with the other islands will continue.

PART C – MOVING FORWARD

SECTION 22 – FURTHER DEVELOPMENT WORK

- 22.1 Against the background of this report and subsequent debate, it is hoped that the States will have provided clear direction for the guiding principles which will shape the further development of a comprehensive population management regime. Given the complexity of this issue, it is clear that there will still be much work to be done in order to:
- Review and progress the actions suggested within the PPG's proposals,
 - Develop the detailed proposals,
 - Consult with the public on those detailed proposals,
 - Establish the policies which will govern the day-to-day decision making,
 - Obtain various approvals of the States,
 - Draft and approve the necessary legislation, and
 - Establish the administrative arrangements to implement the new regime.
- 22.2 It is also clear that the Policy Council as it stands today cannot predict what a new Policy Council, or indeed a new States Assembly, will want to do following the election in April 2012.
- 22.3 In order to provide a degree of certainty, the Policy Council will review, taking into account the views expressed during debate by the States, and progress the actions suggested within the PPG's proposals. The Policy Council will also be recommending that, as a matter of priority following the election in April 2012, the new Policy Council publishes a detailed timetable of its intentions for the future development and implementation of a new population management regime.

Resources and Legislation

- 22.4 The Policy Council confirms its intention to continue to prioritise the resourcing of the development of the population management regime in 2012. The Policy Council anticipates being able to fund this resource requirement from its existing budget, but will review the position later in the year.
- 22.5 In respect of 2013 and subsequent years, should there be any long term ongoing resource requirements, those additional funding requirements will be subject to prioritisation as part of the States Strategic Plan process, or whichever process for the funding of new developments is in place at that time.

- 22.6 It is also anticipated that the Treasury and Resources Department will be asked, at the appropriate time in the development process, to take account of any short term transitional costs associated with moving from the Housing Control regime to a population management regime when recommending Cash Limits for the Policy Council and the Housing Department in future years.
- 22.7 It is too early in the policy development process to consider how the making of new legislation might be resourced, albeit that the Law Officers' Chambers have been, and will continue to be, engaged in providing advice on what form that legislation might take as and when drafting is recommended.

Principles of Good Governance

- 22.8 The contents of this States Report are in accordance with the Principles of Good Governance as outlined in Billet d'État IV 2011, particularly Principles 4, 5 and 6:
- Principle 4, taking informed, transparent decisions and managing risk,
 - Principle 5, developing the capacity and capability of the governing body to be effective, and
 - Principle 6, engaging stakeholders and making accountability real.

SECTION 23 – MANAGING CHANGE

- 23.1 It is important to point out that while these proposals are about managing changes in Guernsey's population, and therefore go much further than the current Housing Control regime, the proposals are intended to replace that regime. If the States approves the recommendation at the end of this report, then there will be a date in the future when the new regime will come into effect and the current Housing Control regime will no longer apply.
- 23.2 At this early stage, it is not possible to predict what proposals might be approved by the States in the future. It is therefore not possible to predict what impact any future proposals might have on specific individuals. The detailed proposals, transitional arrangements and legislation will all be subject to debate in the States and will therefore be made public before any decisions are made.
- 23.3 **It should be emphasised that these proposals are not intended to remove, or reduce, any pre-existing rights which an individual has acquired under the existing or previous laws.**
- 23.4 The Policy Council agrees with the statement made by the PPG during the consultation process that there needs to be an acceptance that whatever regime is

designed and implemented by the States, it is unlikely to find favour with everyone. In order to address the needs of employers; to honour the Island's commitment to human rights; and to acknowledge concerns about the impact on our culture and the environment of increasing population numbers, a degree of compromise will be required between individuals and groups if a workable, sustainable and flexible regime is to be implemented. The Policy Council believes that the PPG's new proposals could provide pragmatic solutions which will satisfy the interests of the Island, but it has to be accepted that parts of the proposals might not be welcomed by some individuals.

- 23.5 Again, it is worth re-stating here that, because any successful population management regime will have an impact to a greater or lesser degree on every single member of the population, discussion prompted by this report is bound to touch on sensitive subjects. This might generate some controversy because of the anticipated personal impact that the proposals might have as they attempt to intervene in the choices people make about their lives. The Policy Council asks the States and the community to bear these points in mind when considering the contents of this States Report.

SECTION 24 – RECOMMENDATIONS

- 24.1 As described in Section 2 of this report, the Policy Council requests that this matter be debated in accordance with Rule 12(4) of the Rules of Procedure of the States of Deliberation.

- 24.2 The Policy Council recommends the States to:

Approve the replacement of the Housing Control and Right to Work Laws with a Population Management regime, based on a system of Permits for Residence and Employment, which determines and manages the circumstances under which people may reside in Guernsey, for what reasons and for how long.

L S TROTT
Chief Minister

7th November 2011

Deputy B M Flouquet, Deputy Chief Minister
Deputy C N K Parkinson
Deputy C S McNulty Bauer
Deputy M G O'Hara
Deputy C A Steere
Deputy P R Sirett

Deputy A H Adam
Deputy G H Mahy
Deputy D B Jones
Deputy M H Dorey

APPENDIX A – QUALIFICATION ROUTES

Extract from the Housing (Control of Occupation) (Guernsey) Law, 1994, as amended

Section 10 - Qualified residents not to require housing licence

- (1) Subject to the succeeding provisions of this Law, a qualified resident shall not require a housing licence to occupy a dwelling in Guernsey.
- (2) The following persons are qualified residents-
 - (a) a person-
 - (i) who, at any time during the period commencing on the 1st January, 1938 and ending on the 30th June, 1957, was ordinarily resident in Guernsey; and
 - (ii) who, on the 31st July, 1968, was occupying a dwelling in Guernsey;
 - (b) a person who, on the 31st July, 1968, was the spouse or child of a person described in paragraph (a) and who, prior to the 26th March, 1975, had been ordinarily resident in Guernsey for an aggregate of not less than 5 years;
 - (c) a person who was born in Guernsey before the commencement of this Law and who, since his birth, has been continuously ordinarily resident in Guernsey;
 - (d) a person-
 - (i) who was born in Guernsey before the commencement of this Law;
 - (ii) who has been ordinarily resident in Guernsey for an aggregate of not less than 10 years in any 20 year period; and
 - (iii) who is the child of parents at least one of whom was ordinarily resident in Guernsey at the time of the birth of that person;
 - (e) a person-
 - (i) who was born in Guernsey on or after the commencement of this Law;
 - (ii) who has been ordinarily resident in Guernsey for an aggregate of not less than 10 years in any 20 year period; and

- (iii) who is the child of parents at least one of whom is a qualified resident and was ordinarily resident in Guernsey at the time of the birth of that person;
- (f) a person who has been ordinarily resident in Guernsey for an aggregate of not less than 10 years in any 20 year period as the child of a person-
- (i) described in paragraph (d) or (e); or
 - (ii) deemed to be a person described in paragraph (d) or (e) by virtue of paragraph (m);
- (g) a person-
- (i) who has been ordinarily resident in Guernsey for a period of not less than 10 consecutive years and who has, throughout that period, cohabited with a qualified resident as his spouse; or
 - (ii) who is the surviving spouse of a qualified resident and who cohabited with him as his spouse for a period of not less than 5 consecutive years immediately prior to his death and who has been ordinarily resident in Guernsey for a period of not less than 10 consecutive years after the date of their marriage;
- (h) a person who has been ordinarily resident in Guernsey for a period of not less than 15 consecutive years and who throughout that period has been in occupation of a dwelling or dwellings-
- (i) under or by virtue of a licence granted under the Law of 1948, the Law of 1967, the Law of 1969, the Law of 1975, the Law of 1982 or section 3 of this Law; or
 - (ii) under or by virtue of successive such licences, because his employment was, by reason of his qualifications, skill or experience, essential to the community; or
 - (iii) otherwise than under or by virtue of such licences but in circumstances which, in the Authority's opinion stated in a notice served on that person, are such that his period of occupation should be treated as being occupation under or by virtue of such licences;
- (i) a person-
- (i) who is the child of a person described in paragraph (h);
 - (ii) who first occupied a dwelling in Guernsey as a minor and as a member of the household of a person described in paragraph (h); and

- (iii) who has been ordinarily resident in Guernsey for an aggregate of not less than 15 years in any 25 year period;
- (j) a person who has been ordinarily resident in Guernsey for a period of not less than 20 consecutive years and who throughout that period has been in occupation of a dwelling or dwellings-
- (i) under or by virtue of a licence (other than a licence for the occupation of a dwelling which, at the time in question, was a dwelling inscribed in Part B or C of the Housing Register or was a dwelling inscribed in Part D of the Register of which he was the owner) granted under the Law of 1948, the Law of 1967, the Law of 1969, the Law of 1975, the Law of 1982 or section 3 of this Law;
 - (ii) under or by virtue of successive such licences; or
 - (iii) otherwise than under or by virtue of such licences but in circumstances which, in the Authority's opinion stated in a notice served on that person, are such that his period of occupation should be treated as being occupation under or by virtue of such licences;
- (k) a person, whether or not born in Guernsey, who has been ordinarily resident in Guernsey for an aggregate of not less than 20 years in any 30 year period and who first occupied a dwelling in Guernsey as a minor and as a member of the household of his father or mother;
- (l) the surviving spouse of a person described in paragraph (d), (e) or (f) who died while serving in the armed forces of the Crown if the surviving spouse was cohabiting with him as his spouse immediately prior to his death and became ordinarily resident in Guernsey within a period of six months immediately following the date of his death;
- (m) a person-
- (i) whose birth took place elsewhere than in Guernsey by reason of a need for special medical or surgical care or treatment at or in connection with the birth or for other reasons or in other circumstances beyond the control of his mother;
 - (ii) whose mother was ordinarily resident in Guernsey at the time of his birth; and
 - (iii) who, but for the fact that he was born elsewhere than in Guernsey, would be a person described in paragraph (c), (d) or (e).
- (3) For the purposes of subsection (2), a person born elsewhere than in Guernsey at any time during the period commencing on the 1st June, 1940 and ending on the

31st December, 1947 shall be deemed to satisfy the requirements of subsection (2)(d)(i) and (iii) if at least one of his parents-

- (a) was ordinarily resident in Guernsey at any time during 1940;
- (b) subsequently ceased to be so ordinarily resident; and
- (c) having so ceased to be so ordinarily resident, resumed such ordinary residence before the 31st December, 1947.

APPENDIX B – HUMAN RIGHTS

THE RIGHTS

The European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) provides that certain basic rights and freedoms should be secured. These include:

- The right to life
- Freedom from torture or inhuman or degrading treatment or punishment
- Freedom from slavery or compulsory labour
- The right to liberty and security of person
- The right to fair trial for the determination of civil rights and criminal charges
- The right to respect for private and family life, home and correspondence
- The right to freedom of thought, conscience and religion
- The right to freedom of expression
- The right to peaceful assembly and association with others
- The right to marry and to found a family
- The prohibition of discrimination.

Article 8 of the Convention is the most relevant in respect of the current Housing Control regime and any new population management regime because it protects an individual's right to a private life, family life, home and correspondence. It states:

- "1. Everyone has the right to respect for his private and family life, his home and correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

THE MEANING OF "PRIVATE LIFE"

Many issues fall within the meaning of "private life". In *Kinley v the Minister for the*

*Housing Department*²³ the Court provided a clear statement of its preferred definition of “private life” by following the definition in *Human Rights Law and Practice*²⁴,

“In the leading case of Niemietz (1992) 16 EHRR 97, the ECt HR [European Court of Human Rights] pronounced that:

“The court does not consider it possible or necessary to attempt an exhaustive definition of the notion of ‘private life’. However, it would be too restrictive to limit the notion to an ‘inner circle’ in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings.

‘There appears to be no reason of principle why this understanding of ‘private life’ should be taken to exclude activities of a professional or business nature since it is in the course of their working lives that the majority of people have a significant, opportunity of developing relationships with the outside world ... his work may form part and parcel of his life to such a degree that it becomes impossible to know in what capacity he is acting at a given time.’

THE MEANING OF “FAMILY LIFE”

The concept of “family life” is not the same as that of “family”. The Court of Appeal in *Singh v Entry Clearance Officer, New Delhi*²⁵ stated,

“Family life for the purposes of Article 8 is essentially a question of fact depending on the real existence in practice of close personal ties”.

In the case of parents and minor children there is a general presumption of family life:

“... will be presumed to exist as between children and their natural parents, but exceptionally the presumption may be displaced ... the relationship between an adoptive parent and an adopted person is in principle of the same nature as a family relationship protected by Article 8”.

Wider relationships such as grandparents, grandchildren, aunts and uncles, etc will only fall within family life if there is a strong emotional tie or dependency. Relationships between adult children and their parents will not normally constitute family life unless there are special dependency issues, beyond normal emotional ties,

²³ [2009] Unreported Judgement 24/2009

²⁴ 2nd edition edited by Lord Lester of Herne Hill QC and David Pannick QC

²⁵ [2004] EWCA Civ 1075

“... a family life is not established between an adult child and his surviving parent or other siblings unless something more exists than normal emotional ties.

*Most of us have close relations of whom we are extremely fond and whom we visit; but none of us would say on those grounds alone that we share a family life with them within the meaning and purpose of Article 8”.*²⁶

The Courts have allowed interferences under Article 8(2), except where it might restrict contact between children and their parents, and seek to prevent an arbitrary interference:

*“Matters such as the age, health and vulnerability of the applicant, the closeness and previous history of the family, the applicant’s dependence on the financial and emotional support of the family, the prevailing cultural tradition and conditions in the country of origin and many other factors may all be relevant. ... the Convention confers no right on individuals or families to choose where they prefer to live.”*²⁷

THE MEANING OF “HOME”

“Home” has also been widely interpreted by the European Court but in general terms it has been taken to mean the place where an individual lives on a settled basis²⁸. The protection of “*respect for home*” implies a right of access and occupation²⁹.

The definition of “home” will depend on the individual circumstances, including his current home and anywhere else he might have established ties. Its meaning was examined in *Harrow London Borough Council v Qazi* [2004] 1 AC 983 where it was observed that:

“... the need for some protection of the home was recognised in the convention, since few things are more central to the enjoyment of human life than having somewhere to live... the expression 'home' appears to invite a down-to-earth and pragmatic consideration whether the place in question is that where a person 'lives and to which he returns and which forms the centre of his existence'.

...

*In Gillow v UK (1986)*³⁰, the court held that the house in question was the applicants' home because although they had been absent from Guernsey for many years they had not established any other home elsewhere in the United Kingdom and had retained 'sufficient continuing links' with the house for it to be considered their home for the purposes of Article 8.

²⁶ *Kugathas v Secretary of State for the Home Department* [2002] EWCA Civ 31

²⁷ *Huang -v- Secretary of State for the Home Department; Kashmiri -v- Secretary of State for the Home Department* [2007] UKHL 11

²⁸ *Murray v United Kingdom* [1994] 19 EHRR 193

²⁹ *Gillow v United Kingdom* [1986] 11 EHRR 335 and *Wiggins v United Kingdom* [1978] 13 DR 40

³⁰ *11 EHRR 335*

...A person's home is ... the place where he and his family are entitled to be left in peace free from interference by the State."

In this context "home" relates to the property in which the individual lives and not the community and place in a wider sense in which the individual is living.

Article 8 does not guarantee:

- The right to a home,
- The right to have one's housing problems being solved by the authorities, or
- For an acquired right to be protected regardless of a break in residence.

APPENDIX C – STATUTORY ROLES

There are many existing examples of statutory roles within the States which allow for clear separation between the roles of policy making and administrative decision making. Some examples are listed below. (This list is not intended to be exhaustive.)

Data Protection Commissioner

Powers under: Data Protection (Bailiwick of Guernsey) Law, 2001.

Director General of Utility Regulation

Powers under: Regulation of Utilities (Bailiwick of Guernsey) Law, 2001.

Director of Civil Aviation

Powers under: Aviation (Bailiwick of Guernsey) Law, 2008.

Director of Income Tax

Powers under: Income Tax (Guernsey) Law, 1975.

Director of Public Health

Powers under: Loi relative à la Santé Publique, 1934, Ordonnance relative à la Santé Publique, 1936 and Smoking (Prohibition in Public Places and Workplaces) (Guernsey) Law, 2005.

Director of Environmental Health and Pollution Regulation

Powers under: Loi relative à la Santé Publique, 1934, Ordonnance relative à la Santé Publique, 1936 and Environmental Pollution (Guernsey) Law, 2004.

Registrar of Companies

Powers under: Companies (Guernsey) Law, 2008.

Chief Health and Safety Officer

Powers under: Health and Safety at Work etc (Guernsey) Law, 1979, Poisonous Substances (Guernsey) Law, 1994, Food and Environment Protection Act 1985(a) as extended to the Bailiwick of Guernsey by the Food and Environment Protection Act 1985 (Guernsey) Order 1987, Loi relative aux Substances Explosives, 1939, the Safety of Employees (Miscellaneous Provisions) (Guernsey) Ordinance, 1952 and Loi relative aux Huiles ou Essences Minérales ou autres substances de la même nature, 1927.

APPENDIX D – RESTRICTING WHERE AN INDIVIDUAL CAN LIVE – CURRENT SITUATION

The Housing Control Law allows the Housing Department to attach conditions to any Licence it issues, including conditions it believes are necessary to address any housing shortages in Guernsey. The ability to limit a Licence holder's housing choices reflects the Law's primary purpose of ensuring that there is sufficient housing to meet the needs of Qualified Residents and current Housing Licence holders.

The Housing Department's approach is to attach standardised housing conditions to most essential employment-related Licences which generally take the form of restricting the holder's housing options by:

- Setting a minimum Tax on Real Property (TRP) value for the property they might wish to rent or purchase, or
- Setting a maximum number of habitable rooms (i.e. excluding kitchen and bathrooms etc.) the property which they occupy can have.

These housing restrictions are calculated solely by looking at the Licence holder's salary package (i.e. including salary, bonuses and any benefits such as a company car, housing subsidy or private health insurance). In general terms the higher the salary package of the Licence holder, the higher the minimum TRP. There is also a link between the Licence holder's salary package and the number of habitable rooms offered.

The link between TRP and salary is important as not all Licence holders are on high incomes. For example nurses, social workers and teachers will be on relatively modest salaries.

As TRP is calculated based on the size of the property, an assumption has been made that the higher the TRP, the more expensive the property is likely to be. So, by setting a minimum TRP value by reference to the salary of the Licence holder, those with higher incomes are directed to rent or buy larger properties.

The option based on a maximum number of habitable rooms is mainly aimed at single Licence holders or couples without children, who might prefer to rent or buy a smaller property rather than occupy a larger property which might be too big for their needs using their TRP option.

The Housing Department has advised the PPG that using these options has a number of benefits, including:

- TRP is set by the Treasury and Resources Department and is calculated based on the measurements of the dwelling,

- A property's TRP is published and easily accessible, and
- The use of TRP or number of habitable rooms reduces the possibility of under-occupancy as a single individual with a high salary can be permitted to live in a smaller property rather than a larger one.

However, the Housing Department has also advised the PPG that the use of TRP-based housing controls is far from ideal for a number of reasons and these are listed below.

- a) The relationship between the cost of a property and its TRP is not as clear cut as it might first appear. Many other factors determine property prices – location, size of garden, parking, age and state of repair, etc. and so two properties with the same TRP can vary significantly in price.
- b) The housing needs and preferences of individuals vary – the number and age of any children, whether they have pets, their lifestyle and interests, etc - will all be factors that influence the type of accommodation an individual wants; two Licence holders within the same TRP band might have very different housing needs / preferences.
- c) The TRP calculation is solely based on the Licence holder's employment income. It does not include any other assets, income or expenditure the individual and their household might have, for example the income of their partner if they have one.
- d) Neither the demand for, or the supply of, property at all price points in the housing market is uniform. By directing Licence holders to parts of the housing market based solely on their income, additional demand might be placed on certain parts of the housing market which might contribute to inflated property prices.
- e) When an individual is looking to purchase a property, the TRP band does not take into account their borrowing capacity, i.e. whether or not they can obtain a mortgage to purchase a property within those options.
- f) The assessment of the number of habitable rooms can be less than straightforward, particularly where the property is open plan or some of its rooms are very small.
- g) The TRP banding and number of habitable rooms apply throughout the duration of the Housing Licence. Therefore when a Licence holder wants to move house during this time, they must check with the Housing Department to see whether their TRP / habitable room threshold has changed because of changes in their salary package since the Licence was first granted.
- h) For many essential employment-related Licence holders, securing employment is only one aspect of their decision to move to Guernsey. Finding a suitable home is also important and the use of housing conditions can lead to a tension for the Licence holder, e.g. he has found a job he wants to take, but his family's focus is likely to be on their new life and home in Guernsey. However, what type of property they can afford, or indeed whether they can afford to move to Guernsey at

all, cannot be fully explored until the TRP banding is known and, for example, the Licence holder's spouse has found employment, they have sold any existing property, etc.

It has already been mentioned that the current system is difficult and time consuming to administer. This situation becomes even more resource intensive because many Licence holders need to ask the Housing Department for permission to buy or rent a house of a lower TRP, or with more rooms because they are unable to find or afford a property within the options they have been set.

When the Housing Department receives such requests it has to ask the individual to provide full details of their financial position (i.e. all assets, income and outgoings, including debts, maintenance payments, etc), properties they have considered and rejected, and the reasons why. This can be a very intrusive exercise, but it is the only way that the Housing Department can obtain all of the information that it needs to reconsider the level of the TRP banding/number of habitable rooms associated with a particular Licence. It also has to look at what properties are available to rent or buy in the Island at that particular time.

This is also a very time consuming process and, of course, the property market is not static – it changes daily. In many cases the Licence holder will approach the Housing Department having found a property that they want to rent or buy but are unable to do so because it falls outside their options. In these cases, time is often of the essence as the individual will be pressing for an answer in order to secure the property.

The Housing Department has advised the PPG that in most cases a potential Licence holder will not accept a post until he has found a suitable and affordable property. Restricting where a Licence holder can live acts as another obstacle which the individual has to deal with when property hunting and in some cases results in the individual deciding not to take up the job offer. It is important to remember that the Licence has been granted because the post the individual will be filling is essential to Guernsey's economy and there is no Qualified Resident available to fill it.

When a job offer is not accepted for these reasons, the employer is frustrated and keen to avoid any repetition when another candidate for the post is found. In addition to adding to the Housing Department's work load, such cases also further undermine confidence in the Housing Control regime, increase recruitment costs and might lead to breaks in business or service continuity if the post remains unfilled for a protracted period. Several respondents during the consultation process cited their own difficulties in finding a suitable property when taking up essential employment in Guernsey and some employers gave examples of people who had not taken up offers of employment for similar reasons. Several of the responses from community, business and professional organisations also referred to the difficulties their members had experienced when recruiting key staff, which were specifically linked to the application of controls on where an individual can live.

APPENDIX E – OTHER CRIMINAL CONVICTION CHECK REGIMES

Immigration Regime

The Immigration Rules provide that an individual with an unspent³¹ criminal conviction may be refused entry to the UK. These rules apply to Guernsey, insofar as non – European Economic Area citizens are concerned, through the extension of the Immigration Act 1971 and the Bailiwick’s Immigration Rules.

European Union Directive on the Free Movement of Persons

The European Union (EU) law on free movement of persons for the purpose of taking up work or engaging in other economic activity does not apply in Guernsey. However, the special relationship that Guernsey has with the EU under Protocol 3 to the UK’s 1972 Act of Accession (subsequently extended to include Iceland, Liechtenstein and Norway as the European Economic Area (EEA)) incorporates the principle of non-discrimination on grounds of nationality. This generally means that different treatment cannot be afforded to nationals of other EEA States coming to, and already in, Guernsey than it is to British citizens. Therefore it would not be lawful to issue a Permit to a UK citizen with a criminal conviction but refuse a similar application from the citizen of another EEA country.

EEA citizens can only be excluded from the UK (and therefore Guernsey) on very limited grounds of public policy, public security or public health and previous criminal convictions cannot alone constitute grounds for taking such measures.

Safeguarding Regime

The UK Safeguarding Vulnerable Groups Act 2006 provides the legal framework for the Vetting and Barring Scheme. The Scheme aims to provide a comprehensive, centralised, integrated and updated system to prevent unsuitable people from gaining access to vulnerable groups through their work (paid or voluntary), and to ensure that those who become unsuitable do not continue in such work. The Act makes it an offence for an employer to employ an individual without having made appropriate checks through the Scheme. In September 2009 the States approved proposals for parts of this Act to be extended to the Bailiwick and for local legislation to be drafted to replicate the offences contained within the 2006 Act.

³¹ **Spent Convictions** - A ‘spent’ conviction is one which the individual concerned does not have to reveal or admit its existence in most circumstances. This means that once their conviction is spent, they do not have to disclose it when filling in application forms, applying for insurance, jobs, or when asked. An employer cannot refuse to employ an individual because he or she has a spent conviction. They are also not permitted to dismiss them on that ground. However, there are some exceptions relating to certain types of employment. Some convictions are never ‘spent’.

Unspent Convictions - If an individual is convicted of an offence and a sentence of more than 30 months is imposed, the conviction is never spent. As it remains an unspent conviction, the individual must always disclose their conviction when asked about their criminal record.

Regulation within the Financial Services Sector

Anybody working at managerial level and above and controllers within a Financial Services Business are required under the Regulation of Fiduciaries, Administration Business and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 to disclose details of any unspent convictions and any “relevant” spent convictions, e.g. a conviction for fraud, money laundering, etc. Although there is no statutory requirement for more junior staff to be checked, most employers will ask all staff to provide an appropriate level of disclosure to ensure the future integrity of the business.

(NB The Treasury and Resources Department notes that if the recommendation is accepted, the Policy Council will return to the States with detailed proposals. These detailed proposals may have resource implications, either in respect of short-term transitional costs or longer-term, ongoing funding requirements. Any proposals for increasing States expenditure must be considered within the existing corporate governance framework through the mechanism of the annual Budget process for short-term measures or the States Strategic Plan, for prioritising service developments.)

The States are asked to decide:-

1.- Whether, after consideration of the Report dated 7th November, 2011, of the Policy Council, they are of the opinion:-

To approve the replacement of the Housing Control and Right to Work Laws with a Population Management regime, based on a system of Permits for Residence and Employment, which determines and manages the circumstances under which people may reside in Guernsey, for what reasons and for how long.

(NB The Policy Council has requested that this matter be debated in accordance with Rule 12(4) of the Rules of Procedure of the States of Deliberation which provides:

“Where a Department or Committee originating a matter for debate before the States is of the opinion that the proposals it is submitting to the States are ones of general policy, and where it is desirable that the general principles of that policy should be considered, the Department or Committee may request that its propositions be considered by the States without amendment, on the understanding that if the propositions are accepted, the Department or Committee would return with detailed proposals which could be accepted or rejected, together with any amendments.....”)