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PROJET DE LOI

ENTITLED

The Population Management (Guernsey) Law, 2016

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PROJET DE LOI

ENTITLED

The Population Management (Guernsey) Law, 2016

THE STATES, in pursuance of their Resolutions of the 26th January, 2012^a, 28th June, 2013^b, 29th July, 2014^c, 24th June, 2015^d, 29th July, 2015^e and 10th December, 2015^f have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

PART 1

ESTABLISHMENT OF THE OFFICE OF THE ADMINISTRATOR OF POPULATION MANAGEMENT

Establishment of Office of Administrator.

1. (1) There is hereby established an office to be known as the Office of the Administrator of Population Management ("**the Office of the Administrator**").

(2) The holder of that office shall be known as the Administrator of Population Management ("**the Administrator**").

(3) The Administrator shall be appointed by the States Committee for Home Affairs ("**the Committee**").

^a Billet d'État No. I of 2012.

^b Article 1 of Billet d'État No. XI of 2013.

^c Article VI of Billet d'État No. XVI of 2014.

^d Article VI of Billet d'État No. XI of 2015.

^e Articles VI and VII of Billet d'État No. XIV of 2015.

^f Article XIV of Billet d'État No. XX of 2015.

(4) The Administrator shall, subject to the terms and conditions of his appointment, exercise the functions assigned or transferred to him by or under this Law and any other enactment.

(5) The Administrator may do anything that appears to him to be necessary, conducive or expedient to or for the carrying out of his functions or incidental to their proper discharge.

(6) The Administrator shall act compatibly with Convention rights, and with fairness and impartiality, when exercising his functions.

(7) For the purposes of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^g -

(a) the Office of the Administrator is a public office, and

(b) the Administrator is an office holder.

(8) The provisions of Schedule 1 have effect in respect of the Office of the Administrator.

Duty of Administrator to take account of States population policies.

2. (1) When exercising his functions under this Law, the Administrator shall be under a duty to take account of –

(a) strategic objectives of the States that he considers are relevant to those functions,

(b) to the extent that they are not inconsistent with (a), approved policies of the States relating to the size and composition of the population, and the availability of housing, and

^g Ordres en Conseil Vol. XXXIII, p. 478; as amended by Recueil d'Ordonnances Tome XXIX, p. 406.

- (c) to the extent that they are not inconsistent with (a) and (b), policies of the Committee relating to the management of the population.

(2) The objectives and policies mentioned in subsection (1) are referred to in this Law as "**States population policies**".

PART 2 CONTROL OF RESIDENCE AND EMPLOYMENT

CHAPTER 1 PERMANENT RESIDENTS, ESTABLISHED RESIDENTS, OPEN MARKET RESIDENTS

Permanent Residents.

3. The following persons are Permanent Residents –
 - (a) a person (A) who was born in Guernsey on or after Commencement, one of whose birth parents (B) was born in Guernsey, where –
 - (i) B was ordinarily resident at the time of A's birth, and
 - (ii) one of B's parents was born in Guernsey,
 - (b) a person who –
 - (i) was born in Guernsey on or after Commencement, and
 - (ii) completes an aggregate period of eight years ordinary residence in an 18 year period,

one of whose parents –

- (A) is (or was before his death, as the case may be) a Permanent Resident, and
 - (B) was ordinarily resident at the time of the person's birth,
- (c) a person who –
 - (i) was first resident on or after Commencement as a minor in the household of one or both of his parents, and
 - (ii) completes an aggregate period of eight years ordinary residence in an 18 year period,
 one of whose parents –
 - (A) is (or was before his death, as the case may be) a Permanent Resident, and
 - (B) was born in Guernsey,
- (d) a person who on or after Commencement starts and completes a period of eight consecutive years ordinary residence, one of whose parents –
 - (i) is (or was before his death, as the case may be) a Permanent Resident, and
 - (ii) was born in Guernsey,
- (e) a person who –
 - (i) was born in Guernsey on or after Commencement at a time when one of his parents was ordinarily resident, and

- (ii) completes an aggregate period of 14 years ordinary residence in a 24 year period,
- (f) a person who –
 - (i) was first resident on or after Commencement as a minor in the household of one or both of his parents, and
 - (ii) completes an aggregate period of 14 years ordinary residence in a 24 year period, and
- (g) a person who on or after Commencement starts and completes a period of 14 consecutive years ordinary residence in a Local Market dwelling.

Permanent Residents: supplementary provisions.

4. (1) A Permanent Resident may occupy, and be the householder of, a Local Market dwelling and an Open Market dwelling.

(2) For the avoidance of doubt, a person does not cease to be a Permanent Resident if he ceases to be ordinarily resident.

(3) A Permanent Resident may accommodate in a Local Market dwelling only –

- (a) (subject to the provisions of section 72) his immediate family members, and
- (b) a person who may otherwise occupy a Local Market dwelling under this Law.

Established Residents.

5. (1) A person who completes a period of eight consecutive years ordinary residence in a Local Market dwelling is an Established Resident.

(2) Subject to the provisions of this Law, an Established Resident may occupy a Local Market dwelling and an Open Market dwelling.

(3) An Established Resident may be the householder of a Local Market dwelling only if he is the holder of -

- (a) an Established Resident Certificate, or
- (b) a Discretionary Resident Permit that permits him to be a householder.

(4) An Established Resident who is the householder of a Local Market dwelling may accommodate only -

- (a) (subject to the provisions of section 72) his immediate family members, and
- (b) any person who may otherwise occupy a Local Market dwelling.

(5) A person ceases to be an Established Resident if he ceases to be ordinarily resident, other than pursuant to an agreed absence.

Permanent Residents and Established Residents: transitional provisions.

6. (1) The following persons are Permanent Residents -

- (a) a person (A) who -
 - (i) was born in Guernsey,
 - (ii) was under eight years of age on Commencement, and
 - (iii) on Commencement has been ordinarily resident since birth,

and one of whose birth parents (B) was born in Guernsey, where -

(A) B was ordinarily resident at the time of A's birth, and

(B) one of B's parents was born in Guernsey,

(b) a person who was a qualified resident under the Housing Control Law,

(c) a person who –

(i) is ordinarily resident on Commencement, and

(ii) completes after Commencement a period of 14 consecutive years ordinary residence in a Local Market dwelling,

(d) a person who, after Commencement, satisfies the conditions of becoming a qualified resident under section 10(2)(d), (e), (f), (i), (k) or (m) of the Housing Control Law, in circumstances where he was first ordinarily resident before Commencement,

(e) a person who is –

(i) ordinarily resident on Commencement, and

(ii) the spouse or partner of a person (C) who is a Permanent Resident,

and who has completed, or who completes after Commencement, a period of ten consecutive years ordinary residence in co-habitation with C,

(f) a person who on Commencement was –

- (i) ordinarily resident, and
- (ii) in cohabitation with his spouse or partner, who was on Commencement or subsequently became a Permanent Resident, and who has died since Commencement,

and who has completed, or who completes after Commencement, a period of ten consecutive years ordinary residence since he started co-habiting with his spouse or partner, and

(g) a person who on Commencement was –

- (i) ordinarily resident, and
- (ii) the surviving spouse or partner of a person who–

(A) was a qualified resident under the Housing Control Law, and

(B) cohabited with him as his spouse or partner for a period of not less than five consecutive years immediately prior to his death,

and who has completed, or who completes after Commencement, a period of ten consecutive years ordinary residence.

- (2) A person who –
 - (a) is ordinarily resident on Commencement, and
 - (b) completes after Commencement a period of eight consecutive years ordinary residence in a Local Market dwelling,

is an Established Resident.

Open Market Residents.

7. An Open Market Resident is a person who lawfully occupies an Open Market dwelling and who may not occupy a Local Market dwelling; and this subsection is to be construed consistently with section 72.

Householders of Open Market dwellings.

8. (1) An Open Market Resident who holds an Open Market Resident Certificate is the householder of the dwelling he occupies.

(2) If no Open Market Resident Certificate holder is in occupation of an Open Market dwelling, then –

- (a) if there is only one lawful occupier of the dwelling of at least 16 years of age, that person shall be the householder for the purposes of this Law,
- (b) if there is more than one such lawful occupier, the Administrator shall decide, in such a way as he thinks fit in all the circumstances of the case, which of them shall be the householder for the purposes of this Law.

(3) The householder of an Open Market dwelling may accommodate –

- (a) his immediate family members,

- (b) a person who may be the householder of a Local Market dwelling, together with any persons who could be accommodated by that person if he were such a householder,
- (c) the holder of a Short Term Employment Permit, and
- (d) the holder of a Discretionary Resident Permit that permits the holder to be so accommodated.

(4) The householder of an Open Market dwelling occupying a dwelling inscribed in Part A who is -

- (a) the holder of an Open Market Resident Certificate (Part A), or
- (b) a person who may be the householder of a Local Market dwelling,

may accommodate, in addition to the persons listed in subsection (3) -

- (i) his extended family members,
- (ii) one lodger who holds a valid Open Market Lodger Resident Permit (Part A),
- (iii) full-time household staff members, and
- (iv) immediate family members of full-time household staff members.

CHAPTER 2

CERTIFICATES AND PERMITS: GENERAL PROVISIONS

Control of Residence and Employment by Certificates and Permits.

9. (1) Subject to the provisions of this section and Parts 4 and 5, no person shall be -

- (a) resident, or
- (b) employed,

unless he holds a valid Certificate or Permit.

(2) For the avoidance of doubt, the holder of -

- (a) a Resident Certificate or a Resident Permit may be resident and (unless the Resident Permit provides to the contrary on its face) be employed, and
- (b) an Employment Permit may be employed and be resident.

(3) A person who is -

- (a) under 16 years of age,
- (b) lawfully accommodated, and
- (c) not employed,

may be resident without holding a Certificate or Permit, and this Law (including but not limited to Schedule 2 (Resident Permits)) shall be construed accordingly.

(4) For the purposes of this Part of the Law, time a person spends in occupation of an Open Market dwelling in circumstances where the Administrator has confirmed in writing that he could have lawfully been in occupation of a Local Market dwelling, shall be deemed to be time spent in occupation of a Local Market dwelling.

(5) The following persons may be employed without holding a Certificate or Permit -

- (a) a person engaged in employment in a visit to Guernsey not exceeding 15 hours, and
- (b) a person whose employer is not resident at a time when the person concerned has been employed in Guernsey –
 - (i) on no more than ten days during the preceding 30 days, and
 - (ii) on no more than 90 days during the preceding 12 months.

(6) A person employed pursuant to an appointment made by Her Majesty's Warrant, Letters Patent or Commission (whether or not the appointee is or may be entitled to remuneration out of money provided by the States) may be resident and employed without holding a Certificate or Permit.

(7) The holder of a Certificate or Permit (other than the holder of a Permanent Resident Certificate) must inform the Administrator, in such form as the Administrator may require, within four weeks of ceasing to be resident, or changing address within Guernsey; and a person who contravenes this requirement is liable to the imposition of a civil penalty under section 52(3).

(8) For the avoidance of doubt, only a person so specified in this Law may –

- (a) occupy,
- (b) be the householder of,

a Local Market dwelling.

Certificates and Permits non-transferrable.

10. A Certificate or Permit is personal to the holder and may not be transferred to another person.

Administrator's general powers and duties in respect of Certificates and Permits.

11. (1) Subject to section 40, the Administrator may –

- (a) refuse to issue a Certificate or grant a Permit,
- (b) issue a Certificate (other than a Permanent Resident Certificate), or, subject to subsection (2), grant a Permit, subject to conditions (in addition to the conditions specified in this Law relating to the issue of Certificates and the grant of classes of Permits),

if he is satisfied that there are reasonable grounds for doing so, and this Law shall be construed accordingly.

(2) The Administrator may not grant a Long Term Employment Permit, a Medium Term Employment Permit or (subject to section 24(4)) a Short Term Employment Permit containing a condition which has the effect of preventing the holder from occupying a dwelling of a specified class, or classes, however identified or defined, of Local Market dwellings.

(3) Subject to section 41, the Administrator may at any time (either of his own volition, or on a request being made to him) –

- (a) impose a condition in respect of an issued Certificate (other than a Permanent Resident Certificate) or a granted Permit, or
- (b) vary or remove a condition subject to which a Certificate was issued or a Permit was granted,

if he is satisfied that there are reasonable grounds for doing so.

- (4) A Certificate or Permit shall cease to be valid –
 - (a) upon its expiry on the date specified on its face in that regard (if any),
 - (b) upon the grant to the holder of another Certificate or Permit,
 - (c) if any condition of it is contravened, or
 - (d) if the Administrator revokes it.

(5) Subject to section 41, the Administrator may revoke a Certificate or Permit if –

- (a) the application in consequence of which the Certificate or Permit was granted failed to disclose any criminal conviction that was not, at the time, spent for the purposes of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002^h, in circumstances where the Administrator required the disclosure of such convictions from the applicant under section 15 or 21,
- (b) any person is convicted of an offence under section 46(1) in connection with the application in consequence of which the Certificate or Permit was issued or granted,
- (c) he is satisfied that the Certificate or Permit was issued or granted in error, or

^h Ordres en Conseil Vol. XLII, p. 3; there are amendments not relevant to this enactment.

- (d) the holder applies in that behalf to the Administrator.

(6) For the avoidance of doubt, where an Established Resident Certificate, a Resident Permit or an Open Market Employment Permit (Part A) ceases to be valid by reason of effluxion of time, and the Administrator is satisfied that the holder continues to be a person who is entitled to hold such a Certificate or Permit, he may, on a further application being made to him in such form as he may require, and on the payment of such a fee as the Committee may prescribe, issue or grant a further Certificate or Permit for such period and subject to such conditions as he thinks reasonable.

Circumstances in which applications need not be considered.

12. (1) The Administrator shall have no obligation to proceed to consider an application for a Certificate or Permit where -

- (a) the application is a further application (that is to say, an application which relates to a person or household in respect of whom a previous application has been received by the Administrator),
- (b) in the opinion of the Administrator, that further application discloses no significant change in any material circumstances concerning that person or household since the determination of the previous application, and
- (c) either -
 - (i) an appeal under section 43, relating to a previous application concerning that person or household, has been commenced but not yet determined, or
 - (ii) within the period of 12 months immediately preceding receipt of the further application -

- (aa) a previous application has been determined by the Administrator,
- (bb) an appeal under section 43, relating to a previous application, has been determined, or
- (cc) the Administrator has, in accordance with this section, declined to consider a previous application.

(2) For the purposes of subsection (1), an application relates to a household if it is an application for a Discretionary Resident Permit and, in the opinion of the Administrator, its determination will affect members of the applicant's household.

CHAPTER 3 RESIDENT CERTIFICATES AND RESIDENT PERMITS

Resident Certificates.

13. (1) A "**Resident Certificate**" means one of the following certificates that may be issued by the Administrator under this Law –

- (a) a Permanent Resident Certificate,
- (b) an Established Resident Certificate, and
- (c) an Open Market Resident Certificate.

(2) For the avoidance of doubt, a Resident Certificate confirms the status of the holder as a Permanent Resident, an Established Resident or an Open Market Resident, as the case may be.

Classes of Resident Permits.

14. A "**Resident Permit**" means one of the following permits that may be granted by the Administrator under this Law –

- (a) an Established Resident Permit,
- (b) a Family Member Resident Permit,
- (c) a Discretionary Resident Permit,
- (d) an Open Market Family Member Resident Permit,
- (e) an Open Market Employee Family Member Resident Permit,
- (f) an Open Market Lodger Resident Permit (Part A),
- (g) an Open Market HMO Resident Permit (Part D).

Applications for Resident Certificates and Resident Permits

Applications for Resident Certificates and Resident Permits: general.

15. (1) A person wishing to obtain a Resident Certificate or a Resident Permit shall apply to the Administrator –

- (a) in such form and manner, and giving such information, as the Administrator may require, and
- (b) in accordance with such provisions relating to time periods for the making of applications, and the payment of fees, as the Committee may prescribe.

(2) Regulations under subsection (1)(b) may make provision for the payment of different fees in different circumstances, and in respect of applications made other than in accordance with prescribed time periods.

(3) For the avoidance of doubt, in relation to applicants for a Resident Permit who are not ordinarily resident at the time of application, information that the Administrator may require under subsection (1) includes the

disclosure of any criminal convictions that are not spent for the purposes of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002.

(4) Upon receipt of an application under subsection (1) and at any time thereafter the Administrator may require the applicant to supply such additional information as he may reasonably consider necessary to determine the application.

Applications for Resident Certificates: Permanent Residents and Established Residents.

16. (1) On receipt of an application for a Permanent Resident Certificate, where the applicant has complied with any requirements imposed under section 15 and the Administrator is satisfied that the applicant is a Permanent Resident, the Administrator shall issue him a Permanent Resident Certificate.

(2) On receipt of an application for an Established Resident Certificate, where the applicant has complied with any requirements imposed under section 15 and the Administrator is satisfied that one of the conditions in subsection (3) is satisfied in respect of him, the Administrator shall issue the applicant an Established Resident Certificate, which must specify the date on which it shall cease to be valid.

(3) The conditions are that the applicant is an Established Resident, and immediately prior to becoming an Established Resident was –

- (a) the holder of a Long Term Employment Permit, or
- (b) pursuant to section 56 (Continuing validity of documents issued under the old regime), the holder of a housing licence issued under the Housing Control Law entitling the holder to be ordinarily resident, other than –
 - (i) a short-term housing licence, or
 - (ii) a licence requiring the holder to live only in the household of a person lawfully occupying

a Local Market dwelling.

Applications for Resident Certificates: Open Market Residents.

17. (1) Subject to subsection (3), on receipt of an application for an Open Market Resident Certificate, where –

- (a) the applicant has complied with any requirements imposed under section 15, and
- (b) the Administrator is satisfied the applicant is –
 - (i) entitled to lawfully occupy an Open Market dwelling but not entitled to lawfully occupy a Local Market dwelling, and
 - (ii) the owner or lessee of the dwelling he is occupying or proposing to occupy,

the Administrator shall issue him an Open Market Resident Certificate.

(2) The Administrator shall not issue an Open Market Resident Certificate in circumstances where it appears to him that, as a result of that issue, there would be more than one person in occupation of an Open Market dwelling holding an Open Market Resident Certificate.

Periods of validity of Resident Certificates.

18. Subject to the provisions of this Law providing for Resident Certificates to cease to have effect, in certain circumstances, for reasons other than the effluxion of time –

- (a) a Permanent Resident Certificate is valid in perpetuity, and
- (b) an Established Resident Certificate, and an Open Market Resident Certificate, is valid for the period specified on its face, and will cease to be valid before the expiry of that period if the holder ceases to be an Established Resident or an

Open Market Resident (as the case may be).

Applications for, and periods of validity of, Resident Permits.

19. Schedule 2 (Resident Permits) has effect.

CHAPTER 4
EMPLOYMENT PERMITS

General

Classes of Employment Permit.

20. (1) An "**Employment Permit**" means one of the following permits that may be granted under this Law –

- (a) a Long Term Employment Permit,
- (b) a Medium Term Employment Permit,
- (c) a Short Term Employment Permit, and
- (d) an Open Market Employment Permit.

(2) An Open Market Employment Permit means one of an Open Market Employment Permit (Part A), an Open Market Employment Permit (Part B) and an Open Market Employment Permit (Part C).

Applications for Employment Permits: general.

21. (1) In this section, "employer" includes prospective employer, "employee" includes prospective employee, and a "self-employed person" includes a person who intends to be self-employed.

(2) An application for an Employment Permit may be made only by –

- (a) the employer of the person to whom the application relates, or

(b) a self-employed person (in respect of himself).

(3) A person wishing to obtain an Employment Permit shall apply to the Administrator in such form and manner and giving such information as the Administrator may require, and making payment of such a fee as the Committee may prescribe.

(4) For the avoidance of doubt, in relation to an application for an Employment Permit where the person to whom the application relates is not ordinarily resident at the time of application, information that the Administrator may require under subsection (3) includes the disclosure of any criminal convictions that are not spent for the purposes of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002.

(5) The Administrator may require information to be provided under subsection (3) by the person to whom the application relates, his employer, or both.

(6) An application under subsection (3) must specify to what class of Employment Permit the application relates.

(7) Upon receipt of an application under subsection (3) and at any time thereafter the Administrator may require the employer or the person to whom the application relates, or both, to supply such additional information as he may reasonably consider necessary to determine the application.

(8) An employer or self-employed person may not make an application for an Employment Permit –

(a) after the person to whom the application relates has become employed in the post to which the application relates, or (as the case may be and for the avoidance of doubt) has become self-employed in Guernsey, or

(b) if the person to whom the application relates is not

ordinarily resident, after he has entered Guernsey for the purposes of seeking employment,

except in such circumstances, and subject to such conditions (including the payment of such fee), as the Committee may by regulations provide, and this Chapter shall be construed accordingly; and for the avoidance of doubt, such regulations may provide for the payment of a fee in a sum greater than any that may be prescribed under subsection (3).

Grant, refusal and conditions of Employment Permits: general.

22. (1) The Administrator, when considering whether to grant an Employment Permit, shall take into account such factors as he considers relevant in all the circumstances of the case.

(2) Without prejudice to the generality of subsection (1), he shall take into account in each case States population policies relating to the sector of the economy and the occupation to which the application relates, and the grant of the relevant class of Employment Permit, and he may only grant an Employment Permit in any particular case if he is satisfied that its grant is in accordance with those policies.

(3) An Employment Permit shall specify –

- (a) the person to whom it relates,
- (b) the employer to whom it relates,
- (c) the post to which it relates,
- (d) the date upon which it will (unless it ceases to have effect earlier under the provisions of this Law) expire, and
- (e) any conditions imposed by the Administrator in respect of the Permit under section 11(1)(b) or 11(3).

Long, Medium and Short Term Employment Permits

Long Term and Medium Term Employment Permits.

23. (1) Subject to subsection (2), a Long Term Employment Permit (in this Part, an "LTEP") may be granted for a period of up to eight years, and shall specify the date upon which it will (unless it ceases to be valid earlier under the provisions of this Law) cease to be valid.

(2) The Administrator may grant an LTEP for a period of up to one month in excess of the period specified in subsection (1) in any case where he considers that to do so would –

- (a) facilitate better administration, and
- (b) not be contrary to States population policies.

(3) A Medium Term Employment Permit (in this Part, an "MTEP") may be granted for a period of up to five years, and shall specify the date upon which it will (unless it ceases to be valid earlier under the provisions of this Law) cease to be valid.

(4) An LTEP and an MTEP shall cease to be valid if the holder ceases to be ordinarily resident other than pursuant to an agreed absence.

(5) The holder of an LTEP and the holder of an MTEP may occupy, and be the householder of, either a Local Market dwelling or an Open Market dwelling.

(6) The holder of an LTEP and the holder of an MTEP may be employed in more than one post, and shall not be required to hold an Employment Permit in respect of any such additional post.

(7) The holder of an LTEP and the holder of an MTEP may only accommodate in a Local Market dwelling (subject to the provisions of section 72) immediate family members, and any other person in relation to whom the Administrator has granted permission.

Short Term Employment Permits.

24. (1) A Short Term Employment Permit (in this Part, a "STEP") may be granted for a period of up to one year, and shall specify the date upon which it will (unless it ceases to be valid earlier under the provisions of this Law) cease to be valid.

(2) A STEP shall cease to be valid if the holder ceases to be ordinarily resident.

(3) The holder of a STEP may be employed in more than one post, and shall not be required to hold an Employment Permit in respect of any such additional post.

(4) The holder of a STEP may be accommodated in a Local Market or Open Market dwelling, but may not be the householder of a dwelling (whether Local Market or otherwise).

Long, Medium and Short Term Employment Permits: reissue, etc.

25. (1) Subject to subsections (2) and (3), the Administrator may grant an LTEP, MTEP or STEP to a person (D) who has previously been resident only if he is satisfied that if D has previously been granted a Permit –

- (a) he took a recognised break in residence following the cessation of validity of the last previously granted Permit, or in any other case
- (b) where the Permit applied for is an LTEP or an MTEP, it will not permit the person to be resident for a period (including residence before the grant of the Permit) exceeding-
 - (i) in the case of LTEP, eight consecutive years, and
 - (ii) in the case of an MTEP, five consecutive years.

- (2) The restrictions in subsection (1) do not apply -
 - (a) in the case of a grant by the Administrator of a STEP, where that grant follows a previous grant of a STEP to that person in circumstances where no other class of Employment Permit has been granted to that person since that previous grant,
 - (b) in any other case where the Administrator is satisfied that the grant of the Permit is consistent with States population policies.

(3) The Administrator may not grant a STEP to a person (E) in circumstances where that grant would result in E's aggregate residence (both before and after Commencement) exceeding five years.

Open Market Employment Permits

Open Market Employment Permits (Part A).

26. (1) An Open Market Employment Permit (Part A) (in this Part, an "OMEP(A)") shall be valid for the period specified on its face.

- (2) It shall be a condition of an OMEP(A) that the holder is –
 - (a) accommodated at a particular dwelling inscribed in Part A specified on the face of the Permit, and
 - (b) a full-time household staff member.

Open Market Employment Permits (Part B).

27. (1) An Open Market Employment Permit (Part B) (in this Part, an "OMEP(B)") shall be granted for a period of up to five years, and shall specify the date upon which it will (unless it ceases to be valid earlier under the provisions of this Law) cease to be valid.

- (2) It shall be a condition of an OMEP(B) that the holder –
 - (a) is accommodated at a particular property inscribed in Part B specified on the face of the Permit, and
 - (b) is a full-time property staff member.

Open Market Employment Permits (Part C).

28. (1) An Open Market Employment Permit (Part C) (in this Part, an "OMEP(C)") shall be granted for a period of up to five years, and shall specify the date upon which it will (unless it ceases to be valid under the provisions of this Law) cease to be valid.

- (2) It shall be a condition of an OMEP(C) that the holder –
 - (a) is accommodated at a particular property inscribed in Part C specified on the face of the Permit, and
 - (b) is a full-time property staff member.

Open Market Employment Permits: reissue and breaks in residence.

29. The Administrator may grant an OMEP(B) or an OMEP(C) to a person who has previously been resident only if he is satisfied that -

- (a) he took a recognised break in residence following the cessation of validity of the last Permit previously granted to him (if any), or in any other case,
- (b) the Permit will not permit the person to be resident for a continuous period (including residence before the grant of the Permit) exceeding five years.

Open Market Employment Permits: employment in more than one post permitted.

30. The holder of an OMEP(A), OMEP(B) or a OMEP(C) may be employed in more than one post, and shall not be required to hold an Employment

Permit in respect of any such additional post.

PART 3

LEGAL PROVISIONS, APPEALS, OFFENCES AND CIVIL SANCTIONS

Possession of dwelling may be vested in the Committee.

31. (1) If the Committee has reasonable grounds to believe that a person is in occupation of a dwelling in contravention of any condition of a Certificate or a Permit, then it may apply to the Ordinary Court for a vesting order.

(2) A vesting order is an order vesting the possession of the dwelling concerned, or a part thereof, in the Committee, for such period, in consideration of such rent and subject to such other terms and conditions having regard to all the circumstances of the case as the Ordinary Court may determine.

(3) Upon the making of a vesting order on an application to the Ordinary Court by the Committee, possession of the dwelling or the part thereof to which the order relates shall vest in the Committee accordingly as though the Committee were a tenant thereof with power to apply for an eviction order against any person in occupation thereof and to sublet the same to, or permit the use thereof by, or with the assent of the owner to assign the interest of the Committee to, any person for the purposes of human habitation.

(4) A vesting order may be varied, renewed, extended or rescinded by a subsequent order of the Ordinary Court hereunder.

(5) Notice of the day and time of an application to the Ordinary Court for a vesting order shall be served by the Committee on the occupier concerned and shall require him to be present at the hearing of the application.

(6) Where an occupier upon whom a notice is served under subsection (5) is not the owner of the dwelling concerned, a copy of the notice shall be served by the Committee on the owner who may be present at the hearing of the application and make representations thereon.

(7) Upon an application by the Committee pursuant to subsection

(3) for an eviction order, the Ordinary Court shall not be bound to take into account any of the matters referred to in section 3 of the Law giving the Court increased power to stay execution in actions for eviction registered on the 31st August, 1946ⁱ.

(8) For the avoidance of doubt, the Committee's powers under this Part are without prejudice to the powers and duties of the States Committee for the Environment & Infrastructure ("**the Environment & Infrastructure Committee**") in respect of the transfer and deletion of the inscription of dwellings on the Open Market Housing Register under Part 1 of the Open Market Housing Register Law.

Legal proceedings against landlords.

32. (1) Upon the making of a vesting order, any tenant of the dwelling in occupation thereof on the date of the order may, within a period of three months immediately following the date of the order, action his landlord before the Ordinary Court for an order terminating his tenancy and for the reimbursement of the legal charges and disbursements incurred by him in the acquisition of his interest.

(2) The Ordinary Court, upon hearing an action under subsection (1), if it is satisfied that, at the time of the execution of the tenancy agreement, neither the tenant nor any servant or agent of his was aware of the need to procure a Certificate or Permit in order that he should be entitled to occupy the dwelling or part thereof concerned, may make such an order as is described in subsection (1) subject to such directions and conditions as appear to the Ordinary Court to be just.

Appointment and powers of inspectors.

33. (1) The Committee may from time to time appoint inspectors for the purposes of this Law; and every inspector so appointed shall be furnished with a certificate of appointment.

(2) For the purpose of ascertaining whether the provisions of this Law are being or have been complied with an inspector may, on production if so

ⁱ Ordres en Conseil Vol. XII, p. 262.

required of his certificate of appointment -

- (a) subject to subsection (3), enter at any reasonable time any premises where he has reasonable cause to believe that a person is in employment,
- (b) require the production of any record kept as required under section 35 and of any other information relating to a person in employment,
- (c) require any person appearing to the inspector to be in employment, or to be an employer, to answer such questions as the inspector may reasonably put to him and to sign a declaration as to the truth of his answers to those questions,
- (d) require any person appearing to the inspector to be in employment to produce, within such time as the inspector may reasonably require, a currently valid Permit or Certificate issued or granted to that person.

(3) An inspector shall not enter any premises without the consent of a person whom he reasonably believes to be entitled to grant entry except under and in accordance with the authority of a warrant issued by the Bailiff, within the meaning of section 34, under and in accordance with that section.

(4) An inspector exercising any of his powers under this section may have with him such other persons as he thinks fit.

(5) A power conferred by this section to require the production of any record, document or other information includes the power -

- (a) if it is produced, to examine and take copies of it (in whichever form it is held),
- (b) if it is not produced, to require the person who was

required to produce it to state, to the best of his knowledge and belief, where it is, and

- (c) to require the reproduction in legible form of any record or information maintained otherwise than in legible form.

(6) An inspector may act simultaneously under powers conferred on him under this Law and powers conferred on him under any other enactment.

Warrant to enter premises.

34. (1) If the Bailiff is satisfied by information on oath supplied by an inspector appointed under section 33, that there are reasonable grounds for suspecting that any person is contravening or has contravened any provision of this Law or any subordinate legislation made under it or any condition of a Certificate or Permit, the Bailiff may grant a warrant.

(2) A warrant granted under subsection (1) authorises the person named therein at any time within one month of the date of the grant to enter the premises specified in the warrant for the purpose of ascertaining whether there is or has been any such contravention.

(3) The Bailiff must not issue a warrant under subsection (1) unless the Bailiff is satisfied that any one of the following four conditions is met.

(4) The first condition is that the whole of the premises is used as a dwelling and the occupier has been informed of the decision to apply for a warrant.

(5) The second condition is that any part of the premises is not used as a dwelling and that each of the following applies to the occupier of the premises -

- (a) the occupier has been informed of the decision to seek entry to the premises and of the reasons for that decision,

(b) the occupier has failed to allow entry to the premises on being requested to do so by an inspector, and

(c) the occupier has been informed of the decision to apply for a warrant.

(6) The third condition is that -

(a) the premises are unoccupied or the occupier is absent, and

(b) notice of intention to apply for a warrant has been left in a conspicuous place on the premises.

(7) The fourth condition is that it is inappropriate to inform the occupier of the decision to apply for a warrant because -

(a) it would defeat the object of entering the premises, or

(b) entry is required as a matter of urgency.

(8) An inspector executing a warrant issued under this section may use such reasonable force as may be necessary.

(9) Sections 10 (Search warrants - safeguards) and 11 (Execution of warrants) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^j apply in relation to the issue of a warrant under this section to an inspector as they apply in relation to the issue of a warrant to a police officer.

(10) For the purposes of this section, "**the Bailiff**" means the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge

^j Ordres en Conseil Vol. XLIII (2), p. 617; as amended by Order in Council No. XVI of 2009; No. XV of 2011; Ordinance No. XXXIII of 2003; No. XXIX of 2011; and No. XX of 2015.

Délégué.

Employment records

Employment records.

35. It is the duty -

- (a) of every employer, in respect of every contract of employment entered into by him and in respect of every person employed by him in Guernsey, and
- (b) of every self-employed person, in respect of his employment,

to keep a record, containing such information and in such form (if any) as the Committee may from time to time prescribe under this section.

Disclosure of Information

Confidentiality.

36. (1) Subject to sections 37 to 39, information obtained in connection with the operation of this Law shall not be disclosed, if it is information from which an individual or a legal person or unincorporated body can be identified, except -

- (a) to the extent necessary for the performance of any function, or for the purpose of civil proceedings, in connection with this Law, the Open Market Housing Register Law or the Social Insurance (Guernsey) Law, 1978^k,

^k Ordres en Conseil Vol. XXVI, p. 292; as amended by Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; Vol. XXXI, p. 278; Vol. XXXII, p. 59; Vol. XXXIV, p. 510; Vol. XXXV(1), p. 161; Vol. XXXVI, pp. 123 and 343; Vol. XXXVIII, p. 59; XXXIX, p. 107; Vol. XL, p. 351; Vol. XLI, p. 267; Vol. XLII(2), p. 1230; Order in Council No. XXIV of 2003; No. XI of 2004; No. XVIII of 2007; No. V of 2012; No. IV of 2014; Recueil d'Ordonnances Tome. XXV, p. 148; Tome

- (b) for the purposes of criminal proceedings or the investigation of crime,
- (c) in compliance with an order of the Royal Court, or
- (d) with the consent of the person to whom it relates.

(2) For the purposes of subsection (1), information disclosed to a person under section 111B of the Social Insurance (Guernsey) Law, 1978 is obtained by that person in connection with the operation of this Law.

(3) Nothing in this section shall be taken to prohibit the Administrator or any person authorised by him in that behalf from disclosing to –

- (a) the electronic census supervisor, or
- (b) any census officer,

appointed under the Electronic Census (Guernsey) Ordinance, 2013¹, for the purposes of enabling them to discharge their functions under that Ordinance, information obtained by the Administrator in connection with the operation of this Law.

(4) Information disclosed to the electronic census supervisor or any census officer under subsection (3) may, without prejudice to the provisions of the Electronic Census (Guernsey) Ordinance, 2013 restricting or authorising the disclosure and use of information, be used by them for the purposes mentioned in subsection (3).

XXVI, p. 177; Ordinance No. XXXIII of 2003; No. XLIV of 2007; Nos. VII and XLII of 2009; No. XVII of 2011; No. XXXVIII of 2012; and No. XXX of 2013 .

¹ Ordinance No. XXX of 2013; as amended by Order in Council No. IV of 2014.

Disclosure of information to Director of Income Tax.

37. (1) The Administrator may disclose or cause to be disclosed to the Director of Income Tax appointed under the Income Tax (Guernsey) Law, 1975^m ("the Director"), or any person authorised by the Director for this purpose, such information as he has received in the exercise of his functions which he has reason to believe will assist the Director in the exercise of his functions.

(2) Where the Director or a person authorised by the Director has received information that has been disclosed under subsection (1), he may not disclose such information except –

- (a) to any member of the staff of the Director appointed under section 205 of the Income Tax (Guernsey) Law, 1975, who shall not further disclose the information to any person who is not such a member of staff, or
- (b) to a Law Officer of the Crown.

Disclosure of information by Director of Income Tax.

38. No obligation as to secrecy imposed by the Income Tax (Guernsey) Law, 1975, shall prevent –

- (a) the Director, or any person authorised by the Director, from disclosing to the Administrator, or any person authorised by

^m Ordres en Conseil Vol. XXV, p. 124; as amended by Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; Vol. XXXIII, p. 91; Vol. XXXIV, pp. 201, 287 and 440; Vol. XXXV(2), p. 623; Vol. XXXVI, pp. 71, 158 and 571; Vol. XXXVII, pp 38 and 434; Vol. XXIX, pp. 32 and 107; Vol. XL, p.40; Vol. XLI, pp. 234 and 587; Vol. XLII(1), p. 222; Vol. XLII(2), p. 766; Vol. XLIII(1), pp. 109 and 532; Vol. XLIII(2), p. 850; Vol. XLIV(1), p. 269 and 417; Vol. XLV, pp. 125, 316 and 424; Order in Council No's. II and VII of 2006; No. XXI of 2007; Nos. V and VI of 2011; No. XXVI of 2008; No. XXIV of 2009; No. VII of 2011; No. IX of 2011; No. XII of 2010; Nos. V and VI of 2012; Nos. IV and VI of 2014; No. XI of 2015; Ordinance No. XXXIII of 2003; Ordinance No. VII of 2009; Nos. XIII, XVI, XXIV, XXXV and LVIII of 2012; Nos. VII and XXX of 2013; Nos. I, VIII, XIII and XXXI of 2014; Nos. III, VII and XXV of 2015.

the Administrator, information the Director has received in the exercise of his functions which he has reason to believe will assist the Administrator in the exercise of his functions,

- (b) the Administrator from using that information to assist him in the exercise of his functions,

and accordingly a person shall not be guilty of an offence under the Income Tax (Guernsey) Law, 1975 by reason of such disclosure or use.

Disclosure of information to employers and prospective employers.

39. (1) Subject to subsection (2), the Administrator may from time to time make available to a person's employer or prospective employer the following information, for the purpose of furthering the better administration of this Law, and facilitating the compliance by employers and prospective employers with their duties under it –

- (a) the class of Certificate or Permit held, or applied for, by the person (as the case may be),
- (b) the expiry date of the Certificate or Permit held by the person (if any), and
- (c) the person's address.

(2) The Administrator may not make information available under subsection (1) unless the person to whom the information relates consents.

(3) The States may by Ordinance amend the list at subsection (1) of information that may be made available under this section.

Appeals

Notice of refusal etc. of Certificate or Permit.

40. (1) If the Administrator decides to –

- (a) refuse to issue or grant a Certificate or Permit, or
- (b) grant a Certificate or Permit subject to conditions,

a notice issued by a person authorised in that behalf by the Administrator and in such form as the Administrator may determine shall, as soon as possible after the decision, be served on the applicant, and the notice shall state -

- (i) the terms and grounds of the decision, and
- (ii) particulars of the right to appeal under section 43.

(2) Subsection (1) does not require the Administrator to specify any reason which would in his opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to -

- (a) a criminal investigation (whether in the Bailiwick or elsewhere),
- (b) co-operation or relations with investigatory, or prosecuting authorities in any other place, or
- (c) a third party (wherever situated).

Notice of intention to revoke a Certificate or Permit, or vary conditions.

41. (1) Where the Administrator proposes to -

- (a) impose a condition in respect of an issued Certificate or granted Permit,
- (b) vary a condition (of his own volition) subject to which a Certificate has been issued or Permit granted, or
- (c) revoke a Certificate or Permit,

a notice issued by a person authorised in that behalf by the Administrator and in such form as the Administrator may determine shall, as soon as possible after the decision, be served on the person concerned (F), and the notice shall state -

- (i) that he is proposing to make the decision,
- (ii) the terms of, and the grounds for, the proposed decision,
- (iii) that F may, within a period of 28 days beginning on the date of the notice, make written representations to the Administrator in respect of the proposed decision, and
- (iv) particulars of the right of appeal which would be exercisable under section 43 if the Administrator were to make the decision.

(2) Subsection (1) does not require the Administrator to specify any reason which would in his opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to -

- (a) a criminal investigation (whether in the Bailiwick or elsewhere),
- (b) co-operation or relations with investigatory, or prosecuting authorities in any other place, or
- (c) a third party (wherever situated).

(3) The Administrator shall consider any representations made in response to a notice served under subsection (1) before giving further consideration to the proposed decision.

(4) The period of 28 days mentioned in subsection (1) may be reduced or extended in any case in which the Administrator considers it necessary

to do so.

Notice of decision.

42. (1) Where the Administrator decides (having taken into account, where appropriate, any representations) to make a decision in respect of which a right of appeal is conferred by section 43, he shall serve on the person to whom the decision relates notice in writing of the decision -

- (a) stating the terms of, and the grounds for, the decision, and
- (b) giving particulars of the right of appeal conferred by section 43.

(2) Subsection (1) does not require the Administrator to specify any reason which would in his opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to -

- (a) a criminal or regulatory investigation (whether in the Bailiwick or elsewhere),
- (b) co-operation or relations with investigatory, regulatory or prosecuting authorities in any other place, or
- (c) a third party (wherever situated).

Appeals against decisions.

43. (1) A person aggrieved by a decision of the Administrator under this Law may appeal to the Court against the decision.

(2) The grounds of an appeal under this section are that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,

- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(3) Subject to subsection (4), an appeal under this section shall be instituted -

- (a) within a period of two months immediately following the date of the notice of the decision, and
- (b) by summons served on the Administrator stating the grounds and material facts on which the appellant relies.

(4) The period within which an appeal in respect of a decision of the Administrator to issue a notice of a financial penalty under section 52(7) shall be instituted is 28 days immediately following the date of the notice of the decision.

(5) The Administrator may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just.

The provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court

Civil Rules, 2007ⁿ.

(6) On an appeal under this section the appellant shall have the burden of proof and the final right of reply.

(7) On an appeal under this section the Court may -

(a) set the decision aside and, if the Court considers it appropriate to do so, remit the matter to the Administrator with such directions as the Court thinks fit, or

(b) confirm the decision, in whole or in part.

(8) On an appeal under this section against a decision of the Administrator, the Court may, on the application of the appellant or the Administrator or of its own volition, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(9) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(10) In this section "**the Court**" means the Royal Court sitting as an Ordinary Court.

Offences

Residence Offences.

44. (1) A person who –

(a) occupies, or causes or permits another person to occupy, a dwelling, or

ⁿ O.R.C. No. IV of 2007; as amended by O.R.C. No. II of 2008.

- (b) is otherwise resident, or
- (c) causes or permits another person to be otherwise resident,

in contravention of any provision of this Law or any subordinate legislation made under it or any condition of a Certificate or Permit, is guilty of an offence and liable—

- (i) on conviction on indictment, to a fine, to imprisonment for a term not exceeding six months or to both,
- (ii) on summary conviction, to a fine not exceeding level 5 on the uniform scale or (on a second or subsequent conviction, and whether or not the prior convictions were summary convictions) to a fine not exceeding twice level 5 on the uniform scale, to imprisonment for a term not exceeding three months or to both.

(2) It is a defence for a person charged with an offence under subsection (1) of causing or permitting another person to —

- (a) occupy a dwelling, or
- (b) be otherwise resident,

in contravention of any provision of this Law or any subordinate legislation made under it or condition of a Certificate or Permit, to prove that he has taken all reasonable precautions to avoid the commission of an offence.

Employment Offences.

45. (1) If a person is employed in contravention of any provision of this Law or any subordinate legislation made under it, or any condition of a Permit,

then-

- (a) that person, and
- (b) subject to subsection (2), any person who is his employer,

is guilty of an offence.

(2) It is a defence for an employer charged with an offence under subsection (1) to prove that he has taken all reasonable precautions to avoid the commission of an offence.

(3) A person convicted of an offence under subsection (1) of this section is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding level 4 on the uniform scale, or to both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

False, deceptive or misleading statements.

46. (1) A person commits an offence if –

- (a) for the purpose of or in connection with an application under this Law,
- (b) in purported compliance with any requirement of a Certificate or Permit, or other document issued under this Law,
- (c) in purported compliance with a requirement imposed under, or otherwise for the purposes of this Law,

- (d) otherwise than as mentioned in paragraphs (a) to (c) but in circumstances in which that person intends, or could reasonably be expected to know, that the statement, information or document provided would or might be used by any person for the purpose of exercising functions conferred under this Law,

that person does any of the following -

- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular.

(2) A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding 2 years, or to a fine not exceeding twice level 5 on the uniform scale, or to both.

(3) Where a person is convicted of an offence under this section in connection with an application for a Certificate or Permit –

- (a) that Certificate or Permit shall be deemed to be void *ab initio* and shall not be evidence of any fact stated therein, and
- (b) any period of residence pursuant to that Certificate or Permit shall be deemed not to be a period of lawful residence for any purpose under this Law or, to the extent that they are still given effect for limited purposes by this Law, the Housing Control Law and the Right to Work Law, and the provisions of that legislation shall be construed accordingly.

Obstruction, etc.

47. (1) A person who -

- (a) obstructs another person in the exercise of that other person's functions under this Law,
- (b) fails, without reasonable excuse, to comply with a requirement imposed on him by an inspector exercising his functions under section 33, or
- (c) fails, without reasonable excuse, to give any person executing a warrant issued under section 34 such assistance as that person may reasonably require for the execution of the warrant,

commits an offence.

(2) A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding 2 years, or to a fine not exceeding twice level 5 on the uniform scale, or to both.

Failure to keep records.

48. A person who fails to keep any record which he is required to keep

by any regulations made under section 35 of this Law is guilty of an offence and liable, on conviction, to a fine not exceeding level 4 on the uniform scale.

Breach of confidentiality.

49. A person who discloses information in contravention of section 36(1) or 37(2) of this Law is guilty of an offence and liable, on conviction, to a fine not exceeding level 3 on the uniform scale, or to imprisonment for a term not exceeding one month, or to both.

Burden of proof.

50. (1) If in proceedings for an offence under section 44 or section 45-

- (a) a person claims that he or another person whom he caused or permitted to occupy the dwelling to which the proceedings relate (or otherwise be resident) does not require a Certificate or Permit to occupy that dwelling or otherwise be resident, the burden of proving that fact shall lie upon the person who so claims,
- (b) a person claims that he or another person whom he caused or permitted to undertake the employment does not require a Certificate or Permit to undertake the employment, the burden of proving that fact shall lie upon the person who so claims,
- (c) it is shown that the accused or some other person was in occupation of the dwelling to which the proceedings relate on a particular date, the burden of proving the accused or other person was in lawful occupation of that dwelling on that date shall lie upon the accused, and
- (d) it is shown that the accused or some other person was in the employment to which the proceedings relate on a

particular date, the burden of proving the accused or other person was lawfully employed on that date shall lie upon the accused.

(2) Subject to section 46(3), in proceedings for an offence under section 44 or section 45, a Permanent Resident Certificate in the name of a person, or a status declaration that a person is a qualified resident issued under section 12(1) of the Housing Control Law (in this Law, a "**status declaration**"), shall be evidence of the fact the person is a Permanent Resident.

Offences by legal persons and unincorporated bodies.

51. (1) Where a legal person is guilty of an offence under this Law, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) any director, manager, secretary or other similar officer, or any foundation official, of the legal person, or
- (b) any person purporting to act in any such capacity,

he as well as the legal person is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a legal person are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director.

(3) Where an offence under this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any

officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or

- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence must be brought in the name of that body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of an offence under this Law must be paid from the funds of that body.

Civil Sanctions

Discretionary financial penalties.

52. (1) Where the Administrator is satisfied that a person has –

- (a) occupied, or caused or permitted another person to occupy, a dwelling, or
- (b) been otherwise resident, or
- (c) caused or permitted another person otherwise to be resident,

in contravention of any provision of this Law or condition of a Certificate or Permit, he may (subject to the provisions of this section, section 53 and section 43) impose on that person a financial penalty in respect of the contravention of such amount of such amount as he considers appropriate and proportionate, but not exceeding £1,000, or such other amount as the Committee may prescribe not

exceeding £2,000.

(2) Where the Administrator is satisfied that a person has been employed in contravention of any provision of this Law or condition of a Permit, he may (subject to the provisions of this section, section 53 and section 43) impose on that person and his employer a financial penalty in respect of the contravention of such amount of such amount as he considers appropriate and proportionate, but not exceeding £1,000 or such other amount as the Committee may prescribe not exceeding £2,000.

(3) Where the Administrator is satisfied that –

- (a) the holder of a Certificate or Permit has contravened the requirement at section 9(7), or
- (b) a person has contravened the requirement at section 55(3),

he may (subject to the provisions of this section, section 53 and section 43) impose on that person a financial penalty of such amount as he considers appropriate and proportionate, but not exceeding £500 or such other amount as the Committee may prescribe not exceeding £1,000.

(4) In deciding whether or not to impose a penalty under this section and, if so, the amount thereof the Administrator must take into consideration the following factors -

- (a) whether the contravention was brought to the attention of the Administrator by the person concerned,
- (b) the seriousness of the contravention,
- (c) whether or not the contravention was inadvertent,
- (d) in the case of a contravention by an employer under subsection (2), whether or not the employer had taken

all reasonable precautions to avoid the contravention occurring,

- (e) what efforts, if any, have been made to rectify the contravention and to prevent a recurrence,
- (f) the potential financial consequences to the person concerned and to third parties of imposing a penalty, and
- (g) the penalties imposed by the Administrator under this section in other cases (if any).

(5) Any financial penalty imposed under this section is payable to the States and is recoverable as a civil debt.

(6) Where the Administrator proposes to impose a financial penalty, he must notify in writing the person on whom the penalty is to be imposed of –

- (a) the proposed penalty, and the reasons for the same,
- (b) the date on which it is proposed, subject to sections 43 and 53, to impose the penalty, which must not be less than 21 days after the date of the notice, and
- (c) that person's right to make written representations to the Administrator under section 53(1).

(7) Where the Administrator imposes a financial penalty he must-

- (a) issue to the person on whom the penalty is being imposed notice of the penalty, and
- (b) include in the notice a statement of the right of appeal under section 43.

Representations prior to financial penalty.

53. (1) The person on whom a notice is served under section 52(6) may make written representations to the Administrator concerning the proposed financial penalty within 14 days of the date of the notice.

(2) If the person in question exercises their right under subsection (1) the Administrator -

- (a) must consider their representations, and
- (b) may decide to –
 - (i) impose the penalty,
 - (ii) impose a penalty in a lesser amount,
 - (iii) withdraw the penalty, or
 - (iv) postpone the date for imposing the penalty,

but in any event must inform that person of his decision in writing, and the reasons for the same, before the date on which financial penalty is imposed or would otherwise have been imposed.

(3) Without prejudice to section 43(8), and for the avoidance of doubt, where the Administrator has imposed a financial penalty under section 52 he may not seek to recover payment of that penalty until –

- (a) 28 days immediately following the date of the notice of the penalty issued under section 52(7)(a), or
- (b) if an appeal is instituted within that period, the final determination, or withdrawal, of that appeal,

and for the purposes of this subsection, an appeal shall be deemed not to have been

finally determined until the expiration of the time allowed for the institution of an appeal to the Court of Appeal under the Court of Appeal (Guernsey) Law, 1961^o or until the determination of any such appeal instituted within that time.

PART 4 TRANSITIONAL AND SAVING PROVISIONS

Transitional and saving provisions: general.

54. (1) Subject to the provisions of this Part, anything done or having effect as if done (excluding the making of subordinate legislation) under or for the purposes of any provision repealed or revoked by this Law has effect as if done under or for the purposes of any corresponding provision of this Law or the Open Market Housing Register Law, or of any subordinate legislation made under those Laws.

(2) Where a person commits an offence under a provision repealed by this Law –

(a) before Commencement, or

(b) partly before and partly after Commencement,

he shall be charged and proceeded against under that provision as if it had not been repealed.

Status declarations under the old regime.

55. (1) Subject to subsections (2) and (3), a status declaration shall for all purposes be treated as if it were a Permanent Resident Certificate.

(2) Notwithstanding the provisions of subsection (1), the holder of a status declaration may apply to the Administrator for it to be exchanged for a Permanent Resident Certificate, and no charge may be imposed in respect of the

^o Ordres en Conseil Vol. XVIII, p. 315; as amended by Order in Council No. III of 2012; and Recueil d'Ordonnances Tome XXIX, p. 406.

issue of a Permanent Resident Certificate in such circumstances.

- (3) A person who immediately prior to Commencement was –
 - (a) a qualified resident under the Housing Control Law, and
 - (b) not ordinarily resident,

must within 28 days of entering Guernsey with the intention of resuming ordinary residence (or within 28 days of Commencement if he is in Guernsey on Commencement and intends to resume ordinary residence), or within such longer period as the Administrator may specify in any particular case, apply to the Administrator for –

- (i) the issue of a Permanent Resident Certificate, or
- (ii) if he holds a status declaration, for it to be exchanged for a Permanent Resident Certificate under subsection (2),

and a person who contravenes this requirement is liable to the imposition of a civil penalty under section 52(3).

(4) For the avoidance of doubt, subsection (3) does not apply in respect of persons under 16 years of age.

Continuing validity of documents issued under the old regime.

56. (1) Subject to the provisions of this Law, any right to work document, including any conditions imposed in respect thereof, within the meaning of section 2 of the Right to Work Law (in this Law an "**old regime document**") that was in force immediately prior to Commencement shall continue to have effect pursuant to, and according to the provisions of, the Housing Control Law and the Right to Work Law, until, for the avoidance of doubt, the document ceases to be valid under, and for the purposes of, that Law and the Right to Work Law; and the

Housing Control Law and the Right to Work Law shall continue to have effect to the extent required to give effect to this subsection and shall be construed accordingly.

(2) Without prejudice to the generality of subsection (1), references to "the Department" in the Housing Control Law and the Right to Work Law, shall, for the purposes of that subsection, be construed as references to the Administrator.

(3) For the avoidance of doubt, references in this Law (however expressed) to a valid old regime document, or to such a document ceasing to be valid, are references to such a document being or ceasing to be valid under, and for the purposes of, the Housing Control Law and the Right to Work Law pursuant to the provisions of subsection (1).

Persons not required to hold old regime documents.

57. (1) Any person who was, immediately prior to Commencement -

(a) at least 16 years of age, and

(b) lawfully resident without holding an old regime document,

does not commit an offence and is not liable to a civil penalty by reason of being resident without holding a Certificate or Permit.

(2) For the avoidance of doubt, a person falling within subsection (1) may not be employed without holding a Certificate or Permit.

Residential home and nursing home residents.

58. A person who is, and was on Commencement, resident in a property inscribed in Part C for the purpose of receiving care or support, may be resident without holding a Certificate or Permit.

Short Term Employment Permits.

59. (1) Subject to subsection (4), where the aggregate residence of a

person resident prior to Commencement under a short term housing licence issued under the Housing Control Law exceeds five years, the Administrator may grant that person (G) a STEP for a period of up to one year after that licence has ceased to be valid, but only if he is satisfied that either of the two conditions in subsection (2) is satisfied.

(2) The conditions are that -

- (a) following that housing licence ceasing to be valid, G undertook a recognised break in residence,
- (b) where that housing licence ceased to be valid before Commencement, G ceased being resident for a period of three months following it ceasing to be valid.

(3) Subject to subsection (4), following the grant of that STEP, no further STEP may be granted to G unless the Administrator is satisfied that prior to its grant, G has undertaken a recognised break in residence.

(4) The Administrator may not grant a STEP to G under subsection (1) if he knows or reasonably suspects that G has been not ordinarily resident for a period of three consecutive years or more.

Lodgers in Part A dwellings.

60. (1) A person who immediately prior to Commencement -

- (a) was a lodger in a dwelling inscribed in Part A, and
- (b) had been ordinarily resident for a period of less than five consecutive years,

may continue to be accommodated in that dwelling as a lodger without holding a Certificate or Permit until such time as his period of residence reaches five consecutive years, at which point (unless he has been issued or granted a Certificate or Permit that permits him to continue to be resident) he must, unless the Administrator permits otherwise in writing, undertake a recognised break in

residence before the Administrator may consider any application from him for the issue or grant of a Certificate or Permit under this Law.

(2) Subject to subsection (3), a person who immediately prior to Commencement –

- (a) was a lodger in a dwelling inscribed in Part A, and
- (b) had been ordinarily resident for a period of more than five consecutive years,

may continue to occupy that dwelling as a lodger until the old regime document he holds ceases to be valid.

(3) A person who on the 19th June, 2015 was a lodger in a dwelling inscribed in Part A, and who immediately prior to Commencement –

- (a) was such a lodger, and
- (b) had been ordinarily resident for a period of more than five consecutive years,

may continue to be accommodated in a dwelling as a lodger for so long as that dwelling remains inscribed in Part A.

(4) For the avoidance of doubt, a person falling within subsection (1) or (3) may not be employed without holding a Certificate or Permit.

Employees resident in Part B and Part C properties.

61. (1) A person who immediately prior to Commencement –

- (a) was lawfully employed in a hotel inscribed in Part B, and
- (b) was lawfully accommodated at that hotel, and

- (c) had been ordinarily resident for a period of five or more consecutive years,

may, subject to subsection (3), continue to be employed and accommodated in that hotel for so long as his circumstances do not change in any material way.

- (2) A person who immediately prior to Commencement –
 - (a) was lawfully employed in a nursing or residential home inscribed in Part C,
 - (b) was lawfully accommodated at that home, and
 - (c) had been ordinarily resident for a period of five or more consecutive years,

may, subject to subsection (3), continue to be employed and accommodated in that home for so long as his circumstances do not change in any material way.

(3) On his old regime document ceasing to be valid, a person falling within subsection (1) or (2) may not continue to be employed or accommodated unless he holds a Certificate or a Permit.

Persons resident in States-owned properties.

62. (1) A person who immediately prior to Commencement was lawfully accommodated in a property in the possession or ownership of the States may continue to be accommodated in that property without holding a Certificate or Permit for so long as his circumstances do not change in any material way.

(2) For the avoidance of doubt, a person falling within subsection (1) may not be employed without holding a Certificate or Permit.

Boat dwellers.

63. (1) A person who resides in a vessel in Guernsey, and who had been continuously so resident for a period of at least six months immediately prior to Commencement, may continue to reside in that vessel without holding a

Certificate or Permit for so long as his circumstances do not change in any material way.

- (2) For the avoidance of doubt, a person falling within subsection (1) may not be employed without holding a Certificate or Permit.

Parts A and D of the Open Market Housing Register.

64. (1) In this section, "**the Part D cap**" has the meaning given in the Open Market Housing Register Law; and "**unrelated persons**" means any group of two or more persons other than one wholly, or primarily, comprising one group of immediate family members or extended family members together with any full-time household staff members and their immediate family members.

(2) Where the Environment & Infrastructure Committee is satisfied that a dwelling was –

- (a) occupied by unrelated persons on the 10th May, 2013,
- (b) occupied by unrelated persons immediately prior to Commencement, and
- (c) inscribed in Part A immediately prior to Commencement,

it shall, on Commencement, transfer that dwelling's inscription to Part D.

(3) The owner of any dwelling that was –

- (a) occupied by unrelated persons on the 10th May, 2013,
- (b) in use as a private family home immediately prior to Commencement, and
- (c) inscribed in Part A immediately prior to Commencement,

may, within six months of Commencement, apply to the Environment & Infrastructure Committee in such form and on payment of such fee as the Environment & Infrastructure Committee may require, for its inscription to be transferred to Part D.

(4) On an application being made under subsection (3), the Environment & Infrastructure Committee shall transfer the inscription of the dwelling to Part D if it is satisfied that –

- (a) at the time of the transfer the number of properties inscribed in Part D is less than the Part D cap,
- (b) the conditions set out in subsection (3) apply to the dwelling, and
- (c) the dwelling complies with any other requirements and standards relating to houses in multiple occupation that the Environment & Infrastructure Committee considers relevant.

(5) Where a property that –

- (a) is inscribed in Part A,
- (b) was inscribed in Part A immediately prior to Commencement, and
- (c) does not fall within subsection (1),

is occupied by unrelated persons on Commencement, the Environment & Infrastructure Committee may not serve a compliance notice under section 25 of the Open Market Housing Register Law in respect of the property, or delete its inscription and inscribe it in Part D under section 16(4) of that Law, until six months after Commencement.

(6) Section 43 (Appeals against decisions) applies in respect of a

decision of the Environment & Infrastructure Committee to transfer a dwelling's inscription to Part D under subsection (2), and to refuse to transfer a dwelling's inscription to Part D on an application being made under subsection (3), as if the Environment & Infrastructure Committee were the Administrator; and section 43 shall be construed accordingly.

Persons resident in Part D properties.

65. (1) A person who, immediately prior to the coming into force of the Open Market Housing Register Law, was lawfully accommodated in a property inscribed in Part D, may continue to be accommodated in that property or any other property inscribed in Part D without holding a Certificate or Permit until such time (if any) as the old regime document held by him ceases to be valid.

(2) A person who immediately prior to Commencement –

- (a) was accommodated in a property inscribed in Part A that is transferred to Part D under section 64, and
- (b) had been resident for a period of more than five consecutive years,

may, subject to subsection (4), continue to occupy the property referred to in paragraph (a), or any other property inscribed in Part D.

(3) A person who immediately prior to Commencement –

- (a) was accommodated in a property inscribed in Part A the inscription of which was transferred to Part D under section 64(2), and
- (b) had been resident for a period of less than five consecutive years,

may, subject to subsection (4), continue to occupy the property referred to in paragraph (a), or any other property inscribed in Part D, until such time as he has been resident for a period of five consecutive years (such period to include time

both before and after Commencement), whereupon he must, unless the Administrator permits otherwise in writing, take a recognised break in residence.

(4) On his old regime document ceasing to be valid, a person falling within subsection (2) or (3) may not continue to be employed or resident unless he holds a Certificate or a Permit.

Appeals under the Housing Control Law.

66. (1) In any case where, on Commencement, an appeal has been instituted under section 13 of the Housing Control Law but not determined, it shall be determined as if it were an appeal against a decision of the Administrator to refuse to issue a Permanent Resident Certificate.

(2) In any other case where, on Commencement, an appeal has been instituted under the Housing Control Law but not determined, it shall be determined as if the Housing Control Law were still in force.

Applications for old regime documents.

67. In any case where, on Commencement -

- (a) an application for a status declaration under the Housing Control Law has been made and not determined, it shall be treated as an application for a Permanent Resident Certificate,
- (b) an application for a housing licence or a declaration of lawful residence under the Housing Control Law has been made and not determined, it shall be treated as an application for such a Certificate or Permit as the Administrator thinks most appropriate in light of the applicant's circumstances,
- (c) an application for a temporary exemption certificate under the Right to Work Law has been made and not determined, it shall be treated as an application for a Discretionary Resident Permit, and
- (d) an application for a tent dweller's declaration under the Right

to Work Law has been made and not determined, it shall be treated as an application for such a Certificate or Permit as the Administrator thinks most appropriate in light of the applicant's circumstances.

Applications under Part IV of the Housing Control Law.

68. In any case where, on Commencement, an application under Part IV of the Housing Control Law has been made but not determined, it shall be determined as if the Housing Control Law were still in force.

Applications to Court under section 61, and actions under section 62, of the Housing Control Law.

69. (1) In any case where, on Commencement, an application under section 61 of the Housing Control Law has been made but not determined, it shall be determined as if it had been made under section 31 of this Law.

(2) In any case where, on Commencement, a tenant has actioned his landlord under section 62 of the Housing Control Law and that action has not been heard, it shall be heard as if the landlord had been actioned under section 32 of this Law.

Non-applicability of certain transitional provisions to Permanent Residents.

70. For the avoidance of doubt sections 59 to 63, and 65, do not apply to Permanent Residents.

PART 5
MISCELLANEOUS AND FINAL

Tourists, guests and house-swaps.

- 71.** (1) A person (H) shall not require a Certificate or Permit to –
- (a) occupy tourist accommodation,
 - (b) live in a dwelling as a guest of a person who is a Permanent Resident or otherwise a householder, or

- (c) live in a dwelling pursuant to a house-swap,

provided that the period during which H is present in Guernsey does not exceed an aggregate of 90 days in any 12 month period, and H is not in employment.

(2) In subsection (1), "tourist accommodation" means a hotel or self-catering unit in respect of which there is in force a boarding permit granted under the Tourist Law, 1948^P, and a "house-swap" means an arrangement as part of which the householder of a dwelling permits a person to live in the dwelling in his absence.

Restriction on right to occupy Local Market dwellings as immediate family member.

72. A person who has previously occupied a dwelling inscribed in the Open Market Housing Register other than as a –

- (a) lodger,
- (b) full-time household staff member,
- (c) full-time property staff member, or
- (d) an immediate family member of a full-time household staff member or a full-time property staff member,

may not occupy a Local Market dwelling solely by virtue of his being an immediate family member of the householder of that dwelling; and this Law, documents granted or issued under this Law or under subordinate legislation made under it, and such subordinate legislation, shall be construed accordingly.

Service of documents.

73. (1) Any notice or document other than a summons to be served

^P Ordres en Conseil Vol. XXI, p. 104; as amended by Recueil d'Ordonnances Tome XVIII, p. 20; and Vol. XXVIII, p. 275.

under or for the purposes of the provisions of this Law may be served on -

- (a) an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,
- (b) a legal person with a registered office in Guernsey, by being left at, or sent by post or transmitted to, that office,
- (c) a legal person without a registered office in Guernsey, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or, if there is no such place, its registered office or principal or last known principal place of business elsewhere,
- (d) an unincorporated body -
 - (i) by being served on any partner, member of the committee or other similar governing body, manager, director or other similar officer thereof in accordance with paragraph (a), or
 - (ii) by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere,
- (e) the Committee, by being left at, or sent by post or transmitted to, the Committee's offices,
- (f) the Environment & Infrastructure Committee, by being left at, or sent by post or transmitted to, that Committee's offices,

- (g) the Administrator, by being left at, or sent by post or transmitted to, the Administrator's offices.

(2) Where the provisions of this Law authorise or require a document to be served on a person who is a minor or a person under legal disability, the document may be served on –

- (a) in the case of a minor, his parent or guardian, and
- (b) in the case of a person under legal disability, his guardian,

and if there is no guardian, the party wishing to effect service may apply to the Royal Court for the appointment of a person to act as guardian for the purposes of those provisions.

(3) If service of a notice or document cannot, after reasonable enquiry, be effected in accordance with subsection (1), the notice or document may be served by being -

- (a) delivered to some responsible person in the dwelling (if any) to which the notice or document relates or, if there is no such person, by being affixed to a conspicuous part of the dwelling; or
- (b) published on two occasions in La Gazette Officielle.

(4) Subsections (1) to (3) are without prejudice to any other lawful method of service and to the provisions of section 74.

(5) Where a document is sent by post it shall, unless the contrary is shown, be deemed for the purposes of the provisions of this Law to have been received -

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,
- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any non-business day.

(6) For the purposes of the provisions of this Law, service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(7) Notwithstanding the provisions of this section and of any other rule of law in relation to the service of documents, no document to be served on the Committee, the Environment & Infrastructure Committee or the Administrator under or for the purposes of the provisions of this Law shall be deemed to have been served until it is received.

(8) In this section and in section 74 -

"by post" means by registered post, recorded delivery service or ordinary letter post,

"non-business day" means -

- (a) a Saturday, a Sunday, Christmas Day and Good Friday, and
- (b) any day appointed as a public holiday by Ordinance of the States under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^q,

^q Ordres en Conseil Vol. XVII, p. 384; as amended by Vol. XXIV, p. 84; Vol. XXXIV, p. 504; Vol. XXXV(1), p. 367; and Ordinance No. IX of 2001.

"served" includes given and submitted,

"summons" includes any document compelling a person's attendance before a court, and

"transmitted" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication (in which event the document shall be regarded as served when it is received).

Submission, etc., of documents in electronic form.

74. (1) Any document to be served on the Administrator, the Committee or the Environment & Infrastructure Committee under or for the purposes of the provisions of this Law, or any Ordinance made under it, shall or, as the case may be, may be in such electronic form and served by such electronic means as the Administrator, the Committee or the Environment & Infrastructure Committee (as the case may be) may require or, as the case may be, permit, whether in any particular case or class of cases or generally; and, without limitation, this section applies to any, and to anything accompanying any, application, statement, consent, declaration or signature.

(2) Accordingly, where under the provisions of this Law or any subordinate legislation made under it, any information or document is required to be in such form or to be served by such means, or anything is required to be done in such manner, as (in whatever words) the Administrator, the Committee or the Environment & Infrastructure Committee may require, the Administrator, the Committee or the Environment & Infrastructure Committee (as the case may be) may, without limitation, require the information or document to be in or, as the case may be, to be served, or the thing to be done, by electronic means.

(3) This section is without prejudice to -

(a) section 73(7), and

- (b) the Electronic Transactions (Guernsey) Law, 2000^r.

Power to amend Law by Ordinance for specific purposes.

75. (1) The States may amend this Law by Ordinance for the following purposes –

- (a) to provide that the Administrator may not grant an Employment Permit to an applicant of an age exceeding the age specified for that purpose in the Ordinance,
- (b) to provide that a person's Employment Permit may be revoked by the Administrator upon the holder's conviction of such offences and in such circumstances as make his continued residence contrary to the public interest,
- (c) notwithstanding the provisions of section 11(2), to provide that the Administrator may, or shall, grant Permits subject to the condition that the holder may occupy only a dwelling of a specified class, or classes, however identified or defined, of Local Market dwellings,
- (d) to make such further or different provision as the States thinks fit for effecting the transition from any provision made by, or by virtue of, any enactment repealed by this Law to any provision made by, or by virtue of, this Law or the Open Market Housing Register Law, and
- (e) to provide for a Committee, authority or other body of

^r Ordres en Conseil Vol. XL, p. 263; as amended by Ordinance No. XXXIII of 2003; and No. XIV of 2014.

the States to perform one or more of the functions of the Committee or the Environment & Infrastructure Committee under this Law.

- (2) The States may amend sections 36, 37 and 38 by Ordinance.

General provisions as to Ordinances.

76. (1) An Ordinance under this Law (including for the avoidance of doubt an Ordinance amending this Law made under section 75) -

- (a) may be amended or repealed by a subsequent Ordinance hereunder;
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to the States to be necessary or expedient.

(2) Any power conferred upon the States by this Law to make an Ordinance may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;
- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise);
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes;

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Any power conferred by this Law to make an Ordinance may be exercised at any time after the registration of this Law and before Commencement; provided that no Ordinance so made shall come into force until Commencement.

General provisions as to regulations.

77. (1) Regulations under this Law -

- (a) may be amended or repealed by subsequent regulations hereunder;
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to the Committee to be necessary or expedient.

(2) Any power conferred by this Law to make regulations may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;
- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise);
 - (ii) the same provision for all cases, or different provision for different cases or classes of

cases, or different provision for the same case or class of case for different purposes;

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Regulations under this Law shall be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the States resolve that the regulations be annulled, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Interpretation.

78. (1) In this Law, unless the context otherwise requires –

"**Administrator**": see section 1,

"**accommodate**": see subsection (3),

"**adopted child**" includes a person who is adopted -

- (a) under the provisions of the Adoption (Guernsey) Law, 1960^s,
- (b) in pursuance of an order made in the United Kingdom, the Isle of Man or the Island of Jersey,
- (c) by virtue of an overseas adoption within the meaning of section 5(3) of the Adoption (Guernsey) Law, 1970^t,

^s Ordres en Conseil Vol. XVIII, p.192; as amended by Vol. XXI, p. 34; Vol. XXII, p. 521; Vol. XXIII, p. 26; Vol. XXVI, p. 264; Vol. XXXI, p. 278; Vol. XXXVII, p. 130; Vol. XL, p. 371; Vol. XLI, p. 151; Ordinance No. XXXIII of 2003; and No. VII of 2010.

^t Ordres en Conseil Vol. XXII, p. 380.

and "**adopted children**", "**adoption**" and other related expressions shall be construed accordingly,

"**agreed absence**": see section 82,

"**aggregate residence**" means a person's total period of residence, which period need not be continuous and, for the avoidance of doubt, does not include recognised breaks in residence,

a "**birth parent**" of a person means (subject to section 81) the genetic mother or father of that person,

"**Certificate**" means a Resident Certificate,

"**Commencement**" means the coming into force of this Law,

"**the Committee**": see section 1,

"**contract of employment**" means a contract of service or apprenticeship (whether written or oral, express or implied),

"**contravention**" includes failure to comply and related expressions shall be construed accordingly,

"**controller**" means, in relation to a legal person, a person, or two or more persons together, having a controlling interest in that legal person as defined in paragraph (a) of the definition of the phrase "controlling interest" contained in this section,

"**controlling interest**" means, in relation to a legal person, the power of a person -

- (a) to secure, by means of the holding of shares or the possession of voting power in or in relation to that or any other legal person, or by virtue of any powers

conferred by the Articles of Association or any other document regulating that or any other legal person or otherwise, that the affairs of the first mentioned legal person are conducted in accordance with his wishes,

- (b) who is a loan creditor of a legal person and who, in the opinion of the Committee, is able to secure that the affairs thereof are conducted in accordance with his wishes,

"Convention rights" has the meaning given in section 1 of the Human Rights (Bailiwick of Guernsey) Law, 2000^u,

"the Court of Appeal" means the Court of Appeal established under the provisions of the Court of Appeal (Guernsey) Law, 1961,

"dwelling" means any premises or any part of any premises or any vessel used or usable for the purposes of human habitation,

"employed" means employed in Guernsey in any occupation whether full-time or part-time, and whether under a contract of employment or as a self-employed person from which remuneration or profit in money or money's worth is or may be directly or indirectly derived, and includes any trade, business, office profession and vocation; and **"employment"** shall be construed accordingly,

"employee" means a person engaged in an occupation under a contract of employment,

"employer" means a person responsible under a contract of employment for paying the remuneration of an employee, and the

^u Ordres en Conseil Vol. XL, p. 396; as amended by Order in Council No. I of 2005; Recueil d'Ordonnances Tome XXVIII, p. 493; Ordinance No. XXXIII of 2003; the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015; and G.S.I. No. 27 of 2006.

"**prospective employer**" of a person (I) means a person who has made a conditional offer of employment to I; and "**prospective employee**" shall be construed accordingly,

"**Employment Permit**": see section 20,

"**enactment**" means any Law, Ordinance or subordinate legislation,

"**the Environment & Infrastructure Committee**": see section 31(8),

"**Established Resident**": see section 5,

an "**extended family member**" of a person (J) means a person who is related within the fourth degree of consanguinity to J, or to J's spouse or partner, calculated using the canonical mode and with siblings of the half-blood and adopted siblings ranking equally with siblings of the whole blood in parity of degree,

"**foundation official**" has the meaning given by the Foundations (Guernsey) Law, 2012^v,

"**full-time employment**" means employment pursuant to a contract of employment for –

- (a) at least thirty five hours a week, or
- (b) in exceptional circumstances, some other number of hours per week which Administrator is satisfied it is reasonable to treat as constituting full time employment by reference to normal or reasonable practice for the type of work being done by that person,

^v Order in Council No. I of 2013.

and "**full-time employment post**" shall be construed accordingly,

"**full-time property staff member**" means a person in full-time employment related to the running of a hotel, or residential home or nursing home, inscribed in Part B or Part C (as the case may be),

"**full-time household staff member**" means a person in full-time employment related to the running of a household of a dwelling inscribed in Part A,

"**grandchild**" includes step-grandchild,

"**Guernsey**" means the Island of Guernsey and includes the territorial waters adjacent thereto,

"**the Housing Control Law**" means the Housing (Control of Occupation) (Guernsey) Law, 1994^w,

"**immediate family member**": see section 80,

"**inspector**": see section 33,

"**Law Officer of the Crown**" means Her Majesty's Procureur and Her Majesty's Comptroller,

"**legal person**" includes any body corporate and any other body of persons on which legal personality is conferred by any enactment,

"**Local Market dwelling**" means any dwelling other than an Open Market dwelling,

"**lodger**" means a person who occupies any part of a dwelling in

^w Ordres en Conseil Vol. XXXV(1), p.75; as amended by Vol. XXXVIII, p. 193; Vol. XLII(1), p. 34; No. VIII of 2007; No. I of 2009; Ordinance No. XXXIII of 2003; No. XVII of 2008; and No. VII of 2010.

circumstances where he is accommodated by, and that occupation is under the control of, the dwelling's householder,

"minor" means a person under 18 years of age,

"to occupy", in relation to a dwelling, means to inhabit that dwelling, and related expressions shall be construed accordingly,

"old regime document": see section 56,

"Open Market dwelling" means a dwelling inscribed in the Open Market Housing Register,

"the Open Market Housing Register" has the meaning given in the Open Market Housing Register Law,

"the Open Market Housing Register Law" means the Open Market Housing Register (Guernsey) Law, 2016,

"Open Market Resident": see section 7,

"the Ordinary Court" means the Royal Court sitting as an Ordinary Court,

"ordinarily resident": see subsection (7),

a **"parent"** of a person (K) means (subject to section 81) –

- (a) the genetic mother or father of K, or
- (b) where an adoption order has been made in respect of K, a person entitled under the order to adopt K,

and includes a step-parent of K,

"Part A", **"Part B"**, **"Part C"** and **"Part D"** mean those Parts of the

Open Market Housing Register,

"partner": see section 80(1),

"Permanent Resident": see section 3,

"Permit" means a Resident Permit or Employment Permit,

"prescribed" means prescribed by regulations, and **"prescribe"** shall be construed accordingly,

"prospective employer" and **"prospective employee"**: see the definition of **"employer"**,

"recognised break in residence" means a period of time during which a person is not resident that is of a duration equal to, or exceeding, that person's last period of residence,

"residence" means residence in Guernsey, including living in Guernsey without occupying a dwelling; and **"resident"** and other related expressions shall be construed accordingly,

"Resident Certificate": see section 13,

"Resident Permit": see section 14,

"Right to Work Law" means the Right to Work (Limitation and Proof) Guernsey Law, 1990^x,

"the Royal Court" means the Royal Court of Guernsey,

"spouse": see subsection (4),

^x Ordres en Conseil Vol. XXXII, p. 59; as amended by Vol. XXXV, p. 75; Recueil d'Ordonnances Tome XXV, p. 148; Ordinance No. XXXIII of 2003; and G.S.I. No. 9 of 2003.

"status declaration": see section 50(2),

"States population policies": see section 2(2),

the **"step-child"** of a person includes the issue of the first degree and the adopted child of that person's spouse or partner, and means a person who, when he became a step-child and when he was first resident, was a minor; and **"step-parent"** shall be construed accordingly,

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect,

"uniform scale" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^y, and

"vessel" means anything made for the conveyance by water of people or property, and includes a houseboat.

(2) In this Law, **"owner"**, in relation to a dwelling, means -

- (a) where the dwelling is the subject of saisie proceedings which have resulted in the making of an interim vesting order, the person in whose favour that order has been made,
- (b) where the dwelling is not the subject of such saisie proceedings -
 - (i) if the dwelling is held in trust, the trustees and

^y Ordres en Conseil Vol. XXXI, p. 278; as amended by Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXV, p. 344; No. XXII of 1998; No. XXIX of 2006; and No. XXIX of 2013.

any person entitled to a beneficial interest under the trust,

- (ii) if the dwelling is owned by a legal person, that legal person and any controller of that legal person,
- (iii) otherwise, the person in whom there is vested, solely, jointly or in common, an estate of inheritance in the dwelling,

and references to ownership, howsoever expressed, shall be construed accordingly.

(3) In this Law, "**accommodate**" means for the householder of a dwelling to allow a person, other than a guest, to occupy that dwelling, but does not include allowing a person to live in a dwelling on a short-term and *ad-hoc* basis in circumstances where that person is otherwise in lawful occupation of another dwelling, and related expressions shall be construed accordingly; and for the purposes of this definition, a guest means a person who is not employed, and who is not resident for an aggregate of 90 days or more in any 12 month period.

(4) For the purposes of this Law, a marriage under the law of any country or territory is not prevented from being recognised only because it is the marriage of a same sex couple, and "**spouse**" shall be interpreted accordingly.

(5) For the purposes of this Law, 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 –

- (a) have been born in Guernsey before Commencement, and
- (b) be the child of birth parents at least one of whom was ordinarily resident at the time of the person's birth,

if at least one of his parents –

- (i) was ordinarily resident at any time during 1940,
- (ii) subsequently ceased to be so ordinarily resident, and
- (iii) having so ceased to be so ordinarily resident, resumed such ordinary residence before the 31st December, 1947.

(6) For the purposes of this Law, a person (L) –

- (a) who was born outside Guernsey by reason of a need for special medical or surgical care or treatment, or in connection with the birth, or in circumstances beyond the control of L's mother, and
- (b) whose mother was ordinarily resident at the time of L's birth,

shall be deemed to have been born in Guernsey.

(7) Subject to the provisions of this Law (including, but not limited to, section 82(3)), a person shall be treated as being ordinarily resident during any period only if he was –

- (a) living lawfully in Guernsey, and had his home in Guernsey, or
- (b) a minor living in Guernsey in the household of his parents, or one of them,

throughout that period.

(8) A person who was not born in Guernsey but who was adopted

when a minor by persons ordinarily resident at the time of the adoption shall be deemed, for the purposes and subject to the provisions of this Law, to have been born in Guernsey.

(9) The States may by Ordinance make further provision relating to the treatment, for the purposes of Part 2 of this Law, of periods of time spent by–

- (a) persons in prison, both in Guernsey and in the United Kingdom, and
- (b) other persons outside Guernsey, including (but not limited to) minors in fostering and pre-adoptive arrangements and persons receiving medical treatment.

(10) The States may by Ordinance make provision relating to and regulating the residential status, for the purposes of this Law, of –

- (a) minors in fostering and pre-adoptive arrangements who are ordinarily resident, and
- (b) students from other islands within the Bailiwick (including Herm) who are lodgers or otherwise resident in Guernsey during the academic year.

(11) Except in so far as the context otherwise requires, any references in this Law to any other enactment shall be construed as references to that enactment as amended, repealed and re-enacted, extended or applied by or under any other enactment including this Law.

Householders.

79. (1) The householder of a dwelling under this Law must occupy that dwelling, and be at least 16 years of age.

(2) Only the householder of a dwelling under this Law may accommodate other persons, and he may only do so in circumstances where he is also occupying the dwelling.

Meanings of "partner" and "immediate family member".

80. (1) For the purposes of this Law, M is N's partner if M is N's civil partner, or if M and N live in the same household in a subsisting relationship that is akin to marriage or civil partnership; and "civil partner" means a person who has registered as the civil partner of another person under the Civil Partnership Act 2004^z, or who is treated under that Act as having formed a civil partnership by virtue of having registered an overseas relationship within the meaning of that Act, and whose civil partnership, or registered overseas relationship, has not been dissolved or annulled.

(2) For the purposes of this Law, a person (O) is an immediate family member of another person (P) if O is the –

(a) spouse, partner, child, parent, grandchild, or

(b) father-in-law or mother-in-law,

of P.

(3) Subject to section 81, for the purposes of subsection (2), O is–

(a) the father-in-law of P if he is the father of P's spouse or the father of P's partner, and "mother-in-law" shall be construed accordingly,

(b) the child of P if –

(i) O is the genetic son or daughter of P, or

(ii) where an adoption order has been made in respect of O, P is entitled under the order to adopt O, or

^z An Act of Parliament (2004 c. 33).

- (iii) he is the step-child of P.

Children born as a result of assisted reproduction.

81. For the avoidance of doubt, where a child has been born as a result of assisted reproduction, as defined in section 109(3) of the Children (Guernsey and Alderney) Law, 2008^{aa}, the parentage of that child for the purposes of this Law shall be determined pursuant to the provisions of the Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009^{bb}, and the definitions of "birth parent" and "parent", section 80, and this Law generally, shall be construed accordingly.

Meaning of "agreed absence".

82. (1) For the purposes of this Law, an "**agreed absence**" is a period during which a person is not ordinarily resident in circumstances where the Administrator has agreed in writing to treat that period as an agreed absence for the purposes of this Law.

(2) Two periods of ordinary residence interrupted by an agreed absence shall be deemed to be one continuous period of ordinary residence for the purposes of this Law; and for the avoidance of doubt, an agreed absence shall not (subject to subsection (3)) be deemed to be a period of ordinary residence for the purposes of this Law.

(3) The Administrator may deem an agreed absence to be a period of ordinary residence for the purposes of this Law in any case where he is satisfied that to do so would be equitable, and consistent with any States population policies in respect of agreed absences.

Service with Her Majesty's Forces.

83. (1) A period of time spent outside Guernsey by a person as a

^{aa} Order in Council No. XIV of 2009; as amended by Ordinance No. XI of 2009; No. XLVIII of 2009; the Children (Guernsey and Alderney) (Amendment) Ordinance, 2015.

^{bb} Ordinance No. XLVII of 2009.

necessary result of that person's service with Her Majesty's Forces is deemed to be a period of ordinary residence for the purposes of this Law, in circumstances where-

- (a) that person was ordinarily resident at any time during the period of six months ending with the start of the period of service with Her Majesty's Forces, and
- (b) that period of service ceases on or after Commencement.

(2) A person born outside Guernsey as a necessary result of the service with Her Majesty's Forces by one of his parents is deemed to have been born in Guernsey for the purposes of this Law, in circumstances where –

- (a) that parent was ordinarily resident at any time during the period of six months ending with the start of the period of service with Her Majesty's Forces, and
- (b) that period of service ceases on or after Commencement.

(3) A period of time spent outside Guernsey by a person (Q) as a necessary result of service with Her Majesty's Forces by one of Q's parents is deemed to be a period of ordinary residence for the purposes of this Law, if –

- (a) that parent –
 - (i) was at the start of the period of service with Her Majesty's Forces, or
 - (ii) becomes during that period of service,
 - a Permanent Resident,
- (b) Q was ordinarily resident in the household of that

parent as a minor at any point during that period of service, and

- (c) that period of service ceases on or after Commencement.

(4) A period of time spent outside Guernsey by a person (R) as a necessary result of service with Her Majesty's Forces by R's spouse or partner, during which period their relationship subsists, shall be deemed to be a period of ordinary residence for the purposes of this Law if –

- (a) R was ordinarily resident at any time during the period of six months ending with the start of the period of service with Her Majesty's Forces,
- (b) that period of service ceases on or after Commencement, and
- (c) either –
 - (i) R and his spouse or partner return to Guernsey in a subsisting relationship and become ordinarily resident, or
 - (ii) R's spouse or partner dies during his period of service.

Proof of documents.

84. In any legal proceedings a document purporting to be a document issued by or on behalf of the Administrator and to be signed by a member of the staff of the Office of the Administrator shall be received in evidence and shall, unless the contrary is proved, be deemed to be the document which it purports to be and to have been signed by the person by whom it purports to have been signed, without proof of his identity, signature or official capacity and shall be evidence of the matters stated therein.

Repeals.

85. The enactments set out in Schedule 3 (Repeals) are repealed.

Consequential amendments.

86. The enactments set out in Schedule 4 (Consequential amendments) are amended as set out therein.

Citation.

87. This Law may be cited as the Population Management (Guernsey) Law, 2016.

Extent.

88. This Law extends to Guernsey.

Commencement.

89. This Law shall come into force on the day appointed by Ordinance of the States, and such an Ordinance may appoint different days for different provisions and different purposes; and in particular, different days may be appointed for the taking effect of the repeal of particular enactments, or parts of such enactments to be specified, set out in Schedule 3, and for the amendment of particular enactments, or parts of such enactments to be specified, set out in Schedule 4.

SCHEDULE 1
OFFICE OF THE ADMINISTRATOR

Section 1.

Duty of Administrator to develop and publish administrative policies.

1. The Administrator shall develop policies relating to the administration of the provisions of this Law and any other enactment under which he has been assigned functions and duties, and such policies may be published by the Administrator, including on the States of Guernsey website.

Delegation of functions.

2. (1) The Administrator may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of his functions to be exercised in his name by any person named or described in the instrument, other than this power of delegation.

(2) A function exercised by a delegate pursuant to an arrangement made under this paragraph is for all purposes exercised by the Administrator; and every decision taken or other thing done by a delegate pursuant to such an arrangement has the same effect as if taken or done by the Administrator.

(3) An arrangement made under this paragraph for the exercise of a function by a delegate -

(a) may be varied or terminated at any time by the Administrator, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,

(b) does not prevent the exercise of the function by the Administrator while the arrangement subsists.

(4) The provisions of this paragraph and of paragraph 3 are without prejudice to the provisions of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991.

Appointment of Deputy Administrator.

3. (1) Without prejudice to the generality of paragraph 2, the Committee may, subject to such terms and conditions as it thinks fit, appoint any person as Deputy Administrator with authority to exercise the Administrator's functions during any period during which the Administrator is unavailable.

(2) A function exercised by a Deputy Administrator pursuant to an appointment under this paragraph is for all purposes exercised by the Administrator; and every decision taken or other thing done by a Deputy Administrator pursuant to such an appointment has the same effect as if taken or done by the Administrator.

(3) An appointment under this paragraph of a Deputy Administrator -

(a) may be varied or terminated at any time by the Committee, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment,

(b) does not prevent the exercise of the function by the Administrator while the appointment subsists.

Disclosure of interests.

4. (1) The Administrator shall, if he has any direct or indirect personal interest in the outcome of any matter of which he is seized under this Law or any other enactment, disclose the nature of his interest to the Committee.

(2) For the purposes of this paragraph, a general notice given by the Administrator to the effect that he is a member, director or officer of a legal person, and is to be regarded as interested in any matter concerning that legal person, is a sufficient disclosure in relation to any such matter.

(3) In this paragraph, references to "the Administrator" include references to a Deputy Administrator in circumstances where one has been appointed under paragraph 3.

SCHEDULE 2
RESIDENT PERMITS

Section 19.

General

Local Market Family Members.

1. For the purposes of this Schedule, a Local Market Family Member is an immediate family member of –

- (a) a Permanent Resident,
- (b) an Established Resident Certificate holder,
- (c) a Long Term Employment Permit holder,
- (d) a Medium Term Employment Permit holder,
- (e) a Discretionary Resident Permit holder, where the Permit states on its face that the holder may accommodate other persons, or
- (f) the holder of a housing licence (other than a short-term housing licence) issued under the Housing Control Law pursuant to section 56 (Continuing validity of documents issued under the old regime), entitling the holder to be ordinarily resident,

and that Permanent Resident, Certificate holder, Permit holder or housing licence holder in any particular case is referred to in this Schedule as the relevant Local Market Family Member's "principal".

Convention rights compliance.

2. (1) For the avoidance of doubt, the Administrator may not issue a Certificate or grant a Permit containing a condition if he is of the opinion that by doing so he would be acting incompatibly with a Convention right.

(2) Subparagraph (3) applies in any case where the Administrator is required under this Schedule to grant a Permit containing a condition or conditions specified in –

- (a) paragraph 4(2),
- (b) paragraph 6(2),
- (c) paragraph 10(2),
- (d) paragraph 13(2),
- (e) paragraph 16(2), or
- (f) paragraph 19(2).

(3) Notwithstanding the provisions of this Schedule and without prejudice to the generality of subparagraph (1), if in the opinion of the Administrator the imposition of the condition or conditions in question is incompatible with a Convention right, he may not grant the Permit, but rather he shall grant a Discretionary Resident Permit under paragraph 7 in such terms as he thinks fit in all the circumstances of the case; and this Schedule shall be construed accordingly.

(4) If the Administrator has granted a Permit under this Schedule containing a condition referred to in subparagraphs (2)(a) to (f), and subsequently is of the opinion that the imposition of that condition is incompatible with a Convention right, he shall –

- (a) revoke that Permit, and
- (b) if he is of the opinion that he would otherwise be acting incompatibly with a Convention right, or that it is otherwise equitable, grant to the person a Discretionary Resident Permit in such terms as he thinks fit in all the circumstances of the case.

Local Market Resident Permits and applications

Established Resident Permit applications.

3. (1) An Established Resident Permit may only be granted to a Local Market Family Member who is an Established Resident.

(2) On receipt of an application for an Established Resident Permit, where the applicant has complied with any requirements imposed under section 15 (including the payment of any prescribed fee), and where the Administrator is satisfied that the applicant is a Local Market Family Member who is an Established Resident, the Administrator shall grant the applicant an Established Resident Permit.

Established Resident Permits.

4. (1) Subject to subparagraph (3), an Established Resident Permit shall be granted for a period not exceeding six years.

(2) An Established Resident Permit shall have as conditions that the holder –

- (a) may not be a householder, and
- (b) may only be accommodated in a Local Market (or Open Market) dwelling if he is accommodated by his principal.

(3) The Administrator may grant an Established Resident Permit for a period of up to one month in excess of the period specified in subsection (1) in any case where he considers that to do so would –

- (a) facilitate better administration, and
- (b) not be contrary to States population policies.

Family Member Resident Permit applications.

5. (1) A Family Member Resident Permit (an "FMRP") may only

be granted to a Local Market Family Member.

(2) On receipt of an application made in accordance with the requirements imposed under section 15 (including the payment of any prescribed fee), and where the Administrator is satisfied that the applicant is a Local Market Family Member, the Administrator shall grant the applicant person an FMRP.

Family Member Resident Permits.

6. (1) Subject to subparagraph (3), an FMRP shall be granted for a period not exceeding eight years.

(2) An FMRP shall have as conditions that the holder –

- (a) may not be a householder, and
- (b) may only be accommodated in a Local Market (or Open Market) dwelling if he is accommodated by his principal.

(3) The Administrator may grant an FMRP for a period of up to one month in excess of the period specified in subparagraph (1) in any case where he considers that to do so would –

- (a) facilitate better administration, and
- (b) not be contrary to States population policies.

Discretionary Resident Permits.

7. (1) The purpose of a Discretionary Resident Permit is to enable a person to be resident, or to occupy a class or classes of dwelling, in circumstances where –

- (a) it would otherwise be unlawful for him to do so, and
- (b) it is necessary to ensure compatibility with one or more Convention rights, or otherwise equitable, that he

should be so able.

(2) The Administrator may grant a Discretionary Resident Permit on an application being made to him in compliance with any requirements relating to the same (including the payment of any fee) set out in section 15, where he is satisfied that the grant would be consistent with the purpose set out in subparagraph (1).

(3) The Administrator must take account of –

- (a) any States population policies relating to the circumstances of the applicant and the grant of such Permits (in this paragraph, "relevant States population policies"),
- (b) any criminal conviction disclosed by the applicant that is not spent for the purposes of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002, and
- (c) such other factors as he considers relevant in all the circumstances of the case,

when determining an application for a Discretionary Resident Permit.

(4) A Discretionary Resident Permit may be granted for such a period (including a period identified by reference to the occurrence of an event) and subject to such conditions, and may contain such other provisions, as the Administrator thinks appropriate by reference to the facts of the case and any relevant States population policies.

(5) Without reference to the generality of subparagraph (4), a Discretionary Resident Permit may provide that the holder's period of residence under it (or any part of that period) shall be deemed not to be a period of ordinary residence for any purpose under this Law.

Open Market Resident Permits and applications

Open Market Family Members.

8. (1) An Open Market Family Member Resident Permit (an "OMFM Resident Permit") may only be granted to an Open Market Family Member.

(2) An Open Market Family Member means –

- (a) an immediate or extended family member of the holder of an Open Market Resident Certificate (Part A),
- (b) an immediate family member of an Open Market Resident who is not the holder of an Open Market Resident Certificate (Part A),

who wishes to be accommodated by that Open Market Resident.

Open Market Family Member Resident Permit applications.

9. On receipt of an application made in accordance with the requirements imposed under section 15 (including the payment of any prescribed fee), and where the Administrator is satisfied that the applicant is an Open Market Family Member, the Administrator shall grant the applicant an OMFM Resident Permit (Part A), an OMFM Resident Permit (Part B), an OMFM Resident Permit (Part C) or an OMFM Resident Permit (Part D), depending on which Part of the Open Market Housing Register the property where he wishes to be accommodated is inscribed.

Open Market Family Member Resident Permits.

10. (1) An OMFM Resident Permit shall be granted for such period as the Administrator thinks fit in all the circumstances of the case.

(2) An OMFM Resident Permit shall have as a condition that the holder must be accommodated by the Open Market Resident referred to in paragraph 8(2), as that paragraph applies in his case.

Open Market Employee Family Members.

11. (1) An Open Market Employee Family Member Resident Permit (an "OMEFM Resident Permit") may only be granted to an Open Market Employee Family Member.

(2) An Open Market Employee Family Member means an immediate family member of the holder of an Open Market Employment Permit (Part A).

Open Market Employee Family Member Resident Permit applications.

12. On receipt of an application made in accordance with the requirements imposed under section 15 (including the payment of any prescribed fee), and where the Administrator is satisfied that the applicant is an Open Market Employee Family Member, the Administrator shall grant the applicant an OMEFM Resident Permit.

Open Market Employee Family Member Resident Permits.

13. (1) An OMEFM Resident Permit shall be granted for such period as the Administrator thinks fit in all the circumstances of the case.

(2) An OMEFM Resident Permit shall have as a condition that the holder must be accommodated by the Open Market Employment Permit holder referred to in paragraph 11(2), as that paragraph applies in his case.

(3) For the avoidance of doubt, an OMEFM Resident Permit shall cease to be valid if the Permit held by the Open Market Employment Permit holder referred to in subparagraph (2) ceases to be valid.

Open Market Lodgers (Part A).

14. (1) An Open Market Lodger Resident Permit (Part A) (an "OMLRP(A)") may only be issued to an Open Market Lodger (Part A).

(2) An Open Market Lodger (Part A) means a person who wishes to be accommodated as a lodger by an Open Market Resident Certificate holder in a dwelling inscribed in Part A.

Open Market Lodger Resident Permit (Part A) applications.

15. (1) On receipt of an application made in accordance with the requirements imposed under section 15 (including the payment of any prescribed fee), and where the Administrator is satisfied that the applicant is an Open Market Lodger (Part A), the Administrator shall, subject to subparagraph (2), grant the applicant an OMLRP(A).

(2) The Administrator may grant an OMLRP(A) to a person who has previously been resident only if he is satisfied that -

- (a) the person has taken a recognised break in residence since his last period of residence, or
- (b) the OMLRP(A) will not permit the person to be resident for a continuous period (including residence before the grant of the Permit) exceeding five years.

Open Market Lodger Resident Permits (Part A).

16. (1) An OMLRP(A) shall be granted for a period not exceeding five years.

(2) An OMLRP(A) shall have as a condition that the holder must be accommodated by the Open Market Resident referred to in paragraph 14(2), as that paragraph applies in his case.

Open Market HMO Residents (Part D).

17. (1) An Open Market HMO Resident Permit (Part D) may only be granted to an Open Market HMO Resident (Part D).

(2) An Open Market HMO Resident (Part D) means a person wishing to occupy part of a dwelling registered in Part D other than as -

- (a) the owner or tenant of the whole dwelling, or
- (b) an immediate family member of the owner.

Open Market HMO Resident Permit (Part D) applications.

18. (1) On receipt of an application made in accordance with the requirements imposed under section 15 (including the payment of any prescribed fee), and where the Administrator is satisfied that the applicant is an Open Market HMO Resident (Part D), the Administrator shall, subject to subparagraph (2), grant the applicant an Open Market HMO Resident Permit (Part D).

(2) The Administrator may not grant an Open Market HMO Resident Permit (Part D) to a person who has previously been resident unless he is satisfied that -

- (a) the person has taken a recognised break in residence since his last period of residence, or
- (b) the Permit will not permit the person to be resident for a continuous period (including residence before the grant of the Permit) exceeding five years.

Open Market HMO Resident Permits (Part D).

19. (1) An Open Market HMO Resident Permit (Part D) shall be granted for a period not exceeding five years.

(2) An Open Market HMO Resident Permit (Part D) shall have as a condition that the holder must be accommodated at the dwelling referred to in paragraph 17(2), as that paragraph applies in his case.

SCHEDULE 3
REPEALS

Section 85.

Repeal of whole enactments

Laws

The Right to Work (Limitation and Proof) (Guernsey) Law, 1990
 The Housing (Control of Occupation) (Guernsey) Law, 1994
 The Housing (Control of Occupation) (Amendment) (Guernsey) Law, 1998^{cc}
 The Housing (Control of Occupation) (Amendment) (Guernsey) Law, 2001^{dd}
 The Housing (Control of Occupation) (Amendment) (Guernsey) Law, 2006^{ee}
 The Housing (Control of Occupation) (Amendment) (Guernsey) Law, 2008^{ff}

Ordinances

The Housing (Control of Occupation) (Implementation) Ordinance, 1982^{gg}
 The Right to Work (Limitation and Proof) (Modification and Commencement of Law) Ordinance, 1990^{hh}
 The Right to Work (Limitation and Proof) (Tent Dwellers' Industries) (Amendment) Ordinance, 1991ⁱⁱ
 The Right to Work (Limitation and Proof) (Tent Dwellers' Industries) (Amendment) Ordinance, 1992^{jj}

^{cc} Ordres en Conseil Vol. XXXVIII, p. 193.

^{dd} Order in Council No. III of 2002.

^{ee} Order in Council No. VIII of 2007.

^{ff} Order in Council No. I of 2009.

^{gg} Recueil d'Ordonnances Tome XXII, p. 369; as amended by Ordres en Conseil Vol. XXXI, p. 278 and Tome XXIX, p. 406.

^{hh} Recueil d'Ordonnances Tome XXV, p. 148; as amended by Ordinance No. XXXIII of 2003.

ⁱⁱ Recueil d'Ordonnances Tome XXV, p. 309.

^{jj} Recueil d'Ordonnances Tome XXVI, p. 64.

The Housing (Control of Occupation) (Extension) Ordinance, 1993^{kk}
 Housing (Control of Occupation) (Commencement) Ordinance, 1994^{ll}
 The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 1997^{mm}
 The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 1998ⁿⁿ
 The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 1998^{oo}
 The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2003^{pp}
 The Housing (Control of Occupation) (Extension) Ordinance, 2004^{qq}
 The Housing (Control of Occupation) (Suspension of Provisions of Section 65) Ordinance, 2004^{rr}
 The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2004^{ss}
 The Housing (Control of Occupation) (Amendment of Housing Register) (No. 2) Ordinance, 2004^{tt}
 The Housing (Control of Occupation) (Extension) Ordinance, 2005^{uu}
 The Housing (Control of Occupation) (Extension) Ordinance, 2007^{vv}
 The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2007^{ww}

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- kk Recueil d'Ordonnances Tome XXVI, p. 180.
 ll Recueil d'Ordonnances Tome XXVI, p. 313.
 mm Recueil d'Ordonnances Tome XXVII, p. 156.
 nn Recueil d'Ordonnances Tome XXVIII, p. 18.
 oo Recueil d'Ordonnances Tome XXVIII, p. 174.
 pp Ordinance No. XV of 2003.
 qq Ordinance No. XII of 2004.
 rr Ordinance No. I of 2004.
 ss Ordinance No. XXV of 2004.
 tt Ordinance No. XLVI of 2004.
 uu Ordinance No. XIV of 2005.
 vv Ordinance No. XIV of 2007.

The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2008^{xx}

The Housing (Control of Occupation) (Guernsey) (Amendment) Ordinance, 2008^{yy}.

The Housing (Control of Occupation) (Extension) Ordinance, 2009^{zz}

The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2010^{aaa}

The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2011^{bbb}

The Housing (Control of Occupation) (Amendment of Housing Register) (No. 2) Ordinance, 2011^{ccc}

The Housing (Control of Occupation) (Extension) Ordinance, 2011^{ddd}

The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2012^{eee}

The Housing (Control of Occupation) (Amendment of Housing Register) (No. 2) Ordinance, 2012^{fff}

The Housing (Control of Occupation) (Extension) Ordinance, 2013^{ggg}

The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2014^{hhh}

The Housing (Control of Occupation) (Amendment of Housing Register) (No. 2) Ordinance, 2014ⁱⁱⁱ

| | |
|------------|-------------------------------|
| ww | Ordinance No. XLIX of 2007. |
| xx | Ordinance No. XXIV of 2008. |
| yy | Ordinance No. XVII of 2008. |
| zz | Ordinance No. XX of 2009. |
| aaa | Ordinance No. XXV of 2010. |
| bbb | Ordinance No. XV of 2011. |
| ccc | Ordinance No. XLIV of 2011. |
| ddd | Ordinance No. XXXIII of 2011. |
| eee | Ordinance No. IV of 2012. |
| fff | Ordinance No. XXXII of 2012. |
| ggg | Ordinance No. XXXII of 2013. |
| hhh | Ordinance No. XXVII of 2014. |
| iii | Ordinance No. LVI of 2014. |

Guernsey Statutory Instruments

The Right to Work (Employment Records) Regulations, 1990^{jjj}

The Right to Work (Limitation and Proof) (Tent Dwellers' Declarations) Regulations, 2003^{kkk}

The Housing (Control of Occupation) (Fees) (Guernsey) Regulations, 2014^{lll}

Repeal of parts of enactments

Section 11 of the Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001^{mmm}

^{jjj} G.S.I. No. 11 of 1990.

^{kkk} G.S.I. No. 9 of 2003.

^{lll} G.S.I. No. 80 of 2014.

^{mmm} Order in Council No. XVIII of 2001; as amended by Ordinance No. XXVII of 2001 and No. XXXIII of 2003.

SCHEDULE 4
CONSEQUENTIAL AMENDMENTS

Section 86.

General

1. In any enactment in which there is a reference to a Part or Parts of the Housing Register maintained by the States Housing Department under the Housing (Control of Occupation) (Guernsey) Law, 1994, there is substituted a reference to that Part or those Parts of the Open Market Housing Register maintained by the States Committee for the Environment & Infrastructure under the Open Market Housing Register (Guernsey) Law, 2016.

Laws

2. In section 6B(2) of the Supplementary Benefit (Guernsey) Law, 1971ⁿⁿⁿ, for the definition of "a relevant person", substitute –

"**a relevant person**" means a person who is not a Permanent Resident within the meaning of the Population Management(Guernsey) Law, 2016, and".

3. In section 78(2)(b)(i) of the Children (Guernsey and Alderney) Law, 2008, for "the Housing (Control of Occupation) (Guernsey) Law, 1994", substitute "the Population Management (Guernsey) Law, 2016".

Ordinances

4. In section 4 of the Smoking (Prohibition in Public Places and Workplaces) (Exemptions and Notices) (Guernsey) Ordinance, 2006^{ooo}, for the definition of

ⁿⁿⁿ Ordres en Conseil Vol. XXIII, p. 26; as amended by Ordres en Conseil Vol. XXVI, p. 292; Vol. XXIX, p. 107; Order in Council No. XIII of 2014; No. VII of 2015; Recueil d'Ordonnances Tome. XXVI, p. 177; Ordinance No. XXXIII of 2003; and No. VII of 2010.

^{ooo} Ordinance No. XXIV of 2006; as amended by Ordinance No. V of 2013.

"hotel" substitute –

""**hotel**" has the meaning given by section 37 of the Open Market Housing Register (Guernsey) Law, 2016, "".

5. For section 1(2)(a) of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009^{PPP}, substitute –

"(a) the Population Management (Guernsey) Law, 2016, and".

Guernsey Statutory Instruments

6. Renumber as 3(1) paragraph 3 of the States Housing (Statutory Tenancies) (Guernsey) Regulations, 2005^{qqq}, in that subparagraph for "right to work document" substitute "old regime document, Resident Certificate, Resident Permit or Employment Permit," and after that subparagraph insert –

"(2) In subparagraph (1), "old regime document", "Resident Certificate", "Resident Permit" and "Employment Permit" have the meanings given in the Population Management (Guernsey) Law, 2016.".

7. In paragraph 3 of the Immigration (Guernsey) (Accession State Workers) Rules 2004^{rrr}, for subparagraph (b)(i) substitute –

"(i) in Guernsey, he holds an appropriate Resident Permit or Employment Permit under the provisions of the Population Management (Guernsey) Law, 2016; and",

and for subparagraph (c)(i) substitute –

^{PPP} Ordinance No. VII of 2010.
^{qqq} G.S.I. No. 9 of 2005.
^{rrr} G.S.I. No. 15 of 2004.

"(i) in Guernsey, he complies with the provisions of the Population Management (Guernsey) Law, 2016; and".

8. In paragraph 3 of the Immigration (Accession) (Workers from Bulgaria and Romania (Guernsey) Rules 2006^{sss}, for subparagraph (1)(a)(i) substitute –

"(i) in Guernsey, he holds an appropriate Resident Permit or Employment Permit under the provisions of the Population Management (Guernsey) Law, 2016; and",

and for subparagraph (1)(b)(i) substitute –

"(i) in Guernsey, he complies with the provisions of the Population Management (Guernsey) Law, 2016; and".

^{sss}

G.S.I. No. 56 of 2006.

PROJET DE LOI

ENTITLED

The Open Market Housing Register (Guernsey) Law, 2016

ARRANGEMENT OF SECTIONS

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Offences

- 28. False, deceptive or misleading statements.
- 29. Obstruction, etc.
- 30. Offences by legal persons and unincorporated bodies.

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- 32. General provisions as to Ordinances.
- 33. Power to amend Law by Ordinance for specific purpose.
- 34. General provisions as to regulations.
- 35. Service of documents.
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- 37. Interpretation.
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PROJET DE LOI

ENTITLED

The Open Market Housing Register (Guernsey) Law, 2016

THE STATES, in pursuance of their Resolutions of the 26th January, 2012^a, 28th June, 2013^b, 29th July, 2014^c, 24th June, 2015^d, and 29th July, 2015^e, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

PART 1

THE OPEN MARKET HOUSING REGISTER

General

The Open Market Housing Register.

1. (1) The Committee shall maintain the register of dwellings which was established under section 22(1) of the Law of 1982, and which shall be referred to as the Open Market Housing Register (in this Law, "**the Register**").

(2) The Register shall continue to be divided into Parts A, B, C and D, and a reference in this Law to Part A, Part B, Part C or Part D is a reference to that Part of the Register.

The Part D cap.

2. (1) The States may by Ordinance prescribe the maximum number

^a Billet d'État No. I of 2012.

^b Item 1 of Billet d'État No. XI of 2013.

^c Item VI of Billet d'État No. XVI of 2014.

^d Item VI of Billet d'État No. XI of 2015.

^e Items VI and VII of Billet d'État No. XIV of 2015.

of properties that may be inscribed in Part D, provided that the number prescribed in such an Ordinance is more than the number of properties inscribed in Part D at the time the Ordinance is made.

(2) The maximum number of properties that may be inscribed in Part D from time to time pursuant to an Ordinance made under subsection (1) shall be referred to as "**the Part D cap**".

New inscriptions.

3. (1) Subject to subsection (2), the Committee may, on application being made to it in a form prescribed by the Committee by regulations and on payment being made of any fee so prescribed, inscribe in the Register a property that is currently not so inscribed.

(2) A property may only be inscribed in the Register under subsection (1) if the Committee is satisfied that –

- (a) the inscription would be in accordance with States population policies, and
- (b) in the case of an inscription in Part D –
 - (i) the property is a house in multiple occupation, and
 - (ii) the number of properties inscribed in Part D at the time the inscription is made is less than the Part D cap.

(3) The States may by Ordinance make further provision in relation to the inscription of properties in Part D.

Provisions as to deletion subject to Committee's powers under section 17.

4. Any provision of this Law that requires the Committee to delete the inscription of a property from –

- (a) the Register, or
- (b) one Part of the Register and transfer it to another,

is subject to the Committee's powers under section 17 (Temporary maintenance of inscription of properties subject to deletion), and shall be construed accordingly.

Replacement dwellings.

5. Subject to the provisions of this Law and of any Ordinance made under it the Committee shall, upon application being made to it in accordance with the provisions of any such Ordinance by the owner of a dwelling ("the new dwelling") constructed to replace a dwelling ("the old dwelling") which was demolished, destroyed or damaged at a time when it was inscribed in, or eligible to be inscribed in, the Register, inscribe the new dwelling in the Register if the owner thereof satisfies the Committee that -

- (a) the new dwelling is constructed on the same site as the old dwelling,
- (b) the demolition, destruction or damage was of such extent as to render the old dwelling incapable of being wholly used for the purposes of human habitation, and
- (c) the construction of the new dwelling was commenced within a period of 12 months (or such other period as the Committee may determine in any particular case, including by reference to the occurrence of an event) immediately following the date on which the demolition, destruction or damage took place and was completed before the expiration of such further period thereafter as the Committee may so determine.

Deletion from Register by Committee.

6. Where a dwelling inscribed in the Register is used wholly for purposes other than human habitation, the Committee shall delete the inscription relating to that dwelling from the Register.

Deletion from Register at request of owner.

7. Subject to the provisions of this Law and of any Ordinance made under it the Committee shall, upon application being made to it in accordance with the provisions of any such Ordinance by the owner of a dwelling inscribed in the Register, delete the inscription relating to that dwelling from the Register.

Dwellings which are combined.

8. (1) Where two or more dwellings, any of which is not inscribed in the Register, are combined, whether by alteration or otherwise, so as to be used or made usable as a single dwelling, then that single dwelling, whether or not inscribed as such in the Cadastre, shall not be eligible to be inscribed in the Register and, if any of those dwellings are inscribed in the Register, the Committee shall delete the inscriptions relating to them from the Register.

(2) Where the owner of a single dwelling created by the combination of no more than two dwellings in the circumstances described in subsection (1) (referred to in this subsection as "**the single dwelling**"), is also the owner of another dwelling which is deleted from Part A under section 7 or 9, the Committee may, upon application made to it in that behalf no later than six months after the date of deletion from Part A of that other dwelling, inscribe the single dwelling in Part A by way of substitution for the deleted dwelling.

Dwellings which are divided.

9. Where a single dwelling inscribed in the Register is, whether by alteration or otherwise, used or made usable as two or more dwellings -

- (a) that single dwelling, whether or not inscribed as such in the Cadastre, shall, subject to section 11, cease to be eligible to be inscribed in the Register and the Committee shall delete the inscription relating to it from the Register, and
- (b) the Committee may, upon application being made to it in that behalf, inscribe in the Register one only of the dwellings created by the alteration or otherwise of that single dwelling.

Dwellings which are otherwise altered.

10. (1) Where any works, whether of alteration or otherwise, are carried out in relation to a dwelling inscribed in the Register the effect of which is the enlargement of that dwelling by the incorporation within it or annexation to it of any accommodation comprised in another dwelling, that accommodation may, subject to the provisions of section 8, be inscribed in the Register as part of the first-mentioned dwelling if and only if -

- (a) the owner of the first-mentioned dwelling has complied with the provisions of subsection (4), and
- (b) where the other dwelling is not a dwelling inscribed in the Register, the Committee has given its prior written consent to the carrying out of the works in question.

(2) For the purposes of subsection (1)(b) the Committee shall give its consent to the carrying out of the works in question if and only if satisfied that -

- (a) the gain of accommodation in relation to the dwelling inscribed in the Register and the loss of accommodation in relation to the dwelling which is not so inscribed resulting from the works would not be significant, and
- (b) the works are to be carried out solely for the purpose of the rationalisation by way of better arrangement of the accommodation comprised in the dwellings in question;

and in deciding whether or not to give its consent the Committee may take into account any previous such works affecting any of the dwellings in question.

(3) Where any works, whether by alteration or otherwise, are carried out in relation to a dwelling inscribed in the Register the effect of which is the enlargement of another dwelling by the incorporation within it or annexation to

it of any accommodation comprised in the first-mentioned dwelling -

- (a) that accommodation shall cease to be inscribed in the Register as part of the first-mentioned dwelling, but the remaining parts of that dwelling may, subject to the provisions of section 9, and provided that the owner thereof has complied with the provisions of subsection (4), continue to be inscribed in the Register, and
- (b) the other dwelling, if not inscribed in the Register, shall not, as so enlarged, be eligible to be so inscribed.

(4) Where the owner of a dwelling inscribed in the Register intends to effect any works described in this section, whether by way of enlargement, incorporation, annexation, alteration or otherwise, he shall, not less than 14 days before the day on which the works commence (or within such other period as the Committee may, in its absolute discretion, determine, including by reference to the occurrence of an event), inform the Committee by notice in writing of the fact, nature and extent of the proposed works.

(5) Upon receipt of an application for consent under subsection (1)(b) or a notice under subsection (4) and at any time thereafter, the Committee may require the owner for the time being of any of the dwellings in question to supply such additional information and documents as the Committee may require.

(6) A person who without reasonable excuse, proof whereof shall lie on him, fails to comply with subsection (4) or any requirement under subsection (5) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(7) The provisions of this section are without prejudice to any other requirement of law relating to the carrying out of the works in question.

Dwellings to which section 9 does not apply.

11. Notwithstanding the provisions of section 9, where a hotel inscribed

in Part B is, whether by alteration or otherwise, used or made usable as two or more dwellings, such of the two or more dwellings as are used -

- (a) for the accommodation of persons employed at the hotel for the purposes of the operation of its boarding permit shall continue to be included in the inscription in Part B relating to the hotel, and
- (b) as self-catering units for the business of providing accommodation for reward to tourists shall cease to be included in the said inscription.

Transfers of inscription

Transfers from Part A to Part B.

12. Where a dwelling inscribed in Part A is a hotel, the Committee shall delete the inscription relating to the dwelling from Part A and inscribe the dwelling in Part B.

Transfers from Part B.

13. Where a dwelling inscribed in Part B ceases to be a hotel, the Committee shall delete the inscription relating to the dwelling from Part B and, if the dwelling -

- (a) was –
 - (i) on the 31st October, 1982, inscribed in the Register of 1975, or
 - (ii) immediately prior to its inscription in Part B, inscribed in Part A,

the Committee shall inscribe it in Part A,

- (b) is a residential home or a nursing home, the Committee shall inscribe it in Part C,

- (c) is a house in multiple occupation, the Committee shall, subject to section 16, inscribe the dwelling in Part D.

Transfers from Part A to Part C.

14. Where a dwelling inscribed in Part A is registered as a residential home or nursing home under the Nursing Homes Law, the Committee shall delete the inscription relating to the dwelling from Part A and inscribe the dwelling in Part C.

Transfers from Part C.

15. Where a dwelling inscribed in Part C ceases to be registered as a residential home or nursing home under the Nursing Homes Law, the Committee shall delete the inscription relating to the dwelling from Part C, and -

- (a) if the dwelling -
 - (i) was, on the 31st October, 1982, inscribed in the Register of 1975, or
 - (ii) was, immediately prior to its inscription in Part C, inscribed in Part A,

and is not one to which paragraph (b) or (c) applies, the Committee shall inscribe the dwelling in Part A,

- (b) if the dwelling is a hotel, the Committee shall inscribe the dwelling in Part B, or
- (c) if the dwelling is, in the opinion of the Committee, being used as a house in multiple occupation, the Committee shall, subject to section 16, inscribe the dwelling in Part D.

Transfers to and from Part D.

16. (1) A property inscribed in another Part may not be transferred to Part D unless at the time of the transfer the number of properties inscribed in Part

D is less than the Part D cap.

(2) The owner of a property inscribed in Part D may apply to the Committee for the inscription of that property to be transferred to Part A; and if the Committee is satisfied that the property is being, and shall continue to be, used as a private family home it shall grant the application.

(3) Where a dwelling inscribed in Part D ceases in the opinion of the Committee to be used as a house in multiple occupation, the Committee shall delete the inscription relating to the dwelling from Part D, and -

(a) if the dwelling -

(i) was, on the 31st October, 1982, inscribed in the Register of 1975, or

(ii) was, immediately prior to its inscription in Part D, inscribed in Part A,

and is not one to which paragraph (b) or (c) applies, the Committee shall inscribe the dwelling in Part A,

(b) if the dwelling is a hotel, the Committee shall inscribe the dwelling in Part B, and

(c) if the dwelling is registered as a residential home or nursing home under the Nursing Homes Law, the Committee shall inscribe the dwelling in Part C.

(4) Where a dwelling inscribed in Part A is, in the opinion of the Committee, being used as a house in multiple occupation, the Committee shall delete the inscription relating to the dwelling from Part A and shall, subject to subsections (1), (5) and (6), inscribe the dwelling in Part D.

(5) The Committee shall, before inscribing a dwelling in Part D under subsection (4) or under section 15(c), serve on the owner thereof notice of its

intention to do so; and the notice shall give the owner particulars of his right of appeal to the Ordinary Court under section 27.

(6) The Committee shall not inscribe a dwelling in Part D under subsection (4) or under section 15(c) -

- (a) until the expiration of 28 days immediately following the date of the notice required to be served by subsection (5), or
- (b) where an appeal is instituted against the decision to so inscribe the dwelling, until the appeal is finally determined or withdrawn.

(7) For the purposes of subsection (6) an appeal shall be deemed not to have been finally determined until the expiration of the time allowed for the institution of an appeal to the Court of Appeal under the Court of Appeal (Guernsey) Law, 1961^f or until the determination of any such appeal instituted within that time.

(8) Subsection (4) is subject to the provisions of section 64 (Parts A and D of the Open Market Housing Register) of the Population Management Law.

(9) Notwithstanding the provisions of section 35, a notice to be served on the owner of a dwelling under subsection (5) shall, if sent by post, be sent by registered post or by recorded delivery service.

Temporary maintenance of inscription of properties subject to deletion.

17. (1) Where –

- (a) a property is subject to deletion from the Register under this Law, and

^f Ordres en Conseil Vol. XVIII, p. 315; as amended by Order in Council No. III of 2012; and Recueil d'Ordonnances Tome XXIX, p. 406.

- (b) the Committee is satisfied that the circumstances pertaining which have resulted in its being so subject are, or are likely to be, temporary,

the Committee may direct that the property's inscription in the Part of the Register in which it is inscribed at the time of the direction shall be maintained for a specified period (which period may be specified by reference to the occurrence of an event), and -

- (i) if at the end of that period the same circumstances continue to pertain such that it continues to be subject to deletion from the Register, it shall be so deleted, unless the Committee has made another direction under this section before that period expires, and
- (ii) if at the end of that period the same circumstances do not continue to pertain and the property is thereby no longer subject to deletion, it shall not be so deleted,

and a direction under this subsection shall be served on the property's owner; and this Law shall be construed accordingly.

(2) References in subsection (1) to a property being subject to deletion from the Register include references to a property being subject to deletion from one Part of the Register and inscription in another Part.

Transfers subject to provisions as to deletion.

18. The provisions of sections 12 to 16 in respect of the inscription of dwellings in particular Parts are subject to the provisions of sections 6 to 10.

Miscellaneous

Declarations of registration.

19. (1) The owner of a dwelling inscribed in the Register or a person authorised by him in writing in that behalf may apply to the Committee in such form and manner and giving such information as the Committee may require for a declaration ("**a declaration of registration**") that the dwelling concerned is validly and properly inscribed in Part A, B, C or D, as the case may be.

(2) Upon receipt of an application under subsection (1) and at any time thereafter, the Committee may require the applicant to supply such additional information as the Committee may require.

Power to make regulations providing for the payment of charges.

20. The Committee may make regulations providing that a fee shall be payable on an application made under section 19(1).

Issue of declarations of registration.

21. (1) The Committee shall, upon receipt of an application under section 20, if satisfied that the dwelling concerned is validly and properly inscribed in Part A, B, C or D, issue to the applicant a declaration of registration, signed by a person authorised in that behalf by the Committee and in such form as the Committee may determine, stating its decision that, on the date specified in the declaration, the dwelling was validly and properly so inscribed.

(2) If the Committee is not satisfied that the dwelling concerned is validly and properly inscribed in Part A, B, C or D, it shall serve notice on the applicant stating its decision and the reasons therefor.

(3) In proceedings for a contravention of this Law or of the Population Management Law, a declaration of registration stating that, on the date specified in the declaration, a dwelling was validly and properly inscribed in Part A, B, C or D shall, subject to subsection (4), be evidence of that fact.

(4) Where a person is convicted of an offence under section 28 in connection with an application for a declaration of registration, any such declaration issued in consequence of that application shall thereupon be deemed to be void *ab*

initio and shall not be evidence of any fact stated therein.

Additional premises to dwellings.

22. (1) Where within the enclos, curtilage or precincts of a hotel inscribed in Part B there are built, converted or otherwise created any premises, other than a self-catering unit, for the accommodation of tourists or persons employed at the hotel for the purposes of the operation of the boarding permit, the Committee may, upon application being made to it by the owner, include the premises within the inscription in the Register relating to the hotel.

(2) Any premises included within the inscription relating to a hotel under subsection (1) shall cease to be so included if the premises cease to be used for the accommodation of tourists or persons employed as aforesaid.

Certain dwellings may be retained on Register.

23. Where a person ("the purchaser") purchases a dwelling which is, on the day on which the conveyance relating to the purchase is registered at the Greffe, inscribed in the Register but which is not on that day eligible to be so inscribed by reason of being used or having been made usable as two or more dwellings, the Committee may retain the inscription relating to that dwelling in the Register if the purchaser -

- (a) satisfies the Committee that, on the day on which he gave his consent to the conveyance, he was unaware that the dwelling was not on that day eligible to be inscribed in the Register, and
- (b) within a period of 30 days immediately following the date of the conveyance or such longer period as the Committee may allow (including by reference to the occurrence of an event), causes the said two or more dwellings to be combined to the satisfaction of the Committee, whether by alteration or otherwise, so as to be used or usable as a single dwelling.

Provision for Register by Ordinance.

24. Subject to the succeeding provisions of this Law, the States may by

Ordinance make such provision as they consider to be necessary or expedient for the maintenance by the Committee of the Register; and, without prejudice to the generality of the foregoing, they may in particular make provision for all or any of the following matters—

- (a) the form of the Register and the matters to be inscribed therein (including, for the avoidance of doubt, provision for the Register to be maintained solely in electronic form),
- (b) the giving of prior notice to the Committee or any other person by the owner of a dwelling inscribed in the Register if the owner intends to effect any alteration, whether structural or by way of change of use, to the dwelling,
- (c) the availability of the Register for inspection (including, for the avoidance of doubt, provision for the Register to be available for inspection solely on a website or through some other electronic means), and
- (d) such incidental and supplementary matters as the States consider it necessary or expedient to provide.

PART 2

LEGAL PROVISIONS AND OFFENCES

Compliance Notices.

25. (1) If the Committee has reasonable grounds to believe that a dwelling inscribed in the Register is being used inconsistently with its inscription in the Register, it may serve on the owner thereof a notice under subsection (2) ("**a compliance notice**").

- (2) A compliance notice shall set out –
 - (a) how and why the Committee believes the property is being used inconsistently with its inscription in the Register,

- (b) the steps that need to be taken for the Committee to be satisfied that the property is being used consistently with its inscription in the Register,
- (c) the period within which those steps are required be taken,
- (d) a warning that if those steps are not taken within that period, the Committee may suspend for a specified period, or delete, the property's inscription pursuant to this section, and
- (e) the right of the person served with the notice to appeal against it under section 27.

(3) If the Committee is satisfied, after service of a compliance notice, that the steps specified under subsection (2)(b) have not been taken within the period specified under subsection (2)(c), the Committee may, subject to subsection (4) –

- (a) suspend for the period specified, or
- (b) delete,

the inscription in the Register of the property in question.

(4) For the avoidance of doubt –

- (a) the Committee may not suspend or delete the inscription of the property in question until after the expiry of -
 - (i) the period referred to in section 27(3)(a), or
 - (ii) the period specified in subsection (2)(c), if that

period is longer, and

- (b) if an appeal under section 27 against the decision to serve the compliance notice is instituted, the Committee may not suspend or delete the inscription of the property in question until the appeal is finally determined, or withdrawn,

and for the purposes of this subsection, an appeal shall be deemed not to have been finally determined until the expiration of the time allowed for the institution of an appeal to the Court of Appeal under the Court of Appeal (Guernsey) Law, 1961 or until the determination of any such appeal instituted within that time.

(5) If the Committee suspends or deletes the inscription of a property under subsection (3) it shall serve a notice on the property's owner, informing him of the suspension or deletion (a "**suspension notice**" or "**deletion notice**" as the case may be).

(6) A suspension notice shall -

- (a) specify the period of suspension of inscription of the property in question,
- (b) set out the steps that need to be taken within that period for the Committee to be satisfied that the property is being used consistently with its inscription in the Register and thereafter restore the property to the Register, and
- (c) provide that if the Committee is not so satisfied within that period, it may delete the inscription of the property from the Register.

(7) If, after service of a suspension notice, the Committee is satisfied as to the matters and within the period specified and set out pursuant to subsections (6)(a) and (b), it shall restore the inscription of the property on the

Register, and inform the property's owner of the same; and if it is not so satisfied it may delete the inscription of the property from the Register, in which case it shall serve a deletion notice on the property's owner.

(8) For the avoidance of doubt, the Committee's powers under this Part are without prejudice to -

- (a) the Committee's powers and duties in respect of the transfer and deletion of the inscription of dwellings on the Register under Part 1, and
- (b) the powers and duties of the States Committee for Home Affairs under sections 31 and 32 of the Population Management Law.

Warrant to enter premises.

26. (1) If the Bailiff is satisfied by information on oath supplied by a person authorised by the Committee to apply for and execute warrants under this section, that there are reasonable grounds for suspecting that –

- (a) any two or more dwellings are used or usable in the manner described in section 8,
- (b) any single dwelling is used or usable in the manner described in section 9, or
- (c) any dwelling inscribed in the Register is being used wholly for purposes other than human habitation,

the Bailiff may grant a warrant.

(2) A warrant granted under subsection (1) authorises the person named therein at any time within one month of the date of the grant to enter the premises specified in the warrant for the purpose of ascertaining whether any of the circumstances described in subsection (1)(a) to (c) pertain, or have pertained, in respect of those premises.

(3) The Bailiff must not issue a warrant under subsection (1) unless the Bailiff is satisfied that any of the following four conditions is met.

(4) The first condition is that the whole of the premises is used as a dwelling and the occupier has been informed of the decision to apply for a warrant.

(5) The second condition is that any part of the premises is not used as a dwelling and that each of the following applies to the occupier of the premises -

- (a) the occupier has been informed of the decision to seek entry to the premises and of the reasons for that decision,
- (b) the occupier has failed to allow entry to the premises on being requested to do so by an officer of the Committee, and
- (c) the occupier has been informed of the decision to apply for a warrant.

(6) The third condition is that -

- (a) the premises are unoccupied or the occupier is absent, and
- (b) notice of intention to apply for a warrant has been left in a conspicuous place on the premises.

(7) The fourth condition is that it is inappropriate to inform the occupier of the decision to apply for a warrant because -

- (a) it would defeat the object of entering the premises, or

(b) entry is required as a matter of urgency.

(8) A person executing a warrant issued under this section may use such reasonable force as may be necessary.

(9) A person executing a warrant issued under this section may require, on production if so required of that warrant, the production of any record, document or other information relating to the matters set out in subsection (1)(a) to (c).

(10) The power under subsection (9) to require the production of any record, document or other information includes the power –

- (a) if it is produced, to examine and take copies of it (in whichever form it is held),
- (b) if it is not produced, to require the person who was required to produce it to state, to the best of his knowledge and belief, where it is, and
- (c) to require the reproduction in legible form of any record or information maintained otherwise than in legible form.

(11) Sections 10 (search warrants - safeguards) and 11 (execution of warrants) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^g apply in relation to the issue of a warrant under this section as they apply in relation to the issue of a warrant to a police officer.

(12) For the purposes of this section, **"the Bailiff"** means the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué.

^g Ordres en Conseil Vol. XLIII (2), p. 617; as amended by Order in Council No. XVI of 2009; No. XV of 2011; Recueil d'Ordonnances Tome XXIX, p. 406; Ordinance No. XXIX of 2011; and No. XX of 2015.

Appeals against decisions.

27. (1) A person aggrieved by a decision of the Committee under this Law may appeal to the Court against the decision.

(2) The grounds of an appeal under this section are that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(3) Subject to subsection (4), an appeal under this section shall be instituted -

- (a) within a period of 28 days immediately following the date of the notice of the Committee's decision, and
- (b) by summons served on the President of the Committee stating the grounds and material facts on which the appellant relies.

(4) An appeal against a decision stated in a declaration of registration issued under section 21(1) or stated in a notice served under section 21(2) shall be instituted within a period of two months immediately following the date of the declaration or, as the case may be, of the notice.

(5) The Committee may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the

application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just.

The provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007^h.

(6) On an appeal under this section the appellant shall have the burden of proof and the final right of reply.

(7) On an appeal under this section the Court may -

- (a) set the decision of the Committee aside and, if the Court considers it appropriate to do so, remit the matter to the Committee with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

(8) On an appeal under this section against a decision of the Committee the Court may, on the application of the appellant or the Administrator or of its own volition, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(9) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(10) In this section "**the Court**" means the Ordinary Court.

^h O.R.C. No. IV of 2007; as amended by O.R.C. No. II of 2008.

*Offences***False, deceptive or misleading statements.**

28. (1) A person commits an offence if –

- (a) for the purpose of or in connection with an application under this Law,
- (b) in purported compliance with any requirement of a document issued under this Law,
- (c) in purported compliance with a requirement imposed under, or otherwise for the purposes of this Law,
- (d) otherwise than as mentioned in paragraphs (a) to (c) but in circumstances in which that person intends, or could reasonably be expected to know, that the statement, information or document provided would or might be used by any person for the purpose of exercising functions conferred under this Law,

that person does any of the following -

- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or

misleading in a material particular, or

- (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular.

(2) A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding 2 years, or to a fine not exceeding twice level 5 on the uniform scale, or to both.

Obstruction, etc.

29. (1) A person who -

- (a) obstructs another person in the exercise of that other person's functions under this Law,
- (b) fails, without reasonable excuse, to give any person executing a warrant issued under section 26 such assistance as that person may reasonably require for the execution of the warrant,

commits an offence.

(2) A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding 2 years, or to a fine not exceeding twice level 5 on the uniform scale, or to both.

Offences by legal persons and unincorporated bodies.

30. (1) Where a legal person is guilty of an offence under this Law, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) any director, manager, secretary or other similar officer, or any foundation official, of the legal person,

or

- (b) any person purporting to act in any such capacity,

he as well as the legal person is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a legal person are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director.

(3) Where an offence under this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the Committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence must be brought in the name of that body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of an offence under this Law must be paid from the funds of that body.

(6) In this section, "**legal person**" includes any body corporate and any other body of persons on which legal personality is conferred by any enactment.

PART 3 GENERAL AND FINAL

Delegation of functions.

31. (1) The Committee may resolve that any of its functions under this Law may be performed in its name by -

- (a) a sub-committee comprising not less than two members of the Committee, or
- (b) any individual member or officer of the Committee.

(2) A function performed in pursuance of a resolution under subsection (1) shall be considered for all purposes to have been performed by the Committee; and any decision taken or other thing done pursuant to the resolution shall have effect as if taken or done at a quorate meeting of the Committee.

(3) The Committee may by resolution vary or revoke a resolution under subsection (1), but without prejudice to anything previously done pursuant thereto.

(4) Nothing contained in this section or in a resolution under subsection (1) -

- (a) prevents the carrying out of a function by the Committee, or
- (b) affects the operation in relation to the Committee of the Public Functions (Transfer and Performance)

(Bailiwick of Guernsey) Law, 1991ⁱ.

General provisions as to Ordinances.

32. (1) An Ordinance under this Law (including for the avoidance of doubt an Ordinance under section 33) -

- (a) may be amended or repealed by a subsequent Ordinance hereunder,
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to the States to be necessary or expedient.

(2) Any power conferred upon the States by this Law to make an Ordinance may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;
- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise);
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes;

ⁱ Ordres en Conseil Vol. XXXIII, p. 478; as amended by Recueil d'Ordonnances Tome XXIX, p. 406.

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Any power conferred by this Law to make an Ordinance may be exercised at any time after the registration of this Law and before Commencement; provided that no Ordinance so made shall come into force until Commencement.

Power to amend Law by Ordinance for specific purpose.

33. The States may amend this Law by Ordinance, but only for the purpose of providing for a committee, authority, or like body of the States of Guernsey, however called, to perform one or more of the functions of the Committee under this Law.

General provisions as to regulations.

34. (1) Regulations under this Law -

- (a) may be amended or repealed by subsequent regulations hereunder;
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to the Committee to be necessary or expedient.

(2) Any power conferred upon the Committee by this Law to make regulations may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;
- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends,

or any lesser provision (whether by way of exception or otherwise);

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes;
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Regulations under this Law shall be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the States resolve that the regulations be annulled, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Service of documents.

35. (1) Any notice or document other than a summons to be served under or for the purposes of the provisions of this Law may be served on -

- (a) an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,
- (b) a legal person with a registered office in Guernsey, by being left at, or sent by post or transmitted to, that office,
- (c) a legal person without a registered office in Guernsey, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or, if there is no such place, its registered office or principal or last known principal place of business elsewhere,

- (d) an unincorporated body -
 - (i) by being served on any partner, member of the Committee or other similar governing body, manager, director or other similar officer thereof in accordance with paragraph (a), or
 - (ii) by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere,
- (e) the Committee, by being left at, or sent by post or transmitted to, the Committee's offices,

(2) Where the provisions of this Law authorise or require a document to be served on a person who is a minor or a person under legal disability, the document may be served on –

- (a) in the case of a minor, his parent or guardian, and
- (b) in the case of a person under legal disability, his guardian,

and if there is no guardian, the party wishing to effect service may apply to the Royal Court for the appointment of a person to act as guardian for the purposes of those provisions.

(3) If service of a notice or document cannot, after reasonable enquiry, be effected in accordance with subsection (1), the notice or document may be served by being -

- (a) delivered to some responsible person in the dwelling (if any) to which the notice or document relates or, if there is no such person, by being affixed to a

conspicuous part of the dwelling; or

(b) published on two occasions in La Gazette Officielle.

(4) Subsections (1) to (3) are without prejudice to any other lawful method of service and to the provisions of section 36.

(5) Where a document is sent by post it shall, unless the contrary is shown, be deemed for the purposes of the provisions of this Law to have been received -

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any non-business day.

(6) For the purposes of the provisions of this Law, service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(7) Notwithstanding the provisions of this section and of any other rule of law in relation to the service of documents, no document to be served on the Registrar under or for the purposes of the provisions of this Law shall be deemed to have been served until it is received.

(8) In this section and in section 36 -

"**by post**" means by registered post, recorded delivery service or ordinary letter post,

"**non-business day**" means -

- (a) a Saturday, a Sunday, Christmas Day and Good Friday, and
- (b) any day appointed as a public holiday by Ordinance of the States under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^j,

"served" includes given and submitted,

"summons" includes any document compelling a person's attendance before a court, and

"transmitted" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication (in which event the document shall be regarded as served when it is received).

Submission, etc., of documents in electronic form.

36. (1) Any document to be served on the Committee under or for the purposes of the provisions of this Law or any Ordinance made under it shall or, as the case may be, may be in such electronic form and served by such electronic means as the Committee may require or, as the case may be, permit, whether in any particular case or class of cases or generally; and, without limitation, this section applies to any, and to anything accompanying any, application, statement, consent, declaration or signature.

(2) Accordingly, where under the provisions of this Law or any subordinate legislation made under it, any information or document is required to be in such form or to be served by such means, or anything is required to be done in such manner, as (in whatever words) the Committee may require, the Committee may, without limitation, require the information or document to be in or, as the case may be, to be served, or the thing to be done, by electronic means.

^j Ordres en Conseil Vol. XVII, p. 384; as amended by Vol. XXIV, p. 84; Vol. XXXIV, p. 504; Vol. XXXV(1), p. 367; and Ordinance No. IX of 2001.

- (3) This section is without prejudice to -
- (a) section 35(7), and
 - (b) the Electronic Transactions (Guernsey) Law, 2000^k.

Interpretation.

37. (1) In this Law, unless the context otherwise requires -

"**boarding permit**" means a boarding permit granted under the Tourist Law, 1948^l,

"**the Cadastre**" means the Cadastre prepared and maintained under the provisions of the Cadastre Law, 1947^m,

"**Commencement**" means the coming into force of this Law,

"**the Committee**" means the States Committee for the Environment & Infrastructure,

"**contract of employment**" means a contract of service or apprenticeship (whether written or oral, express or implied),

"**contravention**" includes failure to comply and related expressions shall be construed accordingly,

"**controller**" means, in relation to a body corporate, a person, or two or more persons together, having a controlling interest in that body

^k Ordres en Conseil Vol. XL, p. 263; as amended by Recueil d'Ordonnances Tome XXIX, p. 406; and Ordinance No. XIV of 2014.

^l Ordres en Conseil Vol. XXI, p. 104; as amended by Recueil d'Ordonnances Tome XVIII, p. 20; and Vol. XXVIII, p. 275.

^m Ordres en Conseil Vol. XIII, p. 78; as amended by Vol. XIII, p. 381; Vol. XXVIII, p. 395; Vol. XXXI, p. 278; Vol. XXXII, p. 161; and Recueil d'Ordonnances Tome XXIX, p. 406.

corporate as defined in paragraph (a) of the definition of the phrase "controlling interest" contained in this section,

"controlling interest" means, in relation to a body corporate, the power of a person -

- (a) to secure, by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or by virtue of any powers conferred by the Articles of Association or any other document regulating that or any other body corporate or otherwise, that the affairs of the first mentioned body corporate are conducted in accordance with his wishes,
- (b) who is a loan creditor of a body corporate and who, in the opinion of the Committee, is able to secure that the affairs thereof are conducted in accordance with his wishes,

"the Court of Appeal" means the Court of Appeal established under the provisions of the Court of Appeal (Guernsey) Law, 1961,

"dwelling" has the meaning given by the Population Management Law,

"employed" has the meaning given by the Population Management Law,

"foundation official" has the meaning given by the Foundations (Guernsey) Law, 2012ⁿ,

"Guernsey" means the Island of Guernsey,

ⁿ

Order in Council No. I of 2013.

"house in multiple occupation" does not include a private family home, a hotel, or a residential home or a nursing home,

"hotel" means a dwelling, other than a self-catering unit, in respect of which there is in force a boarding permit and which, in the opinion of the Committee, is being used for the business of providing sleeping accommodation for reward to tourists in accordance with the provisions of that permit,

"the Law of 1982" means the Housing (Control of Occupation) (Guernsey) Law, 1982⁰,

"member", in relation to the Committee, includes the President and Vice-President thereof,

"minor" means a person under 18 years of age,

"the Nursing Homes Law" means the Nursing Homes and Residential Homes (Guernsey) Law, 1976^P,

"the Ordinary Court" means the Royal Court sitting as an Ordinary Court,

"occupy" has the meaning given by the Population Management Law,

"the Part D cap": see section 2,

"the Population Management Law" means the Population Management (Guernsey) Law, 2016,

⁰ Ordres en Conseil Vol. XXVII, p. 448; as amended by Vol. XXXI, p. 30; Vol. XXXII, p. 88; Recueil d'Ordonnances Tome XXII, pp. 369, 470 and 548; Tome XXIII, pp. 33, 255, 256 and 438; Tome XXIV, pp. 104 and 498; Tome XXV, pp. 30, 74 and 135; and Tome VI, p. 10 and 291.

^P Ordres en Conseil Vol. XXVI, p. 71; as amended by Vol. XXXI, p. 278; Order in Council No. VI of 2007; and Ordinance No. XXXIII of 2003.

"the Register": see section 1,

"the Register of 1975" means the Housing Control Register established and maintained under the provisions of the Housing (Control of Occupation) (Guernsey) Law, 1975^q before the commencement of the Law of 1982,

"the Royal Court" means the Royal Court of Guernsey,

"self-catering unit" means any premises in respect of which there is in force such a description of boarding permit as is granted in respect of self-catering units,

"States population policies" has the meaning given by the Population Management Law,

"tourist" means a person who is present in Guernsey -

- (a) for the purposes of a holiday, or
- (b) for an aggregate of not more than 10 days in any 30 day period for the purposes of his employment,

but does not include a person who has been physically present in Guernsey for an aggregate of more than 90 days in any 12 month period, and

"uniform scale" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^r.

^q Ordres en Conseil Vol. XXV, p. 332; as amended by Vol. XXVII, pp. 176, 246 and 351; and Recueil d'Ordonnances Tome XX, p. 222.

^r Ordres en Conseil Vol. XXXI, p. 278; as amended by Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXV, p. 344; No. XXII of 1998; No. XXIX of 2006; and No. XXIX of 2013.

- (2) In this Law, "**owner**", in relation to a dwelling, means -
- (a) where the dwelling is the subject of saisie proceedings which have resulted in the making of an interim vesting order, the person in whose favour that order has been made,
 - (b) where the dwelling is not the subject of such saisie proceedings -
 - (i) if the dwelling is held in trust, the trustees and any person entitled to a beneficial interest under the trust,
 - (ii) if the dwelling is owned by a body corporate, that body corporate and any controller of that body corporate,
 - (iii) otherwise, the person in whom there is vested, solely, jointly or in common, an estate of inheritance in the dwelling,

and references to ownership, howsoever expressed, shall be construed accordingly.

(3) Except in so far as the context otherwise requires, any references in this Law to any other enactment shall be construed as references to that enactment as amended, repealed and re-enacted, extended or applied by or under any other enactment including this Law.

Proof of documents.

38. In any legal proceedings a document purporting to be a document issued by or on behalf of the Committee and to be signed by a member or officer thereof shall be received in evidence and shall, unless the contrary is proved, be deemed to be the document which it purports to be and to have been signed by the person by whom it purports to have been signed, without proof of his identity, signature or official capacity and shall be evidence of the matters stated therein.

Citation.

39. This Law may be cited as the Open Market Housing Register (Guernsey) Law, 2016.

Extent.

40. This Law extends to Guernsey.

Commencement.

41. This Law shall come into force on the day appointed by Ordinance of the States; and such an Ordinance may appoint different days for different provisions and different purposes.

PROJET DE LOI

ENTITLED

The Succession to the Crown (Bailiwick of Guernsey) Law, 2016

WHEREAS representatives of the Commonwealth Realms of which Her Majesty is Sovereign agreed on the 28th October, 2011 to change the rules on succession to the throne and possession of it so as to make succession not depend on gender and to end the disqualification arising from marrying a Roman Catholic;

AND WHEREAS on the 25th April, 2013 Her Majesty assented to an Act of Parliament entitled the Succession to the Crown Act 2013 which amongst other things changes the rules on succession to the throne and possession of it so as to make succession not depend on gender and ends the disqualification arising from marrying a Roman Catholic;

NOW THEREFORE THE STATES, in pursuance of their Resolution of the 11th December, 2013^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Succession to the Crown.

1. (1) The death of the Sovereign shall have the effect of transferring all the functions, duties, powers, authorities, rights, privileges and dignities belonging to the Crown to the Sovereign's successor as determined in

^a

Article VIII of Billet d'État No. XXIV of 2013.

accordance with the Act of Settlement 1700^b of the United Kingdom and any other law of the United Kingdom relating to succession to the Crown.

(2) Every reference to the Sovereign (however expressed) in any enactment, document or instrument in force shall, unless the context requires otherwise, be deemed to refer to the Sovereign for the time being.

(3) In this section, references to "**the Sovereign**" and to "**the Crown**" are to the Sovereign and the Crown in right of the Bailiwick.

Regency.

2. Where, under the law of the United Kingdom, the royal functions are being performed in the name and on behalf of the Sovereign by a Regent, the royal functions of the Sovereign in right of the Bailiwick shall be performed in the name and on behalf of the Sovereign in right of the Bailiwick by that Regent.

Interpretation.

3. (1) In this Law -

- (a) "**the Bailiwick**" means the Bailiwick of Guernsey, and
- (b) references to the law of the United Kingdom and to any enactment include any law or enactment passed before or after the commencement of this Law.

(2) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of this Law throughout the Bailiwick.

^b An Act of Parliament (12 & 13 Will. C. 2).

^c Ordres en Conseil Vol. XIII, p. 355.

Citation.

4. This Law may be cited as the Succession to the Crown (Bailiwick of Guernsey) Law, 2016.

PROJET DE LOI

ENTITLED

The Inheritance (Amendment) (Guernsey) Law, 2016

THE STATES, in pursuance of their Resolution of the 10th December, 2015^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

Amendments to Law of 2011.

1. The Inheritance (Guernsey) Law, 2011^b is amended as follows -

(a) in section 30(1), the following additional entries shall be inserted in the appropriate positions -

""**marriage**"" shall be construed in accordance with subsection (1A)", and

""**spouse**"" means a party to a marriage and shall be construed in accordance with subsection (1A)", and

(b) immediately after section 30(1) the following additional subsection shall be inserted -

^a Article VIII of Billet d'État No. XXIII of 2015.

^b Order in Council No. XIII of 2011.

"(1A) For the purposes of this Law, a marriage under the law of any country or territory is not prevented from being recognised only because it is the marriage of a same-sex couple, and "spouse" shall be interpreted accordingly.".

Citation.

2. This Law may be cited as the Inheritance (Amendment) (Guernsey) Law, 2016.

Commencement.

3. This Law shall come into force on the date of its registration on the records of the Island of Guernsey.

PROJET DE LOI

ENTITLED

The Arbitration (Guernsey) Law, 2016

ARRANGEMENT OF SECTIONS

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4. Severability of agreement to arbitrate.
5. Whether agreement discharged by death or lack of capacity.
6. Stay of court proceedings.
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8. Confidentiality.
9. Power of court to extend time.
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11. Composition of the tribunal.
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18. Power of court to remove arbitrator.
19. Resignation of arbitrator.
20. Death of person appointing arbitrator.
21. Filling of vacancy, etc.
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23. Immunity of arbitrator.

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- 24. Competence of the tribunal to rule on its own jurisdiction.
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- 26. Determination of preliminary point of jurisdiction.

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- 28. Procedural and evidential matters.
- 29. Consolidation of proceedings and concurrent hearings.
- 30. Legal or other representation.
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Powers of the court

- 36. Enforcement of peremptory orders of tribunal.
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- 40. Rules applicable to the substance of the dispute.
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- 48. Notification of award.
- 49. Power to withhold award in case of non-payment.
- 50. Correction of award or additional award.

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Award of costs

- 54. Costs of the arbitration.
- 55. Agreement to pay costs in any event.
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- 58. The recoverable costs of the arbitration.
- 59. Recoverable fees and expenses of arbitrators.
- 60. Power to limit recoverable costs.

Powers of the court in relation to the award

- 61. Enforcement of the award.
- 62. Challenging the award: substantive jurisdiction.
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- 67. Savings for rights of person who takes no part in proceedings.
- 68. Loss of right to object.
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- 71. Powers of court in relation to service of documents.
- 72. Reckoning periods of time.
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- 74. Constitution and rules of Royal Court.
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- 84. Continuation of Part II of the Arbitration (Guernsey) Law, 1982.
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PROJET DE LOI

ENTITLED

The Arbitration (Guernsey) Law, 2016

THE STATES, in pursuance of their Resolution of 25th February, 2004^a and of [***] February 2016^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

PART I

THE AGREEMENT & COMMENCEMENT OF PROCEEDINGS

Agreement to arbitrate.

1. (1) Where two or more persons ("**the parties**") have agreed to arbitrate all, or any particular, dispute between them, and that agreement ("**the arbitration agreement**") -

(a) is evidenced in writing, and

(b) the seat of the arbitration is Guernsey,

then the provisions of this Law apply.

^a Article VIII of Billet d'État No. II of 2004.

^b Article XXI of Billet d'État No. III of 2016.

(2) For the purpose of subsection (1)(a) an agreement is **"evidenced in writing"** if it is -

- (a) in writing, whether or not signed by the parties,
- (b) made by exchange of communications in writing,
- (c) made by reference to a written form of arbitration clause, or to a document containing such a clause, if the reference (expressly or implicitly) incorporates that clause into the agreement between the parties,
- (d) made by an agreement not in writing by reference to terms in writing,
- (e) recorded in writing by one of the parties, or by a third party with the authority of the parties,
- (f) alleged by one of the parties in the exchange of legal submissions and not denied by the other party in the response, or
- (g) otherwise evidenced in writing.

(3) In this Law **"the seat of the arbitration"** means the juridical seat of the arbitration designated -

- (a) by the parties,

(b) by any person or arbitral institution vested by the parties with powers in that regard, or

(c) by the arbitral tribunal if so authorised by the parties,

or determined, in the absence of any such designation, having regard to the parties' agreement and all the relevant circumstances.

Application of the Law.

2. (1) Except where provision to the contrary is made, this Law applies to arbitration agreements entered into after the commencement of this Law.

(2) The following sections apply even if the seat of the arbitration is outside Guernsey or no seat has been designated or determined -

(a) sections 6 and 7 (stay of legal proceedings, etc), and

(b) section 61 (enforcement of awards).

(3) The powers conferred by the following sections apply even if the seat of the arbitration is outside Guernsey or no seat has been designated or determined -

(a) section 37 (securing the attendance of witnesses), and

(b) section 38 (court powers exercisable in support of arbitration proceedings),

but the court may refuse to exercise any such power if, in the opinion of the court, the fact that the seat of the arbitration is outside Guernsey, or that when designated

or determined the seat is likely to be outside Guernsey, makes it inappropriate to do so.

(4) The court may exercise a power conferred by any provision of this Law not mentioned in subsection (3) or (4) for the purpose of supporting the arbitral process where -

- (a) no seat of the arbitration has been designated or determined, and
- (b) by reason of a connection with Guernsey the court is satisfied that it is appropriate to do so.

(5) Section 4 (severability of arbitration agreement) and section 5 (discharge of arbitration agreement) apply where the law applicable to the arbitration agreement is the law of Guernsey even if the seat of the arbitration is outside Guernsey or has not been designated or determined.

Arbitration Rules.

3. The Committee may specify by regulations default arbitration rules that will apply to arbitrations, unless, and to the extent to which, the parties otherwise agree.

Severability of agreement to arbitrate.

4. Unless otherwise agreed by the parties, an arbitration agreement which forms, or was intended to form, part of another agreement (whether or not in writing) shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, did not come into non-existence or has become ineffective, and the arbitration agreement shall for that purpose be treated as a distinct agreement.

Whether agreement discharged by death or lack of capacity.

5. (1) Unless otherwise agreed by the parties, an arbitration agreement is not discharged by the lack of capacity (see section 90) of a party and may be enforced by or against the personal representatives, guardians, or liquidators, of that party.

(2) Subsection (1) does not affect the operation of any enactment or rule of law by virtue of which a substantive right or obligation is extinguished by a lack of capacity.

Stay of court proceedings.

6. (1) A party against whom legal proceedings are brought (whether by way of claim or counterclaim) in respect of a matter that is the subject of an arbitration agreement may (upon notice to the other parties to the proceedings) apply to the court in which the proceedings have been brought to stay the proceedings insofar as they concern that matter.

(2) An application may be made under subsection (1) notwithstanding whether the arbitration agreement provides that the matter is to be referred to arbitration only after the exhaustion of other dispute resolution procedures.

(3) An application under subsection (1) may not be made by a party -

- (a) before taking the appropriate procedural step (if any) to acknowledge the legal proceedings, or
- (b) after that party has taken any step in those proceedings

to answer the substantive claim.

(4) On an application under this section the court shall grant a stay unless satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed.

(5) If the court refuses to stay the legal proceedings, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of any matter is of no effect in relation to those proceedings.

Relief by way of interpleader.

7. (1) Where in legal proceedings relief by way of interpleader is granted and any issue between the parties is one in respect of which there is an arbitration agreement between them, the court granting the relief shall direct that the issue be determined in accordance with the agreement unless the circumstances are such that proceedings brought by a plaintiff in respect of the matter would not be stayed.

(2) Where subsection (1) applies but the court does not direct that the issue be determined in accordance with the arbitration agreement, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of any matter shall not affect the determination of that issue by the court.

Confidentiality.

8. (1) Unless the arbitration agreement otherwise provides, an arbitration is confidential and so -

- (a) the hearing shall be conducted in private, with only the parties, their advisors and the arbitrators permitted to be present throughout, and

- (b) the documents used in, prepared for, and in, the arbitration proceedings ("**the arbitral documents**") shall not be used or disclosed for any other purpose, subject to subsection (2).

(2) Subsection (1)(b) does not prohibit -

- (a) the arbitral documents from being disclosed with the consent of the parties, or pursuant to an order or direction of the court,
- (b) the use of an arbitral document by any person where -
 - (i) the document has previously been placed in the public domain in good faith, and
 - (ii) that person has obtained the document from a source other than the arbitration proceedings,
- (c) the disclosure of an arbitration award to a third party if it is necessary to do so in order to enforce or protect the legal rights of a party to the arbitration agreement.

Power of court to extend time.

9. (1) Where an arbitration agreement to refer future disputes to arbitration provides that a claim shall be barred, or the plaintiff's right extinguished, unless the plaintiff takes within a time fixed by the agreement some step -

- (a) to begin arbitration proceedings, or

- (b) to begin other dispute resolution procedures which must be exhausted before arbitration proceedings can be begun,

the court may by order extend the time for taking that step.

(2) Any party may apply for such an order (upon notice to the other parties), but only -

- (a) after a claim has arisen, and
- (b) after exhausting any available arbitral process for obtaining an extension of time.

(3) The court shall make an order under subsection (1) only if satisfied -

- (a) that the circumstances are such as were outside the reasonable contemplation of the parties when they agreed the provision in question, and that it would be just to extend the time, or
- (b) that the conduct of one party makes it unjust to hold the other party to the strict terms of the provision in question.

(4) The court may extend the time for such period and on such terms as it thinks fit, and may do so whether or not the time previously fixed (by agreement or previous order) has expired.

(5) The leave of the court is required for any appeal from a decision of the court under this section.

(6) An order under this section does not affect the operation of any prescription period.

Commencement of arbitration proceedings.

10. (1) The parties are free to agree when arbitration proceedings are to be regarded as having been commenced for the purposes of this Law and for the purposes of any prescription period.

(2) If there is no such agreement, arbitration proceedings commence in respect of a matter when one party serves a notice in writing -

- (a) on the other party requiring that party to -
 - (i) submit that matter to the arbitrator named or designated in the arbitration agreement, or
 - (ii) appoint an arbitrator or to agree to the appointment of an arbitrator in respect of that matter,
- or
- (b) to the person or arbitral institution required, by the terms of the arbitration agreement, to appoint the arbitrator, requesting such an appointment in respect of that matter.

PART II
THE TRIBUNAL

Composition

Composition of the tribunal.

11. (1) The parties are free to agree on the number of arbitrators to form the tribunal and whether there is to be a chairman.

(2) Unless otherwise agreed by the parties, an agreement that the number of arbitrators shall be an even number shall require the appointment of an additional arbitrator as chairman of the tribunal.

(3) If there is no agreement as to the number of arbitrators, the tribunal shall consist of one arbitrator.

Procedure for the appointment of arbitrators.

12. (1) The parties are free to agree on the procedure for appointing the arbitrator or arbitrators, including the procedure for appointing any chairman.

(2) If the parties do not agree a procedure, the tribunal shall be appointed as follows -

- (a) if there is a sole arbitrator the parties shall jointly appoint the arbitrator not later than 28 days after service of a request in writing by either party to do so,

- (b) if there are to be two arbitrators, each party shall appoint one arbitrator not later than 14 days after service of a request in writing by either party to do so,
- (c) if there are to be three arbitrators, two shall be appointed in accordance with paragraph (b), and those two arbitrators shall together appoint a third arbitrator as chairman of the tribunal no later than 28 days after the day on which the last of the two was appointed.

Power in case of default to appoint sole arbitrator.

13. (1) Unless the parties otherwise agree, where each of two parties to an arbitration agreement is to appoint an arbitrator and one party (“A”) refuses to do so, or fails to do so within the time specified, the other party (“B”), having duly appointed an arbitrator, may give notice in writing to A that B proposes to appoint B’s arbitrator to act as sole arbitrator.

(2) If A does not within 7 clear days of that notice being given -

- (a) make the required appointment, and
- (b) notify B of it,

B may appoint B’s arbitrator as sole arbitrator whose award shall be binding on both parties as if that arbitrator had been so appointed by agreement.

(3) Where a sole arbitrator has been appointed under subsection (2), A may (upon notice to B) apply to the court which may set aside the appointment.

(4) The leave of the court is required for any appeal from a decision of the court under this section.

Failure of appointment procedure.

14. (1) The parties are free to agree what is to happen in the event of a failure of the procedure for the appointment of the arbitration tribunal (see section 12).

(2) If or to the extent that there is no such agreement, any party may (upon notice to the other parties) apply to the court to exercise its powers under this section.

(3) Those powers are -

- (a) to give directions as to the making of any necessary appointments,
- (b) to direct that the tribunal shall be constituted by such appointments as have been made,
- (c) to revoke any appointments already made,
- (d) to make any necessary appointments itself.

(4) An appointment made by the court under this section has effect as if made with the agreement of the parties.

(5) In deciding whether to exercise any of its powers under this section the court shall have due regard to any qualifications required of the

arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(6) The leave of the court is required for any appeal from a decision of the court under this section.

Role of chairman.

15. (1) Where the parties have agreed that there is to be a chairman, they are free to agree what the functions of the chairman are to be in relation to the making of decisions, orders and awards.

(2) If or to the extent that there is no such agreement -

- (a) decisions, orders and awards shall be made by all or a majority of the arbitrators (including the chairman), and
- (b) in the event that there is neither unanimity nor a majority in relation to a decision, order or award, the view of the chairman shall prevail.

Decision-making where there is no chairman.

16. (1) Where the parties agree that there shall be two or more arbitrators with no chairman, the parties are free to agree how the tribunal is to make decisions, orders and awards.

(2) If there is no such agreement, decisions, orders and awards shall be made by all or a majority of the arbitrators.

Revocation of arbitrator's authority.

17. (1) The parties are free to agree in what circumstances the authority of an arbitrator may be revoked.

(2) If or to the extent that there is no such agreement the authority of an arbitrator may not be revoked except by -

- (a) the parties acting jointly (and agreed in writing unless the parties also agree (whether or not in writing) to terminate the arbitration agreement), or
- (b) a person or arbitral institution vested by the parties with powers in that regard.

(3) Nothing in this section affects the power of the court -

- (a) to revoke an appointment under section 14 (failure of appointment procedure), or
- (b) to remove an arbitrator on the grounds specified in section 18.

Power of court to remove arbitrator.

18. (1) A party may (upon notice to the other parties and to all arbitrators) apply to the court to remove an arbitrator on any of the following grounds -

- (a) that circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality,

- (b) that the arbitrator does not possess the qualifications required by the arbitration agreement,
- (c) that the arbitrator is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to the arbitrator's capacity to do so,
- (d) that the arbitrator has refused or failed -
 - (i) properly to conduct the proceedings, or
 - (ii) to use all reasonable despatch in conducting the proceedings or making an award,

and that substantial injustice has been or will be caused to the applicant.

(2) If there is a person or arbitral institution vested by the parties with power to remove an arbitrator, the court shall not exercise its power of removal unless satisfied that the applicant has first exhausted any available recourse to that person or institution, as the case may be.

(3) The arbitral tribunal may (unless the court orders otherwise) continue the arbitration proceedings and make an award while an application to the court under this section is pending.

(4) Where the court grants an application under subsection (1) and removes an arbitrator, it may make such order as it thinks fit with respect to the arbitrator's entitlement (if any) to fees or expenses, or the repayment of any fees or expenses already paid.

(5) The arbitrator concerned is entitled to appear and be heard by the court before it makes any order under this section.

(6) The leave of the court is required for any appeal from a decision of the court under this section.

Resignation of arbitrator.

19. (1) The parties are free to agree with an arbitrator as to the consequences of the arbitrator's resignation as regards -

- (a) entitlement (if any) to fees or expenses, and
- (b) any liability thereby incurred by the arbitrator.

(2) If or to the extent that there is no such agreement an arbitrator who resigns may (upon notice to the parties) apply to the court -

- (a) to grant relief from any liability thereby incurred by the arbitrator, and
- (b) to make such order as it thinks fit with respect to the arbitrator's entitlement (if any) to fees or expenses or the repayment of any fees or expenses already paid.

(3) If, upon an application under subsection (2), the court is satisfied that in all the circumstances it was reasonable for the arbitrator to resign, it may grant such relief as is mentioned in subsection (2)(a) on such terms as it thinks fit.

(4) The leave of the court is required for any appeal from a decision of the court under subsections (2) and (3).

Death of person appointing arbitrator.

20. Unless otherwise agreed by the parties, the death of the person by whom an arbitrator was appointed does not revoke the arbitrator's authority.

Filling of vacancy, etc.

21. (1) Where an arbitrator ceases to hold office the parties are free to agree -

- (a) whether, and if so how, the vacancy is to be filled,
- (b) whether, and if so to what extent, the previous proceedings should stand, and
- (c) what effect (if any) ceasing to hold office has on any appointment made by the arbitrator (alone or jointly).

(2) If or to the extent that there is no such agreement -

- (a) the provisions of sections 12 (Procedure for the appointment of arbitrators.) and 14 (Failure of appointment procedure.) apply in relation to the filling of the vacancy as in relation to an original appointment,
- (b) the arbitral tribunal (when reconstituted) shall determine whether and if so to what extent the previous proceedings should stand, and

- (c) the arbitrator's ceasing to hold office does not affect any appointment by the arbitrator (alone or jointly) of another arbitrator, and in particular any appointment of a chairman.

(3) This section does not affect any right of a party to challenge those proceedings on any ground which had arisen before the arbitrator ceased to hold office.

Joint and several liability of parties to arbitrators for fees and expenses.

22. (1) The parties are jointly and severally liable to pay to the arbitrators such reasonable fees and expenses (if any) as are appropriate in the circumstances.

(2) Any party may apply to the court (upon notice to the other parties and to the arbitrators) which may order that the amount of the arbitrators' fees and expenses shall be considered and adjusted by such means and upon such terms as it may direct.

(3) If the application is made after any amount has been paid to the arbitrators by way of fees or expenses, the court may order the repayment of such amount (if any) as is shown to be excessive, following a determination under subsection (2), but shall not do so unless it is shown that it is reasonable in the circumstances to order repayment.

(4) The above provisions have effect subject to any order of the court under section 18(4) or 19(2)(b) (order as to entitlement to fees or expenses in case of removal or resignation of arbitrator).

(5) Nothing in this section affects any liability of a party to any other party to pay all or any of the costs of the arbitration (see sections 54 to 60) or any contractual right of an arbitrator to payment of fees and expenses.

(6) In this section references to arbitrators include an arbitrator who has ceased to act.

Immunity of arbitrator.

23. (1) An arbitrator is not liable for anything done or omitted in the discharge or purported discharge of that arbitrator's functions unless the act or omission is shown to have been in bad faith.

(2) Subsection (1) applies to an employee or agent of an arbitrator as it applies to the arbitrator.

(3) This section does not affect any liability incurred by an arbitrator by resigning (but see section 19).

Jurisdiction of the arbitral tribunal

Competence of the tribunal to rule on its own jurisdiction.

24. (1) Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction, that is, as to -

- (a) whether there is a valid arbitration agreement,
- (b) whether the tribunal is properly constituted, and
- (c) what matters have been submitted to arbitration in accordance with the arbitration agreement.

(2) For the purpose of subsection (1)(a), an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract and a decision by the arbitral tribunal that the contract is null and void is not determinative of the validity of the arbitration clause.

(3) Any such ruling may be challenged by any available arbitral process of appeal or review or in accordance with the provisions of this Law.

Objection to substantive jurisdiction of tribunal.

25. (1) An objection that the arbitral tribunal lacks substantive jurisdiction at the outset of the arbitration proceedings must be raised by a party not later than the time that party takes the first step in the proceedings to contest the merits of any matter in relation to which that party challenges the tribunal's jurisdiction.

(2) A party is not precluded from raising such an objection by the fact that that party has appointed or participated in the appointment of an arbitrator.

(3) Any objection during the course of the proceedings that the arbitral tribunal is exceeding its substantive jurisdiction must be made as soon as possible after the matter alleged to be beyond its jurisdiction is raised.

(4) The arbitral tribunal may admit an objection later than the time specified in subsection (1) or (3) if it considers the delay justified.

(5) Where an objection is duly taken to the tribunal's substantive jurisdiction and the tribunal has power to rule on its own jurisdiction, it may -

(a) rule on the matter in an award as to jurisdiction, or

- (b) deal with the objection in its award on the merits.

If the parties agree which of these courses the tribunal should take, the tribunal shall proceed accordingly.

(6) The tribunal may in any case, and shall if the parties so agree, stay proceedings whilst an application is made to the court under section 26 (determination of preliminary point of jurisdiction).

Determination of preliminary point of jurisdiction.

26. (1) The court may, on the application of a party to arbitration proceedings (upon notice to the other parties), determine any question as to the substantive jurisdiction of the tribunal provided that the party has not lost the right to object (see section 68).

(2) An application under this section shall not be considered unless -

- (a) it is made with the agreement in writing of all the other parties to the proceedings, or
- (b) it is made with the permission of the tribunal and the court is satisfied -
 - (i) that the determination of the question is likely to produce substantial savings in costs,
 - (ii) that the application was made without delay, and

- (iii) that there is good reason why the matter should be decided by the court.

(3) An application under this section, unless made with the agreement of all the other parties to the proceedings, shall state the grounds on which it is said that the matter should be decided by the court.

(4) Unless otherwise agreed by the parties, the arbitral tribunal may continue the proceedings and make an award while an application to the court under this section is pending.

(5) The decision of the court on the question of jurisdiction shall be treated as a judgment of the court for the purposes of an appeal.

(6) The court shall not give leave to appeal unless it considers that the question involves a point of law which is one of general importance or is one which for some other special reason should be considered by the Court of Appeal.

PART III THE PROCEEDINGS

Conduct of proceedings

General duty of the tribunal.

27. (1) The arbitral tribunal shall -
- (a) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting that

party's case and dealing with that of the opponent, and

- (b) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters to be determined.

(2) The tribunal shall comply with that general duty in conducting the arbitration proceedings, in its decisions on matters of procedure and evidence and in the exercise of all other powers conferred on it.

Procedural and evidential matters.

28. (1) Subject to the right of the parties to agree any matter, it shall be for the tribunal to decide all procedural and evidential matters.

- (2) Procedural and evidential matters include (without limitation)

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- (a) when and where any part of the proceedings is to be held,
- (b) the language(s) to be used in the proceedings and whether translations of any relevant documents are to be supplied,
- (c) whether any, and if so what form of, written statements of claim and defence are to be used, when these should be supplied and the extent to which such statements can be later amended,

- (d) whether any, and if so which, documents or classes of documents should be disclosed between and produced by the parties and at what stage,
- (e) whether any, and if so what, questions should be put to and answered by the respective parties and when and in what form this should be done,
- (f) whether to apply strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered on any matters of fact or opinion, and the time, manner and form in which such material should be exchanged and presented,
- (g) whether, and to what extent, the tribunal should itself take the initiative in ascertaining the facts and the law,
- (h) whether, and to what extent, there should be oral or written evidence or submissions.

(3) The tribunal may fix the time within which any directions given by it are to be complied with, and may, if it thinks fit, extend the time so fixed (whether or not it has expired).

(4) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties in advance of the decision.

Consolidation of proceedings and concurrent hearings.

29. (1) The parties are free to agree -

(a) that the arbitration proceedings shall be consolidated with other arbitration proceedings, or

(b) that concurrent hearings shall be held,

on such terms as may be agreed.

(2) Unless the parties agree to confer such power on the tribunal, the tribunal has no power to order consolidation of proceedings or concurrent hearings.

(3) In the absence of agreement between the parties as to consolidation, a party to more than one set of arbitration proceedings in respect of the same matter, may apply to the court for consolidation of those proceedings.

(4) Where an application is made under subsection (3), the court may order consolidation of proceedings if it is satisfied -

(a) that consolidation is likely to produce substantial savings in costs for all parties,

(b) that the application was made without delay, and

(c) that it is in the interests of justice to do so.

Legal or other representation.

30. Unless otherwise agreed by the parties, a party to arbitration proceedings may choose to be represented in the proceedings by a lawyer or by any other person.

Power to appoint experts, legal advisers or assessors.

31. (1) Unless otherwise agreed by the parties -

(a) the tribunal may -

(i) appoint experts or legal advisers to report to it and the parties, or

(ii) appoint assessors to assist it on technical matters,

and may allow any such expert, legal adviser or assessor to attend the proceedings, and

(b) the parties shall be given a reasonable opportunity to comment on any information, opinion or advice offered by any such person.

(2) The fees and expenses of an expert, legal adviser or assessor appointed by the tribunal for which the arbitrators are liable are expenses of the arbitrators for the purposes of this Law.

General powers exercisable by the tribunal by way of interim measures.

32. (1) The parties are free to agree on the powers exercisable by the tribunal for the purposes of, and in relation to, the proceedings.

(2) Unless otherwise agreed by the parties the tribunal may, by way of interim measure -

- (a) order a claimant to provide security for the costs of the arbitration, save that this power shall not be exercised solely on the ground that the claimant is a person ordinarily resident outside Guernsey, which, in the case of a legal person, shall mean established, incorporated or controlled in a place other than Guernsey,
- (b) by order restrict the manner in which a party may deal with that party's assets during the proceedings,
- (c) give directions in relation to any property which is the subject of the proceedings or as to which any question arises in the proceedings, and which is owned by or is in the possession of a party -
 - (i) for the inspection, photographing, preservation, custody or detention of the property by the tribunal, an expert or a party, or
 - (ii) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property,
- (d) direct that a party or witness shall be examined on oath or affirmation, and may for that purpose administer

any necessary oath or take any necessary affirmation,

- (e) give directions to a party for the preservation for the purposes of the proceedings of any evidence in that party's custody or control,
- (f) give such directions as may be necessary to preserve the relative positions of the parties or the arbitration proceedings,
- (g) modify, suspend or terminate any interim measure made by the tribunal.

(3) When considering whether or not to make an interim measure the tribunal shall have regard to the effect of that measure on the parties, taking into account the harm that may arise if the measure is not made, and where the measure is sought by a party -

- (a) the tribunal shall take into account the prospects of success of the requesting party,
- (b) if the measure is made, the tribunal may -
 - (i) require the requesting party to provide appropriate security in connection with the measure,
 - (ii) require the requesting party to disclose promptly any material change in circumstances, on the basis of which the

measure was made,

- (ii) make a subsequent order against the requesting party if it transpires that the measure should not have been made, in respect of costs and damages caused by the measure to any party.

Power to make provisional awards.

33. (1) The parties are free to agree that the tribunal shall have power to order on a provisional basis any relief which it would have power to grant in a final award.

(2) This includes, for instance, making -

- (a) a provisional order for the payment of money or the disposition of property as between the parties, or
- (b) an order to make an interim payment on account of the costs of the arbitration.

(3) Any such order shall be subject to the tribunal's final adjudication; and the tribunal's final award (on the merits or as to costs) shall take account of any such order.

(4) Unless the parties agree to confer such power on the tribunal, the tribunal has no such power. This does not affect its powers under section 41 (awards on different issues).

General duty of parties.

34. (1) The parties shall do all things necessary for the proper and expeditious conduct of the arbitration proceedings.

(2) This includes without limitation -

- (a) complying without delay with any determination as to procedural or evidential matters, or with any order or directions of the tribunal, and
- (b) where appropriate, taking without delay any necessary steps to obtain a decision of the court on a preliminary question of jurisdiction or law (see sections 26 and 39).

(3) If any party breaches this duty, then the tribunal may exercise its powers under section 35(2)(b)(iii).

Powers of tribunal in case of party's default.

35. (1) The parties are free to agree on the powers of the tribunal in case of a party's failure to do something necessary for the proper and expeditious conduct of the arbitration.

(2) If the parties fail to reach such agreement, and -

- (a) if the tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing the claim and that the delay -
 - (i) gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a

fair resolution of the issues in that claim, or

- (ii) has caused, or is likely to cause, serious prejudice to the respondent,

the tribunal may make an award dismissing the claim, or

- (b) if without showing sufficient cause a party -
 - (i) fails to attend or be represented at an oral hearing of which due notice was given, the tribunal may continue the proceedings in the absence of that party,
 - (ii) where matters are to be dealt with in writing, fails after due notice to submit written evidence or make written submissions, the tribunal may continue the proceedings without any written evidence or submissions on that party's behalf, and may make an award on the basis of the evidence before it, or
 - (iii) fails to comply with any determination, order or directions of the tribunal, the tribunal may make a peremptory order to the same effect, prescribing such time for compliance with it as the tribunal considers appropriate,
- (c) if a claimant fails to comply with a peremptory order of the tribunal to provide security for costs, the

tribunal may make an award dismissing that party's claim,

- (d) if a party fails to comply with any other kind of peremptory order, then, without prejudice to section 36 (enforcement by court of tribunal's peremptory orders), the tribunal may do any of the following -
 - (i) direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject matter of the order,
 - (ii) draw such adverse inferences from the act of non-compliance as the circumstances justify,
 - (iii) proceed to an award on the basis of such materials as have been properly provided to it,
 - (iv) make such order as it thinks fit as to the payment of costs of the arbitration incurred in consequence of the non-compliance.

Powers of the court

Enforcement of peremptory orders of tribunal.

36. (1) Unless otherwise agreed by the parties, the court may make an order requiring a party to comply with a peremptory order made by the tribunal.

- (2) An application for an order under this section may be made -

- (a) by the tribunal (upon notice to the parties),
- (b) by a party with the permission of the tribunal (and upon notice to the other parties), or
- (c) where the parties have agreed that the powers of the court under this section shall be available.

(3) The court shall not act unless it is satisfied that the applicant has exhausted any available arbitral process in respect of failure to comply with the tribunal's order.

(4) No order shall be made under this section unless the court is satisfied that -

- (a) the person to whom the tribunal's order was directed has failed to comply with it within the time prescribed in the order or, if no time was prescribed, within a reasonable time, and
- (b) it is in the interests of justice for such an order to be made to assist the proper functioning of the arbitral process.

(5) The leave of the court is required for any appeal from a decision of the court under this section.

Securing the attendance of witnesses.

37. (1) A party to arbitration proceedings may use the same court procedures as are available in relation to legal proceedings in the court to secure the

attendance before the tribunal of a witness in order to give oral testimony or to produce documents or other material evidence.

(2) This may only be done with the permission of the tribunal or the agreement of the other parties.

(3) The court procedures may only be used if -

- (a) the witness is in Guernsey, and
- (b) the arbitration proceedings are being conducted in Guernsey.

(4) A person shall not be compelled by virtue of this section to produce any document or other material evidence which that person could not be compelled to produce in legal proceedings.

Court powers exercisable in support of arbitration proceedings.

38. (1) Unless otherwise agreed by the parties, the court has for the purposes of, and in relation to, arbitration proceedings the same power of making orders about the matters listed in subsection (2) below as it has for the purposes of and in relation to legal proceedings.

(2) Those matters are -

- (a) the taking of the evidence of witnesses,
- (b) the preservation of evidence,
- (c) making orders relating to property which is the subject

of the proceedings or as to which any question arises in the proceedings -

- (i) for the inspection, photographing, preservation, custody or detention of the property, or
- (ii) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property,

and for that purpose authorising any person to enter any premises in the possession or control of a party to the proceedings,

- (d) the sale of any goods the subject of the proceedings,
- (e) the granting of an interim injunction or the appointment of a liquidator.

(3) If the case is one of urgency, the court may, on the application of a party or proposed party to the proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets, including, *inter alia*, contractual rights.

(4) If the case is not one of urgency, the court shall act only on the application of a party to the proceedings (upon notice to the other parties and to the tribunal) made with the permission of the tribunal or the agreement in writing of the other parties.

(5) In any case the court shall act only if, or to the extent that, the

tribunal, and any person or arbitral institution vested by the parties with power in that regard, has no power or is unable for the time being to act effectively.

(6) If the court so orders, an order made by it under this section shall cease to have effect in whole or in part on the order of the tribunal or of any such person or arbitral institution having power to act in relation to the subject-matter of the order.

(7) The leave of the court is required for any appeal from a decision of the court under this section.

Determination of preliminary point of law.

39. (1) Unless otherwise agreed by the parties, the court may on the application of a party (upon notice to the other parties) determine any question of law arising in the course of the arbitration proceedings which the court is satisfied substantially affects the rights of one or more of the parties. An agreement to dispense with reasons for the tribunal's award shall be considered an agreement to exclude the court's jurisdiction under this section.

(2) An application under this section shall not be considered unless -

- (a) it is made with the agreement of all the other parties to the proceedings, or
- (b) it is made with the permission of the tribunal and the court is satisfied -
 - (i) that the determination of the question is likely to produce substantial savings in costs, and

(ii) that the application was made without delay.

(3) The application shall identify the question of law to be determined and, unless made with the agreement of all the other parties to the proceedings, shall state the grounds on which it is said that the question should be decided by the court.

(4) Unless otherwise agreed by the parties, the arbitration tribunal may continue the arbitration proceedings and make an award while an application to the court under this section is pending.

(5) The decision of the court on the question of law shall be treated as a judgment of the court for the purposes of an appeal.

(6) The court shall not give leave to appeal unless it considers that the question is one of general importance or is one which for some other special reason should be considered by the Court of Appeal.

PART IV THE AWARD

Award on merits

Rules applicable to the substance of the dispute.

40. (1) The tribunal shall decide the dispute -

(a) in accordance with the substantive law chosen by the parties as applicable to the dispute, or

- (b) if the parties so agree, in accordance with such other rules as are agreed by them or determined by the tribunal.

(2) For this purpose the reference to the substantive law of a territory does not include the conflict of laws rules of that territory.

(3) If or to the extent that there is no such choice or agreement, the tribunal shall apply the substantive law as determined by the conflict of laws rules which it considers applicable.

(4) The arbitral tribunal shall decide the dispute according to principles of justice and fairness, rather than as a matter of strict law, only if the parties have expressly authorised it to do so.

(5) In all cases, where appropriate to do so, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Awards on different issues.

41. (1) Unless otherwise agreed by the parties, the tribunal may make more than one award at different times on different aspects of the matters to be determined.

(2) The tribunal may, in particular, make an award relating -

- (a) to an issue affecting the whole claim, or
- (b) to a part only of the claims or cross-claims submitted to it for decision.

(3) If the tribunal does so, it shall specify in the award the issue, or the claim or part of the claim, which is the subject matter thereof.

Remedies.

42. (1) The parties are free to agree on the powers exercisable by the tribunal as regards remedies.

(2) Unless otherwise agreed by the parties, the tribunal -

- (a) may make a declaration as to any matter to be determined in the proceedings,
- (b) may order the payment of a sum of money, in any currency, and
- (c) has the same powers as the court to order -
 - (i) a party to do or refrain from doing anything,
 - (ii) the rectification, setting aside or cancellation of a deed or other document.

Interest.

43. (1) The parties are free to agree on the powers of the tribunal as regards the award of interest.

(2) Unless otherwise agreed by the parties the tribunal may -

- (a) award simple or compound interest from such dates, at

such rates and with such rests as it considers meets the justice of the case, on the whole or part of -

- (i) any amount awarded by the tribunal, in respect of any period up to the date of the award, or
 - (ii) any amount claimed in the arbitration and outstanding at the commencement of the arbitration proceedings but paid before the award was made, in respect of any period up to the date of payment,
- (b) award simple or compound interest from the date of the award (or any later date) until payment, at such rates and with such rests as it considers meets the justice of the case, on the outstanding amount of any award (including any award of interest under subparagraph (a) and any award as to costs).

(3) References in this section to an amount awarded by the tribunal include an amount payable in consequence of a declaratory award by the tribunal.

(4) The above provisions do not affect any other power of the tribunal to award interest.

Extension of time for making award.

44. (1) Where the time for making an award is limited by or in pursuance of the arbitration agreement, then, unless otherwise agreed by the parties,

the court may by order extend that time in accordance with the following provisions.

- (2) An application for an order under this section may be made -
 - (a) by the tribunal (upon notice to the parties), or
 - (b) by any party to the proceedings (upon notice to the tribunal and the other parties),

but only after exhausting any available arbitral process for obtaining an extension of time.

- (3) The court shall only make an order if satisfied that a substantial injustice would otherwise be done.

- (4) The court may extend the time for such period and on such terms as it thinks fit, and may do so whether or not the time previously fixed (by or under the agreement or by a previous order) has expired.

- (5) The leave of the court is required for any appeal from a decision of the court under this section.

Settlement.

45. If during arbitration proceedings the parties settle the dispute, unless otherwise agreed by the parties -

- (a) the tribunal shall terminate the substantive proceedings, and, if so requested by the parties and

not objected to by the tribunal, shall record the settlement in the form of an agreed award,

- (b) an agreed award shall state that it is an award of the tribunal and shall have the same status and effect as any other award on the merits of the case,
- (c) the provisions relating to awards (sections 46 to 52) apply to an agreed award, and
- (d) unless the parties have also settled the matter of the payment of the costs of the arbitration, the provisions relating to costs (sections 54 to 60) continue to apply.

Form and contents of award.

- 46.** (1) The parties are free to agree on the form of an award.
- (2) If or to the extent that there is no such agreement, the award -
- (a) shall be in writing signed by all the arbitrators or a majority of the arbitrators provided that the reason for any omitted signature is stated in the award,
 - (b) shall contain the reasons for the award unless it is an agreed award or the parties have agreed to dispense with reasons, and
 - (c) shall state the seat of the arbitration and the date on which the award is made (see section 47).

Place and date of award.

47. (1) Unless otherwise agreed by the parties, where the seat of the arbitration is in Guernsey, any award in the proceedings shall be treated as made there, regardless of where it was signed, despatched or delivered to any party.

(2) Unless otherwise agreed by the parties the tribunal may decide what is to be the date on which the award was made. In the absence of any such decision, the date of the award is the date on which it is signed by the final arbitrator.

Notification of award.

48. (1) The parties are free to agree on the requirements as to notification of the award to the parties.

(2) If there is no such agreement, the award shall be notified to the parties by service on each of them of a copy of the award, which shall be done without delay after the award is made.

(3) Nothing in this section affects section 49 (power to withhold award in case of non-payment).

Power to withhold award in case of non-payment.

49. (1) The tribunal may refuse to deliver an award to the parties except upon full payment of the fees and expenses of the arbitrators.

(2) If the tribunal refuses on that ground to deliver an award, a party to the arbitration proceedings may (upon notice to the other parties and the tribunal) apply to the court, which may order that -

(a) the tribunal shall deliver the award on the payment into

court by the applicant of the fees and expenses demanded, or such lesser amount as the court may specify,

- (b) the amount of the fees and expenses properly payable shall be determined by such means and upon such terms as the court may direct, and
- (c) out of the money paid into court there shall be paid such fees and expenses as may be found to be properly payable and the balance of the money (if any) shall be paid to the applicant.

(3) For this purpose the amount of fees and expenses properly payable is the amount the applicant is liable to pay under section 22 or any agreement relating to the payment of the arbitrators.

(4) No application to the court may be made where there is any available arbitral process for appeal or review of the amount of the fees or expenses demanded.

(5) References in this section to arbitrators include an arbitrator who has ceased to act.

(6) The provisions of this section also apply in relation to any person or arbitral institution vested by the parties with powers in relation to the delivery of the tribunal's award. As they so apply, the references to the fees and expenses of the arbitrators shall be construed as including the fees and expenses of that person or institution.

(7) The leave of the court is required for any appeal from a decision of the court under this section.

(8) Nothing in this section shall be construed as excluding an application under section 22 where payment has been made to the arbitrators in order to obtain the award.

Correction of award or additional award.

50. (1) The parties are free to agree on the powers of the tribunal to correct an award or make an additional award.

(2) If or to the extent that there is no such agreement -

(a) the tribunal may on its own initiative or on the application of a party -

(i) correct an award so as to remove any clerical mistake or error arising from an accidental slip or omission or clarify or remove any ambiguity in the award, or

(ii) make an additional award in respect of any claim (including a claim for interest or costs) which was presented to the tribunal but was not dealt with in the award,

but these powers shall not be exercised without first affording the other parties a reasonable opportunity to make representations to the tribunal,

- (b) any application for the exercise of those powers must be made within 28 days of the date of the award or such longer period as the parties may agree,
- (c) any correction of an award shall be made within 28 days of the date the application was received by the tribunal or, where the correction is made by the tribunal on its own initiative, within 28 days of the date of the award or, in either case, such longer period as the parties may agree,
- (d) any additional award shall be made within 56 days of the date of the original award or such longer period as the parties may agree,
- (e) the tribunal may, if it thinks fit, extend any period of time in this subsection, and
- (f) any correction of an award shall form part of the award and the provisions relating to awards (sections 46 to 52) apply to any additional award or correction.

Interpretation of award.

51. (1) If agreed by the parties, within 28 days of receipt of the award, or within any another period of time agreed by the parties, a party, with notice to the other parties, may request the tribunal to give an interpretation of a specific point or part of the award.

(2) If the tribunal considers the request to be justified, it shall give the interpretation within 28 days of receipt of the request.

(3) Any interpretation given under subsection (2) shall form part of the award and the provisions relating to awards (sections 46 to 52) apply to it.

Effect of award.

52. (1) Unless otherwise agreed by the parties, an award made by the tribunal pursuant to an arbitration agreement is final and binding both on the parties and on any persons claiming through or under them.

(2) This does not affect the right of a person to challenge the award by any available arbitral process of appeal or review or in accordance with the provisions of this Law.

Termination of arbitration proceedings.

53. (1) The arbitration proceedings are terminated by the final award or by an order of the tribunal under subsection (2).

(2) The tribunal shall issue an order for the termination of the proceedings when -

(a) the claimant withdraws the claim, unless the respondent objects and the arbitral tribunal recognises a legitimate interest on the respondent's part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings,

- (c) the tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the tribunal terminates with the termination of the proceedings.

Award of costs

Costs of the arbitration.

54. References to the costs of the arbitration are to -

- (a) the arbitrators' fees and expenses,
- (b) the fees and expenses of any person (other than the parties) or arbitral institution concerned,
- (c) the legal or other costs of the parties, and
- (d) the costs of or incidental to any proceedings to determine the amount of the recoverable costs of the arbitration (see section 58).

Agreement to pay costs in any event.

55. An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event is only valid if made after the dispute in question has arisen.

Award of costs.

56. (1) The tribunal may make an award allocating the costs of the arbitration as between the parties, subject to any agreement of the parties.

(2) Unless the parties otherwise agree, the tribunal shall award costs on the general principle that costs should follow the event except where it appears to the tribunal that in the circumstances this is not appropriate in relation to the whole or part of the costs.

Effect of agreement or award about costs.

57. Unless the parties otherwise agree, any obligation under an agreement between them as to how the costs of the arbitration are to be borne, or under an award allocating the costs of the arbitration, extends only to such costs as are recoverable in accordance with section 58.

The recoverable costs of the arbitration.

58. (1) The parties are free to agree what costs of the arbitration are recoverable but if, or to the extent that, there is no such agreement, the following provisions apply.

(2) The tribunal may determine by award the recoverable costs of the arbitration on such basis as it thinks fit. If it does so, it shall specify -

- (a) the basis on which it has acted, and
- (b) the items of recoverable costs and the amount referable to each.

(3) If the tribunal does not determine the costs, and there is a person or an arbitral institution vested by the parties with power to determine the

costs, that person or institution, as the case may be, shall determine the costs in accordance with subsection (2).

(4) If the recoverable costs of the arbitration are not determined in accordance with subsection (2) or (3), any party to the arbitration proceedings may apply to the court (upon notice to the other parties) which may -

- (a) determine the recoverable costs of the arbitration on such basis as it thinks fit, or
- (b) order that they shall be determined by such means and upon such terms as it may specify.

(5) The court shall not exercise the power in subsection (4) unless satisfied that the applicant has first exhausted any available recourse to the tribunal or person or institution, as the case may be.

(6) Unless the person or body determining the costs of the arbitration decides otherwise -

- (a) the recoverable costs of the arbitration shall be determined on the basis that there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and
- (b) any doubt as to whether costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party.

(7) This section has effect subject to section 59 (recoverable fees

and expenses of arbitrators).

(8) Nothing in this section affects any right of the arbitrators, any expert, legal adviser or assessor appointed by the tribunal, or any person or arbitral institution, to payment of their fees and expenses.

Recoverable fees and expenses of arbitrators.

59. (1) If there is any question as to what reasonable fees and expenses of the arbitrators are appropriate in the circumstances, and the matter is not already before the court on an application under section 58(4) and provided that section 58(5) does not apply, the court may on the application of any party (upon notice to the other parties) -

- (a) determine the matter, or
- (b) order that it be determined by such means and upon such terms as the court may specify.

(2) Subsection (1) has effect subject to any order of the court under section 18(4) or 19(2)(b) (order as to entitlement to fees or expenses in case of removal or resignation of arbitrator).

(3) Nothing in this section affects any right of the arbitrator to payment of fees and expenses.

Power to limit recoverable costs.

60. (1) Unless otherwise agreed by the parties, the tribunal may direct that the recoverable costs of the arbitration, or of any part of the arbitration proceedings, shall be limited to a specified amount.

(2) Any direction may be made or varied at any stage, but this must be done sufficiently in advance of the incurring of costs to which it relates, or the taking of any steps in the proceedings which may be affected by it, for the limit to be taken into account.

Powers of the court in relation to the award

Enforcement of the award.

61. (1) An award made by the tribunal pursuant to an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.

(2) Where leave is so given, judgment may be entered in terms of the award.

(3) Leave to enforce an award shall not be given where, or to the extent that, the person against whom it is sought to be enforced shows that -

- (a) the award is now prescribed, or
- (b) the tribunal lacked substantive jurisdiction to make the award, provided that the right to raise such an objection has not been lost (see section 68).

(4) Nothing in this section affects the recognition or enforcement of an award under any other enactment or rule of law, in particular under Part II of the Arbitration (Guernsey) Law, 1982^c (enforcement of awards under Geneva

^c Ordres en Conseil Vol. XXVII, p. 525; as amended by Vol. XXIX, p. 178).

Convention), the provisions of Part VII of this Law relating to the recognition and enforcement of awards under the New York Convention, or by an action on the award.

Challenging the award: substantive jurisdiction.

62. (1) A party may (upon notice to the other parties and to the tribunal) apply to the court -

- (a) challenging any award of the tribunal as to its substantive jurisdiction, or
- (b) for an order declaring an award made by the tribunal on the merits to be of no effect, in whole or in part, because the tribunal did not have substantive jurisdiction.

A party may lose the right to object (see section 68) and the right to apply is subject to the restrictions in section 65(1) and (2).

(2) The tribunal may continue the arbitration proceedings and make a further award while an application to the court under this section is pending in relation to an award as to jurisdiction.

(3) On an application under this section challenging an award of the tribunal as to its substantive jurisdiction, the court may by order -

- (a) confirm the award,
- (b) vary the award, or

- (c) set aside the award in whole or in part.

(4) The leave of the court is required for any appeal from a decision of the court under this section.

Challenging the award: serious irregularity.

63. (1) A party may (upon notice to the other parties and to the tribunal) apply to the court challenging an award in the proceedings on the ground of serious irregularity affecting the tribunal, the proceedings or the award. A party may lose the right to object (see section 68) and the right to apply is subject to the restrictions in section 65(1) and (2).

(2) Serious irregularity means an irregularity of one or more of the following kinds which the court considers has caused or will cause substantial injustice to the applicant -

- (a) failure by the tribunal to comply with section 27 (general duty of tribunal),
- (b) the tribunal exceeding its powers (otherwise than by exceeding its substantive jurisdiction: see section 62),
- (c) failure by the tribunal to conduct the proceedings in accordance with the procedure agreed by the parties,
- (d) failure by the tribunal to deal with all the issues that were put to it,
- (e) any arbitral institution or person vested by the parties with powers in relation to the proceedings or the award

exceeding its powers,

- (f) uncertainty or ambiguity as to the effect of the award,
- (g) the award being obtained by fraud or the award or the way in which it was procured being contrary to public policy,
- (h) failure to comply with the requirements as to the form of the award, or
- (i) any irregularity in the conduct of the proceedings or in the award which is admitted by the tribunal or by any arbitral institution or person vested by the parties with powers in relation to the proceedings or the award.

(3) If there is shown to be serious irregularity affecting the tribunal, the proceedings or the award, the court may -

- (a) remit the award to the tribunal, in whole or in part, for reconsideration,
- (b) set the award aside in whole or in part, or
- (c) declare the award to be of no effect, in whole or in part.

The court shall not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.

(4) The leave of the court is required for any appeal from a decision of the court under this section.

Appeal on point of law.

64. (1) Unless otherwise agreed by the parties, a party may (upon notice to the other parties and to the tribunal) appeal to the court on a question of law arising out of an award made in the proceedings. An agreement to dispense with reasons for the tribunal's award shall be considered an agreement to exclude the court's jurisdiction under this section.

(2) An appeal shall not be brought under this section except -

- (a) with the agreement of all the other parties to the proceedings, or
- (b) with the leave of the court.

The right to appeal is also subject to the restrictions in section 65(1) and (2).

(3) Leave to appeal shall be given only if the court is satisfied that -

- (a) the determination of the question will substantially affect the rights of one or more of the parties,
- (b) the question is one which the tribunal was asked to determine,
- (c) on the basis of the findings of fact in the award -

- (i) the decision of the tribunal on the question is obviously wrong, or
- (ii) the question is one of general public importance and the decision of the tribunal is at least open to serious doubt, and
- (d) despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question.

(4) An application for leave to appeal under this section shall identify the question of law to be determined and state the grounds on which it is alleged that leave to appeal should be granted.

(5) The court shall determine an application for leave to appeal under this section without a hearing unless it appears to the court that a hearing is required.

(6) The leave of the court is required for any appeal from a decision of the court under this section to grant or refuse leave to appeal.

(7) On an appeal under this section the court may by order -

- (a) confirm the award ,
- (b) vary the award,
- (c) remit the award to the tribunal, in whole or in part, for

reconsideration in the light of the court's determination, or

- (d) set aside the award in whole or in part.

The court shall not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.

(8) The decision of the court on an appeal under this section shall be treated as a judgment of the court for the purposes of a further appeal.

(9) The court shall not give leave to appeal unless it considers that the question is one of general importance or is one which for some other special reason should be considered by the Court of Appeal.

Challenge or appeal: supplementary provisions.

65. (1) An application or appeal may not be brought under sections 62, 63, or 64 if the applicant or appellant has not first exhausted -

- (a) any available arbitral process of appeal or review, and
- (b) any available recourse under section 50 (correction of award or additional award).

(2) Subject to section 73 (power of court to extend time limits) and to the agreement of the parties, any such application or appeal must be brought within 28 days of -

- (a) the date of the award, save that where the award has

been corrected in accordance with section 50 the date of the award shall be the date of the correction of the award or,

- (b) if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process.

(3) If on such an application or appeal it appears to the court that the award -

- (a) does not contain the tribunal's reasons,
- (b) does not set out the tribunal's reasons in sufficient detail to enable the court properly to consider the application or appeal,

the court may order the tribunal to state the reasons for its award in sufficient detail for that purpose.

(4) Where the court makes an order under subsection (3), it may make such further order as it thinks fit with respect to any additional costs of the arbitration resulting from its order.

(5) The court may order the applicant or appellant to provide security for the costs of the application or appeal, and may direct that the application or appeal be dismissed if the order is not complied with. However, the power to order security for costs shall not be exercised solely on the ground that the applicant or appellant is a person ordinarily resident outside Guernsey, which, in the case of a legal person that shall mean established, incorporated or controlled in

a place other than Guernsey.

(6) The court may order that any money payable under the award shall be paid into court or otherwise secured pending the determination of the application or appeal, and may direct that the application or appeal be dismissed if the order is not complied with.

(7) The court may grant leave to appeal subject to conditions to the same or similar effect as an order under subsection (5) or (6). This does not affect the general discretion of the court to grant leave subject to conditions.

Challenge or appeal: effect of order of court.

66. (1) The following provisions have effect where the court makes an order under section 62, 63 or 64 with respect to an award.

(2) Where the award is varied, the variation has effect as part of the tribunal's award.

(3) Where the award is remitted to the tribunal, in whole or in part, for reconsideration, the tribunal shall make a fresh award in respect of the matters remitted within three months of the date of the order for remission or such longer or shorter period as the court may direct.

(4) Where the award is set aside or declared to be of no effect, in whole or in part, the court may also order that any provision that an award is a condition precedent to the bringing of legal proceedings in respect of a matter to which the arbitration agreement applies, is of no effect as regards the subject matter of the award or, as the case may be, the relevant part of the award.

SUPPLEMENTARY

Savings for rights of person who takes no part in proceedings.

67. (1) A person alleged to be a party to arbitration proceedings but who takes no part in the proceedings may question -

- (a) whether there is a valid arbitration agreement,
- (b) whether the tribunal is properly constituted, or
- (c) what matters have been submitted to arbitration in accordance with the arbitration agreement,

by proceedings in the court for a declaration or injunction or other appropriate relief.

(2) Such a person also has the same right as a party to the arbitration proceedings to challenge an award -

- (a) by an application under section 62 on the ground of lack of substantive jurisdiction in relation to that person, or
- (b) by an application under section 63 on the ground of serious irregularity (within the meaning of that section) affecting that person,

and section 65(1) (duty to exhaust arbitral procedures) does not apply in that person's case.

Loss of right to object.

68. (1) If a party to arbitration proceedings takes part, or continues to take part, in the proceedings without making any objection (detailed in subsection (2)), either forthwith or within such time as is allowed by -

- (a) the arbitration agreement,
- (b) the tribunal, or
- (c) any provision of this Law,

that party may not raise that objection later, before the tribunal or the court, unless that party shows that, at the time that party took part or continued to take part in the proceedings, that party did not know and could not with reasonable diligence have discovered the grounds for the objection.

(2) The objections referred to in subsection (1) are -

- (a) that the tribunal lacks substantive jurisdiction,
- (b) that the proceedings have been improperly conducted,
- (c) that there has been a failure to comply with the arbitration agreement or with any provision of this Law, or
- (d) that there has been any other irregularity affecting the tribunal or the proceedings.

(3) Where the arbitral tribunal rules that it has substantive

jurisdiction and a party to arbitration proceedings who could have questioned that ruling -

(a) by any available arbitral process of appeal or review,
or

(b) by challenging the award,

does not do so, or does not do so within the time allowed by the arbitration agreement or any provision of this Part, that party may not object later to the tribunal's substantive jurisdiction on any ground which was the subject of that ruling.

Immunity of persons appointing arbitrators, etc.

69. (1) A person designated or requested by the parties to appoint or nominate an arbitrator is not liable for anything done or omitted in the discharge or purported discharge of that function unless the act or omission is shown to have been in bad faith.

(2) A person by whom an arbitrator is appointed or nominated is not liable, by reason of having made the appointment or nomination, for anything done or omitted by the arbitrator (or the arbitrator's employees or agents) in the discharge or purported discharge of the arbitrator's functions.

(3) This section applies to an employee or agent as they apply to the person.

Service of notices, etc.

70. (1) The parties are free to agree on the manner of service of any notice or other document required or authorised to be given or served in pursuance of the arbitration agreement or for the purposes of the arbitration proceedings.

(2) If or to the extent that there is no such agreement -

(a) a notice or other document may be served on a person by any effective means (including electronic transmission),

(b) if a notice or other document is addressed, pre-paid and sent by post -

(i) to the addressee's last known principal residence or, if the addressee is or has been carrying on a trade, profession or business, the last known principal business address, or

(ii) where the addressee is a legal person, to the person's registered or principal office,

it shall be treated as effectively served.

(3) This section does not apply to the service of documents for the purposes of legal proceedings for which provision is made by rules of court.

(4) References to a notice or other document include any form of communication in writing and references to giving or serving a notice or other document shall be construed accordingly.

(5) For the purpose of this section "**electronic transmission**" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication (in which event the document shall be regarded as served when it is received).

Powers of court in relation to service of documents.

71. (1) This section applies where service of a document on a person in the manner agreed by the parties, or in accordance with the provisions of section 70 having effect in default of agreement, is not reasonably practicable.

(2) Unless otherwise agreed by the parties, the court may make such order as it thinks fit -

- (a) for service in such manner as the court may direct, or
- (b) dispensing with service of the document.

(3) Any party to the arbitration agreement may apply for an order, but only after exhausting any available arbitral process for resolving the matter.

(4) The leave of the court is required for any appeal from a decision of the court under this section.

Reckoning periods of time.

72. (1) The parties are free to agree on the method of reckoning periods of time for the purposes of any provision agreed by them or any provision of this Law having effect in default of such agreement.

- (2) If or to the extent there is no such agreement -
- (a) where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date,
 - (b) where the act is required to be done a specified number of clear days after a specified date, at least that number of days must intervene between the day on which the act is done and that date,
 - (c) where the period is a period of 7 days or less which would include -
 - (i) a non-business day, or
 - (ii) a public holiday in the place where anything which has to be done within the period falls to be done,
- that day shall be excluded.

Power of court to extend time limits relating to arbitration proceedings.

73. (1) Unless the parties otherwise agree, the court may by order extend any time limit agreed by them in relation to any matter relating to the arbitration proceedings or specified in any provision of this Law having effect in default of such agreement.

- (2) This section does not apply to a time limit to which section 9

applies (power of court to extend time).

(3) An application for an order may be made -

(a) by any party to the arbitration proceedings (upon notice to the other parties and to the tribunal), or

(b) by the arbitral tribunal (upon notice to the parties).

(4) The court shall not exercise its power to extend a time limit unless it is satisfied -

(a) that any available recourse to the tribunal, or to any arbitral institution or person vested by the parties with power in that regard, has first been exhausted, and

(b) that a substantial injustice would otherwise be done.

(5) The court's power under this section may be exercised whether or not the time has already expired.

(6) An order under this section may be made on such terms as the court thinks fit.

(7) The leave of the court is required for any appeal from a decision of the court under this section.

Constitution and rules of Royal Court.

74. (1) In this Law "**the court**" means the Royal Court sitting as an Ordinary Court constituted by the Bailiff sitting unaccompanied by the Jurats; and

for the purposes of this Law the court may appoint one or more assessors to assist it in the determination of any matter before it.

(2) The Royal Court sitting as a Full Court may by order make rules dealing with all procedural and incidental matters arising under this Law in respect of the court and its powers, proceedings, practice and procedure.

(3) Rules under subsection (2) may, without limitation, regulate and prescribe -

- (a) the procedure, including the method of pleading, and the practice to be followed in proceedings,
- (b) the means by which matters may be proved, and
- (c) the manner and the way in which evidence may be adduced.

(4) In addition, rules of court may amend the provisions of this Part -

- (a) with respect to the time within which any application or appeal to the court must be made,
- (b) so as to keep any provision made by this Law in relation to arbitration proceedings in step with the corresponding provision of rules of court applying in relation to proceedings in the court, or
- (c) so as to keep any provision made by this Law in

relation to legal proceedings in step with the corresponding provision of rules of court applying generally in relation to proceedings in the court.

Notice and time in connection with legal proceedings.

75. (1) References in this Law (however expressed) -

- (a) to an application, appeal or other step in relation to legal proceedings being taken "upon notice" to the other parties to the arbitration proceedings, or to the tribunal, are to such notice as is required by rules of court and do not impose any separate requirement, and
- (b) to making an application or appeal to the court within a specified period are to the issue within that period of the appropriate originating process in accordance with rules of court.

(2) Where any provision of this Law requires an application or appeal to be made to the court within a specified time, the rules of court relating to the reckoning of periods, the extending or abridging of periods, and the consequences of not taking a step within the period prescribed by the rules, apply in relation to that requirement.

Saving for certain matters governed by customary law.

76. Nothing in this Law shall be construed as excluding the operation of any rule of law consistent with the provisions of this Law, in particular, any rule of law as to -

- (a) matters which are not capable of settlement by

arbitration,

- (b) the effect of an oral arbitration agreement, or
- (c) the refusal of recognition or enforcement of an arbitral award on grounds of public policy.

Application of prescription.

77. (1) The Guernsey law of prescription shall apply to arbitration proceedings as it applies to legal proceedings, subject to any agreement between the parties to the contrary.

(2) The court may order that in computing the time prescribed by the Guernsey law of prescription for the commencement of proceedings (including arbitration proceedings) in respect of a dispute which was the subject matter of -

- (a) an award, or
- (b) the affected part of an award,

which the court orders to be set aside, or declares to be of no effect, the period between the commencement of the arbitration and the date of the court order shall be excluded.

(3) In determining when a cause of action accrued for the purposes of prescription, any provision that an award is a condition precedent to the bringing of legal proceedings shall be disregarded in respect of a matter subject to an arbitration agreement.

Powers of court in event of default.

78. If a person does not comply with an order of the court under this Law requiring that person to do anything, the court may, on such terms and conditions as it thinks fit, order that the thing be done by another person, nominated for the purpose by the court, at the expense of the person in default (or otherwise as the court directs), and a thing so done has effect in all respects as if done by the person in default.

Application of this Law to consumer contracts.

79. (1) If a person enters into a contract as a consumer, which contract contains an arbitration agreement, that arbitration agreement shall not bind that consumer except where—

- (a) that consumer -
 - (i) has given written consent to be so bound, after the dispute in question has arisen, or
 - (ii) has submitted to arbitration under that agreement in respect of the dispute or any other dispute arising thereunder, or
- (b) the court has made an order under subsection (2).

(2) Where the court is satisfied that it would not be detrimental to the consumer for the dispute in question to be referred to arbitration, in accordance with subsection (3), the Court may order that the arbitration agreement shall bind the consumer, on application by any prospective party to the proceedings made after the dispute has arisen.

(3) In determining whether a reference to arbitration is detrimental to the interests of the consumer, the court shall have regard to all factors appearing to be relevant.

(4) For the purposes of this section a person enters into a contract **"as a consumer"** if -

- (a) he neither makes the contract in the course of a business nor holds himself out as doing so,
- (b) the other party makes the contract in the course of a business, and
- (c) the services or goods passing under or in pursuance of the contract are of a type ordinarily supplied for private use or consumption,

but on a sale by auction or by competitive tender the buyer is not in any circumstances to be regarded as entering into the contract as a consumer.

(5) In subsection (4) "business" includes a profession and the activities of any public authority or person.

(6) It is for those claiming that a person entered into a contract otherwise than as a consumer to show that he did so.

PART VI

STATUTORY ARBITRATIONS

Application of this Law to statutory arbitrations.

80. (1) The provisions of this Law apply to every arbitration under a Guernsey enactment (a "**statutory arbitration**"), subject to the adaptations and exclusions specified in sections 81 to 83.

(2) The provisions of this Law do not apply to a statutory arbitration if or to the extent that their application -

- (a) is inconsistent with the provisions of the enactment concerned, or with any rules of procedure authorised or recognised by it, or
- (b) is excluded by any other enactment.

General adaptation of provisions in relation to statutory arbitrations.

81. (1) The provisions of this Law apply to a statutory arbitration -

- (a) as if the arbitration were pursuant to an arbitration agreement and as if the enactment were that agreement, and
- (b) as if the persons by and against whom a claim subject to arbitration in pursuance of the enactment may be or has been made were parties to that agreement.

(2) Every statutory arbitration shall be taken to have its seat in Guernsey.

Specific adaptations of provisions in relation to statutory arbitrations.

82. (1) The following provisions of this Law apply to a statutory arbitration with the following adaptations.

(2) In section 24(1) (competence of tribunal to rule on its own jurisdiction), the reference in paragraph (a) to whether there is a valid arbitration agreement shall be construed as a reference to whether the enactment applies to the dispute or difference in question.

(3) Section 29 (consolidation of proceedings and concurrent hearings) applies only so as to authorise the consolidation of proceedings, or concurrent hearings in proceedings, under the same enactment.

(4) Section 40 (rules applicable to substance of dispute) applies with the omission of subsection (1)(b) (determination in accordance with considerations agreed by parties).

Provisions excluded from applying to statutory arbitrations.

83. The following provisions of this Law do not apply in relation to a statutory arbitration -

- (a) section 5 (whether agreement discharged by lack of capacity of a party),
- (b) section 9 (power of court to extend agreed time limits),
- (c) sections 6(5), 7(2) and 66(4) (restrictions on effect of provision that award is a condition precedent to right to bring legal proceedings).

PART VII
RECOGNITION AND ENFORCEMENT OF FOREIGN AWARDS

Continuation of Part II of the Arbitration (Guernsey) Law, 1982.

84. (1) Subject to subsection (2), Part II of the Arbitration (Guernsey) Law, 1982 (enforcement of certain foreign awards) continues to apply in relation to foreign awards within the meaning of that Part which are not also New York Convention awards.

(2) In section 32(1) of the Arbitration (Guernsey) Law, 1982 for "section 26 of this Law" substitute "section 61 of the Arbitration (Guernsey) Law, 2016".

New York Convention awards.

85. (1) In this Part a "**New York Convention award**" means an award made, in pursuance of an arbitration agreement, in the territory of a state which is a party to the New York Convention.

(2) For the purposes of subsection (1) and of the provisions of this Part relating to such awards -

(a) "**arbitration agreement**" means an arbitration agreement in writing, and

(b) an award shall be treated as made at the seat of the arbitration, regardless of where it was signed, despatched or delivered to any of the parties.

(3) If Her Majesty by Order in Council declares that a state specified in the Order is a party to the New York Convention, or is a party in

respect of any territory so specified, the Order shall, while in force, be conclusive evidence of that fact.

(4) In this Law "**the New York Convention**" means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on 10th June 1958.

Recognition and enforcement of awards.

86. (1) A New York Convention award shall be recognised as binding on the persons as between whom it was made, and may accordingly be relied on by those persons by way of defence, set-off or otherwise in any legal proceedings in Guernsey.

(2) A New York Convention award may, by leave of the court, be enforced in the same manner as a judgment or order of the Royal Court to the same effect.

(3) Where leave is so given, judgment may be entered in terms of the award.

Evidence to be produced by party seeking recognition or enforcement.

87. (1) A party seeking the recognition or enforcement of a New York Convention award must produce -

- (a) the duly authenticated original award or a duly certified copy of it, and
- (b) the original arbitration agreement or a duly certified copy of it.

(2) If the award or agreement is in a foreign language, the party must also produce a translation of it certified by an official or sworn translator or by a diplomatic or consular agent.

Refusal of recognition or enforcement.

88. (1) Recognition or enforcement of a New York Convention award shall not be refused except in the following cases.

(2) Recognition or enforcement of the award may be refused if the person against whom it is invoked proves -

- (a) that a party to the arbitration agreement was (under the law applicable to that party) under some incapacity,
- (b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made,
- (c) that that person was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present that person's case,
- (d) that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration (but see subsection (4)),

- (e) that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country in which the arbitration took place,
- (f) that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.

(3) Recognition or enforcement of the award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy to recognise or enforce the award.

(4) An award which contains decisions on matters not submitted to arbitration may be recognised or enforced to the extent that it contains decisions on matters submitted to arbitration which can be separated from those on matters not so submitted.

(5) Where an application for the setting aside or suspension of the award has been made to such a competent authority as is mentioned in subsection (2)(f), the court before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the recognition or enforcement of the award. It may also on the application of the party claiming recognition or enforcement of the award order the other party to give suitable security.

Savings for other bases of recognition or enforcement.

89. Nothing in the preceding provisions of this Part affects any right to rely upon or enforce a New York Convention award at customary law or under section 61.

PART VIII
FINAL PROVISIONS

Interpretation.

90. (1) In this Law, unless the context otherwise requires -

"**agreed award**": see section 45(1),

"**the arbitration agreement**": for its meaning in this Law other than in Part VII, see section 1(1), for its meaning in Part VII, see section 85(2),

"**available arbitral process**", in relation to any matter, includes any process of appeal to or review by an arbitral or other institution or person vested by the parties with powers in relation to that matter,

"**claimant**", unless the context otherwise requires, includes a counterclaimant, and related expressions shall be construed accordingly,

"**the Committee**", means the States of Guernsey's Committee for Economic Development,

"**costs of the arbitration**": see section 54(1)

"**the court**" means the Royal Court, constituted in accordance with section 74,

"evidenced in writing": see section 1(2),

"lack of capacity" means, in relation to any person, that -

- (a) a declaration of insolvency has been made in respect of that person by the Royal Court under the Law entitled "Loi ayant rapport aux Débiteurs et à la Renonciation, 1929"^d,
- (b) a Commissioner or Committee of Creditors has been appointed by the Royal Court under Article VII of that Law to supervise or secure that person's estate,
- (c) that person's affairs have been declared to be in a state of "désastre" at a meeting of arresting creditors held before a Commissioner of the Royal Court,
- (d) an interim vesting order has been made against that person in respect of any of that person's real property in the Bailiwick,
- (e) in the case of a natural person, that person has died, or is legally incapable,
- (f) in the case of a company -

^d Ordres en Conseil Vol. VIII, p. 310.

- (i) a liquidator (provisional or otherwise) has been appointed to act,
 - (ii) the company has passed a special resolution that it be voluntarily wound up, or
 - (iii) an administration order is in force in respect of the company under Part XXI of the Companies Law or, if the company is a protected cell company, in respect of any of its cells,
- (g) in the case of a protected cell company, a receivership order is in force in respect of any of its cells,
- (h) in the case of a limited partnership -
- (i) any of the events or circumstances upon the occurrence of which the partnership is required to be wound up has occurred, or
 - (iii) in the case of a protected cell limited partnership, a receivership order is in force in respect of any of its cells,
- (i) in the case of a limited liability partnership ("LLP") registered under the Limited Liability Partnership Law, 2013^e an event, agreement or order specified in

^e Order in Council No. of VI of 2014

section 85(1) of that Law has occurred in respect of the LLP,

- (j) in the case of a partnership other than a limited partnership or limited liability partnership -
 - (i) any of the circumstances or events specified in Part V of the Partnerships (Guernsey) Law, 1995^f in or upon which the partnership is dissolved has occurred, or
 - (ii) the Royal Court has ordered the dissolution of the partnership under section 34 of that Law,
- (k) in the case of a foundation registered under the Foundations Law, 2012^g, a winding up event within the meaning of paragraph 23(1) of Schedule 2 to that Law has occurred in respect of the foundation,
- (l) a composition, compromise or arrangement with creditors has been entered into in respect of that person whereby the creditors will receive less than 100 pence in the pound,
- (m) possession or control has been taken of any of that person's property or affairs by or on behalf of

^f Ordres en Conseil Vol. XXXVI, p. 179.

^g Order in Council No. of I of 2013

creditors or, in the case of a company, the holders of debentures issued by it,

- (n) an event, measure or procedure has occurred outside Guernsey in relation to that person which corresponds as nearly as may be to any event described in the above paragraphs,

and related expressions shall be construed accordingly,

"legal proceedings" means civil proceedings in the court,

"the New York Convention": see section 85(4),

"non-business day" means -

- (a) a Saturday, a Sunday, Christmas Day and Good Friday, and
- (b) a day appointed as a public holiday by Ordinance of the States of Deliberation under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^h,

"the parties": see section 1(1),

"peremptory order" means an order made under section 35(2)(b)(iii) or made in exercise of any corresponding power conferred by the parties,

^h Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; Vol. XXXIV, p. 504; and Vol. XXXV(1), p. 367.

"premises" includes land, buildings, moveable structures, vehicles, vessels, aircraft and hovercraft,

"person" includes both natural and legal persons and an unincorporate body of persons,

"provisions of this Law" includes the provisions of any Ordinance, regulation or rules hereunder,

"the seat of the arbitration": see section 1(3),

"statutory arbitration": see section 80(1),

"States" means the States of Guernsey,

"substantive jurisdiction", in relation to an arbitral tribunal, refers to jurisdiction in respect of the matters specified in section 24(1)(a) to (c), and references to the tribunal exceeding its substantive jurisdiction shall be construed accordingly, and

"writing" means information recorded in any form whether electronically or in hard copy.

(2) For the purposes of this Law, a corporation is resident in the place in which it has its registered office.

(3) Any reference in this Law to an enactment or subordinate legislation is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(4) References in this Law to a party to an arbitration agreement include any person claiming under or through a party to the agreement.

General provisions as to subordinate legislation.

91. (1) The States may by Ordinance -
- (a) amend Parts II, III, IV and V and section 90 of this Law, for the purpose of -
 - (i) clarifying any issues raised by relevant jurisprudence, or
 - (ii) reflecting international best practice in arbitration,and
 - (b) make such other provision as they think fit for the purposes of carrying this Law into effect.
- (2) Any Ordinance, regulations or rules under this Law -
- (a) may be amended or repealed by a subsequent Ordinance, regulation or rule, as the case may be, hereunder, and
 - (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient including, in the

case of an Ordinance, provision amending any enactment.

(3) Any power conferred by this Law to make an Ordinance, regulations or rules may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same class of case for different purposes,
 - (iii) any such provision either unconditionally or subject to any prescribed conditions.

Repeals and transitional provisions.

- 92.** (1) The following enactments are repealed -

- (a) the Arbitration (International Investment Disputes) Act, 1968ⁱ,
- (b) Parts I and III of the Arbitration (Guernsey) Law, 1982, and
- (c) the Arbitration (Amendment) (Guernsey) Law, 1986^j.

(2) Subject to subsection (3), anything done before the date of commencement of this Law or in the process of being done on that date under the Arbitration (Guernsey) Law, 1982 which could be done under this Law shall have effect as if done or, as the case may be, may be continued under this Law.

(3) Notwithstanding subsection (1), the provisions of the Arbitration (Guernsey) Law, 1982 shall continue to apply to arbitration agreements entered into prior to the date of commencement of this Law, unless the parties otherwise agree.

Citation.

93. This Law may be cited as the Arbitration (Guernsey) Law, 2016.

Commencement.

94. This Law shall come into force on the 28th day after the date of its registration on the records of the Island of Guernsey.

ⁱ An Act of the UK Parliament extended to Guernsey, Ordres en Conseil Vol. XXI, p. 272.

^j Ordres en Conseil Vol. XXIX, p. 178.

PROJET DE LOI

ENTITLED

The Designation of Officers (Bailiwick of Guernsey) Law, 2016

ARRANGEMENT OF SECTIONS

1. Designation of officers as having operational powers.
2. Designation may be subject to limitations.
3. Additional provisions concerning police officer designates.
4. Additional provisions concerning customs officer designates.
5. Additional provisions concerning immigration officer designates.
6. Evidence of designation.
7. Resistance or wilful obstruction of designated officers.
8. Assault on designated officers.
9. Impersonation of designated officers.
10. States may make Ordinances.
11. General provisions as to Ordinances.
12. Application of Police Complaints (Guernsey) Law, 2008.
13. Civil liability for wrongful acts of designated officers.
14. Interpretation.
15. Citation.

PROJET DE LOI

ENTITLED

The Designation of Officers (Bailiwick of Guernsey) Law, 2016

THE STATES, in pursuance of their Resolution of the 16th February, 2016^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Designation of officers as having operational powers.

1. (1) The Chief Officer of Police may designate any customs officer or immigration officer as a person having the powers and privileges of a police officer.

(2) The Chief Revenue Officer may designate any police officer or immigration officer as a person having the powers of a customs officer.

(3) The Chief Revenue Officer may designate any police officer as a person having the powers of an immigration officer.

(4) An officer must not be designated under this section unless the Chief Officer of Police or, as the case may be, the Chief Revenue Officer, is satisfied that the officer –

(a) is capable of effectively exercising the operational

^a Article * of Billet d'État No. * of 2016.

powers which the officer is to have,

- (b) has received adequate training in respect of the exercise of those powers, and
- (c) is otherwise a suitable person to exercise those powers.

(5) The Chief Officer of Police or, as the case may be, the Chief Revenue Officer may modify, suspend or withdraw a designation by giving notice of the modification, suspension or withdrawal to the designated officer.

Designations may be subject to limitations.

2. (1) A designation may be made subject to any limitations specified in the designation.

(2) Without limiting the generality of subsection (1), a designation may include limitations on –

- (a) the operational powers that the designated officer is to have,
- (b) the purposes for which the designated officer may exercise the operational powers which the officer is to have, and
- (c) the duration of the designation.

(3) A designation has effect without limitation of time unless the designation limits the duration of the designation.

(4) Any limitation on a designation is subject to modification,

suspension or withdrawal of the designation under section 1(5).

Additional provisions concerning police officer designates.

3. (1) A customs officer or an immigration officer designated as having the powers and privileges of a police officer ("**a police officer designate**") –

- (a) has all the powers and privileges of a police officer subject to any limitations imposed under section 2,
- (b) may exercise those powers and privileges subject to any restrictions on their exercise (for example relating to territory, rank or uniform) that apply when those powers and privileges are exercised by a police officer,
- (c) in the exercise of any such power or privilege, is subject to any duties to which a police officer would be subject if the police officer were exercising the power or privilege, and
- (d) is responsible to the Chief Officer of Police for the exercise of those powers and privileges.

(2) Where a power or privilege of a police officer in any enactment is exercisable by a police officer designate, a reference to a police officer in the enactment is to be regarded as including a reference to the police officer designate.

(3) Without limiting the generality of subsection (2), an enactment which provides for the issuing of warrants that authorise a police officer to exercise any power or privilege has effect as if a police officer designate were a police officer.

Additional provisions concerning customs officer designates.

4. (1) A police officer or an immigration officer designated as having the powers of a customs officer ("**a customs officer designate**") –

- (a) has all the powers of a customs officer subject to any limitations imposed under section 2,
- (b) may exercise those powers subject to any restrictions on their exercise (for example relating to territory, rank or uniform) that apply when those powers are exercised by a customs officer,
- (c) in the exercise of any such power, is subject to any duties to which a customs officer would be subject if the customs officer were exercising the power, and
- (d) is responsible to the Chief Revenue Officer for the exercise of those powers.

(2) Where a power of a customs officer in any enactment is exercisable by a customs officer designate, a reference to a customs officer in the enactment is to be regarded as including a reference to the customs officer designate.

(3) Without limiting the generality of subsection (2), an enactment which provides for the issuing of warrants that authorise a customs officer to exercise any power has effect as if a customs officer designate were a customs officer.

Additional provisions concerning immigration officer designates.

5. (1) A police officer designated as having the powers of an immigration officer ("**an immigration officer designate**") –

- (a) has all the powers of an immigration officer subject to any limitations imposed under section 2,
- (b) may exercise those powers subject to any restrictions on their exercise (for example relating to territory, rank or uniform) that apply when those powers are exercised by an immigration officer,
- (c) in the exercise of any such power, is subject to any duties to which an immigration officer would be subject if the immigration officer were exercising the power, and
- (d) is responsible to the Chief Revenue Officer for the exercise of those powers.

(2) Where a power of an immigration officer in any enactment is exercisable by an immigration officer designate, a reference to an immigration officer in the enactment is to be regarded as including a reference to the immigration officer designate.

(3) Without limiting the generality of subsection (2), an enactment which provides for the issuing of warrants that authorise an immigration officer to exercise any power has effect as if an immigration officer designate were an immigration officer.

Evidence of designation.

6. (1) A designated officer must produce evidence of the designation if –

- (a) the officer exercises, or purports to exercise, any operational power in relation to another person, and
- (b) the other person requests the officer to produce such evidence.

(2) If the designated officer fails to produce such evidence, that failure does not make the exercise of the operational power invalid.

Resistance or wilful obstruction of designated officers.

7. (1) A person commits an offence if the person resists or wilfully obstructs –

- (a) a designated officer acting in the exercise of an operational power, or
- (b) a person who is assisting a designated officer in the exercise of such a power.

(2) A person guilty of an offence under subsection (1) is liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine not

exceeding twice level 5 on the uniform scale, or to both.

Assault on designated officers.

8. (1) A person commits an offence if the person assaults –

- (a) a designated officer acting in the exercise of an operational power, or
- (b) a person who is assisting a designated officer in the exercise of such a power.

(2) A person guilty of an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding two years, or to a fine, or to both.

Impersonation of designated officers.

9. (1) A person commits an offence if, with intent to deceive –

- (a) the person impersonates a designated officer,
- (b) the person makes any statement or does any act calculated to falsely suggest that the person is a designated officer, or
- (c) the person makes any statement or does any act calculated to falsely suggest that the person has powers as a designated officer that exceed the powers that the person actually has.

(2) A person guilty of an offence under subsection (1) is liable on

conviction to imprisonment for a term not exceeding two years, or to a fine, or to both.

States may make Ordinances.

10. (1) The States may, by Ordinance, make such provision as the States considers appropriate in consequence of designated officers having operational powers.

(2) Without limiting the generality of subsection (1), an Ordinance under this section may, in particular –

- (a) provide for designated officers to benefit from exemptions or other protection in respect of the exercise of operational powers,
- (b) provide for the disclosure of information to, or the doing of other things in relation to, designated officers,
- (c) confer functions on designated officers or any other person.

General provisions as to Ordinances.

11. (1) An Ordinance under this Law –

- (a) may be amended or repealed by a subsequent Ordinance, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient, including, without limitation, provision making consequential

amendments to any Law (including this Law), Ordinance or subordinate legislation.

(2) Any power to make an Ordinance under this Law may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases, and
- (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases, or classes of cases, or different provision for the same case or class of case for different purposes, or
 - (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Without prejudice to the generality of the other provisions of this Law, an Ordinance under this Law –

- (a) may empower any department or committee of the States, any other body or authority (including, without

limitation, any court in the Island), or any other person to –

(i) make subordinate legislation, or

(ii) issue codes or guidance,

in relation to any matter for which an Ordinance may be made under this Law,

(b) may provide that no liability shall be incurred by any person in respect of anything done or omitted to be done in the discharge or purported discharge of any of the person's functions unless the thing is done or omitted to be done in bad faith,

(c) may make provision under the powers conferred by this Law despite the provisions of any enactment for the time being in force,

(d) may repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law, and

(e) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by *Projet de Loi*.

Application of Police Complaints (Guernsey) Law, 2008.

12. For the avoidance of doubt, for the purposes of the Police

Complaints (Guernsey) Law, 2008^b and any Ordinance or subordinate legislation made under it –

- (a) a police officer who is designated as having the powers of a customs officer or an immigration officer remains a member of the salaried police force of the Island of Guernsey, despite the designation, and
- (b) a customs officer or an immigration officer who is designated as having the powers and privileges of a police officer does not become a member of the salaried police force of the Island of Guernsey by reason of the designation.

Civil liability for wrongful acts of designated officers.

13. (1) Any unlawful conduct of a police officer designate in the exercise or purported exercise of the powers or privileges of a police officer is to be regarded as if it were the unlawful conduct of a police officer for the purposes of determining civil liability (including who is liable) for that conduct.

(2) Any unlawful conduct of a customs officer designate in the exercise or purported exercise of the powers of a customs officer is to be regarded as if it were the unlawful conduct of a customs officer for the purposes of determining civil liability (including who is liable) for that conduct.

(3) Any unlawful conduct of an immigration officer designate in the exercise or purported exercise of the powers of an immigration officer is to be regarded as if it were the unlawful conduct of an immigration officer for the

^b Order in Council No. XIX of 2009; as amended by Ordinance No. XVI of 2011. See also Ordres en Conseil Vol. XXIX, p. 207 and G.S.I. No. 16 of 2011.

purposes of determining civil liability (including who is liable) for that conduct.

Interpretation.

14. (1) In this Law, unless the context requires otherwise –

"**Chief Officer of Police**" means the Chief Officer of the salaried police force of the island of Guernsey, and

"**Chief Revenue Officer**" means the Chief Officer of Customs and Excise for the time being appointed by the Policy Council,

"**customs officer**" means an officer authorised under section 3 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law 1972^c,

"**customs officer designate**" has the meaning given by section 4(1),

"**designate**" means designate under section 1, and "**designation**" has a corresponding meaning,

"**designated officer**" means an officer designated as having operational powers under section 1,

"**enactment**" includes an Act of Parliament applicable to or extended (subject to any modifications) to the Bailiwick of Guernsey, a Law, an Ordinance and any subordinate legislation and includes any provision or portion of such an Act, a Law, an Ordinance or subordinate legislation,

^c Ordres en Conseil Vol. XXIII, p. 573; as amended by Vol. XXXIII, p. 217 and Recueil d'Ordonnances Tome XXIX, p. 406. There are several other amendments not relevant to this section.

"function" includes power or duty,

"immigration officer" means an immigration officer for the purposes of the Immigration Act 1971^d,

"immigration officer designate" has the meaning given by section 5(1),

"operational powers", in relation to a designated officer, means –

- (a) the powers and privileges of a police officer,
- (b) the powers of a customs officer, or
- (c) the powers of an immigration officer,

conferred on the designated officer by or under this Law,

"police officer" means a member of the salaried police force of the Island of Guernsey,

"police officer designate" has the meaning given by section 3(1),

"Policy Council" means the States of Guernsey Policy Council,

"subordinate legislation" means any regulation, rule, order, rule of

^d An Act of Parliament (Chapter 77 of 1971) extended to the Bailiwick of Guernsey subject to modifications by UK S.I. 1993/1796; as further modified or amended in its application to the Bailiwick of Guernsey by UK S.I. 1998/1264, 2003/2900, 2011/2444 and 2015/1533.

court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance, and

"**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^e.

(2) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation.

15. This Law may be cited as the Designation of Officers (Bailiwick of Guernsey) Law, 2016.

^e Ordres en Conseil Vol. XXXI, p. 278; as amended by Order in Council No. XVIII of 2009.

The Air Navigation (Bailiwick of Guernsey) (Amendment) Ordinance, 2016

THE STATES, in pursuance of their Resolution of the 11th day of December, 2015^a, and in exercise of the powers conferred on them by sections 145 and 151 of the Air Navigation (Bailiwick of Guernsey) Law, 2012^b and all other powers enabling them in that behalf, hereby order:-

Amendment of nationality mark.

1. In section 2(2) of the Air Navigation (Bailiwick of Guernsey) Law, 2012 ("**the Law**") for the words "shall consist of a group of four capital letters in Roman character and both the nationality mark and the registration mark shall comply with requirements published by the Director of Civil Aviation under section 135" substitute "may comprise letters, numbers or a combination thereof; letters shall be displayed as Roman characters and numbers as Arabic numerals and the marks shall comply with the requirements of the Aviation (Registry) (Guernsey) Law, 2013".

Amendment of reference to Category I operation, etc.

2. In -

- (a) section 40(10)(b) of the Law, for "68(9)" substitute "68(8)", and
- (b) section 152 of the Law, in the definition of "Category I operation, Category II operation and Other than Standard Category II operation" for "68(7)" substitute "68(8)".

Issue of an air operator's certificate.

3. Insert the following section after the heading to Part I, Chapter VII of the Law -

^a Article X of Billet d'État No. XIII of 2015.

^b Order in Council No. XI of 2013.

"Issue of air operator's certificate."

59A. (1) An aircraft registered in Guernsey must not fly on any flight for the purpose of commercial air transport except under and in accordance with the terms of an air operator's certificate granted to the operator of the aircraft under subsection (2), certifying that the holder of the certificate is competent to ensure that aircraft operated by the holder on such flights are operated safely.

(2) The Director of Civil Aviation must grant an air operator's certificate to an operator, having its principal place of business in the Bailiwick, upon being satisfied that the applicant is competent to secure the safe operation of aircraft of the types specified in the certificate on flights of the description and for the purposes specified, having regard in particular to the applicant's -

- (a) previous conduct and experience,
- (b) equipment,
- (c) organisation and staffing, and
- (d) maintenance and other arrangements.

(3) The operator of an aircraft to which this section applies must establish and maintain to the satisfaction of the Director of Civil Aviation a safety management system appropriate to the size and complexity of the operation.

(4) A person must not hold himself or herself, or any other person, out as being a person who may offer flights on an aircraft registered in Guernsey for the purpose of commercial air transport unless the person, or that other person (as the case may be), holds a valid air operator's certificate granted under this section.

(5) The Department may by regulations make further provision for the issue of air operator's certificates, and regulations under section 149 may also make provision for the issue of air operator's certificates to operators of aircraft registered in Guernsey."

Interpretation.

4. (1) In this Ordinance "**the Law**" means the Air Navigation (Bailiwick of Guernsey) Law, 2012, and other words or expressions have the same meaning as in the Law.

(2) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of this Ordinance throughout the Bailiwick.

(3) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, repealed and replaced (with or without modification), extended or applied.

Citation.

5. This Ordinance may be cited as the Air Navigation (Bailiwick of Guernsey) (Amendment) Ordinance, 2016.

Commencement.

6. This Ordinance shall come into force on 8th March, 2016.

^c

Ordres en Conseil Vol. XIII, p. 355

The Aviation Registry (Guernsey) (Amendment) Ordinance, 2016

THE STATES, in pursuance of their Resolution of the 11th December, 2015^a, and in exercise of the powers conferred on them by sections 50 and 52 of the Aviation Registry (Guernsey) Law, 2013^b and all other powers enabling the States in that behalf, hereby order:-

Removal of restriction on use of registered aircraft.

1. Section 18 of the Aviation Registry (Guernsey) Law, 2013 ("the Law") is repealed.

Display of nationality marks.

2. In section 21 of the Law, after the words "by Schedule 3" insert ", which may be amended by Regulations of the Department".

Changes to the register: change of registered mark.

3. After section 22 of the Law, insert the following section -

"Changes to the Register: change of registered mark.

22A. Where –

- (a) an aircraft has been registered with a non-random mark, and
- (b) the identity of the registered owner changes,

the registration mark assigned to that aircraft shall revert to a random mark on the issue of the new certificate of registration under section 14, unless the Registrar otherwise agrees in accordance with the registry practice pertaining to non-random marks."

^a Article X of Billet d'État No. XIII of 2015.

^b Order in Council No. XIII of 2013, as amended by Ordinance No. XI of 2014 and No. XVIII of 2015.

De-registration and export amendment.

4. Section 40G of the Law is amended as follows -

- (a) in subsection (2)(b), delete the words "or the creditor's certified designee", and
- (b) in subsection (3)(a), for "authorised party" substitute "creditor".

Amendment to the Aircraft Registry (Interests in Aircraft) (Guernsey) Ordinance, 2015.

5. The Aircraft Registry (Interests in Aircraft) (Guernsey) Ordinance, 2015^c ("**the Ordinance**") is amended as follows -

- (a) in section 17(2)(b), delete the words " or the creditor's certified designee",
- (b) in section 17(3)(a), for "authorised party" substitute "creditor",
- (c) in section 49, delete the definition of "regulations",
- (d) in Schedule 3, for the words "Cape Town Declarations" substitute the text marked in quotation marks in the Schedule to this Ordinance, and.
- (e) after section 50, insert the following section -

"Power of the Department to make regulations.

50A. (1) This Ordinance may be amended by regulations of the Department in order to give further effect, as necessary, to the Cape Town Convention.

^c Ordinance No. XVIII of 2015.

(2) Regulations made under this section shall be deemed to be regulations made under section 52 of the Law, so the power may be exercised accordingly and the regulations shall be laid before the States after being made."

Interpretation.

6. (1) In this Ordinance -

"**the Law**" means the Aviation Registry (Guernsey) Law, 2013,

"**the Ordinance**" means the Aircraft Registry (Interests in Aircraft) (Guernsey) Ordinance, 2015, and

all other terms not defined have the same meanings as in the Law, or in the Ordinance, as the context so requires.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation.

7. This Ordinance may be cited as the Aircraft Registry (Guernsey) (Amendment) Ordinance, 2016.

Commencement.

8. This Ordinance comes into force on the 8th March, 2016.

SCHEDULE

Section 5(c)

"DECLARATIONS
LODGED BY THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND
UNDER THE CAPE TOWN CONVENTION AT THE TIME OF THE DEPOSIT
OF ITS INSTRUMENT OF RATIFICATION

Pursuant to Article 39(1) of the Convention, the Government of the United Kingdom of Great Britain and Northern Ireland declares:

- (a) all categories of non-consensual rights or interests which under the law of the United Kingdom of Great Britain and Northern Ireland, the law of Gibraltar, the law of the Cayman Islands or the law of the Island of Guernsey at the date of this declaration, or created after that date, have priority over an interest in an object equivalent to that of the holder of a registered international interest and shall to that extent have priority over a registered international interest, whether in or outside insolvency proceedings; and
- (b) that nothing in the Convention shall affect the rights of the United Kingdom of Great Britain and Northern Ireland, Gibraltar, the Cayman Islands and the Island of Guernsey or any intergovernmental organization of which the United Kingdom of Great Britain and Northern Ireland is a Member State, or other private provider of public services in the United Kingdom of Great Britain and Northern Ireland, Gibraltar, the Cayman Islands and the Island of Guernsey to arrest or detain an airframe, aircraft engine or helicopter under the law of the United Kingdom of Great Britain and Northern Ireland, the law of Gibraltar, the law of the Cayman Islands or the law of the Island of Guernsey for payment of amounts owed to such entity, organization or provider directly relating to those services in respect of that object or another object, or in the case of the Island of Guernsey in respect of that object only.

Pursuant to Article 39(4) of the Convention, the Government of the United Kingdom of Great Britain and Northern Ireland declares that a right or interest in a category referred to in sub-paragraph (a) above, in the United Kingdom of Great Britain and Northern Ireland, or in the territory of Gibraltar, the Cayman Islands or the Island of Guernsey, shall have priority over an international interest registered prior to the date of deposit of the United Kingdom of Great Britain and Northern Ireland's instrument of ratification.

Pursuant to Article 52 of the Convention, the Government of the United Kingdom of Great Britain and Northern Ireland declares that the United Kingdom's Ratification shall be extended to the territories of the Island of Guernsey, the Cayman Islands and Gibraltar for whose international relations the Government of the United Kingdom of Great Britain and Northern Ireland is responsible.

Pursuant to Article 53 of the Convention, the Government of the United Kingdom of Great Britain and Northern Ireland declares that the following courts are the relevant courts for the purposes of Article 1 and Chapter XII of the Convention: the High Court of Justice in England and Wales, the Court of Session in Scotland, the High Court of Justice in Northern Ireland, the Supreme Court of Gibraltar, the Grand Court of the Cayman Islands and the Royal Court of Guernsey.

Pursuant to Article 54(2) of the Convention, the Government of the United Kingdom of Great Britain and Northern Ireland declares that any remedy available to the creditor in the United Kingdom of Great Britain and Northern Ireland or the territory of Gibraltar, the Cayman Islands or the Island of Guernsey under any provision of the Convention which is not there expressed to require application to the court may be exercised without the leave of the court.

DECLARATIONS

LODGED BY THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND UNDER THE AIRCRAFT PROTOCOL AT THE TIME
OF THE DEPOSIT OF ITS INSTRUMENT OF RATIFICATION

Pursuant to Article XXIX of the Protocol, the Government of the United Kingdom of Great Britain and Northern Ireland declares that the United Kingdom's Ratification of the Protocol shall be extended to the territories of the Island of

Guernsey, the Cayman Islands and Gibraltar for whose international relations the United Kingdom is responsible.

Pursuant to Article XXX(1) of the Protocol, the Government of the United Kingdom of Great Britain and Northern Ireland declares that Articles VIII and XII of the Protocol shall apply to the territories of the Cayman Islands and the Island of Guernsey.

Pursuant to Article XXX(1) of the Protocol, the Government of the United Kingdom of Great Britain and Northern Ireland declares that it will apply Article XIII of the Protocol to the United Kingdom of Great Britain and Northern Ireland and the territories of the Cayman Islands and the Island of Guernsey.

Pursuant to Article XXX(2) of the Protocol, the Government of the United Kingdom of Great Britain and Northern Ireland declares that Article X of the Protocol shall apply to the Island of Guernsey, and that the time period referred to in Article X(2) of the Protocol shall be 10 working days for the purposes of Article 13(1)(a) to (c) of the Convention and 30 working days for the purposes of Article 13(1)(d) and (e) of the Convention.

Pursuant to Article XXX(3) of the Protocol, the Government of the United Kingdom of Great Britain and Northern Ireland declares that Alternative A under Article XI of the Protocol shall apply to the Cayman Islands and the Island of Guernsey with a waiting period of 60 days."

The Housing (Control of Occupation) (Amendment of Housing Register) (No. 2) Ordinance, 2016

THE STATES, in pursuance of their Resolution of the 1st August, 2014^a and in exercise of the powers conferred upon them by sections 52 and 66 of the Housing (Control of Occupation) (Guernsey) Law, 1994^b hereby order:-

Addition of dwellings to Part A of Housing Register.

1. The States Housing Department ("the Department") may inscribe in Part A of the Housing Register any or all of the dwellings known, or to be known, as Parfonde, Pisquet, Moulinet, Moulettes, Amfrocque, Anfree and Clavelee, Royal Terrace, Glategny Esplanade, Saint Peter Port.

Applications to be made on or before 30th April, 2016.

2. An application to the Department to inscribe any or all of the dwellings described in section 1 in Part A of the Housing Register must be made on or before the 30th April, 2016.

Inscriptions to be made on or before 30th April, 2017.

3. (1) Subject to subsection (2), on receipt of an application made under section 2 the Department must, on or before 30th April, 2017, inscribe in Part A of the Housing Register the dwellings which are the subject of the application.

(2) For the avoidance of doubt, subsection (1) does not apply in respect of any dwelling in circumstances where the application regarding that

^a Article XV of Billet d'État No. XVI of 2014.

^b Ordres en Conseil Vol. XXXV(1), p. 75; Vol. XXXVIII, p. 193; Order in Council No. III of 2002; No. VIII of 2007; No. XVII of 2008; No. I of 2009.

dwelling has been withdrawn before its inscription.

Licences to lapse if applications not made on or before 30th April, 2016.

4. Should the owner of a dwelling described in section 1 fail, on or before the 30th April, 2016, to make application to the Department to inscribe the dwelling in Part A of the Housing Register, any housing licence held in respect of the occupation of that dwelling and valid at the expiration of that period shall thereupon cease to be valid.

Interpretation.

5. Except where the context requires otherwise, expressions used in this Ordinance have the same meanings as in the Housing (Control of Occupation) (Guernsey) Law, 1994, as amended.

Citation.

6. This Ordinance may be cited as the Housing (Control of Occupation) (Amendment of Housing Register) (No.2) Ordinance, 2016.

Commencement.

7. This Ordinance shall come into force on the 15th March, 2016.

The Children (Guernsey and Alderney) (Amendment) Ordinance, 2015

THE STATES LEGISLATION SELECT COMMITTEE, in exercise of the powers conferred on the States by section 119 of the Children (Guernsey and Alderney) Law, 2008^a and all other powers enabling the States in that behalf, and in exercise of the powers conferred on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948^b, and having regard to the Policy Letter of the Health and Social Services Department^c, hereby orders:-

Amendment of Law of 2008.

1. The Children (Guernsey and Alderney) Law, 2008 ("**the Law of 2008**") is further amended as follows.

2. Immediately after section 64 of the Law of 2008, insert the following section -

"Powers of police officers to recover children for whom Department is responsible.

64A. (1) Subsection (2) applies -

(a) in relation to a child in respect of whom -

^a Order in Council No. XIV of 2009; as amended by Recueil d'Ordonnances Tome XXXIII, pp. 480 and 709.

^b Ordres en Conseil Vol. XIII, p. 288 (there are amendments not material to this Ordinance).

^c Article ** of Billet d'Etat No III of 2016.

- (i) a care requirement,
- (ii) a community parenting order,
- (iii) an emergency child protection order, or
- (iv) a secure accommodation order.

has been made, and

- (b) where the child -
 - (i) has been unlawfully taken away or is being unlawfully kept away from the Department,
 - (ii) has run away or is staying away from the Department, or
 - (iii) is missing, and
- (c) where the Department has requested a police officer to assist in the recovery of the child.

(2) A police officer may recover the child -

- (a) by requiring any person who has information as to the child's whereabouts to disclose that information,

- (b) by directing any person who is in a position to do so to produce the child,
- (c) by entering without warrant any premises upon which he reasonably suspects the child to be for the purposes of searching for the child,
- (d) by removing the child to such place as the Department may request, or
- (e) by requiring any person to deliver the child to the Department.

(3) No person shall be excused from complying with any request made under subsection (2)(a) on the ground that complying with it might incriminate him or his spouse of an offence but a statement or admission made in complying shall not be admissible in evidence against either of them in proceedings for an offence other than perjury."

3. In section 65 of the Law of 2008, in subsections (1) and (3) for "or 64" substitute ", 64 or 64A".

4. For section 117 of the Law of 2008 substitute the following -

"Additional power of court upon disposal of an application for an order.

117. On disposing of any application for an order under this Law, the court may -

- (a) whether or not it makes any other order in response to the application, order that no

application for an order under this Law of any specified kind may be made with respect to the child concerned by the person named in the order without leave of the court,

- (b) in the case of a recovery order under section 92, and for the avoidance of doubt, direct that the order remains in force for such period as the court may order, provided that the period shall not extend beyond the day on which the relevant requirement or order, as the case may be, referred to in subsection (2) of that section comes to an end."

Citation.

5. This Ordinance may be cited as the Children (Guernsey and Alderney) (Amendment) Ordinance, 2015.

Commencement.

6. This Ordinance shall come into force on the 27th July, 2015.