

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *for* HOME AFFAIRS**

THE POPULATION MANAGEMENT (GUERNSEY) LAW, 2016  
AMENDMENTS TO TRANSITIONAL PROVISIONS

The States are asked to decide:-

Whether, after consideration of 'The Population Management (Guernsey) Law, 2016 – Amendments to Transitional Provisions' dated 17 October 2016, they are of the opinion:-

1. To agree to persons first resident in Guernsey as minors who are resident in Guernsey on the coming into force of the Population Management (Guernsey) Law, 2016 ("the Law") having the right to benefit from the shorter residential qualification periods introduced by the Law;
2. To agree to the amendment of section 57 of the Law, so as to provide that a person to whom it applies may only benefit from its provisions for so long as the person's circumstances do not change in any material way;
3. To agree to the amendment of section 25 of the Law, so as to provide that, with the exception of a holder of a short term housing licence applying for a Short Term Employment Permit, the restrictions within section 25(1) and (3), and their disapplication in the circumstances set out at section 25(2)(b), apply also to a holder of an old regime document (as defined in the Law) who applies for a Permit;
4. To agree to the amendment of section 83 of the Law, so as to provide that, subject to them meeting certain criteria, the spouse/partner of a Guernsey resident currently serving in HM Forces is able to have their residence during that period of service treated as residence in Guernsey; and
5. To agree to the preparation of one or more Ordinances under section 75(1)(d) of the Law to give effect to the above Recommendations, and any necessary incidental or consequential provision.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *for* HOME AFFAIRS**

THE POPULATION MANAGEMENT (GUERNSEY) LAW, 2016  
AMENDMENTS TO TRANSITIONAL PROVISIONS

The Presiding Officer  
States of Guernsey  
Royal Court House  
St Peter Port

17 October 2016

Dear Sir

**1 Executive Summary**

- 1.1 Following public consultation in 2011, and debate on five Policy Letters between 2012 and 2015<sup>1</sup>, in March 2016, the States of Deliberation approved the *Projet de Loi* entitled the Population Management (Guernsey) Law, 2016<sup>2</sup> (“the Law”). It is anticipated that the Law will enter into force on 3 April 2017. It is to be brought into force by Ordinance of the States.
- 1.2 The Law introduces an entirely new Population Management regime, designed to assist the States to manage the size and make-up of the Island’s population. It will replace both the Housing (Control of Occupation) (Guernsey) Law, 1994 and the Right to Work (Limitation and Proof) (Guernsey) Law, 1990, collectively referred to as “the Housing Control regime”.
- 1.3 The Law provides for a system of Certificates and Permits, via which people will be able to demonstrate their right to live and work in Guernsey either as a result of:
- their strong familial connections with the Island;
  - their employment, supporting the Island to meet skills and manpower shortages; or

---

<sup>1</sup> See “Policy Letters and supplementary information”: [www.gov.gg/populationmanagement](http://www.gov.gg/populationmanagement)

<sup>2</sup> [“The Population Management \(Guernsey\) Law, 2016” – Billet d’État VI March 2016](#)

- the sector of the Island’s housing stock in which they reside.

1.4 In addition, it sets out the various ways by which a person can acquire residential qualifications, such that they gain an enduring right to remain in – and return to – Local Market accommodation in the Island.

1.5 Provision has been made in the Law for it to be susceptible to amendment by Ordinance for certain defined purposes, including making further or different provision for the transition from the Housing Control regime to the new system. Such provision is not unusual in legislation introducing a complex new statutory regime, as the Law does; providing for the transition from the old regime to the new tends to be particularly complicated, and it is not uncommon for the relevant provisions to require some technical amendment before the legislation comes into force, to ensure it does so smoothly. This Policy Letter outlines recommendations in respect of a small number of amendments to be made by Ordinance of the States for this purpose. References to "Commencement" are to the coming into force of the Law.

## 2. The power to amend the Law by Ordinance

2.1 The power to amend the Law by Ordinance may be exercised before the Law comes into force, and that is what is proposed here. In this way, if the Recommendations are approved, the Law shall come into force in amended form. The relevant provisions are as follows:

### **"Power to amend Law by Ordinance for specific purposes.**

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

[...]

- (d) to make such further or different provision as the States thinks fit for effecting the transition from any provision made by, or 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,".

### **"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) –

[...]

- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to the States to be necessary or expedient.

[...]

(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.”

The Law was registered on 27<sup>th</sup> June 2016.

### **3. Transitional Arrangements – qualification of those first resident as minors**

- 3.1 Under the Housing Control regime, there are 13 ways to become a Qualified Resident; that is to say, a person who has an enduring right to live in Local Market accommodation and to undertake any employment in the Island. Six of the 13 qualification routes specifically deal with those who were born in Guernsey or were first resident in Guernsey as a minor in the household of their parent<sup>3</sup>.
- 3.2 Under the Law, the number of qualification routes to becoming a Permanent Resident (the Law's equivalent of a Qualified Resident) is reduced to six, and five of the six qualification routes specifically deal with those who were born in Guernsey or were first resident in Guernsey as a minor in the household of their parent<sup>4</sup>.
- 3.3 In terms of the durations of the qualification periods, there is no direct comparison between the "old" and "new" qualification routes referred to in the preceding two paragraphs. When it comes to people first resident in Guernsey as minors, the "new" qualification routes introduced by the Law are, in every case, shorter than the Housing Control regime equivalent.
- 3.4 As a result of the above, when discussing what transitional arrangements ought to be included within the Law in the context of ensuring that children who are resident in the Island on Commencement are able to benefit from the new qualification periods, the former Policy Council's 2015 Policy Letter<sup>5</sup> commented:

“3.72 There are of course others who are currently able to gain permanent rights on the basis of birth in Guernsey plus a period of residence, or because they were first resident as a minor in the household of their parent/s and have subsequently completed a period of residence prescribed under the Housing Control Law; and it is necessary to determine how to deal with their situations upon commencement of the new Law.

---

<sup>3</sup> [As set out in section 10\(2\) of the Housing \(Control of Occupation\) \(Guernsey\) Law, 1994, as amended](#)

<sup>4</sup> [As set out in section 3 of the Law](#)

<sup>5</sup> [“Population Management Regime: Transition Arrangements and Other Matters” - Billet D’État XIV 2015 Volume 1](#)

3.73 The Policy Council believes that the most logical and consistent approach is to apply the “milestone” principle, as set out in paragraph 3.11<sup>6</sup>. This would mean that anyone ordinarily resident in Guernsey on the day the new Law commences will, if he meets the requisite “milestone” of 8 or 14 years’ residence become a Permanent Resident.

3.74 Should such a person be part-way through a qualification period – having completed, say, 7 years out of the 10 needed to qualify – then he will become a Permanent Resident on completion of 8 years’ residence.

3.75 For the avoidance of doubt historic residence in Guernsey will not count towards qualification periods under the new regime unless it can be aggregated with current or future periods of residence in the Island to maintain a person’s right, gained under the Housing Control Law, to complete their qualifying period in this way. This is in line with the principle described in paragraph 3.9.”

3.5 The Resolution corresponding most closely to these paragraphs reads as follows:

“1. To agree that:

[...]

(p) any period of ordinary residence in Guernsey prior to commencement of the new Law will not be counted towards qualifying residence under the new Law unless the person in question is ordinarily resident in Guernsey at commencement of the new Law;”.

3.6 As the relevant provisions are currently drafted, the Law does not provide the gateway envisaged by the above Resolution for all people resident in Guernsey on Commencement to be able to benefit properly from the shorter qualification periods introduced by the new regime. If left un-amended, most persons resident on Commencement who were first resident as a minor will be disadvantaged as regards their overall qualification periods compared to those who are first resident as a minor after the Law comes into force<sup>7</sup>.

---

<sup>6</sup> 3.11 reads: " A third key principle relates to the acknowledgement of the “milestones” previously agreed by the States; specifically the point when a person’s lawful residence in Local Market accommodation under the new system would be acknowledged, regardless of his situation or expectations under the current Law."

<sup>7</sup> The reference is to "most persons" here because some people in this group are *not* disadvantaged as the provisions are currently drafted; children under the age of eight who will benefit from the transitional birthright provisions, for example.

For example, in the future, a child born in Guernsey to 'Open Market' parents, will stand to become a Permanent Resident after completing 14 years' residence in a 24-year period, but their older sibling, born before Commencement would be required to complete 20 years' residence in a 30-year period.

This runs contrary to the States' intention as expressed in the above Resolution when read in conjunction with the relevant paragraphs of the 2015 Policy Letter set out above.

- 3.7 As such, it is recommended that the Law be amended to give full and proper effect to that Resolution, as described above.

#### **4. Transitional Arrangements – continuing rights**

- 4.1 When considering the transitional arrangements, the States was clear that certain groups of people resident on Commencement, and who had not needed to hold a document under the old regime, should be exempt from the need to hold a Certificate or Permit. In particular, this is reflected by the following Resolution -

- on 28 June 2013, on Article I of Billet d'État No.XI:

"6. To agree the requirement that any existing Qualified Resident who:

[...]

- (c) is resident in the Island and is not, and does not intend to be, in employment will not be required to obtain a Permanent Residence Permit.";

- 4.2 To give effect to the above Resolutions, section 57 of the Law effectively exempts people who would not have been required to hold a document under the Housing Control regime from needing to hold a Certificate or Permit :

**"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 a Permit."

- 4.3 It has been concluded that the above provision could have unintended consequences as a result of its not limiting the extent of the exemption.
- 4.4 For example, if an Open Market resident with no right to live in Local Market accommodation was, on Commencement, not working, he would forever be exempted from the need to hold a Certificate or Permit, provided that he did not undertake employment in Guernsey. He might argue, as a consequence of this, that he would not need to obtain a Permit, and would not be committing an offence, if he were to move from his Open Market home into Local Market accommodation - even though he would otherwise have no right to live in the Local Market.
- 4.5 As a result it is considered prudent to amend section 57 of the Law to provide that the exemption therein applies only for so long as the circumstances of a person to whom it applies do not change in any material way. This approach is consistent with other transitional provisions in the Law – see for example sections 61, 62 and 63.

## **5. Transitional Arrangements – breaks in residence before being eligible for an Employment Permit**

- 5.1 The Law introduces the concept of a Recognised Break in Residence<sup>8</sup>. That is to say, an absence from the Island that is at least as long as the person’s last period of residence in the Island.
- 5.2 This concept has been introduced so as to prevent a person ‘stacking’ multiple periods of residence under various types of Employment Permit such that, even though their skills, qualifications, and experience have not merited the grant of a Long-Term Employment Permit, they are able to gain Established Resident status, or to claim, on human rights grounds, that they should be entitled to remain in Guernsey indefinitely.
- 5.3 This is dealt with as part of the 2013 Resolutions:

“(9) To agree that, except in a case of successive Short Term Employment permits, an individual must take a recognised break in residence before that individual will be eligible to obtain an Employment Permit for a subsequent period of residence; that a recognised break in residence be defined as an absence from the Island for a period of time which is at least equal to the duration of an individual’s last period of residence in the Island; and that in a case of successive Short Term Employment Permits an individual’s absence from the island which does not constitute a recognised break in residence will be treated as part of that individual’s aggregate residence for the purposes of Proposition 8(d).”

- 5.4 This Resolution was given effect in the Law by section 25, which provides:

---

<sup>8</sup> [As defined in section 78 of the Law](#)

**“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 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.”

5.5 The Committee for Home Affairs believes that the States did not intend to limit the need for a Recognised Break in Residence so as only to apply to gaps in residence between new regime documents. Rather, taking into account debate and Resolutions on previous Policy Letters, the Committee believes that, despite the absence of an express Resolution to this effect, it was also the intent of the States that persons wishing to return to the Island under the Population Management regime, having last been resident under an old regime document<sup>9</sup>, should also be subject to the restrictions in section 25(1) and (3) (and, equally, to their disapplication in the circumstances set out in section 25(2)(b)). In the view of the Committee, this must be right; the logic of the policy imperative behind section 25, set out in section 4.7 above,

---

<sup>9</sup> [As defined in section 56 of the Law](#)



applies just as much in respect of a person who happens to have been last resident under an old regime document as it does in respect of any other person.

- 5.6 Given this, and subject to what is said in section 5.7 below, the Committee *for* Home Affairs believes that it would be right, and entirely consistent with the primary aims of the Population Management regime, for section 25, as set out above, to apply in respect of holders of old regime documents as it does to Permit holders.
- 5.7 Specific transitional provision is already made, at section 59, in respect of holders of one particular type of old regime document - short term housing licence holders - who apply for one particular type of Permit - Short Term Employment Permits. As such, the amendment to section 25 which is recommended under this section of the Policy Letter will need to exclude such persons from its scope.

## **6. Transitional Arrangements – spouse/partner of a person serving in HM Forces**

- 6.1 Under the Housing Control regime there existed special arrangements whereby the spouse and child(ren) of certain types of Qualified Residents who were serving in HM Forces, could be deemed to have been living in Guernsey during periods when, were it not for that military service, the family would have been resident in Guernsey.
- 6.2 It was apparent from the strength of feeling expressed during the consultation phase and the debates that followed, that the provisions of the Housing Control Law were generally considered to be too narrow. This resulted in the following Resolution -
- on 28 June 2013, on Article I of Billet d'État No.XI:  
“7A. To agree that a local resident and his family being out of the Island with HM Forces would have this time considered as though it was spent in Guernsey.”
- 6.3 In consequence, section 83 of the Law, which include transitional arrangements, ensures that, subject to certain conditions, Guernsey residents serving in HM Forces, and to their spouse/partner and child(ren), are treated as though they are living in Guernsey during the service period.
- 6.4 However, as drafted, the current provisions do not correctly cater for the spouse/partner of a person serving in HM Forces. In consequence, situations might well arise where a person residing elsewhere than Guernsey at the present time as a consequence of the HM Forces service of their spouse, will no longer be able to have that residence deemed to be residence in Guernsey.
- 6.5 The Committee *for* Home Affairs considers it necessary to amend these provisions to ensure that the spouse/partner of a person currently serving in HM Forces can have their expectations met, insofar as their residential status is concerned, when they take up residence in Guernsey at the end of that service.

## **7. Resource and implementation plan**

- 7.1 Other than the preparation of the necessary legislation, there are no direct resource implications arising from this Policy Letter.

## **8. Engagement and consultation**

- 8.1 This Policy Letter has been written in close consultation with the Law Officers' Chambers.

## **9. Recommendations**

- 9.1 The States asked to decide whether they are of the opinion:
1. To agree to persons first resident in Guernsey as minors who are resident in Guernsey on the coming into force of the Population Management (Guernsey) Law, 2016 ("the Law") having the right to benefit from the shorter residential qualification periods introduced by the Law;
  2. To agree to the amendment of section 57 of the Law, so as to provide that a person to whom it applies may only benefit from its provisions for so long as the person's circumstances do not change in any material way;
  3. To agree to the amendment of section 25 of the Law, so as to provide that, with the exception of a holder of a short term housing licence applying for a Short Term Employment Permit, the restrictions within section 25(1) and (3), and their disapplication in the circumstances set out at section 25(2)(b), apply also to a holder of an old regime document (as defined in the Law) who applies for a Permit;
  4. To agree to the amendment of section 83 of the Law, so as to provide that, subject to them meeting certain criteria, the spouse/partner of a Guernsey resident currently serving in HM Forces is able to have their residence during that period of service treated as residence in Guernsey; and
  5. To agree to the preparation of one or more Ordinances under section 75(1)(d) of the Law to give effect to the above Recommendations, and any necessary incidental or consequential provision.

## **10. Committee Support for Propositions**

- 10.1 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Committee.

Yours sincerely,

M M Lowe  
President

R H Graham  
Vice-President

M P Leadbeater  
V Oliver  
R G Prow